

Department of Taxation

Regulation Title: MAINTENANCE CONTRACTS AND WARRANTY PLANS
VAC Number: 23 VAC 10-210-910

- 1. Statement identifying and describing the source of the state and/or federal legal authority to promulgate the contemplated regulation, the scope of the authority provided, and the extent to which the authorized rulemaking is mandatory or discretionary, together with an attached copy of all cited legal provisions;**

Section 58.1-203 of the Code of Virginia authorizes the Commissioner of the Department of Taxation to promulgate regulations related to the interpretation and enforcement of the laws of the Commonwealth governing taxes administered by the department.

- 2. Statement delineating the potential issues to be addressed in the proposed regulation;**

The regulation explains that maintenance contracts which provide for parts or for parts and labor are taxable as it represents a sale of tangible personal property.

- 3. Statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function, including a discussion of the problems the regulations are intended to solve;**

This regulation is essential as questions frequently arise regarding the proper application of the tax to maintenance contracts. The regulation is essential to uphold the department's policy in court should the matter be litigated.

- 4. Statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered, and the reasoning by which the agency has rejected any of the alternatives considered.**

Alternatives which might achieve the essential purpose for which the regulatory action is being undertaken were considered. The department has issued Tax Bulletins to explain the exemption. However, in light of continued confusion in the industry, it has been determined that a regulation is essential to help clarify the application of the tax to maintenance contracts. In addition, since Tax Bulletins, and guidelines do not carry any weight in courts, it is critical that the regulations be amended to reflect current policy.