



Executive Director
Marshall Stranburg

QUESTION:

- 1- Are the premiums paid by customers to providers for home service contracts only subject to the 2% premium tax and not to sales tax?
- 2- Are the amounts that the local contractors charge the providers for repairs made pursuant to the home service contracts not subject to sales tax?
- 3- If the full amounts that the local contractors charge the providers for the repairs are not subject to sales tax, then are the service charges that the customers pay the local contractors subject to sales tax?
- 4- If the full amounts that the local contractors charge the providers are subject to sales tax and the separately stated service charges are subject to sales tax, is this not double taxation?

ANSWER:

1. The premiums paid by the customers to the providers for home service contracts are not subject to sales tax as service warranties under s. 212.0506, F.S. Rather, they are subject to the 2% premium tax under s. 634.313, F.S.
2. If the repair made by the local contractor is a repair to real property, then the amount that the local contractor charges the providers for the repairs is not subject to sales tax; however, the local contractor owes sales and use tax on the materials and supplies. The local contractor may pass on this cost to the provider, so long as it is not separately stated on the invoice as sales tax. For example, if a local contractor repairs real property for a charge of \$400 (consisting of \$250 labor, \$150 parts) and charges the customer the \$65 service charge, the contractor would owe sale tax on the \$150 cost of parts, and may bill the provider a total of \$344 (e.g., \$250 labor, \$150 parts, \$9 in sales tax paid by the local contractor on the parts used in the repair, less the \$65 received from the customer).

On the other hand, if the local contractor has repaired tangible personal property, then sales tax is due by the provider on the total charge, including any charges for labor that the local contractor bills for the repair of tangible personal property.

This tax must be separately stated on the invoice. Using the same example, the local contractor should bill the provider a total of \$359 (e.g., \$250 labor, \$150 parts, \$24 sales tax calculated on the total charge of \$400, less the \$65 received from the customer). Please note that this example assumes the customer lives in a county that does not impose a surtax.

3. No sales tax is due from the customer on the service charge paid to the local contractor. Again, for tangible personal property repairs, sales tax is due from the provider as the person being billed for the repairs; and for real property repairs, sales tax is due from the local contractor.
4. As discussed above, no sales tax is due from the customer on the service charge paid to the local contractor. Therefore, there is no double taxation.

October 1, 2013

Re: Technical Assistance Advisement – TAA 13A-022
Home Service Contract
XXX (hereinafter “Taxpayer”)
Sections 212.0506, Florida Statutes (F.S.)
Rules 12A-1.105, Florida Administrative Code (F.A.C)

Dear XXX:

This response is in reply to your letter dated XXX, requesting the Department’s issuance of a Technical Assistance Advisement (“TAA”) pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the Department’s position on the issue of home service contracts. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for issuance of a TAA.

FACTS

Factual Background, as provided by Taxpayer:

Taxpayer is a non-profit 501(c)(6) industry trade organization. It is comprised of various member companies, including numerous home service contract providers. The home service contract providers sell home service contracts. A home service contract is a contract that covers the service, repair or replacement of a home’s systems and appliances, such as interior plumbing, heating systems, electrical systems, water heaters, duct work, dishwashers, ovens/ranges/cook-tops, garbage disposals, garage door openers, air conditioning, refrigerators, washer and dryers, pool equipment and spa equipment.

Home service contracts differ from insurance policies in that home service contracts only cover failure due to normal wear and tear. By strict contrast, insurance policies protect against losses from fortuitous events like fire, flood, collision, vandalism, windstorm and other such outside forces and insurable risks. A homeowner purchases a home service contract to budget against the costs of normal wear and tear. The cost of a home service contract varies depending on the provider and region of the country but is approximately \$XXX to \$XXX per year for a typical contract.

Some of the Taxpayer's member companies operate nationally. The providers issue home service contracts in cities and states throughout the country. The providers do not perform any repairs under the home service contract themselves. Instead, the providers contract the repairs to an independent contractor that is located locally in the customer's city. A provider will typically have established relationships with local contractors in cities throughout the country, and it will use them, as needed, to provide covered repairs to its customers.

