

This letter discusses whether layaway service charges/handling charges constitute taxable gross receipts. See 86 Ill. Adm. Code 130.430. (This is a GIL.)

April 8, 2011

Dear Xxxxx:

This letter is in response to your letter dated January 11, 2011, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

COMPANY respectfully request [sic] formal guidance regarding the application of sales tax to (1) layaway sales and (2) sales made through a partial payment program.

#### **Facts**

COMPANY is a retailer of consumer technology and entertainment products. In an attempt to provide customers with alternatives to traditional cash and credit card purchases, COMPANY intends on offering their customers with two additional purchasing options: (1) Layaway (2) Partial Payment.

#### Layaway

Under the layaway payment option, COMPANY will hold a product in inventory for a customer until the customer has completed a series of payments that amount to the total sales price of the product. The benefit to the customer for placing an item on layaway is that the customer is guaranteed the sales price of the item on the date the item is placed into layaway, and the customer is afforded additional time in order to make the full payment on the item. When a customer enters into a layaway agreement, the customer is required to make an initial 20% down payment on the sales price of the item, along with a non-refundable 5% layaway fee. The customer will then be required to make four additional bi-weekly payments that will cover the remaining amount of the

sales price. Both title and possession of the item remain with COMPANY until the customer has satisfied their payment obligations, at which time the customer will be entitled to receive possession of the item.

For accounting purposes, COMPANY uses the accrual basis. Therefore, COMPANY will record the initial down payment and subsequent layaway payments in a deferred revenue account. COMPANY will not recognize revenue on the sale until the final layaway payment has been made and the item has been transferred to the customer.

### Layaway Example

Upon entering into a layaway agreement for a for [sic] \$1,000 television, a customer will be required to pay a \$200 down payment (20% of the \$1,000 sale price) and a \$50 non-refundable layaway fee (5% of the \$1,000 sale price). It should be noted that the non-refundable layaway fee will be separately stated on the customer's layaway agreement as well as on the customer's receipt. COMPANY will then clearly identify and hold the television in inventory as a layaway item for that specific customer. Both possession and title to the television will remain with COMPANY until the customer has made their final payment. The customer will then be required to make four additional bi-weekly payments in the amount of \$200. In total, the customer will make five layaway payments that will be applied to the price of the television. At the time the final payment is made, COMPANY will transfer possession of the television to the customer.

If the customer fails to make a scheduled bi-weekly payment, the layaway agreement will be nullified. The customer will be refunded the total amount of the layaway payments that were previously made. However, COMPANY will retain the 5% non-refundable layaway fee. In the above example, if the customer failed to make the second scheduled bi-weekly payment, COMPANY would refund the customer \$400 (the initial layaway payment of \$200 plus the first bi-weekly payment of \$200). COMPANY would retain the \$50 layaway fee.

### Partial Payment

The intent of the partial payment plan is to allow customers who want to purchase multiple items that are part of a single order set (i.e. kitchen appliances or a home theater) the flexibility of making payments at their own convenience. Upon setting up a partial payment plan, the customer will be required to make an initial 20% down payment on the total sales price of the bundle of goods for which they have placed an order. After the initial down payment has been made, the customer is free to make additional payments of any amount at any time. The customer also has the flexibility of changing the items placed on order at any time. COMPANY will not hold or designate inventory on behalf of the customer until the time in which the customer schedules the actual delivery of an item that was placed on order. The customer is not eligible to schedule an item for delivery until the customer has made enough payments on their order to cover the sales price of that particular item. It should also be noted that the sales price of an item in which the customer has placed an order on is not final until the time in which the actual payment is applied and delivery is scheduled.

From an accounting perspective, COMPANY will record the initial down payment and any subsequent payments in a deferred revenue account. COMPANY will not recognize revenue on the sale until the final payment has been made and the item has been delivered to the customer.

