TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 04-20

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 the Tennessee sales and use tax to the sale of warranty contracts and to services covered by such contracts.

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

The Company is a provider of home warranty contracts to homeowners of existing homes. The contracts are for a specific amount of time (e.g. twelve months) and are renewable. Pursuant to the contracts, the Company agrees to repair or, when necessary, replace major built-in appliances and covered mechanical systems (such as a water heater, central heat and air conditioning) that malfunction due to normal wear and tear.

Depending on the type of coverage provided to a homeowner, the contract may cover only tangible personal property, only real property such as items permanently affixed to the home, or both real property and tangible personal property. If the contract covers both real property and tangible personal property, the contract may separately state what part of the purchase price applies to each type of property.

When a homeowner requests services under the terms of the contract, the Company engages local independent service contractors to provide those services. When an independent contractor makes a service call, there is a low trade service call fee due from the homeowner (approximately $35 to $50). This trade service call fee is in addition to the price paid for the warranty and any additional charge to the customer for labor or parts. Also, at times, the Company will supply the repair parts. The Company pays Tennessee sales and use tax on parts purchased in Tennessee.

QUESTIONS PRESENTED

1. Sale of Warranties for Repair of Tangible Personal Property.

   (a) Is the Company required to collect sales tax on the sale of warranties for the repair of tangible personal property at the time of initial sale pursuant to Tenn. Code Ann. § 67-6-1002(25)(F)(ix) and Tenn. Code Ann. § 67-6-230(b) (Effective July 1, 2005)?

   (b) With respect to warranties for the repair of tangible personal property prior to July 1, 2005, does Tenn. Comp. R. and Regs. 1320-5-1.04(1) require collection of sales tax on any trade service call fee charged to a customer at the time the warranty service is provided?

   (c) With respect to warranties for the repair of tangible personal property on or after July 1, 2005, does Tenn. Code Ann. § 67-6-230(b) require collection of sales tax on any trade service call fee charged to a customer at the time the warranty service is provided?

2. Sale of Warranties for Repair of Real Property.

   (a) Pursuant to Tenn. Code Ann. § 67-6-102(25)(F)(ix) and applicable Rules and Regulations, is the Company required to collect sales tax on the sale of warranties for the repair of real property?

   (b) With respect to warranties for the repair of real property, pursuant to Tenn. Code Ann. § 67-6-102(25)(F)(ix) and applicable Rules and Regulations, is collection of sales tax required on any trade service call fee charged to a customer at the time the warranty service is provided?

3. Sale of Warranties for the Repair of Tangible Personal Property and Real Property When the Contract Separately States the Portion of the Purchase Price Applicable to Each Type of Property.

   (a) With respect to warranties for the repair of both real property and tangible personal property, if the contract separately states the portion of the purchase price applicable to each type of property, pursuant to Tenn. Code Ann. § 67-6-102(25)(F)(ix), is the Company required to collect sales tax only on the portion of the purchase price that applies to tangible personal property?

   (b) Prior to July 1, 2005, with respect to warranties for the repair of both real property and tangible personal property, if the contract separately states the portion of the purchase price applicable to each type of property, pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.04(1), is collection of sales tax required on only the trade service call fee charged to a customer at the time warranty service is provided for tangible personal property?

(c) Beginning July 1, 2005, with respect to warranties for the repair of both real property and tangible personal property, if the contract separately states the portion of the purchase price applicable to each type of property, pursuant to Tenn. Code Ann. § 67-6-230(b), is the Company required to collect sales tax only on the portion of the purchase price that applies to tangible personal property?

(d) Beginning July 1, 2005, with respect to warranties for the repair of both real property and tangible personal property, if the contract separately states the portion of the purchase price applicable to each type of property, pursuant to Tenn. Code Ann. § 67-6-230(b), is collection of sales tax required on only the trade service call fee charged to a customer at the time warranty service is provided for tangible personal property?

4. Sale of Warranties for the Repair of Tangible Personal Property and Real Property When the Contract does not Separately State the Portion of the Purchase Price Applicable to Each Type of Property.

