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Formal Ruling 2011-06

This is a formal ruling for <redacted> regarding the applicability of sales tax to layaway sales and partial payment sales. This ruling is based upon representations in your letter of <date>.

FACTS

You have described two types of delayed purchases, “layaway” and “partial payment.”

Layaway. Under the layaway plan, the customer pays 20 percent of the purchase price of the item, plus a non-refundable five percent layaway fee. The purchase price is determined at the time of the initial payment. <redacted> holds the item in inventory until the customer has completed four additional biweekly installment payments on the remainder of the purchase price. You state that “title and possession of the item remain with <redacted> until the customer has satisfied their payment obligations.” <redacted> accounts for the purchase on the accrual method and recognizes the revenue on the sale at the time of the final payment and transfer of the item to the customer. If the customer does not timely complete the transaction, all payments are returned to the customer, except the five percent layaway fee is retained by <redacted>.

Partial Payment. Under the partial payment plan, the customer pays 20 percent of the total purchase price of one order of several items. The customer may then make additional payments at any time, and may also at any time change the items on order. <redacted> does not hold any item in inventory for the customer. The customer may schedule delivery of any of the items if the customer has paid the full purchase price of that item to <redacted>; the purchase price is not determined until the customer asks to schedule delivery. <redacted> recognizes the revenue on the sale at the time of the final payment and transfer of the item to the customer.

DISCUSSION

Vermont sales tax is imposed upon “retail sales in this state.” 32 V.S.A. § 9771. The Vermont sales tax statutes do not contain rules specific to layaway or partial payment types of sales transactions. Instead, the tax is simply imposed upon “the sales price charged for . . . tangible personal property.” *Id.* “Retail sale” is defined as “any sale . . . for any purpose other than for resale . . .” and “sales price” is defined as “the total amount of consideration . . . for which personal property or services are sold.” 32 V.S.A. § 9701(4)(A), (5).

With regard to the partial payment sales you describe, there is no known “sales price” until the time at which the customer identifies the item to be purchased and asks to schedule delivery. As a result, no sales tax obligation arises on a partial sale until the time at which the sales price is known and charged.

With regard to the layaway sales you describe, the sales price is known at the time the layaway is initiated. The next question is then: at what point is there a taxable retail “sale”? A “sale” is generally defined as “the transfer of title to or possession of tangible personal property.” Sales and Use Taxes: General Principles, Nagel and Rosen, Bureau of National Affairs, Inc., Arlington, VA, 1300-2nd T.M. (2008), § 1300.01 C.1., p. 101. You state that in the layaway sale, title and possession of the item remain with <redacted> until the customer has satisfied the payment obligations. Thus, under the general rule, there is no taxable “sale” until delivery of title and possession of the item to the customer.¹ This result is similar to the rule for installment sales, which appear analogous to your layaway sales: “sales taxes on installment sales are due at the time the sale is consummated.” *Id.* at § 1300.12 M., p. 1207.

The nonrefundable five percent layaway fee is not part of the sales price charged for tangible personal property, since it is retained by <redacted>, regardless of whether the sale is consummated and regardless of whether the customer takes delivery of the item. Under section 9771, it is therefore not part of the “sales price” which forms the basis for computation of the sales tax on the transaction. You ask what the result would be if the layaway fee were refundable. If the fee were refundable, it would be part of the total amount of consideration charged for the item, since it would not be excluded under the definition of “sales price” in section 9701(4). It would therefore be included in the basis for computation of the sales tax, and would be taxable at the time the sale is consummated.

As a result of the foregoing analysis, the answers to your questions as stated in your letter are as follows:

Layaway

1. For sales tax purposes, at what point in a layaway sale transaction does the taxable event occur?

¹ This result also comports with the general approach of the Streamlined Sales Tax Agreement (“SSTA”), to which the State of Vermont is a party, with regard to sourcing rules. Section 311 of the SSTA provides that for sourcing rules, “‘receive’ and ‘receipt’ mean: taking possession of tangible personal property” This rule is adopted in Reg. § 1.9701(8)-2.

a. Is <redacted>required to collect sales tax, based on the total purchase price of the item, at the time the customer makes the initial down payment? NO

b. Is <redacted> required to collect sales tax at the time, and based on the amount, of each layaway payment? NO

c. Is <redacted>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? YES

2. Are the nonrefundable layaway fees subject to sales tax? NO

If taxable, at what point in the layaway sale transaction do the nonrefundable layaway fees become subject to tax? N/A

a. Would the taxable event occur at the time in which the layaway fee is paid? N/A

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

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)? YES

If taxable, at what point in the layaway sale transaction would the refundable layaway fee become subject to tax? AT TIME OF FINAL PAYMENT AND DELIVERY

a. Would the taxable event occur at the time in which the layaway fee is paid? NO

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

Partial Payment

1. For sales tax purposes, at what point in a partial payment transaction does the taxable event occur? WHEN CUSTOMER IDENTIFIES ITEM FOR PURCHASE AND REQUESTS DELIVERY

a. Is <redacted>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? NO

b. Is <redacted> required to collect sales tax at the time, and based on the amount, of each partial payment? NO

c. Is <redacted>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? YES

GENERAL PROVISIONS

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to your firm and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to

protect confidentiality, to determine the department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

Emily Bergquist
Hearing Officer

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date