

FYI – For Your Information

Warranties and Maintenance Agreements

GENERAL INFORMATION

This FYI addresses the sales tax obligations of vendors who offer warranties and maintenance agreements. The information in this FYI pertains to state and state-administered local taxes **only**. Home rule jurisdictions that administer their own sales taxes must be consulted directly for information about their tax regulations. A list of home rule cities is included in “Colorado Sales/Use Tax Rates” (DRP 1002), a Colorado Department of Revenue publication which is updated each January and July.

For the purposes of determining Colorado sales and use tax applicability, there are two types of warranties for maintenance agreements (also referred to as service contracts): *mandatory agreements* that are part of the purchase price of the item, and *optional agreements* which are sold to the customer as a separate item. [§39-26-105(2) C.R.S.]

MANDATORY CONTRACTS

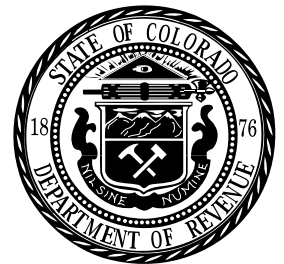
For warranties and maintenance agreements which are mandatory and part of the purchase price of the item the warranty covers, in most cases the seller must collect sales tax on the total purchase price. When the warranty is taxed in this manner, no additional sales or use tax is due from the seller or buyer on the materials used in performing the maintenance. For information on when use tax versus sales tax is due, see FYI Sales 6 “Contractors and Retailer-Contractors” and FYI General 10 “Consumer Use Tax.” See the last section of this FYI information on obtaining these publications.

Colorado sales tax regulations allow an exception to the above rule in taxing mandatory service contracts on tangible personal property only for companies that receive permission to enter into a written agreement with the Department of Revenue. In such agreements, the department is authorized to determine what percentage of the company’s sales contracts is for the sale of tangible personal property and what percentage is for services supplied. The company must then charge sales tax on that percentage of the contract for goods sold, and exempt the service portion of the contract. To qualify for this agreement with the department, call (303) 866-3804. An example of a company that might find such an arrangement useful would be a computer company that sells hardware packages bundled with a standard service contract for equipment maintenance.

OPTIONAL CONTRACTS

If the maintenance agreement is optional, and is sold to the customer as a separate item, tax is not normally charged on the contract at the time of sale. The seller responsible for the warranty work must then pay sales or use tax on the cost of the materials used in performing the maintenance. However, a warranty seller may elect to charge sales tax on the warranty contract to avoid having taxable and nontaxable warranty parts.

If the warranty seller contracts with a third party to perform the maintenance work, it is the subcontractor who is responsible for charging and remitting any tax on the materials used. The third party maintenance contractor would



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Sales Tax: (303) 232-2416
Withholding Tax: (303) 232-2416
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Severance Tax: (303) 232-2446
Fuel Tax: (303) 205-5967

normally bill the warranty seller for actual maintenance costs, including sales tax on parts, supplies and materials.

Regarding which local jurisdictions are owed sales tax for the parts used in performance of a warranty agreement: sales tax is due to the local jurisdictions where the warranty work **is being performed**, regardless of where the original warranty contract was purchased. Warranty contracts taxed at point of sale with the tangible personal property are subject to the same rate as the personal property, including all applicable local taxes.

ADDITIONAL EXPENSES

If, in the performance of a maintenance contract, the seller incurs additional expenses (such as travel, lodging, meals, telephone calls, etc.) which are not covered in the agreement and which are charged to the customer, such charges are not taxable to the customer if they are separately itemized on the bill.

LEASED PROPERTY

All above rules also apply to warranties and maintenance contracts on leased tangible personal property.

REAL ESTATE

For real property, whether sold or leased, no sales tax is levied on any warranty. Instead, sales or use tax is due on materials used in performance of the contract. The tax is due from the company providing the guarantee of the warranty repairs. If the charge is passed through to the insured, it is not sales tax. The tax is an overhead cost charged to the real property owner. The company providing the guarantee has purchased the repair items and installed/built them into real property. Therefore, the guarantor has not resold personal property to the real property owner.

FURTHER INFORMATION

For more information on related topics, consult the following DOR publications:

- FYI General 1 “Department of Revenue Publications”;
- FYI General 8 “The FYI Program – Index and General Information”;
- FYI Sales 52 “Special Regulation: Service Enterprises”;
- FYI Sales 62 “Guidelines for Determining When to Collect State-Collected Local Sales Taxes”;
- “Colorado Sales/Use Tax Rates.”

Single FYIs are free from the Taxpayer Service Division. They may be obtained at any statewide Taxpayer Service Center; or by writing to the Colorado Department of Revenue, 1375 Sherman St., Denver, CO 80261; or by calling the DOR Forms Hotline at (303) 232-2414. Please use the FYI number (General 1, Sales 9, etc.) when ordering FYI publications. FYIs and commonly used forms are available on the Web at www.revenue.state.co.us

For a complete set of FYIs (approximately 130 on sales, income, excise and withholding taxes), you may purchase ***The Complete Book of FYIs*** at low cost from the State Forms Center, Division of Correctional Industries, 4200 Garfield St., Denver, CO 80216. An order form is contained in FYI General 1, or call the State Forms Center, (303) 321-4164, for ordering information