

## Nebraska Sales and Use Tax Guide for Warranties, Guarantees, Service, and Maintenance Agreements

### Overview

Sales of warranties, guarantees, service agreements, and maintenance agreements are taxable when the items or property covered or services to be provided are taxable. Sales tax is due whether the agreement is sold with the item or sold separately. Sales of warranties, guarantees, service agreements, and maintenance agreements covering only real estate, fixtures, or structures are sales tax exempt.

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The information in this guide will be presented in the following order:

- ❖ **Terms** - An alphabetic listing of the common terminology related to warranties, guarantees, and maintenance agreements. For purposes of this information guide, warranties, guarantees, service and maintenance agreements will be referred to as maintenance agreements.
- ❖ **Taxable Sales** - Information on the types of maintenance agreements that are taxable.
- ❖ **Exempt Sales** - Information on the types of maintenance agreements that are sales tax exempt.
- ❖ **Other Information** - The statute and regulations addressing maintenance agreements as well as links to related topics.

### Terms

**Agricultural Machinery and Equipment.** Agricultural machinery and equipment means tangible personal property that is used **directly** in cultivating or harvesting a crop, raising or caring for animal life, or collecting or processing of an agricultural product on the farm or ranch.

**Annexed to Real Estate.** Annexed to real estate means property (building materials and fixtures) that is attached to the real estate so that the property actually becomes real estate (for example, a house), or the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional (for example, a plumber or electrician).

**Building Materials.** Building materials mean any property, including fixtures, which will be annexed to land or an improvement to land.

**Contractor.** A contractor is any person who repairs property annexed to real estate, who annexes building materials and fixtures to real estate, or who arranges for the annexation.

**Durable Medical Equipment.** Durable medical equipment means equipment, including repair and replacement parts, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is not generally useful to a person in the absence of illness or injury, is appropriate for use in the home, and is not worn in or on the body.

**Fixture.** A fixture means a piece of equipment that must be annexed to a building or structure in order to properly function, yet remains identifiable as a separate item (for example, an air conditioner, water heater, furnace, garbage disposal, or built-in dishwasher).

**Maintenance Agreement.** A maintenance agreement is any contract or agreement to provide or pay for the inspection, maintenance, repair, or refurbishing of items for a stated period of time or interval of use. Maintenance agreements include contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or similar terms.

Maintenance agreement does not include any contract or agreement sold by a person operating under a certificate of authority from the Nebraska Department of Insurance and subject to the insurance premium tax.

**Manufacturing Machinery and Equipment.** Manufacturing machinery and equipment means equipment purchased by a person engaged in the business of manufacturing and used in manufacturing. Manufacturing machinery and equipment may be annexed to real estate. [Nebraska Sales and Use Tax Regulation 1-107, Manufacturing Machinery and Equipment Exemption](#) provides a description of the types of property that qualify as manufacturing machinery and equipment.

**Mobility Enhancing Equipment.** Mobility enhancing equipment means equipment that enables a person with a disability to enter, exit, or move from one place to another in his or her residence, and equipment installed on a motor vehicle to make the motor vehicle suitable for use by a person with a disability.

**Motor Vehicle.** Motor vehicle means any motor vehicle, trailer, or semitrailer that must be licensed for operation on the roads and highways of this state. Examples of motor vehicles include buses, cars, motorcycles, pickups, recreational vehicles, trailers, tractors and semitrailers, trucks, minitrucks, and vans. Motor vehicles do not include off-road equipment (for example, bulldozers, road graders, ATVs, boats, or snowmobiles).

**Prosthetic Device.** Prosthetic device means replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any repair or replacement parts.

**Structure.** A structure means any construction composed of building materials arranged and fitted together in some way and annexed to land (for example, buildings, bridges, street lights, television towers, water lines, billboards, or fences).

## **Taxable Sales of Maintenance Agreements**

The sale of a maintenance agreement is subject to tax if the property covered by the agreement is taxable. Maintenance agreements are taxable whether sold by the retailer of the property or by a third party. Taxable maintenance agreements include agreements covering:

- ❖ Appliances (for example, refrigerators and washing machines);
- ❖ Computer hardware and software, prewritten and custom;
- ❖ Copiers, printers, and scanners;
- ❖ Live plants (for example, check soil moisture, remove yellow leaves, clean plant);

- ❖ Machinery, except for qualified manufacturing machinery and equipment or agricultural machinery and equipment;
- ❖ Mobile devices (for example, cell phones, pagers, Smartphones, PDAs, tablet computers); and
- ❖ Motor vehicles.

