

**Revenue Ruling
No. 06- 019
November 27, 2006
Sales and Use Tax**

The Sales Tax Treatment of Piano Tuning

The purpose of this revenue ruling is to clarify the sales tax treatment of piano tuning.

Issue

Is the service of tuning a piano a taxable repair subject to Louisiana sales tax?

Facts

A Louisiana corporation is engaged in the service of piano tuning. Tuning involves changing the pitch of each string by increasing or decreasing the tension of that string. Tuning occurs by selecting the combination of pitches for the notes of the instrument that, according to the taste and experience of the artist, allow the piano to sound its best for its use. The process of tuning is a multi-stage process. The tuner begins by setting the instrument to the pitch to which it is to be tuned. “Concert pitch” is accepted as the pitch to which all musical instruments are tuned. In this case, the “A” note should be set to 440 hertz.

The tuner then performs the setting of the “temperament,” the twelve-note pattern that governs the entire tuning of the piano. It is based on a mathematical formula dictating that all the notes in the twelve-note pattern be evenly spaced apart from each other. This “scale” has been worked out by musicians through the years, and has come to be known as “equal temperament.” The tuner will adjust the tension of each string to perfect pitch. The tuner may also repair any damaged parts of the piano if those parts are worn or broken.

Law

Louisiana taxes sales of certain enumerated services. One of the enumerated taxable services is the “furnishing of repairs to tangible personal property, including but not restricted to the repair and servicing of automobiles and other vehicles, electrical and mechanical appliances and equipment, watches, jewelry, refrigerators, radios, shoes, and office appliances and equipment,” pursuant to La. Rev. Stat. §47:301(14)(g)(i)(aa). The illustration of repair services following the language “the furnishing of repairs to tangible personal property” does not restrict or limit taxable repair services to only those listed in the statute and applicable ordinances.¹ The term “repair” is not defined. The regulation on repairs to tangible personal property, LAC 61:I.4301.C. *Sales of Services*, (i), adds that “both repair and routine servicing of all kinds of tangible personal property are included as taxable services.”

¹ *Parish of Jefferson v. Ekco-Glaco*, 280 so.2d 629 (La. App. 4th Cir. 1973).

Louisiana case law has a series of cases addressing the extent to which servicing of tangible personal property rises to the level of a taxable “repair.” The first case addressing the definition of “repair” was McNamara v. Stauffer Chemical, 506 So. 2d. 1252. In Stauffer Chemical, the chemical treatment process of regenerating or restoring spent sulfuric acid was found to be a repair service because the process restored the acid to a sound and usable state.

The First Circuit Court of Appeals looked to the definition of “repair” in Black’s Law Dictionary, which defined it as follows: “[t]o mend, remedy, restore, renovate. To restore to a sound or good state after decay, injury, dilapidation, or partial destruction.” In addition, the court cited the commentary following the definition which stated: “[t]he word ‘repair’ contemplates an existing structure or thing which has become imperfect, and means to supply in the original existing structure that which is lost or destroyed, and thereby restore it to the condition in which it originally existed, or as near as may be.”

In its ruling, the court reasoned, “it is our opinion it was well within the purpose and objective of the legislature for the word ‘repair’ to be given a general and liberal meaning, and not to be construed in a highly limited sense, and that such word clearly encompasses the ‘restoration of tangible personal property’ in a process, or service which ‘restores’ the thing (spent sulfuric acid) to the condition in which it originally existed (usable sulfuric acid).”

In Intracoastal Pipe Service v. Assumption Parish Sales and Use Tax Dept., 558 So.2d 1296, 1990 La. App. LEXIS 358, 108 Oil & Gas Rep. 388, oilfield pipe cleaning was found not to constitute a taxable repair service under La. Rev. Stat. § 47: 301(14) (g) (i) or the parish ordinance, which tracked the language of the state statute. The testimony was undisputed that the cleaning services in question did not “fix” anything broken, or change in any way the substance of the tubing. The court looked to the common usage of the term repair as “to restore by replacing a part or putting together what is torn or broken,” and held that the popular use of the word repair did not include the cleaning processes performed by the taxpayer.

In South Central Bell v. Barthelemy, 94-0499(La. 10/17/94), 643 So.2d 1240, maintenance services consisting of technical support, updating, enhancing, and reformatting software were not found to be “repair services” for tax purposes. In that case, the Supreme Court reasoned that the services provided were not to “fix” broken software but to enhance already operable software and make it perform as efficiently as possible.

In Stowe-Woodward Company v. Lincoln Parish School Board, 821 So.2d 694, the Second Circuit Court of Appeal held that the recovering of large metal rolls used in the manufacturing of paper was a taxable repair. Although the rolls could be used without the covers, use of the uncovered rolls would be impracticable in most applications as the rolls would not function properly or as designed. The Court distinguished the case from South Central Bell, *supra*, in that re-covering was more than a mere enhancement as it actually restores the roll to a good or sound condition or state allowing it to perform its intended function in the process for which it is used.

Analysis

Tuning services are performed in order to “restore” the piano to the correct pitch and temperament as determined either by the standards of the piano owner or the tuner. In all of the cases on point, courts have adopted the view that “restorative” services are properly taxable as repairs. Tuning is more than a “mere enhancement” to the piano because the primary purpose one has a piano is to produce a desired sound. If an owner did not wish to maintain the desired sound quality of the piano, he would not have the piano tuned. Tuning is actually “fixing” the piano so that it performs as intended. It is not necessary that parts actually be replaced for the tuning to be a taxable repair, although any situation in which the replacement of parts is necessary also constitutes a taxable repair.

With taxable repair services of this nature, the tuner must collect sales tax on the gross amount charged for the repair service, including separately stated amounts for services, materials, overhead, and profit. The customer is required to pay the tax to the tuner who should then report the sale of the repair service on his sales tax return. When remitting the tax, the tuner is authorized by La. Rev. Stat. §47:306(B)(3) to deduct the state advance sales taxes that he paid on materials sold to and furnished to customers as part of the repair service.

Ruling

Piano tuning is a taxable repair since tuning is necessary to restore a piano to proper working order.

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