

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING # 99-02**

**WARNING**

**Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.**

**SUBJECT**

Application of sales and use tax to contract for management services of capital equipment.

**SCOPE**

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

**FACTS**

Hospital is a for-profit institution located in [CITY], Tennessee. Hospital has contracted with the Taxpayer, an independent contractor corporation, to provide general management services of all maintenance services associated with all hospital capital equipment breakdown and repairs. The Taxpayer does not perform repair services itself at any time.

The Taxpayer is paid a fixed fee based on Hospital's previous year's maintenance/repair costs for all capital equipment. In exchange for this fixed fee, the Taxpayer will pay all maintenance/repair costs associated with Hospital equipment breakdowns. The Taxpayer has no responsibility if repairs are performed improperly; in that case, the Hospital's remedies are directly from the vendor. Following is a synopsis of the responsibilities of Hospital and the Taxpayer under the contract:

1. Purchase orders are issued by the Taxpayer to vendors of repair/maintenance companies.
2. The Taxpayer pays directly to the vendor for all service incidents of Hospital capital equipment.
3. The Taxpayer has complete authority to engage the service vendor in order to repair and service Hospital's capital equipment.

4. Hospital must terminate its existing maintenance contracts which are cancelable and replace those contracts with other contracts under certain terms and conditions.
5. Hospital is authorized to call vendors who have been issued purchase orders by the Taxpayer to repair Hospital capital equipment.
6. The Taxpayer pays Tennessee sales tax to all vendors who repair Hospital capital equipment.

### **ISSUE**

Whether the contract for services provided by the Taxpayer to Hospital is subject to sales tax.

### **RULING**

The contract for services provided by the Taxpayer to Hospital is subject to sales tax, but the repairs purchased by the Taxpayer for the Hospital are exempt from sales tax provided the Taxpayer is registered and purchases the repairs using a resale certificate.

### **ANALYSIS**

Tenn. Code Ann. § 67-6-201 declares the business of selling tangible personal property at retail to be a taxable privilege. A “sale at retail” is defined by Tenn. Code Ann. § 67-6-102(24)(F) to include certain services. The repair of tangible personal property is a taxable service. Tenn. Code Ann. § 67-6-102(24)(F)(iv). The statute also imposes the sales tax on “warranty or service contracts warranting the repair or maintenance of tangible personal property; provided, that any repairs to the extent covered by the contract shall not also be subject to tax.” Tenn. Code Ann. § 67-6-102(24)(F)(ix).

The services provided by the Taxpayer in the contract do not include the actual maintenance or repair of equipment. The Taxpayer does, however, arrange for the equipment to be repaired and keeps proper records of such repairs. This agreement between the Taxpayer and the Hospital is a service agreement. The sale of a warranty or service agreement is among the taxable services enumerated in Tenn. Code Ann. § 67-6-102(24)(F). Accordingly, the charges for the Taxpayer’s services are subject to sales tax. The Taxpayer should not pay tax, however, on the purchase of repair services for the Hospital pursuant to the contract. The Taxpayer should register with the Department for sales and use tax to enable to purchase the repairs using a resale certificate.

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APPROVED: Ruth E. Johnson, Commissioner

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