(a) With respect to the sale of warranties for the repair of both real property and tangible personal property, if the contract does not separately state the portion of the purchase price applicable to each type of property, pursuant to Tenn. Code Ann. § 67-6-102(25)(F)(ix), is the Company required to collect sales tax on the entire purchase price at the time of the initial sale?

(b) Prior to July 1, 2005, With respect to the sale of warranties for the repair of both real property and tangible personal property, if the contract does not separately state the portion of the purchase price applicable to each type of property, pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.04(1), is collection of sales tax required on any trade service call fee charged to a customer at the time the warranty service is provided for either type of property?

(c) Beginning July 1, 2005, with respect to the sale of warranties for the repair of both real property and tangible personal property, if the contract does not separately state the portion of the purchase price applicable to each type of property, pursuant to Tenn. Code Ann. § 67-6-230(b), is the Company required to collect sales tax on the entire purchase price at the time of the initial sale?

(d) Beginning July 1, 2005, with respect to the sale of warranties for the repair of both real property and tangible personal property, if the contract does not separately state the portion of the purchase price applicable to each type of property, pursuant to Tenn. Code Ann. § 67-6-230(b), is the collection of sales tax required on any trade service call fee charged to a customer at the time the warranty service is provided for either type of property?

5. Purchase of Parts Used in Servicing Pursuant to Warranty Contracts.

(a) If the Company properly collects and remits sales tax on the sale of a warranty for only tangible personal property, pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.04(2), is the Company required to pay use tax on tangible personal property purchased and used in servicing pursuant to the warranty contract?

(b) If the Company is not required to collect and remit sales tax on the sale of a real property warranty contract and does not do so, pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.04(2), is the Company required to pay use tax on tangible personal property that is purchased and used in servicing real property pursuant to the warranty contract?

(c) Without regard to the type of property for which the warranty service is provided, pursuant to Tenn. Comp. R. & Regs. 1320-5-1-.04(2), is the Company required to pay use tax only on tangible personal property purchased and used in servicing property pursuant to warranty contracts on which no sales tax was ever previously paid?

(d) If the Company is required to remit use tax on tangible personal property that is purchased and used in servicing property pursuant to warranty contracts, is use tax due when such property is withdrawn from the Company's inventory to service such property?

RULINGS

1. Sale of Warranties for Repair of Tangible Personal Property.

(a) Yes.

(b) Yes.

(c) Yes.

2. Sale of Warranties for Repair of Real Property.

(a) No.

(b) No.

3. Sale of Warranties for the Repair of Tangible Personal Property and Real Property When the Contract Separately States the Portion of the Purchase Price Applicable to Each Type of Property.

(a) Yes.

(b) Yes.

(c) Yes.

(d) Yes.

4. Sale of Warranties for the Repair of Tangible Personal Property and Real Property When the Contract does not Separately State the Portion of the Purchase Price Applicable to Each Type of Property.

   (a) Yes.

   (b) If the repair is to tangible personal property, collection of sales tax is required on any trade service call fee charged to a customer at the time the warranty service is provided. If the repair is to real property, collection of sales tax is not required on any trade service call fee charged to a customer at the time the warranty service is provided.

   (c) Yes.

   (d) If the repair is to tangible personal property, collection of sales tax is required on any trade service call fee charged to a customer at the time the warranty service is provided. If the repair is to real property, collection of sales tax is not required on any trade service call fee charged to a customer at the time the warranty service is provided.

5. Purchase of Parts Used in Servicing Pursuant to Warranty Contracts.

   (a) No.

   (b) Yes.

   (c) Yes.

   (d) Yes, however, the Company should pay Tennessee sales or use tax at the time it purchases repair parts or goods that it knows will be not be used to repair or replace property covered by a warranty contract on which Tennessee sales tax was due and on which such tax was in fact collected and remitted.

ANALYSIS

Sale of Warranty Contracts for Repair of Tangible Personal Property

Tenn. Code Ann. § 67-6-102(25)(B) states that the terms "retail sale" or "sale at retail" include ". . . the furnishing of things or services taxable under this chapter." Tenn. Code Ann. § 67-6-102(25)(F)(ix), set forth in pertinent part below, makes it clear that the sale of warranty contracts for repair or maintenance of tangible personal property are subject to the Tennessee sales tax.

