ST 2108 - SALES TAX: WHETHER WARRANTY CHARGES MAY BE EXCLUDED FROM THE SALE VALUE OF TAXABLE GOODS.

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TAXATION RULING NO. ST 2108

SALES TAX: WHETHER WARRANTY CHARGES MAY BE EXCLUDED FROM THE SALE VALUE OF TAXABLE GOODS.

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1132092	OPTIONAL WARRANTY WARRANTY CHARGES	SALES TAX ASSESSMENT ACT (NO. 1). SECTIONS 18 AND 18A, SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT. SUB-ITEM 144(1), FIRST SCHEDULE.

PREAMBLE By virtue of paragraph 18(1)(a) of Sales Tax Assessment Act (No. 1.), the sale value of goods sold by a manufacturer by wholesale is the amount for which the goods are sold. A comparable provision applies in other Assessment Acts e.g. sub-section 4(1) of Sales Tax Assessment Act (No. 2), sub-section 4(1) of Sales Tax Assessment Act (No. 3), section 4 of Sales Tax Assessment Act (No. 6) and sub-section 4(1) of Sales Tax Assessment Act (No. 7).

2. In recent years a practice has developed by which some manufacturers and importer/wholesalers, have excluded from the sale value of taxable goods charges made for warranty services. The electronics industry is one example of where the practice has developed.

3. It is the view of this Office that where the terms or conditions of trade between a manufacturer or wholesaler, on the one hand, and a retailer, on the other hand, require the retailer to accept the manufacturers' or wholesalers' warranty arrangements and pay the warranty charge, then that charge forms part of the amount for which the goods are sold. If, however, the retailer has a clear option whether or not to use the manufacturer's or wholesaler's warranty arrangements and, if not, to make and comply with his own warranty commitments on goods which he sells, this office has accepted that any amounts which are payable by the retailer to the manufacturer or wholesaler by way of warranty charges do not form part of the sale value of the goods. This class of warranty has become known as an optional warranty. For optional warranty charges to be excluded from the sale value it was necessary that they had to be invoiced separately from the price of the goods.

4. Because of growth in the number of cases in which so-called optional warranty charges have been excluded from sale

value, growth in the magnitude of the warranty charges adopted in some instances, and the difficulty of readily determining whether the terms of trade between the relevant parties do provide a clear option to retailers to reject manufacturers' or wholesalers' warranty arrangements, this office has recently re-examined the implications of warranty charges for sales tax purposes.

5. It is relevant to this matter that section 18A of Sales Tax Assessment Act (No. 1), and comparable provisions in other relevant Assessment Acts, provide for an increase in the sale value of goods, where, for example, a manufacturer sells goods to a retailer and, under an agreement entered into for the purpose of securing that the sale value of the goods would be less than the amount that could reasonably be expected to be their sale value if the agreement had not been entered into, valuable consideration has been given by the retailer to the manufacturer for, or in connection with, the provision of "services in connection with the relevant goods" - an expression which, by virtue of sub-paragraph 18A(2)(b)(ii), includes the giving of a guarantee or warranty in respect of the relevant goods.

FACTS

6. Broadly speaking, warranties may be categorised into express warranties and warranties implied by law. Under consumer protection legislation in the States (e.g. Manufacturers Warranties Act (S.A.), Consumer Transactions Act (S.A.), Sale of Goods Act (NSW), Sale of Goods Act (Qld), Consumer Affairs Act (Qld), The Goods Act (Vic), and The Goods (Sales and Leases) Act (Vic)) and under the Commonwealth trade practices legislation (Trade Practices Act), certain statutory obligations are imposed in the form of implied conditions or implied warranties on matters such as title, quiet possession, merchantable quality of goods, fitness of goods for purpose, meeting of goods with description and correspondence of goods with sample. No particular time period for which implied warranties extend is specified in the law. Manufacturers and importer/wholesalers cannot contract out of the implied warranties, and consumers' rights arising under them cannot be restricted, modified or excluded.