## Partial Payment Example

A customer places an order for kitchen appliances on the partial payment plan. Included in the order are a \$1,200 refrigerator, a \$600 dishwasher, and a \$200 microwave. Upon placing the order in a partial payment plan, the customer is required to make an initial 20% down payment in the amount of \$400 ( $\$2,000 \times 20\%$ ). Two weeks after setting up the partial payment plan the customer applies another payment to the order in the amount of \$600. One week later, the customer applies another \$500 payment to the order. With total payments of \$1,500 (\$400 deposit + \$600 first partial payment + \$500 second partial payment) placed on the order, the customer decides to schedule the delivery of the dishwasher. At the time the customer schedules the delivery of the dishwasher, the dishwasher is on sale for a price of \$550. Therefore, the customer's order account will be reduced by \$550, giving the customer a remaining balance of \$950 (\$1,500 total deposit less \$550 purchase). COMPANY will then withdraw the dishwasher from its inventory, or order the unit from a third party, and then schedule the time and place for the customer delivery.

## **Layaway Issue(s)**

- (1) For sales tax purposes, at what point in a layaway sale transaction does the taxable event occur?
  - a. Is COMPANY required to collect sales tax, based on the total purchase price of the item, at the time the customer makes the initial down payment?
  - b. Is COMPANY required to collect sales tax at the time, and based on the amount, of each layaway payment?
  - c. Is COMPANY required to collect the sales tax, based on the total purchase price of the item, at the time when the final layaway payment is made?
- (2) Are the non-refundable layaway fees subject to sales tax? If taxable, at what point in the layaway sale transaction do the non-refundable layaway fees become subject to tax?
  - a. Would the taxable event occur at the time in which the layaway fee is paid?
  - b. Would the taxable event occur at the time in which the final layaway payment is made?
- (3) Would a refundable layaway fee be subject to sales tax (i.e. a fee that would be refunded to the customer upon cancellation of the layaway transaction)? If taxable, at what point in the layaway sale transaction would the refundable layaway fee become subject to tax?
  - a. Would the taxable event occur at the time in which the layaway fee is paid?

- b. Would the taxable event occur at the time in which the final layaway payment is made?

### **Partial Payment Issue(s)**

- (1) For sales tax purposes, at what point in a partial payment transaction does the taxable event occur?
  - a. Is COMPANY required to collect sales tax, based on the total purchase price of the initial order, at the time the customer makes the initial down payment?
  - b. Is COMPANY required to collect sales tax at the time, and based on the amount, of each partial payment?
  - c. Is COMPANY required to collect the sales tax, based on the final purchase price of the item or items, at the time when the payment is applied to the purchase of the item and delivery is scheduled?

Thank you for your time and consideration with respect to this issue. Please contact me if you have any questions or need any additional information.

### **DEPARTMENT'S RESPONSE:**

Generally, if a buyer in a sale at retail makes a binding commitment to purchase tangible personal property and the tangible personal property has been identified, any payment on the purchase price must, at the time of such payment, be included in the measure of the seller's tax liability. The giving of a binding purchase order by the purchaser, identification of the tangible personal property and the making of a payment on the price are sufficient to establish that a sale is intended for the purpose of determining that the seller has received taxable "gross receipts". 86 Ill. Adm. Code 130.430(a).

As indicated at 86 Ill. Adm. Code 130.410, service costs are not deductible in computing ones Retailers' Occupation Tax liability. The non-refundable layaway fee appears to be very similar to a handling charge. Handling charges are also not deductible when computing one's Retailers' Occupation Tax liability. It is nothing more than a cost of doing business which you have chosen to pass on to your customers.

After the seller has paid Retailers' Occupation Tax on the amount of such payment on the price, if the transaction is rescinded and the seller refunds such payment to the purchaser, the seller is in the same position as when he makes a refund on account of the return of merchandise after having paid Retailers' Occupation Tax on the amount so refunded and so may take a deduction on his return for the return period in which such a refund is made. 86 Ill. Adm. Code 130.430(b). The seller would not be allowed to refund the tax previously paid on a non-refundable layaway fee.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

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