



## **Auto Body Association of Connecticut**

104 Cheshire Road • Prospect, CT 06712  
Phone (203) 767-5731 • Fax (860) 283-4154

“Pulling together for a better future”

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**TESTIMONY OF  
AUTO BODY ASSOCIATION OF CONNECTICUT  
BY  
ANTHONY FERRAILO, PRESIDENT  
REGARDING  
SALES TAX TREATMENT OF PAINT USED IN MOTOR VEHICLE REPAIRS  
BEFORE THE  
STATE TAX PANEL  
SEPTEMBER 16, 2015**

*The Auto Body Association of Connecticut (ABAC), a statewide trade association of professionals dedicated to the advancement of the collision repair industry, through safe quality repairs for Connecticut consumers, respectfully submits the following comments to the State Tax Panel regarding the sales tax treatment of paint used in motor vehicle repairs:*

During the 2015 state legislative session, the ABAC was very supportive of the intent behind House Bill 5655, “An Act Concerning The Taxation Of Paint Used In Motor Vehicle Repair.” We advocated for reform because auto body repairers had been unfairly penalized by a recent Department of Revenue Services interpretation that paint and materials used in auto repair should be taxed twice: once at wholesale purchase and once at retail sale. In addition to being inequitable from a tax policy perspective, it was inconsistent with reasonable regulatory interpretations to the contrary and years of industry practice to the contrary.

The ABAC was supportive of the language and the intent of subpart (1) of the bill (See lines 1-3), which sought to clarify the applicability of sales and uses taxes on wholesale sellers of paint used for motor vehicle repair. On behalf of our member shops and the collision repair industry at large, the ABAC would like to ensure that when paint is purchased from a wholesaler, that purchase would be considered a “sale for resale” (as it always has). Accordingly, we are respectfully asking members of the State Tax Panel to examine this important issue and make appropriate recommendations to address this inequity.

More specifically, under the Regulations of Connecticut State Agencies, Department of Revenue Services, Section 12-407(2)(i)(M)-1 (the "Regulation" - a copy of which accompanies this testimony), the *ABAC would like to clarify* that subsection (2) of subpart (c) "Taxability of items used in rendering motor vehicle repair services", *does not pertain to* paints purchased in bulk by repair shops and subsequently used in auto repair on customer vehicles. Clarifying the Regulation would *allow for repair shops to continue to utilize this longstanding exception in the Regulation to purchase paint as a "sale for resale"*, which is consistent with the way industry practices have evolved, as well as, ABAC believes, the original intent of the Regulation.

The ABAC very much supports revision and/or clarification to Section 12-407(2)(i)(M)-1(c)(2). Notably, the auto body repair industry has dramatically evolved and modernized since this regulation was last updated in 1999. Years ago, auto body shops would order paint from a supplier (wholesaler) specifically for use on a certain vehicle. That purchase was considered a sale for resale and nontaxable to the shop; the sales tax would be charged to and collected from the end user customer. The paint used in today's repair process is purchased differently than it was over 15 years ago. Most, if not all, auto body repair facilities purchase paint related materials in bulk form. The product is computer mixed as needed *for each individual repair job*. The totals are recorded and *billed to each specific repair job*. The sales tax is then to be charged to end user customer.

The purchase of liquid paint related materials at the wholesale level should likewise be nontaxable to the repair shop (sale for resale), and when product is mixed for each specific customer's job, taxes should be collected on final invoice to the end user customer. This scenario is already governed by subsection (c)(2) of the Regulation which exempts from taxation at the wholesale level: "Property purchased solely for a particular customer, as long as the charge for such materials will be separately stated on the bill to the customer and tax collected thereon." This modern system of purchasing paint and related materials and mixing only what is needed not only saves the consumer money, but also saves the environment from hazardous waste storage.

For additional information and background on this issue, accompanying this testimony is a copy of a letter from the Connecticut accounting firm of Meyers, Harrison & Pia, LLC to the Auto Body Association of Connecticut. CPAs Thomas Valentino and Jeffrey Cheney also provide an example of how under current interpretation, the state is essentially collecting sales tax twice on the same item/materials. The ABAC believes that this is not only poor tax policy, but also inconsistent with the original intent of the law.

On behalf of the Auto Body Association of Connecticut, thank you for your time and attention to this important matter, not only for repair shops, but also for consumers and taxpayers. The ABAC is ready and willing to work with members of the State Tax Panel, the legislature, and the Department of Revenue Services to address our concerns.



MEYERS, HARRISON & PIA, LLC  
*Certified Public Accountants and Consultants*

One Audubon Street, 3<sup>rd</sup> Floor • New Haven, CT 06511-6431 • Tel (203) 789-1040 • Fax (203) 789-4455

March 18, 2015

Mr. Anthony Ferraiolo  
Auto Body Association of Connecticut  
104 Cheshire Road  
Prospect, CT 06712

As CPAs in the State of Connecticut who are familiar with reading and interpreting laws and regulations, we have been asked for our interpretation of the laws regarding sales tax on paint for the auto repair business.