7. Many manufacturers and importer/wholesalers adopt the practice of issuing written express warranties or guarantees with their goods. Under the express warranties a manufacturer or an importer/wholesaler commonly warrants that its products are free from defects arising from faulty materials and faulty workmanship and that defective parts will be repaired or replaced free of charge for a specified time period.

8. The term "express warranty" is defined very widely in the Trade Practices Act and is similarly defined in most State consumer protection legislation. It embraces most written promises made about the quality, performance or characteristics of a product.

9. Neither Commonwealth nor State consumer protection legislation obliges manufacturers or importer/wholesalers to give, in addition to implied warranties, express warranties for their products. Once given, however, express warranties must be adhered to. To some extent express warranties embrace statutory implied warranties and, in many instances, probably extend

them. It is by no means clear, whether manufacturers or importer/wholesalers may contract out of express warranty obligations.

10. However, manufacturers and importer/wholesalers often do in practice authorise particular service organisations, including in some cases retailers to whom they sell their products, to carry out repairs or replacements when consumers submit defective products and claim to be protected by an express warranty issued with the goods. Should an authorised service organisation fail for one reason or another to fulfil the express warranty obligations, the manufacturer or importer/wholesaler is liable to the consumer to comply with them.

11. There is no doubt that express warranties and implied warranties can, and do in fact, overlap. It is virtually impossible, in practical terms, to segregate implied warranties from express warranties. It is difficult to say, for instance, for what time period implied warranties run and it is equally difficult to say when and where implied warranty obligations (which cannot at law be contracted out of) end, and when and where express warranty obligations (which may not at law be able to be contracted out of) commence.

12. Consequently, it is impraticable to segregate warranty charges made by manufacturers and importer/wholesalers to their customers into components which relate to their implied warranty commitments and to their express warranty commitments.

13. It is important to bear in mind the relationship between warranty charges imposed by manufacturers or by importer/wholesalers at the time goods are sold to retailers and the actual costs which may or may not be incurred subsequent to the sale of the goods in repairing any goods which happen to be defective, or in otherwise remedying their defects, under express warranty commitments. Warranty charges are calculated to recover estimated costs of repair, etc., against the sales revenue of manufacturers or importer/wholesalers.

14. To take a typical situation, a manufacturer or importer/wholesaler of, say, amplifiers may sell to a retailer and would include on the invoice the price for the goods and a warranty charge. This warranty charge would ordinarily be based either on a proportion of an estimated or budgeted total cost of providing repairs on amplifiers under warranty for the ensuing year or on a proportion of the total cost actually incurred in providing such repairs in the preceding year. When a consumer during the express warranty period takes a defective amplifier obtained from a retailer to an authorised service organisation of the manufacturer or importer/wholesaler, the service organisation will do the necessary repairs under the warranty and will obtain payment for the repairs by claiming an amount back from the manufacturer or importer/wholesaler, usually at a predetermined and agreed rate to cover the cost of spare parts and labour.

15. The warranty charge made on an invoice by a manufacturer or importer/wholesaler to a retailer does not relate to the provision of any repairs, etc., expected to be carried out on the particular goods shown on the invoice. It is

merely a convenient means of calculating and receiving an amount sufficient to cover the estimated or budgeted costs of fulfilling the manufacturer's or importer/wholesaler's promise that its products will be defect-free for a certain specified period. It is, in effect, an estimate of the costs the manufacturer or importer/wholesaler expects to incur in meeting its promise. Plainly, it is not known at the time of sale by the manufacturer or importer/wholesaler to the retailer (i.e. at the taxing point) whether the particular goods on the invoice will be defective nor, if they turn out to be defective, what their actual cost of repair, etc., under warranty will be. It would only be coincidence, and highly unlikely at that, if the warranty charge made on the invoice did in fact equate the total actual repair etc., costs payable by the manufacturer or importer/wholesaler to the authorised service organisation.

16. The warranty arrangements of several entities in the electronics industry have been examined by this office in detail. The only election that emerged from the terms of trade entered into by the parties was that, in some cases, a retailer could either arrange to meet all warranty claims in compliance with the manufacturer's or importer/wholesaler's standard warranty commitments or could elect that the manufacturer or importer/wholesaler itself should meet these claims.

