

[DOR Home](#)
[For Individuals and Families](#)
[For Businesses](#)
[For Local Officials](#)
[For Tax Professionals](#)

[Home](#) > [Businesses](#) > [Help & Resources](#) > [Legal Library](#) > [Letter Rulings](#) > [Letter Rulings - By Year\(s\)](#) > [\(1995-1999\) Rulings](#) >

Letter Ruling 96-4: Automobile Re-painting

December 27, 1996

You represent ***** automobile body repairers. You ask how charges for the re-painting of damaged automobiles are treated for Massachusetts sales and use tax purposes under the following factual circumstances.

I. Facts

You state that the automobile body repairers compute re-painting charges separately for (i) labor and (ii) "paint and materials." The labor charge is determined for each paint job based on the amount of time the repairer devotes to the job. The paint and materials component is determined for each paint job by multiplying the repairer's historical rate of consumption of paint and materials by the estimated number of hours needed to complete the job.^[1] The paint and materials component includes charges for items that become physically incorporated into the automobile and are thus ultimately transferred to the customer (e.g., paint, hardener, body-filler and clear coat). It also includes items that are used or consumed exclusively by the repairer in performing the paint job and are not transferred to the customer (e.g., masking paper, tape, sandpaper, paint brushes and squeegees). The customer is presented with a written bill that separately states the charges for labor and paint and materials. The bill does not provide a breakdown of the charges for the individual items included in the paint and materials component. This ruling is based entirely on these facts and does not address any other billing system that may be used by automobile body repairers.

II. Applicable Authorities

A. Sales Tax Treatment of Personal Service Transactions

Automobile repair is a service transaction within the meaning of the Service Enterprises Regulation, 830 CMR 64H.1.1. See 830 CMR 64H.1.1(2). Under the Regulation, where a service transaction does not involve the transfer of any tangible personal property, the service provider is not required to collect the sales tax on the amount it charges its customer. Rather, the service provider must pay the sales tax when it purchases tangible personal property that it will use or consume in providing the service.

Where a service transaction does involve a transfer of tangible personal property, the sales tax treatment of the transaction depends on (i) whether the property transferred is a consequential element of the transaction and (ii) whether the service provider separately states the charge for the tangible personal property on the bill to the customer. The Regulation provides a guideline to determine whether the tangible personal property component of a service transaction is inconsequential. Under that guideline, the term inconsequential "means a value of less than ten

SEARCH

Select an area to search

Search

percent of the total charge" to the customer. 830 CMR 64H.1.1(1). The Regulation requires the following sales tax treatment under the following circumstances.

1. Transactions Involving a Consequential Transfer of Tangible Personal Property

Under the Service Enterprises Regulation, where a repairer, as part of a repair service, transfers parts or materials to a customer, and the value of such tangible personal property is "not inconsequential," the sales or use tax applies. 830 CMR 64H.1.1(5)(a). The sales or use tax is based on the entire charge to the customer, unless the repairer, in its customer invoices and in its records, separately states the fair retail selling price of the tangible personal property. Id. If the repairer does separately state the fair retail selling price of the tangible personal property, then the sales or use tax is imposed only on that price, and not the amount charged for labor. Id.; see also Letter Rulings 82-22 and 85-8.

2. Transactions Involving an Inconsequential Transfer of Tangible Personal Property

In contrast, where a repairer, as part of a repair service, transfers parts and materials to a customer, and the value of such tangible personal property is is inconsequential, the repair service is not subject to the sales tax unless the repairer charges the customer separately for the property. 830 CMR 64H.1.1(5)(a); Letter Ruling 81 93. If the repairer, in its customer invoices and in its records, separately states the fair retail selling price of the tangible personal property, then the sales or use tax is imposed on the sales price of the property, and not on the amount charged for labor. Id. If the repairer does not separately state the charge for the tangible personal property, then the entire repair service is considered a service transaction and is not subject to the sales tax. Id. [\[2\]](#)

3. Presentation of Resale Certificates by Service Providers

Generally, where a transfer of tangible personal property by a service provider is subject to the sales tax under the Service Enterprises Regulation, the service provider is not required to pay the sales tax when it purchases the property that is transferred. See 830 CMR 64H.1.1(4), (5). Rather, the service provider may present a resale certificate when purchasing such tangible personal property. Id. In general, a service provider purchases tangible personal property for resale only if the property is actually sold to a customer in a transaction that is treated as a sale of tangible personal property under the Regulation. See G.L. c 64H, § 1 (definitions of "sale" and "selling" and "sale at retail" or "retail sale"). Thus, a service provider may present a resale certificate (i) where there is a consequential transfer of tangible personal property to a customer, regardless of whether the charge for the property is separately stated and (ii) where there is an inconsequential transfer of tangible personal property to the customer and the charge for the property is separately stated. A service provider may not present a resale certificate where (i) there is no transfer of tangible personal property to the customer or (ii) where there is an inconsequential transfer of tangible personal property to the customer and the charge for the property is not separately stated.