The written laws under CGS §12-407(2)(i)(M)-1 are outdated as to how the auto repair business conducts its business. Even still, with that being said the statutes state under §12-407(2)(i)(M)-1 the following:

§12-407(2)(i)(M)-1(c)(3) Since providers of motor vehicle repair services are considered to be consumers of supplies used in rendering their services, sales of tangible personal property, other than integral parts, to a motor vehicle repair services provider that uses such property in repairing, restoring, rebuilding, replacing parts of or maintaining motor vehicles are retail sales to such provider and are subject to tax.

§12-407(2)(i)(M)-1(a)(1)(A)-(B) An "integral part" means a part, such as an air or oil filter, alternator, battery, belt, hose, muffler, spark plug, tire or windshield wiper blade, that retains its separate identity even after being incorporated into a repaired motor vehicle.

The term "integral part" does not include materials that do not retain their separate identity after being used to repair a motor vehicle, but are consumed by the service provider in repairing the motor vehicle, such as abrasives (e.g., sandpaper, emery paper and grinding wheels), acetylene, acrylic finishes, applicators, body putty, body work tools, brushes, cleaners, compound pads, drop cloths, enamels, flux, hand cleansers, lacquers, lead, masking tape, masking paper, mechanics' tools, metal conditioners, oxygen, paint, painting tools, plastic filler, polishing and buffing pads, primers, removers (liquid and paste), resins (e.g., epoxy, polyester, fiberglass cloth and fiberglass matting), rollers, rubbing compound, rust proofing liquid, sealants, shellacs, solder, spray guns, stain, stencils, strainers, thinners and solvents, undercoating, varnish, waxes, welding rods and disposable or reusable wipes.



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§12-407(2)(i)(M)-1(c)(2) Providers of motor vehicle repair services may purchase certain materials on resale where such property is purchased solely for a particular customer, as long as the charge for such materials will be separately stated on the bill to the customer and tax collected thereon. Examples of such materials include acrylic finishes, enamels, lacquers and paint.

The obstacle in this statute is that the auto repair business has changed the way it services its customers when it comes to painting autos. Prior to law being written, paint was purchased specific to a car and so the language above represents that. Today, toner is purchased and mixed to exact specifications to a specific color for an auto and applied.

By reading the statute, it stands clear to us that an integral part does not consist of consumables, as the list clearly identifies several items that are consumables in the ordinary course of business for an auto repair shop. We feel, the reason the statute states that paint purchased specific for a particular customer may be purchased for resale and not for consumption, i.e. paying sales tax when purchased by the repair shop, is because this level of paint is not considered a consumable once it is specific to a customer's needs. We imagine the intent of this law was to charge sales tax to the repair shop when paint is considered a consumable, keeping in line with the list of items presented as "not an integral part." In the current day, paint is not purchased as a unit, as it was when the law was first written, it is now purchased as toner and mixed. When paint is mixed for a specific customer and applied to the body of the auto it is not a consumable when the repair shop is charging the customer separately for that item on the invoice, which at times can be a large dollar amount. Keeping in line with what appears to be the intent of the statute, it reasons to be that this paint mixture should fall within the meaning of paint being purchased specific to a car and therefore be purchased on resale.

We believe the original intent of the statute was to differentiate between consumable paint used by the auto repair shop versus paint used to finish an auto specifically for a customer. By meeting the other aspects of the statute, i.e. separately stating the charge for customers, etc. we believe the auto repair business should be allowed to include its paint mixtures under this law and the law should be rewritten to conform with current approaches to repairs without losing the intent of the law.



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Under current law, paint toner system materials are taxed to the auto repair shop when purchased. When the material is mixed at the shop and used for a particular customer's car it is once again taxed by the shop to the consumer. By way of example; when the shop purchases \$ 100.00 of toner mixtures, the shop is charged with sales tax of 6.35% for a total of \$ 106.35. If the shop uses that same quantity on a customer's car they must collect sales tax. The bill to the consumer would state "paint" and the charge would be \$ 106.35 and tax would be collected on \$ 106.35 for a total of \$ 113.10. It appears the Department of Revenue Services would be collecting tax twice on the same item. The purchase of the product should be for resale by the auto repair shop so that the final consumer pays a tax just one time. We believe this is what was originally intended by the law but the method by which this particular item is purchased and applied has changed over time and the law needs to address these current circumstances.

Very Truly Yours,

Thomas Valentino, CPA

Jeffrey Cheney, CPA

## Enumerated Services

### Sec. 12-407(2)(i)(M)-1. Repair services to motor vehicles

#### (a) Definitions.

(1) The term “motor vehicle repair services” means the services of mending or bringing back to working order the body or any operating parts of a motor vehicle that was broken, damaged, malfunctioning or defective. The term “motor vehicle repair services” also includes the services of restoring, rebuilding or replacing any motor, engine, working parts, accessories, body or interior of the motor vehicle. The term “motor vehicle repair services” also includes all maintenance services that keep a motor vehicle in good working order by preventing its decline, failure, lapse or deterioration, including but not limited to replacing vehicle fluids (e.g., oil or coolant), lubricating the chassis, diagnostic testing, replacing spark plugs and filters, rotating tires, recharging the air conditioning system, rustproofing, painting or repainting, and applying fabric protection or paint sealant. The term “motor vehicle repair services” does not include the service of installing new parts or accessories that are not replacements for existing parts or accessories (e.g., customizing) or the service of towing or storing a motor vehicle.

