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State of South Carolina  
**Department of Revenue**  
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SC PRIVATE LETTER RULING #11-4

**SUBJECT:** Layaway Sales, Layaway Fees and Partial Payment Sales  
(Sales Tax)

**REFERENCES:** S. C. Code Ann. Section 12-36-910 (2000; Supp. 2010)  
S. C. Code Ann. Section 12-36-1110 (Supp. 2010)  
S. C. Code Ann. Section 12-36-90 (2000; Supp. 2010)  
S. C. Code Ann. Section 12-36-100 (2000)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2008)  
SC Revenue Procedure #09-3

**SCOPE:** A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. Is the non-refundable layaway fee charged by XYZ with respect to a layaway sale, as described in the facts, subject to the sales tax?
2. Is XYZ required to remit the sales tax on its layaway sales, as described in the facts, with the return for the month in which a payment was received or with the return for the month in which the tangible personal property was transferred to the customer?
3. Is XYZ required to remit the sales tax on its partial payment sales, as described in the facts, with the return for the month in which a payment was received or with the return for the month the tangible personal property was transferred to the customer?

## Conclusions:

1. The non-refundable layaway fee charged by XYZ with respect to a layaway sale, as described in the facts, is a part of the “gross proceeds of sale” of the layaway sale and is subject to the sales tax.

The non-refundable layaway fee is only subject to the sales tax if there has been a layaway sale – a transfer of title or possession of the tangible personal property to the customer. If the layaway agreement is nullified because the customer failed to make a required payment and therefore no layaway sale occurs (no transfer of title or possession of tangible personal property occurs), then the non-refundable layaway fee and any layaway payments received are not subject to the sales tax.

Note: If the layaway fee were refundable (*i.e.*, the layaway fee is returned to the customer if the layaway sale does not occur), the application of the sales tax to the layaway fee would be the same as described in the above conclusion. In other words, if a layaway sale occurs (transfer of title or possession of tangible personal property occurs), then the layaway fee and the layaway payments received would be subject to the sales tax. If no layaway sale occurs (no transfer of title or possession of tangible personal property occurs), then the refundable layaway fee and any layaway payments received would not be subject to the sales tax.

2. XYZ is required to remit the sales tax on its layaway sales, as described in the facts, with the return for the month in which the tangible personal property was transferred to the customer. The sales tax is applicable when the sale (transfer of title or possession) at retail of the tangible personal property has taken place.

For example:

On February 14<sup>th</sup>, Customer A enters into a layaway agreement with XYZ for a \$1,000 television and pays a \$200 down payment (20% of the \$1,000 sales price) and a \$50 non-refundable layaway fee (5% of the \$1,000 sales price). Customer A is now required to make four additional bi-weekly payments of \$200 each on February 28<sup>th</sup>, March 14<sup>th</sup>, March 28<sup>th</sup> and April 11<sup>th</sup>. If all payments are made in accordance with the agreement, title and possession of the television will be transferred from XYZ to Customer A in April after the last payment is made.

The \$200 down payment, the \$50 non-refundable layaway fee and each of the \$200 bi-weekly payments are not subject to the sales and use tax as the payments are received. The entire \$1,050 is only subject to the sales and use tax when XYZ transfers title or possession of the television to the customer. If all payments are made in accordance with the agreement, XYZ is required to remit the sales and use tax due on the \$1,050 with its April sales and use tax return since XYZ will transfer title and possession of the television to Customer A in April.

Note: The provisions of SC Regulation 117-318.3 are not applicable to the layaway plan of XYZ as described in the facts. For more information, see the “Discussion” portion of this advisory opinion.

3. XYZ is required to remit the sales tax on its partial payment sales, as described in the facts, with the return for the month in which the tangible personal property was transferred to the customer. The sales tax is applicable when the sale (transfer of title or possession) at retail of the tangible personal property has taken place.

For example:

On January 3<sup>rd</sup>, Customer B places an order for kitchen appliances on a 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, Customer B makes an initial 20% down payment in the amount of \$400 (\$2,000 X 20%). On January 17<sup>th</sup>, Customer B makes another payment in the amount of \$600. One week later, on January 24<sup>th</sup>, Customer B makes a \$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, Customer B decides to schedule delivery of the dishwasher. At the time Customer B schedules the delivery of the dishwasher, the dishwasher is on sale for a price of \$550. Therefore, the customer’s account of payments made will be reduced by the \$550 paid for the dishwasher, giving the customer a remaining balance of unused payments of \$950 (\$1,500 total amount paid to date less the \$550 purchase). XYZ delivers (transfers title and possession) the dishwasher to Customer B on February 1<sup>st</sup>.