> (F) "Retail sale," "sale at retail" and "retail sales price include the following services:
>
> (ix) Charges for 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[.]

Section 38 of Chapter 357 of the Public Acts of 2003, now codified as Tenn. Code Ann. § 67-6-230(b), also provides for the taxation of charges for warranty service contracts for the repair or maintenance of tangible personal property as follows:

> Notwithstanding any other provision of law to the contrary, the sale of a warranty or service contract covering the repair or maintenance of tangible personal property, shall be subject to the tax levied by this chapter and sourced under the provisions of § 67-6-902(a) at the time of the sale of the contract. No additional tax shall be due on any repairs to the extent they are covered by the contract.

Section 68 of Chapter 959 of the Public Acts of 2004 provides that certain provisions of Chapter 357 of the Public Acts of 2003, including the provisions of Section 38, now codified as Tenn. Code Ann. § 67-6-230(b), will become effective ". . . at 12:01 a.m. on July 1, 2005."

In view of the above cited statutes, Tennessee sales taxes should be collected on the sale of warranty or service contracts covering the repair or maintenance or tangible personal property both prior to and on or after July 1, 2005.

Tenn. Code Ann. § 67-6-102(25)(F)(iv) states that Tennessee sales taxes apply to "[t]he performing for a consideration of any repair services with respect to any kind of tangible personal property[.]" Section 25 of Chapter 357 of the Public Acts of 2003, now codified as Tenn. Code Ann. § 67-6-205(c)(4) and effective July 1, 2005 contains an identical provision.

However, Tenn. Code Ann. §§ 67-6-102(F)(ix) and 67-6-230(b) both provide that there shall be no additional tax due on any repairs to the extent that they are covered by a warranty contract.

It clear from case law that the sale of a warranty contract and the repairs performed under such a contract are separate events for Tennessee sales tax purposes. See: *Covington Pike Toyota, Inc. v. Cardwell,* 829 S.W.2d 132 (Tenn. 1992) (decided under prior law) and *Ryder Truck Rental, Inc. v. Huddleston,* WL 420911 (Tenn. App. 1994).

When a homeowner requests services under the terms of a warranty contract, the Company engages local independent service contractors to provide those services.

When an independent contractor makes a service call, there is a low trade service call fee due from the homeowner (approximately $35 to $50). This trade service call fee is in addition to the price paid for the warranty and any additional charge to the customer for labor or parts.

Tenn. Comp. R. & Regs. 1320-5-1-.54(2) states that the terms “repair services” and “repairs” include “. . . ‘service calls’ where any repair work is done or contemplated . . .” Tenn. Comp. R. & Regs. 1320-5-1-.04(1) also explains that charges made at the time of the warranty service on tangible personal property are subject to Tennessee sales tax. This is because such charges obviously were not covered by the warranty contract.

Tenn. Comp. R. & Regs. 1320-5-1-.54(2) and 1320-5-1-.04(1) are consistent with Tenn. Code Ann. § 67-6-102(25)(F)(ix) and Tenn. Code Ann. § 67-6-230(b) effective July 1, 2005, both of which provide that no additional tax shall be due on any warranty repairs “. . . to the extent they are covered by the contract.”

Obviously, the $35 to $50 trade service call fee is not covered by the warranty contract. Thus, it is subject to Tennessee sales tax under applicable statutes and Tenn. Comp. R. & Regs. both prior to and on or after July 1, 2005.

Sale of Warranty Contracts for Repair of Real Property

Tenn. Code Ann. § 67-6-102(25)(F)(ix) and Tenn. Code Ann. § 67-6-230(b) effective July 1, 2005 only tax the sale warranty contracts covering the repair or maintenance of tangible personal property. Tenn. Code Ann. § 67-6-102(25)(F)(iv) and Tenn. Code Ann. § 67-6-205(c)(4) and effective July 1, 2005 only tax the sale of repair services with respect to tangible personal property.

Tenn. Comp. R. & Regs. 1320-5-1-.54(2) states that “[r]epair services and repairs of tangible personal property shall not include any maintenance or other work on buildings, or electrical wiring, plumbing, or fixtures attached to and a part of any real property . . .”

