

Texas Register Preamble

The Comptroller of Public Accounts proposes amendments to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property. The proposed amendments delete information in current subsections (a)(8) and (i) relating to the repair, remodeling, maintenance, and restoration of aircraft because this information is being included in new §3.280 of this title (relating to Aircraft). The proposed amendments also update information relating to vessels to better distinguish between services provided on noncommercial vessels, which are covered by this section, and services provided on commercial vessels, which are addressed in §3.297 of this title (relating to Carriers).

Subsection (a) is amended to revise existing definitions and to add definitions for several terms which appear in the current section but are not expressly defined therein. Subsequent paragraphs are renumbered accordingly.

New paragraph (1) is added to define the term "Chapter 160 boat" consistent with the definition proposed in §3.297 of this title. The proposed definition is adapted from the definition of the term "taxable boat" in §3.741 of this title (relating to Imposition and Collection of Tax). This definition also states that, for purposes of this section, the length of a vessel is measured from the tip of the bow in a straight line to the stern. This measurement is based upon Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors), which defines the term "boat" by reference to Parks and Wildlife Code, §31.003(1) (Definitions), as revised by House Bill 1106, 83rd Legislature, 2013.

Renumbered paragraph (2), defining the term "commercial vessel," is amended consistent with the amendments proposed to the definition of the term in §3.297 of this title.

New paragraph (3) is added to define the term "consumable supplies." The proposed definition is intended to provide guidance and assist taxpayers in distinguishing between materials that are transferred to the customer as part of the provision of a service and materials that are consumed by a service provider when repairing, remodeling, maintaining, or restoring the tangible personal property belonging to another. This definition is based, in part, on the definition of the term provided in §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment). Subsequent paragraphs are renumbered accordingly.

Renumbered paragraph (4), defining the term "extended warranty or service policy," is amended to describe both contracts sold to purchasers for an amount in addition to the charge for the underlying tangible personal property and contracts sold to owners of tangible personal property.

New paragraphs (5) and (9) are added to memorialize longstanding agency policy that the terms "fabricate" and "processing" have the same meaning for the purposes of this section as the meaning given those terms in §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

New paragraph (6) is added to define the term "maintain," which is used throughout the section, to mean "to perform maintenance."

Paragraph (7), defining the term "repairman," is deleted. The term "service provider" is used throughout the section in place of the term "repairman." Paragraph (8), defining the term "private aircraft," is also deleted. Information about the repair, remodeling, maintenance, or restoration of private aircraft is proposed to be addressed in new §3.280 of this title.

Renumbered paragraph (7), defining the term "maintenance," is amended to make the paragraph easier to read.

Renumbered paragraph (8), defining the term "manufacturer's written warranty," is amended to state that the term refers to a warranty provided at no additional charge to the purchaser of the tangible personal property.

Renumbered paragraph (10), defining the term "remodel," is amended to follow the definition of the term "remodeling" provided in §3.300 of this title.

New paragraph (12) is added to define the term "restore." This definition is based upon the definition of the term "restoration" in §3.357 of this title (Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). Section 3.357 defines restoration as, "An activity performed to bring back real property that is still operational and functional but that has faded, declined, or deteriorated, as near as possible to its original condition."

New paragraph (13), defining the term "service provider," is added to replace the term "repairman," which is proposed to be deleted. The definition states that a service provider is someone who repairs, remodels, maintains, or restores tangible personal property belonging to another.

New paragraph (14) is added to define the term "vessel" consistent with the definition proposed in §3.297 of this title. The definition is adapted from Parks and Wildlife Code, §31.003(2) (Definitions), Comptroller's Decision Nos. 8864 & 9034 (1980), and STAR Accession Nos. 7708T0083C10 (August 8, 1977) and 8906L0943C10 (June 7, 1989).

New paragraph (15) is added to define the term "warrantor" in accordance with the commonly understood meaning of the term.

Subsection (b), which explains the basic rules of taxability in the context of the repair, remodeling, maintenance, and restoration of tangible personal property, is amended to provide paragraph headings throughout the section to assist taxpayers in locating information. New subsection (b)(1) is added to draw emphasis to information that was previously provided at subsection (b). The subsection also includes a cross-reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules).