Charges for maintenance agreements covering taxable property are subject to tax regardless of how the charges are invoiced. Whether the charge is included in the original sales price of the property, separately stated on the sales invoice, separately invoiced, or purchased at a later date, the charge is taxable.

**Parts and Labor.** Sales tax does not apply to repair or replacement parts, or repair labor when furnished under a maintenance agreement covering only tangible personal property. When the manufacturer of the tangible personal property being repaired is billed for parts and repair labor, the charge for the parts and repair labor is sales tax exempt.

**Example 1.** An appliance dealer sells a refrigerator for \$3,000. Included in the selling price is a manufacturer’s warranty that will cover any repairs for one year. Tax is collected by the dealer on the full \$3,000. According to the terms of the warranty, in the event of failure of the refrigerator, the purchaser is required to pay a deductible of \$100 prior to the warranty coverage.

Within the first six months, the refrigerator needs a new condenser. The dealer must provide and install the new condenser. No sales tax is due on the purchase of the new compressor by the dealer as the warranty charge was taxed when the refrigerator was purchased. When the dealer bills the manufacturer of the refrigerator for the condenser and the labor to install it, no sales tax is due. However, the payment of the \$100 deductible by the purchaser is taxable.

## Computer Software Maintenance Agreements

Charges for maintenance agreements to maintain computer software that include free or reduced-price upgrades, enhancements, changes, modifications, or updates are taxable.

**Example 2.** A computer software company sells a software program to a customer for \$10,000. The company also sells an annual maintenance agreement for \$1,000. The maintenance agreement provides the customer, at no additional charge, with:

- Updates and enhancements to the software to increase operating speed and operating efficiency;
- Correction of inherent material errors in the software program; and
- Installation of any new release of the software.

The selling price of \$10,000 for the software program is taxable. In addition, the selling price of the maintenance agreement of \$1,000 is taxable.

## Home Maintenance Agreements Covering Both Real Property and Tangible Personal Property

Sales of home warranties and maintenance agreements are taxable if they are sold for one, nonitemized price and cover both tangible personal property (for example, washing machines or refrigerators), and buildings and fixtures (for example, roof, windows, hot water heaters, and furnaces).

**Parts and Labor.** The repair parts furnished for tangible personal property repairs may be purchased sales tax exempt. Contractors making repairs on this property owe sales or use tax on the building materials furnished to fulfill the terms of the agreement, regardless of the contractor’s selected option. When a manufacturer of the tangible personal property, building materials, or fixtures is billed for parts or labor on either a taxable or exempt maintenance agreement, the charge is sales tax exempt.

See page 5 for “Maintenance Agreements That Do Not Provide Full Coverage For Parts and Labor” for more information.

## Motor Vehicle and ATV/UTV Maintenance Agreements

If a maintenance agreement covering a motor vehicle or an all-terrain (ATV) or utility type vehicle (UTV) is sold by the retailer of the vehicle, the charge for the agreement must be included as part of the selling price of the vehicle on the [Nebraska Sales/Use Tax/Tire Fee Statement for Motor Vehicles and Trailer Sales, Form 6](#) or [Nebraska Sales and Use Tax Statement for All-Terrain Vehicle \(ATV\) and Utility-Type Vehicle \(UTV\) Sales, Form 6ATV](#). The purchaser must pay sales tax on the selling price of the vehicle and maintenance agreement to the county treasurer when the vehicle is registered or titled. If the maintenance agreement is sold at a later date by the vehicle retailer or by a third party, sales tax is due at the time the agreement is sold.

## Additional Topics Related to Taxable Sales of Maintenance Agreements

**Inspections That Are Part of a Maintenance Agreement.** Maintenance agreements that include periodic inspections are taxable.

**“Labor Only” Maintenance Agreements.** Maintenance agreements which provide only repair labor are subject to sales tax in the same manner as agreements which provide for both parts and labor.

**Mandatory or Optional Maintenance Agreements.** Sales of maintenance agreements covering taxable property are subject to sales tax regardless of whether the agreement is mandatory, where the customer is obligated to purchase the agreement as a condition of the retail sale; or optional, where the customer is not obligated to purchase the agreement.

