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117-318 Gross Proceeds of Sales and Sales Price.

“Gross proceeds of sales” is the basis for calculating the sales tax and “sales price” is the basis for calculating the use tax. There are many issues that arise from determining what is or is not included in the basis for the tax. The following will address some of these issues.

117-318.2. Carrying and Finance Charges.

When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge. Where the seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds of sales.

In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller’s billing to his customer.

117-318.3. Lay-away Sales.

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 his 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.

117-318.4. Withdrawals for Use - Renter.

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

117-318.5. Gift Wrapping Charges.

The gross proceeds proceeding or accruing from charges for gift wrapping of tangible personal property sold at retail are subject to the sales and/or use tax.

117-318.6. Gratuities.

An amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals is a part of the sales price of such meals and must be included in the measure of the tax even though all or a part thereof may be paid by the retailer to his employees. Conversely, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, however, that in the latter instance the full amount of such tip is turned over to the employee by the retailer.

117-318.7. Bottle Deposits.

Deposits required by retailers to insure return of reusable containers (bottles) are not subject to the sales tax.

117-318.8. Returned Merchandise and Restocking Fees (Effective October 1, 2008).

The sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90. Code Section 12-36-90(2)(b) specifically states that "gross proceeds of sales" does not include "the sales price of property returned by customers when the full sales price is refunded in cash or by credit."

The use tax is based upon the "sales price" of tangible personal property and the term "sales price" is defined at Code Section 12-36-130. Code Section 12-36-130(2)(b) specifically states that "sales price" does not include "an amount charged for property, which is returned by the purchaser, and the full amount is refunded in cash or by credit."

Therefore, the price ("gross proceeds" or "sales price") charged for property which is returned to the retailer by the purchaser is not subject to the sales tax or the use tax provided the full price is refunded to the purchaser in cash or by credit. If a purchaser returns merchandise to the retailer and receives a refund or credit that is less than the price originally paid because the retailer retains a portion of the price paid as a "restocking" or "handling" fee or for any other reason, then the original price is subject to the tax.

HISTORY: Added by State Register Volume 26, Issue No. 6, Part 2, eff June 28, 2002. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 32, Issue No. 2, eff February 22, 2008.