Subparagraphs (A), (B), (C), and (D) are added to subsection (b)(1) to address, respectively, the taxability of services related to aircraft, motor vehicles, vessels, and locomotives and rolling stock. Subparagraph (E) is added to address the taxability of services performed on tax-exempt equipment. The information contained in new subsection (b)(1)(E) was previously provided in subsection (g). All of former subsection (g) was reincorporated into subsection (b)(1)(E), except for former subsections (g)(2)(D) and (F). Subsection (g)(2)(D), regarding boats and motors subject to tax under Chapter 160, is restated in subsection (b)(1)(C). Subsection (g)(2)(F), concerning timber operations, became inapplicable as of January 1, 2008, pursuant to Tax Code, §151.3162(d) (Timber Items), when the exemption in Tax Code, §151.3162(b) became effective.

Former subsection (b)(1) is deleted because the information currently provided in this paragraph is stated more clearly in the new subsection (b)(1).

Subsection (b)(2) is amended by adding the heading, "Resale certificates," creating new subparagraphs (A) and (B), and including cross references to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property). Language is added in subparagraph (A) to explain when a service provider can issue a resale certificate. Subparagraph (B) explains a seller of tangible personal property can issue a resale certificate to a service provider. Minor revisions are proposed to subsection (b)(3) to make the subsection easier to read. Subsection (b)(4) is amended to include a cross reference to

§3.287 of this title (relating to Exemption Certificates) and to make the subsection easier to read. In addition, the reference to subsection (g) is deleted as the information is incorporated into subsection (b).

Subsection (c) is amended to address only consumable supplies and equipment. The defined term consumable supplies is used in the body of the subsection in place of the term supplies. The subsection is further amended to state that a service provider owes sales or use tax on consumable supplies, as that term is proposed to be defined in this section.

Taken together, subsections (b)(2)(A) and (c), as amended, reflect tests that must be met before a provider of taxable services can purchase tangible personal property for resale. First, the tangible personal property must be transferred as an integral part of a taxable service. This gives effect to Tax Code, §151.006(a)(1) ("Sale for Resale"). Second, care, custody, and control of the tangible personal property must be transferred to the purchaser of the service. This gives effect to Tax Code, §151.302(b) (Sales for Resale).

Subsection (d), which addresses taxability issues that arise in the context of repairs made under warranty, is reorganized for clarity. The heading of the subsection is changed from "Repairs under warranties," to "warranties," and the first paragraph is amended to refer taxpayers with questions about the repair of motor vehicles and aircraft to §3.290 and §3.280 of this title, respectively. Subsection (d)(1) is amended to replace the phrase "manufacturer's warranties" with the defined term "manufacturer's written warranty" and to add a reference to recall campaigns. Additional amendments are made to make the paragraph easier to read.

Subsection (d)(2) is amended to make the paragraph easier to read and to use certain defined terms, such as "extended warranty or service policy" and "warrantor." New subsection (d)(2)(E) explains the taxability of charges for tangible personal property and labor not covered by a warranty when the services are performed by a third party.

New subsection (d)(3) is added to reflect longstanding agency policy as to what happens when tangible personal property is replaced or taken in trade or reimbursement is given under the terms of a warranty rather than being repaired, remodeled, or restored.

Subsections (e) and (f) are amended for clarity and readability. No substantive change to policy is intended as a result of these changes.

The information previously provided in subsection (g) concerning services performed on exempt tangible personal property is moved to new subsection (b)(1)(E).

Relettered subsection (g), formerly subsection (h), is amended for clarity and readability. In addition, relettered subsection (g)(3)(B) is amended to correct the cross reference to federal authority that allows the President of the United States to declare a disaster area.

Subsection (i) is deleted as the repair, remodeling, maintenance, and restoration of aircraft is now addressed in §3.280 of this title.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by incorporating into the rule current agency policy and by improving the rule's clarity. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§151.006 (Sale for Resale), 151.0101 (Taxable Services), 151.058 (Property Used to Provide Taxable Services and Sale Price of Taxable Services), 151.151 (Resale Certificate), 151.302 (Sales for Resale), 151.3111 (Services on Certain Exempted Personal Property), and 151.331 (Rolling Stock; Train Fuel and Supplies).