**Renewals or Extensions of Maintenance Agreements.** A charge for the renewal or extension of a taxable maintenance agreement is also taxable.

## Exempt Sales of Maintenance Agreements

Sales of maintenance agreements covering only real estate, fixtures, or structures are sales tax exempt.

**Parts and Labor.** Persons repairing real estate, fixtures, or structures are contractors. The contractor owes sales or use tax, regardless of the contractor option selected, on building materials furnished to fulfill the terms the agreement.

**Example 3.** A business purchases a maintenance agreement covering the roof of their office building. The sale of the agreement is sales tax exempt.

When a roofing contractor performs a repair on the roof that is fully covered by the maintenance agreement, sales or use tax applies to the materials used, depending on the option elected by the contractor. The building is located in a city that imposes a local sales tax of 1.5%.

Materials purchased by contractor (shingles, nails)	\$2,000
*State sales or use tax due (\$2,000 X 5.5%)	110
*Local sales or use tax due (\$2,000 X 1.5%)	<u>30</u>
Total amount due	\$2,140

\*Option 1 and Option 3 contractors remit use tax; Option 2 contractors pay sales tax to materials supplier.

See page 5 for “Maintenance Agreements That Do Not Provide Full Coverage For Parts and Labor” for more information.

## Agricultural Machinery and Equipment

Maintenance agreements covering agricultural machinery and equipment used in commercial agriculture are sales tax exempt. In addition, any repair or replacement parts furnished under the terms of the agreement are not taxable to the dealer or repairperson. Separately stated charges for repair labor on agricultural machinery and equipment are sales tax exempt.

## **Durable Medical Equipment, Mobility Enhancing Equipment, and Prosthetic Devices**

Maintenance agreements covering sales tax exempt durable medical equipment, mobility enhancing equipment, and prosthetic devices are sales tax exempt. Repair labor or replacement parts furnished under the terms of the agreement are also sales tax exempt.

## **Technical Support for Computer Software**

Charges for technical, phone, or help desk support services for computer software, which are provided separately from a service or maintenance agreement, are not taxable as long as they are not associated with any software enhancements, changes, modifications, updates, applications, patches, scripts, fixes, or upgrades.

## **Loaner Vehicles**

When a motor vehicle dealer, in connection with repairs performed under a maintenance agreement, provides a loaner vehicle to the customer and the dealer is reimbursed by the vehicle manufacturer, the reimbursement is sales tax exempt.

## **Manufacturing Machinery and Equipment**

Maintenance agreements covering exempt manufacturing machinery and equipment are sales tax exempt. Repair or replacement parts furnished under the terms of the agreement are also sales tax exempt unless purchased by an Option 2 or Option 3 contractor for use on annexed property.

## **Other Information on Maintenance Agreements**

### **Maintenance Agreements That Do Not Provide Full Coverage for Parts and Labor**

**Tangible Personal Property.** If a maintenance agreement covering tangible personal property **does not provide for full coverage** of parts and repair labor, any amount charged to the customer is taxable.

**Example 4.** A maintenance agreement covering a refrigerator provides full coverage for the repair parts for the condenser but does not cover the labor to repair or replace the condenser. Sales tax applies to any charge to the owner of the refrigerator for the repair labor. A deductible amount that is due to the repairperson is taxable.

**Real Property.** If a maintenance agreement covering real estate, fixtures, or structures **does not provide for full coverage** of building materials or labor:

- ❖ An Option 1 contractor must collect tax on amounts charged to the customer for building materials furnished to fulfill the terms of the agreement; separately stated labor charges are sales tax exempt. However, if the total amount charged by the Option 1 contractor does not itemize the materials from the labor charge, the total amount charged is taxable.
- ❖ Any amount charged to the customer by an Option 2 or Option 3 contractor for either building materials or labor is exempt. However, the Option 2 or Option 3 contractor still owes sales or use tax on the building materials. For more information on the contractor options, review [Reg-1-017, Contractors](#).

**Motor Vehicles.** If a maintenance agreement covering a motor vehicle does not provide full coverage of parts and repair labor, any amount charged to the customer for parts is taxable and any amount charged for labor is sales tax exempt.

A deductible amount that is due to the repairperson is for a motor vehicle repair and is sales tax exempt.

