**Opinion Letter**

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Customer layaway contracts and time payments.** |
| **Keywords:** |  |
| **Approval Date:** | **01/20/2011** |

**Body:**

Office of Policy & Research

January 20, 2011

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RE: Your recent letter on Layaway and Partial Payment Transactions

Dear XXXX:

I have been asked to answer your recent letter. You ask how Kansas sales tax applies to customer layaway contracts and to customer contracts that allow the customer to identify multiple items and pay for them over time. Under this type of contract, the customer takes delivery of each item once its payment total exceeds the selling price of that item.

The department recently published a number of draft regulation on our web site --- www.ksrevenue.org. These regulations can be accessed by entering the words "proposed regulations" in the search bar on the department's home page.

The draft version of K.A.R. 92-19-3a contains the following provisions for layaway sales:

(8) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order shall be deemed accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser. . . .

and

(g)(1) Each retailer that makes a layaway sale shall report sales tax on the total selling price of the goods sold on layaway when the final payment is made and the goods are delivered to the buyer. The tax rate that is applied to a layaway sale shall be the rate that is in effect at the time of delivery. An exemption may be claimed on a layaway sale only if the exemption is in effect at the time of delivery. If an unpaid balance remains when the goods are delivered, the transaction shall be reported as a credit sale that is consummated when the goods are delivered to the buyer.

This draft of K.A.R. 92-19-3a has been reviewed by the Joint Legislative Commission on Rules and Regulations. It will be reviewed at a public hearing scheduled for February 1, 2011.

The only change that the department anticipates making to this regulation's discussion of layaway sales is to add the statement: "Unless otherwise provided by statute" at the beginning of subsection (g)(1). This will be done because the department believes the Kansas legislature may enact a sales tax holiday this session or sometime in the future. If it does, the discussions in (g)(1) about layaway sales will conflict with the treatment of layaways made during a tax holiday that Streamlined Sales Tax states like Kansas must follow.

My research indicates that most Streamlined states have a general rule for layaway charges that mirrors the one in K.A.R. 92-19-3a. These states treat the conflicting requirement for layaway sales made during a sales tax holiday as an exception to the general rule for layaways. *See e.g. La. Admin. Code, Title 61, Sec. 4425; 34 Okla. Admin. Code, Sec. 710:65-13-51; N.C. Admin. Code Title 34-27; Texas Admin. Code Sec. 3.365; W.V Code St. Reg. Sec. 110-15F-14.* These states have recognized other SSTP requirements conflict with other reporting requirements in their law. Therefore, these states have implemented one regulation or notice that enumerates all of the reporting requirements for sales tax holidays.

Having one document that enumerates all of the reporting requirements for sales tax holidays avoids having to draft exceptions to each general reporting requirement that conflicts with SSTP requirements. The general reporting requirements may be published in different regulations and notices, as well as in the instructions for sales tax returns. Having one document simplifies the tax holiday reporting requirements for retailers and their software programmers.

If and when the Kansas legislature enacts a sales tax holiday, the advice given in this letter will be incorrect for layaway sales made or arranged during a sales tax holiday. The department will draft a notice, followed by a regulation, that identify the sales tax reporting requirements in place for sales tax holidays.

With these things in mind, I will answer your questions:

(1) This question is answered by (g)(1): "Each retailer that makes a layaway sale shall report sales tax on the total selling price of the goods sold on layaway when the final payment is made and the goods are delivered to the buyer."

(2) A non-refundable layaway fee is not subject to Kansas sales tax because a retail sale hasn't been made. Since tax is due on a layaway when the final payment is made, the retailer would not have reported tax on its earlier layaway receipts. Tax would not be due on the non-refundable charge retained by the retailer since there hasn't been a retail sale.

(3) A refundable layaway fee is not subject to Kansas sales tax because a retail sale hasn't been made. Since tax is due on a layaway when the final payment is made, the retailer would not have reported tax on its earlier layaway receipts. Therefore, no adjustments need to be made to the retailer's previous reporting or when the fee is refunded.

You also ask about partial payments made to purchase a number of related goods, such as a stove top, built-in oven, refrigerator, and dishwasher, when the buyer wants the appliances to be similar in style or of a single style from one manufacturer. The buyer doesn't take title to or possession of an individual item until the sum of its periodic payments exceeds the selling price of that item. When this happens, the retailer converts the buyer's receipts to a payment of the selling price of the item plus sales tax. It remits the sales tax to the state. In this case, the sale isn't made until the item removed from inventory is delivered to the buyer and the selling price and sales tax is deducted from the total amount that the customer has paid to the retailer over time.

The retailer is required to collect and remit sales tax on the receipts only after the selling price the item and associated sales tax is deducted from the total receipts that the customer paid over time. Tax is not owed on the payments the buyer makes to the seller until the seller delivers an item to the buyer. If the buyer chooses to discontinue making periodic payments, any payment proceeds that are returned to the buyer by the seller are not taxable. As with layaway sales, a non-refundable fee retained by the seller is not subject to Kansas sales tax.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 01/24/2011 Date Modified: 01/24/2011**