Texas Register

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 3	TAX ADMINISTRATION

SUBCHAPTER STATE AND LOCAL SALES AND USE TAXES

O

RULE §3.292 Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property

ISSUE 03/10/2017

ACTION Proposed

(a)Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)Chapter 160 boat--A vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern, that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel, or other watercraft designed to be propelled by paddle, oar, or pole, and that is subject to tax under Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors).

(2)~~(1)~~ Commercial vessel--A vessel that displaces [A ship of] eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and [displacement] that is:

(A)used exclusively and directly in a commercial or business enterprise or activity, including , but not limited to, commercial fishing; or[;]

(B)used commercially for pleasure fishing by individuals who are paying passengers [but excludes any ship used for sports fishing or pleasure].

(3)Consumable supplies--Tangible personal property that is used by a service provider to repair, remodel, maintain, or restore tangible personal property belonging to another; is not transferred into the care, custody, and control of the purchaser of the service; and, having been used once for its intended purpose, is completely used up or destroyed. Examples of consumable supplies include, but are not limited to, canned air used to remove dust from equipment and solvents used to clean equipment parts.

(4)~~(2)~~ Extended warranty or service policy--A [This] contract [is] sold to the purchaser [buyer] of tangible personal property [the product] for an [additional] amount in addition to the charge for the tangible personal property, or sold to an owner of tangible personal property, to extend the terms of the manufacturer's written warranty or provide a warranty in addition to or in place of the manufacturer's written warranty. [The provisions of the contract become effective after the manufacturer's warranty expires.]

(5)Fabricate--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(6)Maintain--To perform maintenance.

(7)~~(3)~~ Maintenance--Work performed [All work] on operational and functioning tangible personal property that is necessary to sustain or support safe, efficient,

continuous operation of the tangible personal property [operations], or is necessary to keep the tangible personal property in good working order by preventing [the] decline, failure, lapse, or deterioration [of tangible personal property].

~~(8)[(4)]~~ Manufacturer's written warranty--A manufacturer's guarantee made for no additional charge to the purchaser of an item of tangible personal property [by the manufacturer] that the item [product at the time of sale] is operable and will remain operable for a specified period of time. [The manufacturer's warranty is provided without additional cost to the buyer.]

(9)Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property, belonging to another, by restoring it to its original condition is not considered processing of the tangible personal property. The mere packing, unpacking, or shelving of tangible personal property to be sold is not considered to be processing of the tangible personal property. Processing does not include remodeling.

(10)[(5)] Remodel--To modify or remake [the style, shape, or form of] tangible personal property belonging to another in a similar but different manner, or to change the style, shape, or form of tangible personal property belonging to another, without causing a loss of its identity or without causing it [the item] to operate in a new or different manner. Remodeling does not include processing.

(11)[(6)] Repair--To mend or restore to working order or operating condition tangible personal property that was broken, damaged, worn, defective, or malfunctioning.

(12)Restore--To return tangible personal property that is still operational and functional, but that has faded, declined, or deteriorated, to its former or original state.

(13)Service provider--A person who repairs, remodels, maintains, or restores tangible personal property belonging to another.

(14)Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(15)Warrantor--A person who has a contractual obligation for a specified period of time to repair, remodel, maintain, or restore tangible personal property belonging to another.

~~{(7)Repairman--Any person who, under either lump sum or separated contracts, restores, repairs, performs maintenance services, or replaces a component of an inoperable or malfunctioning item.}~~

~~{(8)Private aircraft--An aircraft that is operated or used for a purpose other than as a certificated carrier of persons or property or by a flight school for the purpose of training pilots. Persons repairing aircraft belonging to or operated by a certificated~~

~~carrier of persons or property or flight schools should refer to §3.297 of this title (relating to Carriers).]~~

(b) Taxability of services [Services] to repair, remodel, maintain, or restore tangible personal property [other than aircraft, commercial vessels, and motor vehicles].

(1) General rule. Except as otherwise provided in this section, service providers [Persons] who repair, [restore,] remodel, [or] maintain, or restore tangible personal property belonging to another are providing taxable services. A service provider is a seller and must obtain a sales and use tax permit and collect and remit sales and use tax as provided in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities, including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules). Sales or use tax is due from the purchaser on the entire charge for a service to repair, remodel, maintain, or restore tangible personal property, including any separately stated charge for materials, parts, labor, consumable supplies, or equipment. In addition, the purchaser owes sales or use tax on any charge connected to the taxable service, including separately stated charges for inspecting, monitoring, or testing. [Persons who remodel motor vehicles are also covered by this section.]