## Sales of Maintenance Agreements to Certain Exempt Entities

The sale of a maintenance agreement to a qualified exempt entity (for example, a Nebraska-licensed nonprofit educational institution or hospital) is not subject to sales tax if the entity furnishes the retailer of the agreement with a properly completed [Nebraska Resale or Exempt Sale Certificate, Form 13](#). For maintenance agreements covering annexed property, the exempt entity must also furnish the Option 2 or Option 3 contractor with a properly completed [Purchasing Agent Appointment, Form 17](#), which allows the contractor to purchase the building materials which will be used to make the necessary repairs sales tax exempt. The Form 17 is valid for one year from the date it is issued. An Option 1 contractor needs to obtain only the Form 13 to exempt the sale of the building materials to the exempt organization.

## Sourcing the Sale of Maintenance Agreements

Maintenance agreements are subject to sales tax at the rate imposed at the location of the property covered by the agreement at the time of the sale of the agreement.

**Example 5.** Customer A purchases a new computer and maintenance agreement covering the computer at an electronics store. The sale of the computer and maintenance agreement are subject to sales tax at the tax rate imposed at the store's location.

**Example 6.** Customer B purchases a computer and maintenance agreement from an Internet retailer. The computer is delivered to the customer's residence. The sale of the computer and maintenance agreement are subject to sales tax at the rate imposed at the customer's residence. If the retailer does not collect the applicable state and local sales tax, the purchaser must pay the use tax directly to the Department. See the "Use Tax" section below.

## Contractor or Repairperson Purchases of Repair and Replacement Parts for Resale

To purchase repair and replacement parts for resale, the contractor or repairperson must furnish the supplier with a properly complete Form 13, Section A.

Retailers of maintenance agreements are the consumers of equipment, furniture, supplies, and taxable services used in their normal course of business. As consumers, the retailers must pay sales or use tax at the time they purchase these items and services. See [Reg-1-007, Gross Receipts Defined](#) for a list of taxable services. If the retailer of the equipment, furniture, etc., does not collect the state or local sales tax, the consumer is responsible for remitting the applicable state and local use tax on the cost of the property purchased.

## Use Tax

If a retailer of maintenance agreements does not collect sales tax on a taxable maintenance agreement, then the purchaser must remit use tax directly to the Department on the cost of the agreement. Use tax is due at the rate imposed at the location of the property covered by the agreement at the time of the sale of the agreement. For additional information on use tax, see [Reg-1-002, Consumer's Use Tax](#).

## General Information

**Obtaining a Permit.** A Nebraska Sales Tax Permit is obtained by completing a [Nebraska Tax Application, Form 20](#), and returning it to the Department.

**Remitting the Tax.** Sales tax collected from customers is remitted using the [Nebraska and Local Sales and Use Tax Return, Form 10](#). Retailers of maintenance agreements may be required to e-file the Form 10 and pay electronically. Information on electronic filing mandates can be found on the Department's [website](#).

## Resource List

### Statutes

- ❖ [Neb. Rev. Stat. § 77-2701.10, Contractor or repairperson, defined](#)
- ❖ [Neb. Rev. Stat. § 77-2701.16, Gross Receipts, defined](#)
- ❖ [Neb. Rev. Stat. § 77-2703\(1\), Sales and use tax imposed, includes maintenance agreements](#)

### Nebraska Sales and Use Tax Regulations

- ❖ [Reg-1-007, Gross Receipts Defined](#)
- ❖ [Reg-1-012, Exemptions](#)
- ❖ [Reg-1-017, Contractors](#)
- ❖ [Reg-1-050, Medicines and Medical Equipment](#)
- ❖ [Reg-1-074, Warranties and Guarantees](#)
- ❖ [Reg-1-088, Computer Software](#)
- ❖ [Reg-1-094, Agricultural Machinery and Equipment](#)
- ❖ [Reg-1-107, Manufacturing Machinery and Equipment Exemption](#)

### Revenue Rulings

- ❖ [Revenue Ruling 1-07-1 Maintenance Agreement Deductible](#)
- ❖ [Revenue Ruling 1-97-1 Taxability of Warranties, Guarantees, Service and Maintenance Agreements, and Parts](#)

### Information Guides

- ❖ [Agricultural Machinery and Equipment](#)
- ❖ [Computer Software](#)
- ❖ [Nebraska Use Tax](#)
- ❖ [State and Local Sales Tax](#)

### Miscellaneous

- ❖ [Sales and Use Tax Frequently Asked Questions](#)

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