The \$400 down payment, the \$600 payment, and the \$500 payment are not subject to the sales and use tax as the payments are received. The \$550 paid for the dishwasher is subject to the sales and use tax when XYZ transfers title or possession of the dishwasher to the customer. XYZ is required to remit the sales and use tax due on the \$550 with its February sales and use tax return since XYZ transferred title and possession of the dishwasher to Customer B in February.

#### Facts:

XYZ Co., Inc. is a national retailer of consumer technology and entertainment products. In an attempt to provide customers with alternatives to traditional cash and credit card purchases, XYZ intends on offering their customers two additional purchasing options – layaway and partial payment.

#### **Layaway Fees and Sales**

Under the layaway payment option, XYZ 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 benefits to the customer for placing an item on layaway is that the customer is guaranteed the sales price on 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 XYZ until the customer has satisfied their payment obligations, at which time the customer will be entitled to receive possession of the item. In addition, the specific item of merchandise is set aside and marked as a layaway item. A record of the customer's information is also maintained and the item is stored in a secured area.

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

For example, upon entering into a layaway agreement for a \$1,000 television, a customer will be required to pay a \$200 down payment (20% of the \$1,000 sales price) and a \$50 non-refundable layaway fee (5% of the \$1,000 sales price). The non-refundable layaway fee will be separately stated on the customer's layaway agreement as well as on the customer's receipt. XYZ will identify and hold the television in inventory as a layaway item for that specific customer and both possession and title to the television will remain with XYZ until the customer has made the 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 as well as the layaway fee. At the time the final payment is made, XYZ 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 and the customer will be refunded the total amount of the layaway payments that were previously made. However, XYZ will retain the 5% non-refundable layaway fee. In the example, if the customer failed to make the second scheduled bi-weekly payment, XYZ would refund the customer \$400 (the initial layaway payment of \$200 and the first bi-weekly payment of \$200). XYZ would retain the \$50 layaway fee. The item is removed from the secured area and brought back into the general store inventory.

### **Partial Payment Sales**

The intent of the partial payment plan is to allow customers who want to purchase multiple items that are a 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 payments in any amount at any time. The customer also has the flexibility of changing the items placed on order at any time. XYZ will not hold or designate inventory on behalf of the customer until the

time in which the customer actually schedules the actual delivery on an item that was placed on order. The customer is not eligible to schedule an item for delivery until the customer has made enough payment on the order to cover the sales price of that particular item. It should be noted that the sales price of an item for which the customer has placed an order is not final until the time in which the actual payment is applied and delivery is scheduled.

From an accounting perspective, XYZ will record the initial down payment and any subsequent payments in a deferred revenue account. XYZ will 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 a 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 X 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 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 account of payments made will be reduced by the \$550 paid for the dishwasher, giving the customer a remaining balance of unused payments of \$950 (\$1,500 total amount paid to date less the \$550 purchase). XYZ will obtain the dishwasher from its inventory, or order the unit from a third party, and then schedule the time and place for the customer's delivery.

With respect to these plans, XYZ has questions as to when the sales tax is due on these transactions and the basis upon which the tax will be calculated on the layaway sales.

Discussion:

Code Section 12-36-910(A) imposes "a sales tax, equal to [six]<sup>1</sup> percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

Code Section 12-36-90 defines the term "gross proceeds of sales" and reads, in part:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

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<sup>1</sup> Code Section 12-36-1110 increased the general sales and use tax rate by 1% from 5% to 6%.

- (b) the proceeds from the sale of tangible personal property without any deduction for:
  - (i) the cost of goods sold;
  - (ii) the cost of materials, labor, or service;
  - (iii) interest paid;
  - (iv) losses;
  - (v) transportation costs;
  - (vi) manufacturers or importers excise taxes imposed by the United States; or
  - (vii) any other expenses.

In *Meyers Arnold v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of “gross proceeds of sales” with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as “the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs.” But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

Based on the above, a layaway fee, as described in the facts, is a part of the measure of the sales tax – “gross proceeds of sales” – and is subject to the sales tax. In addition, it must be noted that there must be a “sale” of tangible personal property at retail in order for the layaway fee to be a part of “gross proceeds of sales.”

Next, it must be determined when a layaway sale or a partial payment sale, as described in the facts, are subject to the tax.

As noted above, the sales tax applies to the “gross proceeds of sales” of every person engaged in the business of selling tangible personal property at retail and “gross proceeds of sales” is the value proceeding or accruing from the sale of tangible personal property at retail.