RULING

17. This office is not satisfied that the terms of trade entered into by manufacturers and importer/wholesalers with retailers in relation to warranty charges are sufficient to accept that any part of those charges may be excluded from the sale value of taxable goods.

18. There are numerous reasons for the view that warranty charges properly form part of the sale value of taxable goods. Firstly, there are no practicable means of segregating warranty charges made on invoices by manufacturers and importer/wholsesalers into components which relate to express warranty obligations as distinct from implied warranty obligations which at law cannot be contracted out of. The amount of the warranty charges that may be attributable to express warranty commitments which the manufacturer or importer/wholesaler claims to be giving a retailer an absolute option to determine and comply with cannot be readily determined. In any event, there is substantial doubt whether the manufacturer or importer/wholesaler can at law contract out of express warranty commitments that it has given.

19. Secondly, warranty charges imposed by manufacturers and importer/wholesalers are calculated to recover estimated charges against their sales revenue and can be likened to other charges such as advertising, selling expenses and overhead manufacturing costs, all of which are components costed into the amount for which the goods are sold.

20. Thirdly, the provisions of section 18A of Sales Tax Assessment Act (No. 1), and comparable provisions in other Assessment Acts, may be relied on in appropriate cases to provide for an increase in the sale value of goods by the amount of the warranty charges.

21. Fourthly, no evidence has been provided to this office to demonstrate that the terms of trade between any manufacturer

or importer/wholesaler and a retailer are such that the retailer is able to, or has, organised and complied with its own warranty arrangements rather than adopted those of the manufacturer or importer/wholesaler. Wholesalers and retailers alike do not vary a manufacturer's warranty terms.

22. Finally, it is most unlikely that any manufacturer or importer/wholesaler which advertises and warrants its goods on a national basis, and which has its product name and reputation at stake, would allow a retailer a free hand to carry out repair work under warranty as the retailer sees fit without exercising some measure of control over the retailer's repair operations. It is the manufacturer or importer/wholesaler which invariably seeks in practice to convince consumers that it is warranting the goods.

23. Warranty charges, including those described as optional warranty charges, are no longer to be regarded as not forming part of the sale value of taxable goods unless or until a registered person establishes that to be the case either to the satisfaction of this office or before an appropriate appellate tribunal. Moreover, it is not proposed to lay down guidelines or conditions under which it will be accepted that the terms of trade between relevant parties are such that a retailer has a clear option to accept or reject a manufacturer's or importer/wholesaler's warranty arrangements. Any case in which such a claim is made is to be considered on its own particular merits.

24. In none of the cases in the electronics industry examined in this office do the terms of trade between the parties establish that retailers have a clear option to accept or reject the manufacturer's or importer/wholesaler's warranty arrangements. Quite apart from difficulties involved in segregating any appropriate express warranty component of warranty charges, in no case is a retailer free to reject the manufacturer's or importer/wholesaler's warranty arrangements and to determine for itself its own warranty arrangements (e.g. by nominating its own period for which it would repair or replace defective parts free of charge and by authorising its own service organisation to carry out repairs, etc.) and to comply with its own warranty commitments. Any election that is provided to a retailer to either meet all warranty claims in compliance with a manufacturer's or importer/wholesaler's warranty commitments or to elect that the manufacturer or importer/wholesaler meet these claims is not sufficient for this office to accept that warranty charges may be excluded from the sale value of taxable goods.

25. Sub-item 144(1) in the First Schedule to the Sales Tax (Exemptions and Classifications) Act exempts from sales tax goods for use in replacing free of charge any defective part of other goods provided that the cost of goods used in replacement is recouped in the prices for which the other goods and goods of the same kind are sold by wholesale. This sub-item would therefore ordinarily exempt spare parts for use by a manufacturer on an importer/wholesaler in replacing defective parts of its products free of charge under warranty.

COMMISSIONER OF TAXATION
9 January 1985

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