Factual Background Regarding Service Fees, as provided by Taxpayer :

When a customer who has purchased a home service contract needs a repair under the contract, the customer calls the home service contract provider. The provider, in turn, arranges for one of its local contractors to come to the customer's home to service, repair or replace the system or appliance, as necessary.

Home service contracts typically require that the customer pay a contract service charge for each service call. The amount of the service charges vary but a typical service charge would be about \$XXX. The customer pays the service charge to the local contractor at the time of the service, which is deducted off the top of the entire invoice. The local contractor then sends the provider a bill for the entire repair, including all applicable sales taxes on the entire amount of the bill and less a credit for the service fee paid by the customer. The provider then pays the remaining balance to the local contractor. The local contractor must remit the appropriate taxes it has now collected to the state.

For example, if a customer's air conditioner breaks, the customer calls the provider who in turn sends a local contractor to the customer's house. The total charge for labor and parts is \$XXX. The customer pays the local contractor the \$XXX service charge on site. The local contractor then sends the provider a bill for \$XXX plus the applicable Florida sales tax (e.g., $\$XXX \times 6\% = \XXX) for a total of \$XXX but showing a credit for the \$XXX that the customer already paid. The provider then mails the balance due of \$XXX to the local contractor. The provider does not collect any portion of the \$XXX from the customer as this is the contract benefit. If any sales tax is applicable, as it was in this example, the local contractor remits to the state as it ordinarily would on any other transaction in the state.

Home service contract providers are licensed in Florida under Part II of Chapter 634, F.S. Part II, which governs the sale of “home warranties,” a term that is defined in Fla. Stat. § 634.301. Home service contract providers are not licensed under Part III of Chapter 634, F.S., which governs the sales of “service warranties,” a term that is defined in Fla. Stat. § 634.401.

Because the home service contract providers are licensed under Part II of Chapter 634, they pay the 2% premium tax imposed by Fla. Stat. § 634.313(1) to Florida’s Chief Financial Officer on the premiums that their customers pay for the home service contracts. For example, when a customer buys a home service contract for a yearly premium of \$XXX, then the home service contract provider pays the 2% premium tax on the \$XXX to Florida’s Chief Financial Officer.

REQUESTED RULINGS

Taxpayer’s members would like clarification on what payments, if any, that are made in conjunction with the sales of home service contracts and repairs made under those contracts are subject to Florida’s sales tax. Specifically are home service contract fees or “premiums” that customers pay to providers only subject to the 2% premium tax and thus, not subject to sales tax? Additionally, are the entire amounts that local contractors bill the providers for making repairs under the home service contracts not subject to sales tax? And finally, if the entire amounts that the local contractors bill the providers for repairs made under the home service contracts are not subject to sales tax, then are the service charges (or deductibles) that customers pay on site to the local contractors separately subject to sales tax? Alternatively, if the entire amounts that the local contractors bill the providers for repairs are subject to sales tax, then is sales tax separately due on the payments for service charges (deductibles) from the customers paid to the local contractors?

Therefore, the Taxpayer requests a ruling that, for its members who sell home service contracts under licenses under Part II of Chapter 634, F.S., that:

1. the premiums paid by the customers to providers for the home service contracts are not subject to sales tax and instead are only subject to the 2% premium tax;
2. the full amounts that the local contractors charge the providers for the repairs made pursuant to the home service contracts are not subject to sales tax; and
3. if the full amounts that the local contractors charge the providers for the repairs made pursuant to the home service contracts are not subject to sales tax, then the service charges that customers pay to the local contractors are not separately subject to sales tax; and
4. if the full amounts that the local contractors charge the providers for the repairs made pursuant to the home service contracts are subject to sales tax, then the service charges are not separately subject to sales tax, the end result of which would be to tax those payments twice.

