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03.06.01.03

.03 Repairs of Tangible Personal Property.

A. General.

- (1) The charge for labor to repair or alter existing tangible personal property belonging to another for the purpose of restoring the property to its original condition or usefulness is not subject to tax.
- (2) The tax does apply if the labor expended results in the creation of a new or different item.

B. Persons engaged in repairing tangible personal property of others for a consideration may handle the sales and use tax on their transactions in either of the following ways:

- (1) If separate charges are made for materials incorporated in the property being repaired, the tax shall be applied to the charges for the materials. The resale exclusion may be claimed on purchases of materials transferred to customers under these circumstances.
- (2) If separate charges are not made for materials incorporated in the property being repaired, that is, the repair is charged for on a lump-sum basis, the tax may not apply to any portion of the charge to the customer. The resale exclusion may not be claimed on purchases of materials transferred to customers under these circumstances. A person making a repair of tangible personal property who charges for the repair on a lump-sum basis shall pay the tax on purchases of materials used in performing the repair. The taxability of purchases for lump-sum contracts is not affected by the fact that the person for whom the repair work is performed would not have been required to pay the tax on a separately stated charge for materials.

C. Maintenance Contracts.

- (1) The tax does not apply to a charge for a maintenance contract unless it is required to be purchased as a condition of a sale of other tangible personal property.
- (2) An optional maintenance contract for computer software is subject to the tax if the contract entitles the purchaser to receive without charge software products which are otherwise separately priced and marketed by the seller. In this situation, the customer shall be charged the tax on the total charge for the maintenance contract.
- (3) A person performing repairs under an optional maintenance contract, except as stated in §C(2) of this regulation, shall pay the tax on materials passing to customers, unless a separate charge is made for materials. In this latter situation, the tax shall be charged to the customer and the purchase of the materials by the person performing the repair is entitled to the resale exclusion as described in §B(1) of this regulation.
- (4) A person performing repairs under a mandatory maintenance contract or a taxable optional maintenance contract as described in §C(2) of this regulation may claim the resale exclusion on all materials passing to customers.

D. Persons engaged in repairing tangible personal property shall pay the tax on all purchases of equipment, tools, consumables and other materials used in performing the repair work which are not transferred to customers, without regard to the method of billing employed.

E. The circumstances under which resale certificates may be issued by persons engaged in repairing tangible personal property who utilize both separately stated materials and lump-sum charge bases for those repairs are set forth in Regulation .07 of this chapter.

F. The sales and use tax treatment of repairs to real property is described in Regulation .19 of this chapter.