No Tennessee statute or Tenn. Comp. R. & Regs. subjects the sale of warranty contracts covering the repair or maintenance of real property or repair services to real property to Tennessee sales taxes.

It follows that charges made at the time of the warranty service on real property are not subject to Tennessee sales tax. This is because such charges are a part of the repair of real property which is not subject to the tax.

Sale of Warranty Contracts for the Repair of Tangible Personal Property and Real Property When the Contract Separately States the Portion of the Purchase Price Applicable to Each Type of Property

As established above, the Tennessee sales and use tax is applicable only to sales of warranty service contracts covering the repair or maintenance of tangible personal property. Likewise, collection of sales tax is required on only the trade service call fee charged to a customer at the time warranty service is provided for tangible personal property. Charges for warranty service contracts covering the repair or maintenance of real property and trade service call fees charged a customer at the time warranty service is provided for real property are not subject to the tax. This is true both before and on or after July 1, 2005.

The same statutes, case law, Tenn. Comp. R. & Regs. and logic may be used when the warranty contract covers both real property and tangible personal property and specifically states what portion of the purchase price applies to each type of property. In such a case, the Tennessee sales tax need only be collected on the portion of the warranty purchase price that applies to tangible personal property. This is true both before and on or after July 1, 2005.

Likewise, both before and on or after July 1, 2005, collection of sales tax is required on only the trade service call fee charged to a customer at the time warranty service is provided for tangible personal property. Charges for trade service call fees charged a customer at the time warranty service is provided for real property are not subject to the tax either before or on or after July 1, 2005.

Sale of Warranty Contracts for the Repair of Tangible Personal Property and Real Property When the Contract does not Separately State the Portion of the Purchase Price Applicable to Each Type of Property.

In *Saverio v. Carson,* 208 S.W.2d 1018 (Tenn. 1948), the plaintiff operated a laundry service and a linen service. For a fee, she would rent and laundry diapers. Under applicable Tennessee sales tax law at that time, the rental of diapers (tangible personal property) was subject to the sales tax, but the service of laundering the diapers was a nontaxable service. However, a single fee was charged to cover both the rental and the laundering of the diapers. The plaintiff contended that most of the charge was for the nontaxable service of laundering the diapers rather than the taxable rental return on the original purchase price of the diapers.

The Tennessee Supreme Court held that, under the circumstances, the nontaxable laundering services were inseparable from the taxable rental of the diapers and that the plaintiff was subject to sales tax on the entire charge. The Court stated that any attempted division or separation of the charge for nontaxable services would result in confusion in the administration of the statute and would render the law unworkable.

The Tennessee Supreme Court reached a similar conclusion in *Magnavox Consumer Electronics v. King,* 707 S.W.2d 504 (Tenn. 1986) which involved the rental of trucks. The lessee paid a fixed rental for each truck plus a fixed rate for each mile driven. The lessor furnished all fuel for operation of the leased trucks. Standing alone, payments for lease of the trucks were subject to taxation, but charges for fuel were nontaxable. The Court held that the gross proceeds of the lease (both the fixed rental payments and the fixed mileage payments) were subject to taxation because the amount of such gross proceeds applicable to the fuel furnished by the lessor could not be determined.

Saverio and Magnavox are relevant and applicable in this situation both before and on and after July 1, 2005 since the warranty contract does not separately state the portion of the purchase price applicable to real property and the portion applicable to tangible personal property. Standing alone, the portion of the warranty contract's purchase price applicable to real property would not be subject to taxation. However, in this situation, it is impossible to separate the charge applicable to each type of property. Therefore, sales tax must be collected on the entire gross purchase price of the warranty contract pursuant to Tenn. Code Ann. § 67-4-102(25)(F)(iv) and Tenn. Code Ann. § 67-6-205(c)(4).

It has already been noted that the sale of a warranty contract and the repairs performed under such a contract are separate events for Tennessee sales tax purposes. See: *Covington Pike Toyota, Inc. v. Cardwell,* 829 S.W.2d 132 (Tenn. 1992) (decided under prior law) and *Ryder Truck Rental, Inc. v. Huddleston,* WL 420911 (Tenn. App. 1994).