(2) The term “motor vehicle” has the meaning ascribed to it in section 14-1(a)(47) of the general statutes, as from time to time amended.

(3)(A) An “integral part” means a part, such as an air or oil filter, alternator, battery, belt, hose, muffler, spark plug, tire or windshield wiper blade, that retains its separate identity even after being incorporated into a repaired motor vehicle.

(B) The term “integral part” does not include materials that do not retain their separate identity after being used to repair a motor vehicle, but are consumed by the service provider in repairing the motor vehicle, such as abrasives (e.g., sandpaper, emery paper and grinding wheels), acetylene, acrylic finishes, applicators, body putty, body work tools, brushes, cleaners, compound pads, drop cloths, enamels, flux, hand cleansers, lacquers, lead, masking tape, masking paper, mechanics’ tools, metal conditioners, oxygen, paint, painting tools, plastic filler, polishing and buffing pads, primers, removers (liquid and paste), resins (e.g., epoxy, polyester, fiberglass cloth and fiberglass matting), rollers, rubbing compound, rustproofing liquid, sealants, shellacs, solder, spray guns, stain, stencils, strainers, thinners and solvents, undercoating, varnish, waxes, welding rods and disposable or reusable wipes.

(b) **Charges made by service provider.** (1) Motor vehicle repair service providers shall separately state the charge that is attributable to the sale of integral parts and the charge that is attributable to the rendering of motor vehicle repair services on the bill to the customer. Charges for parts and motor vehicle repair services are taxable even when paid for by an insurance company, auto club or other third party on behalf of the customer.

(2) The fact that a motor vehicle was exempt from tax when a recipient of motor vehicle repair services purchased it does not mean that repair services rendered to it are not taxable. Thus, for example, repair services to a truck used exclusively in agricultural production are taxable, even though the purchase of the truck was exempt under section 12-412(63) of the general statutes.

(c) **Taxability of items used in rendering motor vehicle repair services.** (1) Sales of repair parts to a service provider who uses the parts in rendering motor vehicle repair services are sales for resale to such provider if, when used, such parts or materials become an integral part of the motor vehicle.

(2) Providers of motor vehicle repair services may purchase certain materials on resale where such property is purchased solely for a particular customer, as long

as the charge for such materials will be separately stated on the bill to the customer and tax collected thereon. Examples of such materials include acrylic finishes, enamels, lacquers and paint.

(3) Since providers of motor vehicle repair services are considered to be consumers of supplies used in rendering their services, sales of tangible personal property, other than integral parts, to a motor vehicle repair services provider that uses such property in repairing, restoring, rebuilding, replacing parts of or maintaining motor vehicles are retail sales to such provider and are subject to tax.

(4)(A) Providers of motor vehicle repair services may purchase motor vehicle repair services on a resale basis (see Conn. Agencies Regs. § 12-407(2)(i)-1 for rules regarding the resale of services).

(B) Retailers of motor vehicles who purchase motor vehicle repair services for motor vehicles that such retailers are holding for sale, lease or rental in the normal course of business may purchase the motor vehicle repair services and the integral parts, as provided in this subsection, on resale.

(d) **Motor vehicle repair services rendered under maintenance, repair or warranty contract.** See Conn. Agencies Regs. § 12-407(2)(i)(DD)-1 for rules regarding the taxation of motor vehicle repair services rendered under maintenance, repair or warranty contracts.

(e) **Where motor vehicle repair services are deemed to be rendered.** (1) Motor vehicle repair services shall be taxable if the repairs to the motor vehicle are made in Connecticut. If the repairs are made within Connecticut, the sale of motor vehicle repair services shall be taxable, notwithstanding the fact that the materials consumed in rendering such services were purchased outside Connecticut, the contract for services was negotiated or executed outside Connecticut, the bill or invoice for such services is mailed to or from an address outside Connecticut, some of the work with respect to such services is performed for the motor vehicle repairer outside Connecticut, or the purchaser of the services is a nonresident. However, when a Connecticut motor vehicle repairer picks up a motor vehicle from outside Connecticut, or a motor vehicle is shipped from outside Connecticut to the repairer in Connecticut, the motor vehicle is repaired in Connecticut, and then is delivered or shipped to the customer at an out-of-state location, the repair services, and any integral parts sold therewith, are not taxable in Connecticut.

(2) Persons purchasing motor vehicle repair services from out-of-state retailers shall pay Connecticut use tax on such purchases if the motor vehicle to which such repair services are rendered is intended for use and is used in Connecticut.

(Adopted effective April 7, 1999)