

The taxability of maintenance agreements depends upon whether charges for the agreements are included in the selling price of the tangible personal property. See 86 Ill. Adm. Code 140.141 and 140.301. (This is a GIL.)

March 17, 2009

Dear Xxxxx:

This letter is in response to your letter dated January 15, 2009, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Recently, our company began a research project into the taxability of maintenance and warranty contracts. Besides searching the state legislature databases, we review compounded research done by three prominent sources in tax research. For the state of Illinois, all three of these sources found that where a maintenance contract is mandatory and not optional, it should be taxable. A customer in Illinois disputes this conclusion; therefore, we ask the Illinois Department of Revenue for assistance in this matter.

We have provided relevant information to aid in a decision under these particular circumstances. The sales of maintenance contracts occur under the following premises:

Our company is not the actual provider of work done under the maintenance contract as we are engaged in the business of resale only.

When a customer places an order for a particular piece of equipment, the purchase of the maintenance contract for that particular equipment is mandatorily purchased, such that a customer cannot purchase the equipment without the contract.

Because some states exempt maintenance/warranty contracts from sales tax if they are separately stated, we have broken the price out on a separate line for invoice purposes.

While this gives the appearance of a separate price, the contracts are not actually 'sold separately' from the equipment.

Should the maintenance contracts as described above be taxable? Please aid us in interpreting the Illinois Administrative Code as it applies to our situation. Thank you for your consideration.

DEPARTMENT'S RESPONSE:

The taxability of maintenance agreements depends upon whether charges for the agreements are included in the selling price of the tangible personal property. If the charges for the agreements are included in the selling price of the tangible personal property, those charges are part of the gross receipts of the retail transaction and are subject to tax. In those instances, no tax is incurred on the maintenance services or parts when the repair or servicing is performed. A manufacturer's warranty that is provided without additional cost to a purchaser of a new item is an example of an agreement that is included in the selling price of the tangible personal property. Charges for maintenance agreements that are not optional and are not sold separately from the equipment are part of the gross receipts of the retail transactions and are subject to tax, regardless of whether the charges are separately-stated.

If maintenance agreements are sold separately from tangible personal property, sales of the agreements are not taxable transactions. However, when maintenance services or parts are provided under the maintenance agreements, the service or repair companies will be acting as service providers under provisions of the Service Occupation Tax Act that provide that when service providers enter into agreements to provide maintenance services for particular pieces of equipment for stated periods of time at predetermined fees, the service providers incur Use Tax based on their cost price of tangible personal property transferred to customers incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.141 and 140.301(b)(3). The sale of an optional maintenance agreement or extended warranty is an example of an agreement that is not generally a taxable transaction.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

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