

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (31)S
Sales Tax
April 4, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910304B

On March 4, 1991, a Petition for Advisory Opinion was received from Warrantech Corporation, 300 Atlantic Street, Stamford, CT 06901.

The issue raised by Petitioner, Warrantech Corporation, is whether it may issue resale certificates to repair shops that perform warranty work, or if it is the responsibility of its clients to issue such certificates.

Petitioner develops and markets extended warranty programs. It enters into agreements with retail vendors to administer warranty programs for them. Pursuant to such agreements, Petitioner is paid a set fee by retail vendors to act as administrator of warranties for merchandise sold by the vendor. When a retail vendor sells an extended warranty on merchandise, sales tax is paid on the purchase price of the merchandise and on the extended warranty by the customer to the vendor. The vendor then remits a portion of the amount that it has received from the customer for the extended warranty to the Petitioner. Petitioner contracts with an independent insurance company to insure against costs incurred for repairs to merchandise under warranty.

When repair work is required, a customer notifies Petitioner, who in turn, designates the repair shop where merchandise should be taken. Petitioner authorizes the repair shop to make the needed repairs. Petitioner is billed for the repair work by the repair shop. Petitioner pays for the repair work from funds received from insurance company designated to pay such claims.

Section 527.5(d) of the Sales and Use Tax Regulations provides as follows:

- (d) Warranty work
 - (1) Repair or maintenance services rendered, without charge to a customer under a warranty agreement are not taxable.
 - (2) The vendor performing the warranty services may purchase for resale any tangible personal property which is transferred to his customer in connection with the services rendered.
 - (3) Charges for services rendered which are not covered by the warranty are taxable.
 - (4) Where a manufacturer reimburses a vendor or repairman performing warranty work, the reimbursement is not taxable, as it was for resale.

Section 541.1(g) of the Sales and Use Tax Regulations provides as follows:

- (g) Guarantee and warranty work
 - (1) Payments by a contractor to another contractor to perform maintenance, service or repair of real and tangible personal property when purchased to fulfill a guarantee or warranty are not subject to tax. (emphasis added)

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Accordingly, pursuant to Sections 527.5(d) and 541.1(g) of the Sales and Use Tax Regulations, the charges paid by Petitioner to repair shops for performing warranty work are not subject to sales tax, as the repairs are deemed to be purchased for resale. Therefore, provided Petitioner is registered as a vendor for New York State sales tax purposes, Petitioner may issue a Resale Certificate, (Form ST-120), to repair shops for warranty work performed on its behalf.

DATED: April 4, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.