

THE COMMONWEALTH OF MASSACHUSETTS

AUTO DAMAGE APPRAISER LICENSING BOARD

DIVISION OF INSURANCE

470 Atlantic Ave., Boston, Mass 02210-2223

617) 521-7453

Gilbert W. Cox, Jr.

Chairperson

Peter R. Kenyon

Donald R. Spinelli

Walter G. Thomas

Joseph A. Valarioti

November 5, 1997

TO ALL CONCERNED PARTIES

Re: Advisory Ruling **97-98-1**.

The Auto Damage Appraiser License Board (the Board) at its October 22, 1997 meeting unanimously passed a motion to issue the following Advisory Ruling:

Regulation 212 CMR 2.04 (1)(e) provides in part:

“with respect to refinishing materials, if the formula of dollars times hours does not adequately reflect the cost of a particular repair a published manual or other form of documentation shall be used.”

The Board’s intent while writing this provision is clear and unambiguous. If with respect to refinishing material, the formula does not adequately reflect the cost of a particular repair, a published manual or other form of documentation shall be used. The regulation requires that a manual or other form of documentation shall be used to determine *only* the cost of refinishing materials. Thus, if the manual used in preparing the overall estimate which includes parts and labor to perform a repair does not include the cost of paint and body materials, a separate manual or other form of documentation shall be used for that purpose.

The Board reiterates that use of published Paint & Materials Guides is one accepted manner of determining paint and materials costs, and the Board notes that existing Guides presently list only costs to the refinisher without consideration of retail mark-up.

The Board notes that 212 CMR 2.04 (1)(e) requires an appraiser to itemize, among other things, all materials required to restore a vehicle to pre-accident condition. Further, that section of the regulation requires an appraiser to add any applicable sales tax on materials when computing the cost of repair. With respect to applicability of sales tax

to refinishing materials, the Board recognizes the official position of the Department of Revenue in a Letter Ruling issued December 27, 1996:

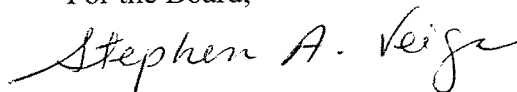
"Thus, where an automobile body repairer re-paints an automobile and, in its customer invoice and in its records, separately states a charge for labor and a charge for the fair retail selling price of the paint and materials, the repairer must collect and pay over the sales or use tax on the full amount of the charge for paint and materials.....[T]he sales price, upon which the sales or use tax is based, includes charges for items of tangible personal property that are ultimately transferred to the customer (e.g., paint, hardener, body-filler and clear coat) as well as charges for additional items that are used or consumed by the repairer in effectuating the transfer of that property (e.g., masking paper, tape, sandpaper, paint brushes and squeegees used in performing the paint job). Thus, charges for such additional items would be subject to the sales or use tax whether or not they were billed separately from other charges for tangible personal property in the customer invoice and the repairer's records."

Therefore, all paint and materials, plus auto body materials, plus other consumable materials used in a particular repair are to be listed at their fair retail selling price and are to be subject to sales tax at that price as part of an appraisal.

This Advisory Ruling shall be in effect upon receipt and should be distributed accordingly. Failure to comply with this ruling could result in a fine and/or other penalty to involved parties.

Should you require more information please contact my office (617) 521-7453.

For the Board,

A handwritten signature in cursive script that reads "Stephen A. Veiga". The signature is written in dark ink and is positioned above the printed name and title.

Stephen A. Veiga
Executive Secretary