It has also been pointed out that Tenn. Comp. R. & Regs. 1320-5-1-.54(2) and 1320-5-1-.04(1) are consistent with Tenn. Code Ann. § 67-6-102(25)(F)(ix) and Tenn. Code Ann. § 67-6-230(b) effective July 1, 2005, both of which provide that no additional tax shall be due on any warranty repairs ". . . to the extent they are covered by the contract."

Tenn. Comp. R. & Regs. 1320-5-1-.54(2) states that the terms "repair services" and "repairs" include ". . . 'service calls' where any repair work is done or contemplated . . ." Tenn. Comp. R. & Regs. 1320-5-1-.04(1) also explains that charges made at the time of the warranty service on tangible personal property are subject to Tennessee sales tax.

The $35 to $50 trade service call fee charged by the local independent contractor engaged by the company to provide services under the contract is in addition to the price paid for the warranty and any additional charge to the customer for labor or parts. The trade service call fee is obviously not covered by the warranty contract. Thus, it is subject to Tennessee sales tax under applicable statutes and Tenn. Comp. R. & Regs. both prior to and on or after July 1, 2005 if the service call is for warranty work done or contemplated on tangible personal property. If the service call is for warranty work done or contemplated on real property, then the trade service call fee is nontaxable.

Purchase of Parts and Goods Used in Performing Services Pursuant to Warranty Contracts

At times, the Company will supply the repair parts and goods used to perform repair or replacement services covered by warranty contracts that it sells. The Company pays Tennessee sales and use tax on parts purchased in Tennessee.

Tenn. Code Ann. § 67-6-324 makes the following provisions concerning parts used to replace faulty parts or equipment covered by a warranty contract.

> There is exempt from sales tax any replacement parts or goods transferred without cost to a purchaser for the replacement of faulty parts or equipment which prior thereto had been sold under a warranty or guarantee or condition and upon which original purchase or importation a sales or use tax was paid.

According to this statute, replacement parts or goods may be purchased tax exempt if the following conditions exist:

1. The customer is not billed for the replacement parts or goods[1].

2. The replacement parts or goods are used to replace faulty parts or equipment (tangible personal property) under warranty, guarantee or condition.

3. Sales or use tax was paid upon the original purchase or importation of the faulty parts or equipment.

Tenn. Comp. R. & Regs. 1320-5-1-.04(2) quoted below is also relevant:

> Dealers buying and using tangible personal property to fulfill sales, warranty, or guarantee obligations to a customer may purchase and use the tangible personal property without the payment of any sales or use tax.

This rule makes it clear that tangible personal property is tax exempt if it is used to fulfill sales, warranty, or guarantee obligations to a customer. This is because sales or use tax was originally paid on the tangible personal property that the parts or equipment purchased are replacing.

Tenn. Code Ann. § 67-6-209(b) makes the following provisions:

> Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, **unless such property has been previously subjected to a sales or use tax,**

[1] According to the facts, the customer is not billed for the replacement parts or goods. The trade service call fee is for the service being performed rather than for the replacement parts or goods (Tenn. Comp. R. & Regs. 1320-5-1-.54(2).

> **and the tax due thereon has been paid.** The exemption provided for herein for private nonprofit colleges or universities shall apply only to the state portion of the sales tax. The sales or use tax levied by this chapter shall not apply to carpet installed for a church when the church is exempt from sales or use taxes under § 67-6-322. (Emphasis added.)

Tenn. Code Ann. § 67-6-210(a) makes the following provisions concerning the use tax:

> On all tangible personal property imported, or caused to be imported from other states or foreign countries, and used by a dealer, the "dealer," as defined in § 67-6-102, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if the articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, consumption, or distribution, or storage to be used or consumed in this state or tangible personal property shall mean each be equivalent to a sale at retail and the tax shall thereupon immediately levy and be collected in the manner provided herein; provided that there shall be no duplication of the tax in any event.

The Company is a "dealer," as the term is defined in Tenn. Code Ann. § 67-6-102(7)(K) because it "[u]ses tangible personal property, whether the title to such property is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations unless such property has previously been subjected to sales or use tax, and the tax due thereon has been paid[.]