B. Determination of the Sales Price

Where a taxable sale of tangible personal property takes place under the Service Enterprises Regulation, the sales price of the property is determined under G.L. c. 64H, § 1. Section 1 provides that the sales price is "the total amount paid" by a purchaser as consideration for a transfer of tangible personal property. In determining the sales price of tangible personal property transferred in a service transaction, separately stated labor charges are excluded. 830 CMR 64H.1.1(5)(a). However, Section 1 disallows any deduction from the sales price for the costs incurred by the service provider in obtaining the property sold, the cost of materials used by the service provider and billed to the customer, or (with certain statutory exceptions not relevant to this ruling) the cost of "other expenses" incurred by the service provider and billed to the customer. The term "other expenses" includes, without limitation, all indirect overhead expenses, administrative expenses, and selling expenses (including expenses incurred in readying tangible personal property for sale or in effectuating the transfer of tangible personal property to a purchaser). See Letter Ruling 82-6 (sales price includes separately stated charges for design of product, overhead and profit); Letter Rulings 81 28 and 80-49 (sales price for leased tangible personal property includes separately stated

charges for local property taxes imposed on the property); Letter Ruling 82-32 (sales price includes separately stated mandatory charge for the removal of leased equipment at the end of the lease term); Letter Ruling 81-10 (sales price for rented automobile includes separately stated refueling charges); Letter Ruling 82-56 (sales price of leased tangible personal property includes separately stated charge for insuring the property).

III. Discussion

A. Collection of the Sales Tax by Automobile Repairers

Under the facts you state, it is not necessary for us to rule on the consequentiality of the tangible personal property transferred as part of the re-painting service transaction, and we do not do so. As discussed above, under the Service Enterprises Regulation, separately stated charges for tangible personal property are subject to the sales or use tax regardless of whether the tangible personal property is a consequential element of the service transaction. Thus, where an automobile body repairer re-paints an automobile and, in its customer invoice and in its records, separately states a charge for labor and a charge for the fair retail selling price of the paint and materials, the repairer must collect and pay over the sales or use tax on the full amount of the charge for paint and materials. As explained above, the sales price, upon which the sales or use tax is based, includes charges for items of tangible personal property that are ultimately transferred to the customer (e.g., paint, hardener, body-filler and clear coat) as well as charges for additional items that are used or consumed by the repairer in effectuating the transfer of that property (e.g., masking paper, tape, sandpaper, paint brushes and squeegees used in performing the paint job). Thus, charges for such additional items would be subject to the sales or use tax whether or not they were billed separately from other charges for tangible personal property in the customer invoice and in the repairer's records. Finally, under the Service Enterprises Regulation, the auto body repairer need not collect the sales or use tax on the labor charge.

B. Payment of the Sales Tax by Automobile Repairers

An automobile body repairer need not pay the sales tax when it purchases tangible personal property that it will resell in the regular course of its business. Thus, under the circumstances you describe, an automobile repairer may present a resale certificate when it purchases items that it will ultimately transfer to its customers for a separately stated charge. Such items include paint, hardener, body-filler and clear coat and other items that become affixed to the customers' automobiles. However, the automobile repairer must pay the sales or use tax when it purchases items that it will use itself in performing the repair service, unless an exemption applies. See 830 CMR 64H.1.1(2); Letter Ruling 83-35. This is so whether or not the automobile repairer recoups the cost of the items by charging its customers for them. Such items are not resold to the customers because the customers do not enter into the repair transaction with an intent to obtain the items and, in fact, do not take title to or possession of the items. In addition, these items (i) do not become ingredient and component parts of of tangible personal property to be sold and (ii) are not used or consumed directly and exclusively in an industrial plant in the actual manufacture of tangible personal property to be sold. Letter Ruling 83-35. Thus, the sales tax exemptions afforded by G.L. c. 64H, §§ 6(r) and 6(s) do not apply.

IV. Conclusion

Automobile body repairers that charge separately for paint and materials must collect the sales or use tax on the full amount charged for such items. Such automobile body repairers may present resale certificates when they purchase paint and materials that are transferred to their customers. They may not present resale certificates when they purchase items that they will use themselves in performing the repair service. Automobile body repairers need not collect the sales or use tax on any separate charge attributable to labor costs.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams
Commissioner of Revenue

MA:HMP:tjc

LR 96-4

[1] You do not ask, and we do not rule on, whether this method of computing the charge for paint and materials is an appropriate method of determining the sales price of the paint and materials under G.L. c. 64H, § 1.

[2] Under these circumstances the repairer is considered the consumer of all tangible personal property used in performing the service, including tangible personal property ultimately transferred to the customer. 830 CMR 64H.1.1(5(a); Letter Rulings 82-22 and 81-93. The repairer must pay the sales or use tax when it purchases these items. Id.