(A) Aircraft. Service providers [-Persons] who repair, remodel, maintain, or restore [private] aircraft should refer to §3.280 of this title (relating to Aircraft) [subsection (i) of this section].

(B) Motor vehicles. Service providers who remodel motor vehicles are providing taxable services and are covered by this section. Service providers [Persons] who repair, maintain, or restore motor vehicles should refer to §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

(C) Vessels. Service providers who repair, remodel, maintain, or restore a vessel that is a Chapter 160 boat, sports fishing boat, or any other boat used for pleasure, and that is not a commercial vessel, are providing taxable services and are covered by this section. Service providers who repair, remodel, maintain, or restore commercial vessels should refer to §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

(D) Locomotives and rolling stock. Service providers who repair, remodel, maintain, or restore locomotives or rolling stock should refer to §3.297 of this title.

(E) Exempt equipment. A service to repair, remodel, maintain, or restore tangible personal property that, if sold, leased, or rented at the time the service is performed, would be exempt under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) due to its nature or its use is exempt from sales and use taxes. Tax is due on the sale of services to repair, remodel, maintain, or restore tangible personal property that was exempt at the time of purchase but would not be exempt at the time the service is performed. For example, services to repair, remodel, maintain, or restore the

following tangible personal property will not qualify for exemption based solely on the fact that such tangible personal property was exempt at the time of its purchase;

(i)tangible personal property purchased from an organization exempted from paying sales or use tax under Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations);

(ii)tangible personal property exempted from use tax because sales tax was paid on the purchase;

(iii)tangible personal property acquired tax-free in a transaction qualifying as an occasional sale under Tax Code, §151.304 (Occasional Sales), or as a joint ownership transfer exempted under Tax Code, §151.306 (Transfers of Common Interests in Property). See §3.316 of this title (relating to Occasional Sales; Transfers Without Change in Ownership; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters) and §3.331 of this title (relating to Transfers of Common Interests in Tangible Personal Property; Intercorporate Services); or

(iv)tangible personal property purchased tax-free during a sales tax holiday as provided by §3.353 of this title (relating to Sales Tax Holiday--Certain Emergency Preparation Supplies), §3.365 of this title (relating to Sales Tax Holiday--Clothing, Shoes and School Supplies) or §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products, Certain Water-Conserving Products, and WaterSense Products).

~~[(1)A service provider is a retailer and must obtain a tax permit and collect sales or use tax on the entire charge for materials, parts, labor, consumable supplies, equipment, and any charges connected to the repair, remodeling, restoration, or maintenance service.]~~

(2)Resale certificates.

(A)A service provider may issue a properly completed resale certificate instead of paying sales or use tax on the purchase of tangible personal property that is integral to repairing, remodeling, maintaining, or restoring tangible personal property belonging to another and is [to the supplier when purchasing materials that will be] transferred to the care, custody, and control of the purchaser of the taxable service. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) [a customer].

(B)A person holding tangible personal property for sale, lease, or rental may issue a properly completed resale certificate in lieu of paying sales or use tax on the purchase of labor and tangible personal property used to repair, remodel, maintain, or restore that tangible personal property. Refer to §3.285 of this title and §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3)A service provider working [must collect sales or use tax on services (labor)] under an agreement that provides that the purchaser of the service [customer] will furnish the tangible personal property [parts and materials] required for the service must collect sales or use tax on the charge for the service [repair].

(4)A service provider may accept a properly completed ~~[an]~~ exemption certificate instead of collecting sales or use tax when performing a taxable service for a purchaser who is ~~[customer]~~ exempt from sales and use tax under Tax Code, Chapter 151, or when performing services ~~[-tax or]~~ on tangible personal property ~~[an item]~~ that is exempt from sales and use tax. Refer to §3.287 of this title (relating to Exemption Certificates).~~[-, see subsection (g) of this section.]~~

(c)Consumable supplies and equipment. Sales or use tax must be paid by the service provider on consumable supplies~~[-, tools,]~~ and equipment that are purchased for use in the performance of a service ~~[the repair but]~~ that are not transferred to the care, custody, and control of the customer.