These provisions, would not apply to tangible personal property used by the Company for repairs or replacements of parts or goods covered by warranty contracts on tangible personal property if Tennessee sales tax or use tax was required to be paid, and in fact was paid, on the purchase price of the warranty contract.

They would also not apply in situations where the warranty contract sold by the Company covers both tangible personal property and real property and Tennessee sales tax was required to be paid, and in fact was paid, on the entire purchase price of the contract. In such a case, tangible personal property could be used by the Company for repairs or replacements of parts or goods covered by the warranty contract without payment of Tennessee sales or use tax because such tax was required to be paid, and in fact was paid, on the purchase price of the warranty contract.

However, in situations where Tennessee sales tax was not required to be paid on the purchase price of the warranty contract and thus was not paid, as in the case of warranty contracts on real property, Tenn. Code Ann. §§ 67-6-209(b) and 67-6-210 would apply. The Tennessee Supreme Court has stated that ". . . it was the legislative intent, as manifested in Section 67-3005, T.C.A. [now Tenn. Code Ann. § 67-4-210], to impose a use tax on all tangible personal property imported from other states and used and consumed in this state, provided a similar tax, equal to or greater, has not been paid in the exporting state." *Woods v. M.J. Kelley Company,* 592 S.W.2d 567 (Tenn. 1980) citing *Young Sales Corp. v. Benson,* 450 S.W.2d 574 (Tenn. 1970).

In *M.J. Kelley* the Court goes on to explain that:

> Liability for the tax may attach under two statutory sections. Under Section 67-3004, T.C.A. [now Tenn. Code Ann. § 67-6-209(b)], a contractor or subcontractor is liable for the use tax in the performance of his contract or to fulfill his contractual obligations. Section 67-3005, T.C.A. [now Tenn. Code Ann. § 67-6-210], among other things makes a "dealer" liable for the use tax on all tangible personal property he imports, or causes to be imported, and uses in this state.

Tenn. Comp. R. & Regs. 1320-5-1-.08 makes the following provisions concerning the purchase of tangible personal property by contractor-dealers:

> (1) Contractors and sub-contractors engaged in the business of erecting, building or otherwise improving, altering and repairing real property for others, and also engaged in the business of selling building materials and supplies to other contractors, consumers, and users, and who may not be able to segregate that portion of the materials and supplies that they will use or consume in the fulfillment of their contracts from that portion of the materials and supplies that they will sell at retail, may give a resale certificate to the seller of the materials and supplies.
>
> (2) Contractor-dealers making sales of tangible personal property shall report all sales made, and all withdrawals from inventory for use as a contractor each month, and pay any applicable sales or use tax due. Any withdrawal from inventory for use as a contractor shall be reported and the tax due thereon shall be paid with the return for the location of the inventory, regardless of the place of use either in or out of the state.
>
> (3) Suppliers making sales of materials and supplies to contractor-dealers and delivering such materials and supplies to a job site for use, of tagging or marking particular materials and supplies for a particular job being performed by the contractor-dealer, shall collect the applicable sales or use tax on those sales.

The Company should pay Tennessee sales or use tax at the time it purchases repair parts or goods that it knows will be not be used to repair or replace property covered by a warranty contract on which Tennessee sales tax was due and on which such tax was in fact collected and remitted.

If at the time it purchases repair parts or goods the Company does not know whether they will be used to repair or replace property covered by a warranty contract on which Tennessee sales tax was due and was collected and remitted, such parts and goods may be purchased without paying Tennessee sales or use tax provided that the Company furnishes the seller with a resale certificate. When such parts or goods are removed from inventory for use in performing repair or replacement services covered by warranty contracts on which Tennessee sales tax was due and was collected and remitted, then no Tennessee sales or use tax need be paid on such parts or goods. However, if such parts or goods are removed from inventory for use in performing repair or replacement services covered by warranty contracts on which no Tennessee sales tax was required to be paid and on which such tax was in fact not collected or remitted, as would be the case with warranty contracts on real property, then Tennessee sales or use tax must be paid on the repair parts or goods at that time.

Arnold B. Clapp
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APPROVED: Loren L. Chumley, Commissioner

DATE: 07/29/04