

This Revenue Notice was revoked and replaced on March 7, 2016 by publication of Revenue Notice #16-03.

Department of Revenue

Revenue Notice # 12-12: Sales and Use Tax – Warranty and Maintenance Contracts – Optional Contracts on Equipment

Purpose

The purpose of this revenue notice is to explain the department's position that sales and use tax applies to charges for optional maintenance contracts on equipment but not to charges for optional warranty contracts on equipment. This revenue notice does not apply to optional maintenance contracts on computer software (governed by *Minnesota Rules* part 8130.9910).

Background

The department's long-standing position had been that optional maintenance contracts and optional warranty contracts were exempt from sales tax and that the service provider was responsible for paying sales or use tax on any taxable items used under the contract. This position no longer applies to optional maintenance contracts due to changes in Minnesota statutes concerning bundled transactions. The department's position that optional warranty contracts are not subject to sales and use tax is unchanged.

Maintenance Contracts

For purposes of this revenue notice, a maintenance contract means a contract under which the specific repair and replacement parts and consumable items needed to maintain the equipment are provided at no additional cost. The maintenance contract is sold for a lump-sum amount and the taxable items provided under the contract are more than *de minimis* compared to the cost of the contract. Both the customer and the service provider are aware at the time the contract is entered that consumable items will be replaced under the contract and that these items are more than a *de minimis* amount compared to the cost of the contract. An example is a maintenance contract for copy machines, where parts and consumable items that require regular replacement for the copier to perform (such as drums, toner, fuser, developer, etc.) are replaced at no additional cost along with incidental repair parts that may need to be replaced due to unforeseen circumstances.

For purposes of this revenue notice, consumable items means items that are depleted, disposable, get used up, or items that need to be replaced after they have been used for a period of time.

Department Position

Maintenance contracts generally meet the definition of bundled transactions under *Minnesota Statutes*, section 297A.61, subd. 38. They include two or more distinct and identifiable products. They include repair labor as well as replacement parts, consumable items, and general services such as cleaning, inspecting, etc. that are provided on a periodic basis. The consumable items, which are necessary for the proper functioning and use of the equipment, are not provided exclusively with and are not essential to the general maintenance service portion of the contract. The repair parts and consumable items provided under the maintenance contract are more than insignificant compared to the total cost of the contract. Therefore, under current Minnesota statutes optional maintenance contracts are subject to sales and use tax.

Warranty Contracts

For purposes of this revenue notice, a warranty contract means a contract that acts like insurance against future unexpected repair costs. Under a warranty contract, neither the customer nor

the seller knows at the time the contract is signed whether anything will be provided under the contract. The replacement of consumable items is not included under a warranty contract.

Department Position

The department's position on optional warranty contracts is not affected by the bundled transaction provisions in Minnesota statutes since they do not meet the definition of a bundled transaction. The sale does not include the sale of two or more products since under the warranty contract there may never be any parts or services provided to the customer. Optional warranty contracts remain exempt from sales and use tax. The provider of the service must pay sales or use tax on the cost of all taxable items used under the contract. If the service provider charges a separate amount for parts or other taxable items, the provider should buy the items exempt for resale and charge sales tax to the customer.

Publication Date: NOV 26 2012



SUSAN VON MOSCH, Assistant Commissioner
for Tax Policy