(d)Warranties. For information on warranties for the repair of motor vehicles, refer to §3.290 of this title. For information concerning warranties for the repair of aircraft, refer to §3.280 of this title. ~~[Repairs under warranties.]~~

(1)Manufacturer's written warranty or recall campaign ~~[warranties]~~. No sales or use tax is due on tangible personal property ~~[parts]~~ or labor furnished by the manufacturer to repair tangible personal property under a manufacturer's written warranty or recall campaign.

(A)Records must be kept by the service provider to document that the service and tangible personal property ~~[-parts]~~ were used in repairing an item under a manufacturer's written warranty or recall campaign.

(B)The service provider may purchase tangible personal property ~~[parts]~~ to be used in repairs under a manufacturer's written warranty or recall campaign tax -free by issuing an exemption certificate to the seller ~~[-supplier]~~.

(2)Extended warranty or ~~[warranties and]~~ service policy ~~[contracts for tangible personal property (motor vehicles and private aircraft see subsection (i)(4) of this section)]~~.

(A)Sales or use tax ~~[Tax]~~ is due on the sale of an extended warranty~~[-, service contract]~~ or service policy ~~[for the repair or maintenance of tangible personal property]~~.

(B)The warrantor ~~[person who warrants the item and is obligated to perform services under the terms of the agreement]~~ may issue a resale certificate in lieu of paying sales or use tax on the purchase of taxable items ~~[for parts or service to be]~~ used in performing the services ~~[-repair or maintenance services]~~ covered by the contract as long as the taxable items are integral to performing the service and the taxable items are also transferred to the care, custody, and control of the purchaser.

(C)If the warrantor ~~[person obligated to perform the services]~~ uses a third-party service provider ~~[-repairman]~~ to perform the service ~~[do the work]~~, the third-party service provider ~~[repairman]~~ may accept a resale certificate from the warrantor in lieu of sales or use tax.

(D) ~~The [repairman or] warrantor [performing the service] must collect sales or use tax on any charge to the purchaser [customer] for labor or tangible personal property [parts] not covered by the extended warranty or service policy.~~

(E) If the warrantor uses a third-party service provider to fulfill the warranty and the service provider charges the warrantor or the purchaser for tangible personal property or labor not covered under the warranty, the service provider must collect sales or use tax on such charges.

(3) Replacements and reimbursements.

(A) Trade-in. If the warrantor is a seller of tangible personal property, and if the terms of a manufacturer's or extended warranty agreement provide for either the replacement or the repair, remodeling, maintenance, or restoration of tangible personal property, then tangible personal property accepted by the warrantor under the terms of the warranty in exchange for, or towards the purchase of, tangible personal property of the type sold by the warrantor in the regular course of business will be considered a trade-in. The provisions of Tax Code, §151.007(c)(5) ("Sales Price" or "Receipts") apply to such a transaction and any amount or credit provided for the trade-in reduces the taxable amount of the sale of the replacement item.

(B) The sale of a contract that provides that a warrantor will reimburse a purchaser for payments made to replace, repair, remodel, maintain, or restore faulty, damaged, lost, or stolen tangible personal property, including the amount of any sales and use tax, is not taxable. In addition, the amount reimbursed to the purchaser of the faulty, damaged, lost, or stolen tangible personal property by the warrantor under such a contract is not taxable.

~~(e) Services performed on real property [Contractors and persons who perform real property repair and remodeling]. Persons who build new improvements to real property, or repair, restore, or remodel residential real property belonging to others, should refer to §3.291 of this title (relating to Contractors). Persons who repair or remodel nonresidential real property belonging to others should refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).~~

~~(f) Fabricating or processing tangible personal property. Persons who fabricate or process tangible personal property belonging to [for] another should refer to §3.300 of this title [(relating to Manufacturing; Custom Manufacturing; Fabricating; Processing)].~~

~~[(g) Services performed on certain tangible personal property.]~~

~~[(1) Labor to repair, remodel, maintain, or restore certain tangible personal property that, if sold, leased, or rented, at the time of the performance of the service, would be exempted under Tax Code, Chapter 151, because of the nature of the property, its use, or a combination of its nature or use is exempted from sales and use taxes.]~~

