



STATE BOARD OF EQUALIZATION

June 26, 1962

Gentlemen:

In your letter of May 24, 1962, you question the application of the tax to your "Layaway Service Charge." You indicate that your procedure calls for placing merchandise aside at the request of the customer and that a standard fee is charged for this service. Subsequently, when the customer calls for the merchandise he pays the full retail price in addition to the fee and the sale is then recorded. The fee is not refundable in the event the customer does not take the merchandise.

Section 6051 of the Sales and Use Tax Law provides that the sales tax is measured by the "gross receipts" from the sale of tangible personal property. So far as is material here, section 6012 of the Sales and Use Tax Law provides that "gross receipts" means and includes all receipts, cash, credits, and property of any kind and any services that are a part of the sale. Therefore, if the "Layaway Service Charge" is collected in connection with a contract for the sale of tangible personal property, the receipts are subject to the tax if not otherwise exempt by law.

We cannot agree with the proposition that your charges for layaway are a separate transaction. It is true that the question of whether or not a present sale of layaway goods is intended depends on whether the parties intended that title should pass to the goods held by the seller. However, even if no present sale is intended, when the seller sets aside the goods and agrees to deliver them to the buyer upon payment of a certain price, there is created a contract to sell tangible personal property and any consideration received pursuant to this contract is part of the gross receipts from the sale. The layaway is performed as incident to completing the sale, and is one of the retailer's expenses not excludable from gross receipts as defined in section 6012.

There is no provision in the law exempting service charges received pursuant to a contract for the sale of tangible personal property. Rather, services in connection with a sale are specifically included in gross receipts under section 6012. Nor are the provisions of ruling 61 applicable to this type of charge. However, where the contract to sell is not completed and does not result in a completed sale, the service charge would not be subject to the tax since there is no sale of tangible personal property.

The opinion found at P-H P. 21,216.15, which you cite as authority for the proposition that the storage charge should be exempt even if it is a part of a single transaction has no application to our case. Under the facts in that case, the storage charges were not incurred as part of a sale of tangible personal property.

We trust the foregoing will be sufficient to clarify this matter, however, feel free to write us again if you have additional questions.

Very truly yours,

E. H. Stetson
Tax Counsel

By: W. E. Burkett

WEB:ls

cc: Out-of-State District