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ETA 3103.2009

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Distinguishing Warranties and Maintenance Agreements

Note: This excise tax advisory (ETA) applies only to periods on or before June 30, 2005. Effective July 1, 2005 the sale of an extended warranty to a consumer is subject to retailing B&O and retail sales taxes. Chapter 514, Laws of 2005.

Background:

This ETA clarifies the distinction between warranties and maintenance agreements as stated in WAC 458-20-257 (Rule 257). Further, it clarifies the separate charge provision of Rule 257(2)(b)(i). This ETA uses the example of computer hardware and software, but its principles apply to all warranties and maintenance agreements.

Many sellers of computer hardware and software sell standard models. These sellers sometimes provide consumers the option to add or delete features from the standard model and adjust the price accordingly. Some of the options made available to consumers are extended warranties or maintenance agreements.

A maintenance agreement includes a requirement that the maintenance provider perform cleaning, servicing, alterations, or improvements to the computer hardware and/or software regardless of whether the computer hardware and/or software is operating properly. The maintenance may be provided on a regular or irregular basis. A warranty is distinguished from a maintenance agreement in that the warranty requires these services only when the computer is not operating properly. An agreement which precludes preventative maintenance is a warranty. The determination of the type of agreement is not based on the label placed on the contract, but rather by the services actually required of the provider. A mixed agreement that requires service when the computer is not operating properly, but also provides for maintenance on a regular or irregular basis, is treated as a maintenance agreement for tax purposes.

Taxation of Warranties:

The value of a warranty on computer hardware and/or software that is included in the selling price of the computer hardware and/or software at no additional cost to a consumer is subject to retail sales tax. Rule 257(2)(a)(i).

An extended warranty is an agreement to provide warranty services beyond the period covered by the normal warranty period. When a separate charge is made for an extended warranty, the sale of the

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extended warranty is subject to service and other activities business and occupation tax, but not retail sales tax. A separate charge is made when the customer agrees to pay an additional amount for the extended warranty, regardless of whether that separate charge is specifically identified on the actual invoice given to the customer.

If the customer cannot buy the hardware and/or software without an extended warranty, the entire charge is for the sale of the hardware and/or software even if an amount for the warranty is listed as a separate charge on the invoice given to the customer.

Taxation of Maintenance Agreements:

All sales of maintenance agreements, including mixed agreements, to a consumer are subject to retail sales tax. Rule 257(3)(c).