TAXPAYERS ARGUMENT

Citing ss. 634.301(2) and (3), 634.303(1), 634.313(1), 634.317, 634.318, 634.401, 634.403(1), 634.415(2), 634.419, 634.420, F.S., the Taxpayer states that Florida law defines and regulates the sale of two different categories of contracts – home warranties and service warranties. A “home warranty” is defined in s. 634.301(2), F.S. Part II of Chapter 634, F.S. (ss. 634.301 – 634.348, F.S.) regulates the sale of home warranties. A “service warranty” is defined in s. 634.401(13), F.S., and Part III of Chapter 634, F.S. (ss. 634.401 – 634.444, F.S.) regulates the sale of service warranties.

Prior to XXX, the Taxpayer’s members sold their home service contracts pursuant to licenses under both Part II and Part III of Chapter 634, F.S. However, pursuant to s. 20, Chapter 2010-175, Laws of Florida, s. 634.301(2), F.S., was amended, removing the definition of “home improvement” and striking any reference to the requirement of the agreement being offered in connection with the sale of realty.

After this change to the statute, providers changed their licenses from one under Part II and Part III of Chapter 634, F.S., for the sale of home warranties and service warranties, respectively, to just licenses under Part II of Chapter 634, F.S., for sale of home warranties. Accordingly, all home service contract providers now only carry the Part II license.

Thus, the Taxpayer asserts that the home service contracts sold by providers under licenses pursuant to Part II of Chapter 634, F.S., are “home warranties.” The premiums for the home service contracts are subject to the 2% premium tax imposed by s. 634.313(1), F.S.; however, the premiums on those home service contracts, the payments made to persons who perform repairs, maintenance or replacements under those home service contracts and the service fees paid by the purchasers to the people performing repairs, maintenance or replacements under the home service contracts are not subject to sales tax.

APPLICABLE STATUTES AND RULES

Section 212.02(16), Florida Statutes (F.S.), provides, in part:

"Sales price" means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. "Sales price" also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property. . . .

Section 212.05, F.S., provides that every person engaged in the business of selling tangible personal property at retail in this state is exercising a taxable privilege.

Section 212.06(1)(a) and (b), F.S., provide, in applicable part:

(1)(a) The aforesaid tax at the rate of 6 percent of the retail sales price as of the moment of sale, 6 percent of the cost price as of the moment of purchase, or 6 percent of the cost price as of the moment of commingling with the general mass of property in this state, as the case may be, shall be collectible from all dealers as herein defined on the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of tangible personal property or services taxable under this chapter. . . .

(b) Except as otherwise provided, any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his or her own use shall pay a tax upon the cost of the product manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02 defining "cost price." . . .

Section 212.06(14), F.S., provides guidance to persons in determining whether they are making improvements to real property, and it states in pertinent part:

(14) For the purpose of determining whether a person is improving real property, the term:

(a) "Real property" means the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."

(b) "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty....

Section 212.0506, F.S., provides, in part:

(1) It is the intent of the Legislature that every person is exercising a taxable privilege who engages in this state in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty.

(2) For exercising such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable at the rate of 6 percent on the total consideration received or to be received by any person for issuing and delivering any service warranty.

(3) For purposes of this section, "service warranty" means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property. The term "service warranty" does not include contracts or agreements to repair, maintain, or replace tangible personal property if such property when sold at retail in this state would not be subject to the tax imposed by this chapter or if the parts and labor to

repair tangible personal property qualify for an exemption under this chapter, nor does it include such contracts or agreements covering tangible personal property which becomes a part of real property.

* * *

(7) This tax shall not apply to any portion of the consideration received by any person in connection with the issuance of any service warranty contract upon which such person is required to pay any premium tax imposed under Florida Insurance Code under s. 634.313(1).

Regarding Warranty Associations, Chapter 634, Part II Home Warranty Associations, Section 634.301(2) and (3), F.S., provides, in part:

(2) “Home warranty” or “warranty” means any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or inherent defect or any such structural component or appliance or necessitated by failure of an inspection to detect the likelihood of any such loss

(3) “Home warranty association” means any corporation or any other organization, other than an authorized insurer, issuing home warranties.

Section 634.313(1), F.S., provides that each home warranty association must annually file a statement showing all premiums received by it in connection with the issuance of warranties in this state and must pay to the Chief financial Officer a tax in an amount equal to 2 percent of the amount of such premiums so received.

