

NHSCA Monthly Update

Thanks to all who were on the call, Thursday, May 5, 2016 at 2:30 PM CST.

HBW 2-10: Mike Bartosch, Lindsay Iten

AHS/HSA: Mark Celichowski

Fidelity: Billy Jensen, Chris Wasson

First American: Jeff Powell

HMS National/Cross Country: Doug Stein, John Walsh

HWA/Direct Energy: Meghan Boyle

NHG: Richard Adams

Old Republic: Lorna Mello, Gwen Gallagher

OneGuard: Dave Hill

NHSCA: Art Chartrand; David Parker, Texas Lobbyist

Brief Highlights:

1. HomeServe USA

Scott Paris with HomeServe USA will be attending the annual meeting in Marblehead. Hopefully, he will submit application for membership onsite. Chartrand reminded members HomeServe USA recently acquired Utility Service Partners.

2. Washington Tax Resolution

Chartrand asked members to let him know if they receive any sort of audit notice from the WA DOR. NHSCA continues to stand on the position no tax owed as noted in the written memo published at <http://homeservicecontract.org/2016/02/16/3649/>

3. Louisiana Bill Update

SB 58 passed and will be on the house floor the week of May 16. The bill passed anonymously without objection. Chartrand reminded members, SB 58 removes the financial claims data reporting that has been in effect since March 1, 2016.

4. Utah DOI Scrutiny

Chartrand recently met with Tracy Klausmeier, Utah DOI P & C Director, who is concerned with the auto and retail service contract industry (SCIS) pushing ancillary insurance products. Chartrand indicated to members that anything in their contracts that ring of an ancillary insurance product will be closely scrutinized. If ancillary benefits are offered, contracts need to

be written as a non-insurance product. Also, contracts should have the name of the company that is registered in Utah, not a parent company or another subsidiary that may be administering certain contract aspects. All phones should be answered in the name of the registered provider.

5. Texas Sales Tax

THSCA lobbyist David Parker has been doing everything he can to get the Comptroller to issue a written bulletin or advisory. The definition of personal property remains a problem for them. They also seem to be reconsidering taxing mixed use contracts under 'some' formula. There have been some ongoing audits with a few NHSCA members. Chartrand suggested members continue to buy time with your audit team and delay any final financial settlement until a policy is issued. Some members are taking a safe harbor approach and going ahead and remitting "some" sales tax payment based upon their own prior determinations of tax for personal property options. We continue to wait for an opinion to be issued. Any member who is under an audit, let the NHSCA office know.

6. State DOR Tax Memo

As members may recall, preparing a state DOR tax model definition was found to be impractical. Instead, a memo was prepared stating the position of the NHSCA. Plans are to post the memo on the NHSCA website. The memo is for state departments to use for reference and promotion (**attached below**) to help them say "no" to sales tax upfront and/or retain the current status quo.

7. NC Sales Tax Issue

There is a meeting set with the NC DOR on May 10, 2016. Hopefully, on next month's call a resolution will be revealed.

8. Accreditation Beta Test Program

Chartrand met with NHG on April 21 and the beta test went very well. Adams will officially report to the members at the annual meeting. ORHP review date is May 18. The pilot program is moving along as planned and will be reviewed in further detail at the annual meeting.

9. PR Media

Besa Public Relations will no longer serve as our public relations firm. We are currently looking at how we will address our public relations, press, web, videos and social media functions and are having discussions with several firms. ConceraMedia, whom we retained recently to manage our website, will be implementing next month the new membership services section under an enterprise security umbrella so we can once again post our board minutes, policies

and procedures, by-laws, etc. We will continue to stay with ConceraMedia for website management and search out other professional firms to handle social media and filmography. This should actually reduce our budget slightly by doing contract work and hopefully having more of a direct impact. Further discussion will continue at the annual meeting.

10. Membership Update

Chartrand was recently advised AHS and HSA have completed their merger and will be combining their NHSCA membership. With the probability of HomeServe USA added to our membership role in June, the void will be filled. The NHSCA office received a new application for membership from American Home Guardian. They are a 1-5 state company. Staff will follow the normal protocol for processing new members and vote at the annual meeting. Chartrand received an oral inquiry of interest from Home Service Club of New York about membership. They would fit in the regional member category. Chartrand continues to lobbying ARW out of Florida to become a member as well.

11. National Meeting June 9-10, 2016, Marblehead, MA

All plans are in place. Happy hour is set at the Harbor Light Inn from 5:30-6:30 pm and dinner at the Boston Yacht Club at 7:00 pm. On Friday, June 10, there will be a yacht excursion for members and their guests who wish to participate. The meeting agenda will be sent out via email to all members in the next few weeks. Anyone with additions or changes, please let us know.

12. Slate of Officers for Upcoming Meeting

Bartosch will become NHSCA president. Doug Stein is serving his last year as president. Richard Adams will continue to serve as treasurer. Members need to be thinking about who they might want to nominate as Vice President.

The next meeting will be onsite in Marblehead, June 10, 2106. See everyone there!

The call adjourned at 3:05 pm.

A Memo for State Departments of Revenue and Tax Sales Tax and Home Service (Warranty) Contracts

CONTEXT: A home service contract (“HSC” often generically called home “*warranty*”) is already regulated in your state under your State Consumer Protection Act or under a specialty law as a non insurance, consumer contract via your Department of Insurance, Real Estate Commission or other agency.

DEFINITION: A HSC is a contract with a provider for any duration to service, repair or replace your major household systems and appliances. Call a 24/7 800 number and a local contractor is dispatched to your house. Contracts only cover failure due to “normal wear and tear” and cannot under state law, cover *insurable* events (fire, theft, windstorm, collision, vandalism etc.)

BACKGROUND: The HSC industry is only about 50 years old. Until recent years, all contracts were only consummated with a residential home sale. Residential home sales are never subject to sales tax. So no tax was collected on the sale of the HSC. The HSC provider neither owned, manufactured or sold any property. (A few states altered this by specific statute.*) Sales tax is later collected on taxable parts and replacements (and even labor if taxable) by local contractors when they later perform repairs or replacements.

- HSC providers are never engaged in the *transfer* of tangible personal property upon sale of a contract. The property already exists.
- The HSC for all practical purposes, *only covers real property or property normally so affixed to real estate* (pumps, ranges, disposals, dishwashers) that they are almost exclusively sold as part of the real estate.
- In recent years, about one third of all contracts are sold outside the home sale transaction and are called “direct sales.”

ON THE OTHER HAND: Retailers sell a similar *functional* product known as an “extended warranty” or on *new product retail sales* of tangible personal property. These goods (sold at Sears, Best Buy, Home Depot, etc.) are new, portable, in a box and go across a **retail** scanner where sales tax is almost always collected. So sales tax is collected on the good and the added price of the service contract. States then always exempt sales tax when work is later performed under the extended warranty since the contract was taxed upfront. These same goods may later become part of the real estate.

One must be mindful that due to countless hypothetical assumptions, there is no

*Sales tax is generally paid upfront on contracts in AR, HI, NE, NY, NJ, SD and WV, and on *personal property options or portions* in CT, OH, PA, TN, TX and UT. As with all tax law, there are other minor exceptions and nuances in definitions and how collected.

ver. May, 2016