

12A-1.105 Service Warranties.

(1)(a) Every person who solicits, offers, provides, enters into, issues, or delivers any service warranty, or who receives, on behalf of another person, any consideration from a service warranty holder is exercising a taxable privilege and shall register as a dealer with the Department of Revenue before such person may engage in or conduct business in this state. See Rule 12A-1.060, F.A.C.

(b)1. The term “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, whether or not the contract provides for the furnishing of parts. The term “service warranty” includes motor vehicle warranties issued under Part I of Chapter 634, F.S., and service warranties issued under Part III of Chapter 634, F.S.

a. Example: A service contract covering an appliance, such as a refrigerator, is a service warranty.

b. Example: A service contract (motor vehicle service agreement) covering the repair of a component part of a motor vehicle is a service warranty.

c. Example: A warranty agreement which indemnifies the agreement holder for the cost of repair or replacement of a television is a service warranty.

d. Example: A maintenance contract covering the cost of labor only to repair or maintain computer hardware is a service warranty.

e. Example: A service agreement covering the cost of labor, and which provides for the furnishing of parts at an additional charge, to repair a washing machine is a service warranty.

2. 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 sales tax or if the parts and labor to repair tangible personal property qualify for an exemption under Chapter 212, F.S.

a. Example: The sale of a wheelchair in Florida is not taxable. A service contract covering the cost of maintaining, repairing, or replacing a wheelchair is not a service warranty.

b. Example: The purchase of a hearing aid in Florida is not taxable. The purchase of a service agreement covering the cost of repairing or replacing a hearing aid is not a service warranty.

c. Example: A maintenance contract covering the cost of parts and labor that are exempt when used to repair industrial machinery and equipment, as provided in Section 212.08(7)(xx), F.S., is not considered a service warranty contract.

3. The term “service warranty” does not include contracts or agreements covering tangible personal property which becomes a part of real property.

a. Example: A central air conditioning system is considered to be part of real property. A service contract covering the cost of repairing a central air conditioning system is not a service warranty.

b. Example: An elevator or escalator is considered to be part of real property. A maintenance contract covering the cost of repair or maintenance of an elevator or an escalator is not a service warranty.

(c)1. If a transaction involves both the issuance of a service warranty subject to tax and the issuance of a warranty, guaranty, extended warranty or extended guaranty, contract, agreement, or other written promise which is not subject to tax, the consideration shall be separately identified and stated with respect to the taxable and nontaxable portions of the transaction. If the consideration for such a transaction is not separately identified and stated, the entire transaction is taxable.

2. If a reasonable, good faith apportionment of the actual consideration for the taxable portion is not evident, that is, if only a nominal amount of the consideration is attached to the taxable portion, the Department shall have the power to reform the contract; such reformation by the Department shall be considered prima facie correct; and the burden to show the contrary shall rest upon the dealer. Sales tax shall apply to the transaction to the extent that the consideration is for a service warranty subject to tax.

3.a. Example: A service contract covers the cost of repairing a central air conditioning system and a refrigerator. The cost of the contract covering the repair of the central air conditioning system and repair of the refrigerator are separately identified and stated on the service contract. The separately identified and stated amount of the contract for the cost of coverage for repair of the central air conditioning system is \$500. The separately identified and stated amount of the contract for the cost of coverage for repair of the refrigerator is \$100. The portion of the contract covering the refrigerator (\$100) is taxable, while that portion covering the central air conditioning system (\$500) is not subject to tax.

b. Example: A service contract covers the cost of repairing a central air conditioning system and a refrigerator. The costs of the contract covering the repair of the central air conditioning system and repair of the refrigerator are separately identified and stated on

the service contract. The separately identified and stated amount of the contract for the cost of coverage for repair of the central air conditioning system is \$599. The separately identified and stated amount of the contract for the cost of coverage for repair of the refrigerator is \$1. Evidence provided to the Department fails to show the apportionment between the taxable and nontaxable portion of the contract was made on a good faith basis, and the Department determines \$500 represents the fair amount of the contract which represents coverage for the repair of the central air conditioning system and \$100 represents the fair amount of the contract which represents coverage for the repair of the refrigerator. The portion of the contract covering the refrigerator (\$100) is taxable, while that portion covering the central air conditioning system (\$500) is not subject to tax.

4. Example: A service contract covers the cost of repairing a central air conditioning system and a refrigerator. A single charge is made for the contract, and items covered under the contract are not separately stated. The entire charge for the contract is taxable.

(d) The partial exemption for the sale of new or used motor vehicles to a resident of another state authorized pursuant to Section 212.08(10), F.S., does not apply to the sale of service warranty contracts.

(2)(a) The tax shall be due at the rate of 6% on the total consideration received or to be received by any person for the privilege of engaging in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty.

