

# STATE OF COLORADO

## DEPARTMENT OF REVENUE

State Capitol Annex  
1375 Sherman Street, Room 409  
Denver, Colorado 80261  
Phone (303) 866-3091  
FAX (303) 866-2400



Bill Ritter, Jr.  
Governor

John Hickenlooper  
Governor

Roxanne Huber  
Executive Director

GIL-11-001

February 22, 2011

XXXXXXXXXXXXX  
Attn: XXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXX

Re: Layaway and Partial Payments Plans / Sales tax

Dear Mr. XXXXX,

You submitted on behalf of XXXXXX ("Company") a request for guidance on the application of sales tax to certain layaway and partial payment plans. The department issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the department but not the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at [www.taxcolorado.org](http://www.taxcolorado.org) > FYI/Publication > Rulings. The department initially treats your request as one for a general information letter. If you would like the department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5.

## Background

### Layaway Plan

Company offers a layaway payment plan in which Company holds 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 in layaway is that the customer is guaranteed the sale 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. The customer is required to make an initial 20% down payment, together with a non-refundable 5% layaway fee. The customer is required to make four additional bi-weekly payments that cover the remaining amount of the sales price. Both title and possession of the product remains with Company until the customer has satisfied their payment obligations, at which time the customer is entitled to receive possession and title of the product.

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

For example, a customer entering into a layaway agreement for a \$1,000 TV must pay a \$200 down payment (20% of the \$1,000 sales price) and a \$50 non-refundable layaway fee (5% of the \$1,000 sale price). The non-refundable layaway fee is separately stated on the customer's layaway agreement as well as on the customer's receipt. Company clearly identifies and holds the TV in inventory as a layaway item for that specific customer. The customer must make four additional bi-weekly payments in the amount of the \$200. In total, the customer makes five layaway payments that will be applied to the price of the TV. At the time the final payment is made, Company transfers possession and title of the TV to the customer.

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

### **Partial Payments Plan**

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. The customer is required to make an initial 20% down payment on the total sales price of the bundle of products they have placed an order. After the initial down payment has been made, the customer is free to make additional payments in any amount at any time. The customer also has the flexibility of changing the items placed on order at any time. Company does not hold or designate any product in its inventory on behalf of the customer until the customer schedules the 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 to cover the sale price of that particular item. The sale price of an item on which the customer has placed an order is not final until the time when the actual payment is applied and delivery is scheduled.

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

For 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 must make an initial 20% down payment of \$400. Two weeks later, the customer

makes another payment of \$600. One week later, the customer makes another \$500 payment. Customer then decides to schedule delivery of the dishwasher and the dishwasher is on sale for \$550. Customer's account is reduced by \$550, giving the customer a balance of \$950 (\$400+\$600+500-\$500). Company withdraws the item from inventory or orders the unit from a third party and then schedule the delivery.

### **Discussion**

Colorado imposes sales tax on the "sale" of tangible personal property. §39-26-104, C.R.S. A "sale" is a transaction in which the retailer transfers title or possession of taxable goods to the buyer. See, Department regulation 39-26-102.10 ("a transaction shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.").

In the two scenarios outlined above, Company does not transfer title or possession until the final payment. Therefore, sales tax is due upon final payment.

We note in passing that Colorado law imposes sales tax on,

installment and credit sales, and the exchange of property as well as the sale thereof for money; every such transaction, conditional or otherwise, for a consideration, constituting a sale...

§39-26-102(10), C.R.S. Credit sales are also addressed in §39-26-111, C.R.S., which states that tax is due on installment payments due pursuant to credit sales and contracts for sale, regardless of whether retailer has transferred title to the buyer. Read in isolation, these provisions might be misconstrued to apply sales tax on installment payments made pursuant to a lay-a-way plan or partial payment plan before the retailer transfers title or possession to the buyer. We believe that the installment sale, credit sale, contract for sale, and conditional sale referred to in these statutes apply to transactions where the retailer has delivered property to the buyer (or the right to possession and control to the buyer or buyer's agent). That is, there is a present transfer of some significant right of dominion and control of the goods from the seller to buyer.

The creation of a lay-a-way or partial payment plan does not constitute a "sale" for tax purposes, but only an agreement to sell at a future date. For example, a "contract for sale," which is used in §39-26-111 (sales tax on installment payments made on credit sales) is generally defined as an agreement for the "present" transfer of property, whereas a "contract to sell" is an agreement to enter into a sale at a future date. See, Black's Law Dictionary, Eighth Edition, pg. 343 ("contract for sale" sections 1 and 2). That is, parties can take a series of steps that eventually lead to a taxable sale, but these initial steps, themselves, do not constitute a sale.

Therefore, installment payments are not taxable if the retailer does not transfer title or possession until the buyer makes the final payment. Moreover, a retailer that designates an item in inventory has not transferred to buyer sufficient dominion or control to trigger a sales tax liability.

### **Miscellaneous**

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Neil L. Tillquist  
Colorado Department of Revenue  
Tele: (303)866-5627  
Email: [ntillquist@spike.dor.state.co.us](mailto:ntillquist@spike.dor.state.co.us)