Code Section 12-36-100 defines the term “sales” to mean:

any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

However, SC Regulation 117-318.3 concerns certain layaway sales and states:

Amounts received in payment of the sales price of property held by the seller until the total amount of the sales price is paid to him are taxable in the month during which such amounts are received by the seller. In the event of the failure of the buyer to complete is [sic] payments, no refund of taxes paid on the amounts received by the seller will be made except where the seller refunds all amounts paid to him by the purchaser.

The regulation states that “no refund of taxes paid on the amounts received by the seller will be made except where the seller refunds all amounts paid to him by the purchaser.” This is a reference to the provision in the definition of “gross proceeds of sales” in Code Section 12-36-90(2)(b) that states that “gross proceeds of sales” does not include “property returned by the customer when the full sales price is refunded in cash or by credit.” In other words, since “gross proceeds of sales” is the value proceeding or accruing from the sale of tangible personal property at retail and a sale requires the transfer of title or possession, SC Regulation 117-318.3 is only applicable to layaway sales where title has been transferred to the property being held by the seller for the purchaser (*e.g.*, as security) until all payments are made.

Therefore, SC Regulation 117-318.3 is not applicable to the layaway plan of XYZ as described in the facts since both title and possession of the item remain with XYZ until the customer has satisfied their payment obligations and since title and possession do not transfer until XYZ delivers the item to the purchaser.

Based on the above, the layaway sales and partial payment sales of XYZ, as described in the facts, are subject to the sales tax when a transfer of title or possession of the tangible personal property occurs.

Therefore, the payments received by XYZ on layaway sales and the partial payment sales are not subject to the tax until XYZ transfers title or possession of the tangible personal property to the customer. XYZ is required to remit the sales tax on its layaway sales and partial payment sales, as described in the facts, with the return for the month in which the title and possession of the tangible personal property was transferred to the customer.

For example:

**Layaway Example:** On February 14<sup>th</sup>, Customer A enters into a layaway agreement with XYZ for a \$1,000 television and pays a \$200 down payment (20% of the \$1,000 sales price) and a \$50 non-refundable layaway fee (5% of the \$1,000 sales price). Customer A is now required to make four additional bi-weekly payments of \$200 each on February 28<sup>th</sup>, March 14<sup>th</sup>, March 28<sup>th</sup> and April 11<sup>th</sup>. If all payments are made in accordance with the agreement, title and possession of the television will be transferred from XYZ to Customer A in April after the last payment is made.

The \$200 down payment, the \$50 non-refundable layaway fee and each of the \$200 bi-weekly payments are not subject to the sales and use tax as the payments are received. The entire \$1,050 is only subject to the sales and use tax when XYZ transfers title or possession of the television to the customer. If all payments are made in accordance with the agreement, XYZ is required to remit the sales and use tax due on the \$1,050 with its April sales and use tax return since XYZ will transfer title and possession of the television to Customer A in April.

**Partial Payment Example:** On January 3<sup>rd</sup>, Customer B places an order for kitchen appliances on a 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, Customer B makes an initial 20% down payment in the amount of \$400 ( $\$2,000 \times 20\%$ ). On January 17<sup>th</sup>, Customer B makes another payment in the amount of \$600. One week later, on January 24<sup>th</sup>, Customer B makes a \$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, Customer B decides to schedule delivery of the dishwasher. At the time Customer B schedules the delivery of the dishwasher, the dishwasher is on sale for a price of \$550. Therefore, the customer's account of payments made will be reduced by the \$550 paid for the dishwasher, giving the customer a remaining balance of unused payments of \$950 (\$1,500 total amount paid to date less the \$550 purchase). XYZ delivers the dishwasher to Customer B on February 1<sup>st</sup>.

The \$400 down payment, the \$600 payment, and the \$500 payment are not subject to the sales and use tax as the payments are received. The \$550 paid for the dishwasher is subject to the sales and use tax when XYZ transfers title or possession of the dishwasher to the customer. XYZ is required to remit the sales and use tax due on the \$550 with its February sales and use tax return since XYZ transferred title and possession of the dishwasher to Customer B in February.

In addition, if the layaway fee is nullified, the layaway fee is not subject to the tax since the sale of tangible personal property did not take place.

Note: If the layaway fee were refundable, the application of the sales tax to the layaway fee would be the same as described in the above conclusion. In other words, if a layaway sale occurs (transfer of title or possession of tangible personal property occurs), then the layaway fee and the layaway payments received would be subject to the sales tax. If no layaway sale occurs (no transfer of title or possession of tangible personal property occurs), then the refundable layaway fee and any layaway payments received would not be subject to the sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter

James F. Etter, Director

July 22 \_\_\_\_\_, 2011  
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.