The Department’s interpretation of the statute regarding contractors who repair, alter, or improve real property is contained in Rule 12A-1.051, F.A.C. Subsection (3) of the rule describes the classification of contracts by pricing. Under this paragraph, contracts are classed as: (3)(a) Lump Sum; (3)(b) Cost Plus or Fixed Fee; (3)(c) Upset or Guaranteed Price; (3)(d) Retail Sale plus Installation; and, (3)(e) Time and Materials contracts. Subsection (4), of the rule, gives the general rule of taxability for real property contractors, specifically, “Contractors performing only contracts described in paragraphs (3)(a), (b), (c), or (e) do not resell the tangible personal property used to the real property owner but instead use the property themselves to provide the completed real property improvement.”

DISCUSSION

Sales tax is not imposed on any consideration received by a person issuing a service warranty contract where the 2% insurance premium tax imposed on home warranty associations pursuant to s. 634.313(1), F.S., is required to be paid. The contracts at issue here are home warranties subject to the 2% insurance premium tax; therefore, sales of these contracts are not subject to sales tax as service warranties under s. 212.0506, F.S.

Because these contracts are not taxable service warranties under Chapter 212, F.S., any charges for repairs made under the contracts are subject to sales and use tax in the same manner as any other repairs.

Contractors making repairs to real property are governed by Rule 12A-1.051, F.A.C. Such contractors are generally considered to be the ultimate consumers of the supplies and materials that are used in the performance of the contract and, as such, are responsible for the payment of sales and use tax on the costs of all materials and supplies, including any fabrication costs, used in the performance of the contract.

Charges, including the charge for labor, made for maintenance/repairs to tangible personal property, i.e., refrigerators, washers and dryers, when parts are supplied, are subject to sales tax. The end consumer is responsible for payment of the tax. Rule 12A-1.006, F.A.C. Therefore, when a local independent contractor makes a repair to tangible personal property under a provider's contract, as opposed to a taxable service warranty contract, and the provider is billed for repair, the provider must be charged sales tax by the local contractor on the entire charge for the repair. See Rule 12A-1.051(17) and (18), F.A.C., for guidance as to which activities are classified as real property and which are classified as tangible personal property.

CONCLUSION

In response to your specific request, the Department's position is as follows:

5. The premiums paid by the customers to the providers for home service contracts are not subject to sales tax as service warranties under s. 212.0506, F.S. Rather, they are subject to the 2% premium tax under s. 634.313, F.S.
6. If the repair made by the local contractor is a repair to real property, then the amount that the local contractor charges the providers for the repairs is not subject to sales tax; however, the local contractor owes sales and use tax on the material and supplies. The local contractor may pass on this cost to the provider, so long as it is not separately stated on the invoice as sales tax. For example, if a local contractor repairs real property for a charge of \$XXX (consisting of \$XXX labor, \$XXX parts) and charges the customer the \$XXX service charge, the contractor would owe sale tax on the \$XXX cost of parts, and may bill the provider a total of \$XXX (e.g., \$XXX labor, \$XXX parts, \$XXX in sales tax paid by the local contractor on the parts used in the repair, less the \$XXX received from the customer).

On the other hand, if the local contractor has repaired tangible personal property, then sales tax is due by the provider on the total charge, including any charges for labor that the local contractor bills for the repair of tangible personal property. This tax must be separately stated on the invoice. Using the same example, the

local contractor should bill the provider a total of \$XXX (e.g., \$XXX labor, \$XXX parts, \$XXX sales tax calculated on the total charge of \$XXX, less the \$XXX received from the customer). Please note that this example assumes the customer lives in a county that does not impose a surtax.

7. No sales tax is due from the customer on the service charge paid to the local contractor. Again, for tangible personal property repairs, sales tax is due from the provider as the person being billed for the repairs, and for real property repairs, sales tax is due from the local contractor.
8. As discussed above, no sales tax is due from the customer on the service charge paid to the local contractor. Therefore, there is no double taxation.

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in Section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of Section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

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