(b) The tax shall be due and payable by the person receiving the consideration from the service warranty agreement holder at the time such consideration is received. The person receiving the consideration from the service warranty agreement holder shall collect the tax and remit it to the Department at the times and in the manner provided in Rule 12A-1.056, F.A.C.

(c) Any dealer registered with the Department who performs repairs or maintenance of tangible personal property indemnified under a service warranty may purchase repair parts, materials, and labor incorporated into the repair or maintenance of indemnified property tax-exempt for the purposes of resale. The repair dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C.

(d) If the person receiving consideration from the service warranty agreement holder is not the person issuing such warranty, then the issuer of the service warranty shall take from that person, in lieu of sales tax, a copy of that person's Annual Resale Certificate (Form DR-13).

(e) When a service agreement is sold in conjunction with the lease of tangible personal property, including the lease of a motor vehicle, tax is due at the time of the sale of the service agreement. If the amount of such premium and assessment, on which sales tax has been collected, is prorated over the term of the lease, the prorated amount of the cost of the service agreement in each lease payment is exempt if separately stated in the lease agreement.

(f) When a service warranty contract, including a motor vehicle service agreement, is assigned to a subsequent purchaser of the property covered by such contract, the total consideration received from such assignment by any person engaged in the business of soliciting, offering, providing, entering into, issuing, or delivering service warranties is taxable.

1. Example: A motor vehicle service agreement is assigned to a subsequent purchaser of a motor vehicle covered by such agreement for a \$50 assignment fee. Tax is due on the assignment fee in the amount of \$3 ($\$50 \cdot .06 = \3).

2. Example: A manufacturer's warranty is assigned to a subsequent purchaser of a motor vehicle covered by such warranty for a \$100 assignment fee. Tax is due on the assignment fee in the amount of \$6 ($\$100 \cdot .06 = \6).

(g) The tax does not apply to any portion of the consideration received in connection with the issuance of any service warranty contract upon which the person issuing such contract is required to pay any premium tax imposed under the Florida Insurance Code or the premium tax imposed on home warranty associations pursuant to Section 634.313(1), F.S.

(h) The purchase of insurance by persons issuing service warranty contracts to underwrite or protect themselves from liabilities incurred from the payment of claims arising from the issuance of service warranty contracts is not subject to sales tax.

(3)(a) When a service warranty is cancelled and the consideration paid is refunded to the warranty holder, the person who remitted the tax to the department shall also refund to the warranty holder the tax paid by the warranty holder for the purchase of the service warranty.

(b) When a service warranty is cancelled and the amount of consideration from the sale of the service warranty is refunded to the warranty holder on a prorated basis, the person who remitted the tax to the Department shall also refund to the warranty holder the tax paid by the warranty holder based on the same proration.

(c) When refunds are paid under the conditions stated in paragraphs a. and b., the dealer may then apply directly to the Department of Revenue for a refund or take an equivalent credit on its sales and use tax return. See Rule 12A-1.014, F.A.C.

(4)(a) The payment of any claim arising under a taxable service warranty by the person issuing the service warranty made to a person performing repairs or maintenance of a product listed under the taxable service warranty, or made directly to a lessor of the

product listed under a taxable service warranty, is not subject to sales tax.

(b) When such a claim is paid, the person performing repairs or maintenance shall note the following elements on the repair invoice:

1. The name of the person issuing the service warranty;
2. The identification number of the service warranty;
3. The date of issuance of the service warranty;
4. The Florida Sales Tax Certificate of Registration number of the service warranty issuer; and
5. The amount of the claim to be paid by the service warranty issuer.

(c) Any dealer registered with the Department who performs repairs or maintenance of tangible personal property indemnified under a service warranty may purchase repair parts, materials, and labor incorporated into the repair or maintenance of indemnified property tax-exempt for the purposes of resale. The repair dealer is required to issue a copy of the dealer's Annual Resale Certificate to the selling dealer at the time of purchase in lieu of paying tax, as provided in Rule 12A-1.039, F.A.C.

(5) The payment of all, or any portion, of a claim arising under a taxable service warranty which is not paid directly to the person performing repairs or maintenance or directly to a lessor of the product listed in the service warranty by the issuer of the service warranty is subject to sales tax. The following amounts are subject to tax:

- (a) Any deductible paid by the service warranty holder;
- (b) Any amount paid by the service warranty holder directly to the person performing repairs or maintenance of the product for which the warranty holder may be subsequently reimbursed by the issuer of the service warranty; and
- (c) Payment by the warranty holder for repairs or maintenance that are not covered by the service warranty.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), (14)(a), (16), 212.0506, 212.06, 212.08(7)(v), 212.18(3), 634.011, 634.131, 634.401, 634.415 FS. History—New 1-2-89, Amended 12-11-89, 8-10-92, 1-4-94, 3-20-96, 4-2-00, 6-19-01, 5-1-06, 9-15-08.

Cross Reference: Subsection (7) of Rule 12A-15.003, F.A.C.