~~[(2) The exemption provided in paragraph (1) of this subsection does not apply to:]~~

~~[(A) tangible personal property sold by an organization exempted by Tax Code, Chapter 151;]~~

~~[(B) tangible personal property exempted from use tax because sales tax was paid on the purchase;]~~

~~[(C)tangible personal property acquired tax free in a transaction qualifying as an occasional sale under Tax Code, §151.304, or as a joint ownership transfer exempted under Tax Code, §151.306;]~~

~~[(D)taxable boat or motor defined by Tax Code, §160.001;]~~

~~[(E)clothing and footwear purchased tax free during a sales tax holiday; or]~~

~~[(F)machinery and equipment used in timber operations.]~~

~~(g)[(h)] Exemption for [labor to repair tangible personal property in a] disaster areas [-area].~~

~~(1)Labor to repair, restore, remodel, or maintain tangible personal property is exempt if:~~

~~(A)the amount of the charge for labor is separately stated from any charge for tangible personal property on the invoice, contract, or similar document provided by the service provider to the purchaser [itemized]; and~~

~~(B)the service is performed on tangible personal [-repair is to] property that was damaged within a disaster area by the condition that caused the area to be declared a disaster area.~~

~~(2)The exemption does not apply to tangible personal property transferred from the service provider to the purchaser as part of the repair.~~

~~(3)In this subsection, "disaster area" means:~~

~~(A)an area declared a disaster area by the Governor of Texas under Government Code, Chapter 418 (Emergency Management); or~~

~~(B)an area declared a disaster area by the President of the United States under 42 United States Code, Chapter 68 (Disaster Relief) [§5141].~~

~~[(i)Responsibilities of repairman or remodelers of private aircraft.]~~

~~[(1)Responsibilities under a lump-sum contract.]~~

~~[(A)Labor to maintain, repair or remodel private aircraft is not taxable. A person maintaining, repairing or remodeling a private aircraft for a lump-sum price is not a retailer of a taxable item and may not issue a resale certificate for parts or material used or consumed in such repair or remodel.]~~

~~[(B)Under a lump-sum contract, the repairman or remodeler is the ultimate consumer of consumable supplies, tools, equipment, and all materials incorporated into the private aircraft. The lump-sum repairman or remodeler must pay the tax to suppliers at the time of purchase. The repairman will not collect tax from customers on the lump-sum charge or any portion of the charge. Under this type of contract, the repairman will pay the tax on materials even when the property is repaired for an exempt customer.]~~

~~[(C)A lump-sum repairman may use materials from inventory that were originally purchased tax free by use of a resale certificate. In those instances, the repairman incurs a tax liability based upon the purchase price of the materials and must report and remit the tax to the comptroller.]~~

~~[(2)Responsibilities under a separated maintenance, repair or remodeling contract. Under a separated contract, the repairman of a private aircraft is a retailer and may issue a resale certificate in lieu of tax to suppliers for materials that will be incorporated into the private aircraft of the customer; the repairman must then collect tax from the customer on the agreed contract price of the materials, which must not be less than the amount the repairman paid to suppliers. The repairman must obtain a tax permit to be able to issue a resale certificate in lieu of tax when materials are purchased. The repairman may also use materials from inventory upon which tax was paid to the supplier at the time of purchase. In these instances, tax will be collected from the customer on the agreed contract price of the materials as if the materials had been purchased with a resale certificate; however, the repairman will remit tax to the~~

~~comptroller only on the difference between the agreed contract price and the price paid to the supplier. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers). A repairman of private aircraft is the ultimate consumer of consumable supplies, tools, and equipment used that are not incorporated into the private aircraft being repaired. The repairman must pay tax to suppliers at the time of purchase. The repairman may not collect tax from customers on any charges for these items.]~~

~~[(3)Repairing jet turbine aircraft engines. Persons engaged in overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).]~~

~~[(4)Warranties.]~~

~~[(A)Manufacturer warranties. Manufacturer's warranties are treated in the same manner as those for tangible personal property (see subsection (d)(1) of this section).]~~

~~[(B)Extended warranties and service contracts. A repairman performing services under an extended warranty covering a private aircraft must collect tax on the parts as required under paragraph (2) of this subsection.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2017

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

Re-Query Register