

Memorandum

To: Santa Rosa – Auditing (ARD)

Date: May 27, 1959

From: Headquarters – Sales Tax Counsel (GAT)

Subject: REDACTED TEXT

This is in reply to your memo of April 13 regarding application of tax to lay-away sales.

It is our understanding from your letter that taxpayer, a department store, takes deposits on items under a lay-away plan. A sales tag is prepared, and the store's sales account is credited with the total sales price plus sales tax reimbursement. An accounts receivable card is prepared for the customer, and the account is charged with the total sales price and credited with the deposit. If the customer fails to pay the balance, a credit memo is prepared debiting sales and crediting the customer's account, and the deposit is forfeited.

During 1958, lay-away deposits totaling \$458.87 were forfeited. The total sales price of the goods was \$2,663.68, and taxpayer subtracted this amount from his taxable gross receipts.

Taxpayer asserts that in these cases sales were not completed, inasmuch as neither title nor possession were ever transferred. It is your position that the method of handling these transactions in the books and records indicates that taxpayer intended to regard them as completed sales.

The application of tax to lay-away sales depends on whether a present sale is intended when the deposit is made, or whether a sale is intended to be made when the full purchase price is paid and the customer picks up the merchandise. The intent of the parties can be determined from several factors; how the initial transaction is handled as indicated by the seller's books and records, and also by the customs of the trade.

Inasmuch as, according to the custom of the trade, the initial payment is considered as a deposit, and it is understood between the parties that further payments must be made prior to delivery, the transaction should be considered as a contract to sell at a future date. Therefore, the full sales price of the items on which deposits have been forfeited are not properly includable in taxpayer's gross receipts.

Although the manner in which taxpayer kept his books seemed to indicate that present sales were made, it is our opinion that, in such "lay-away" transactions, there is no taxable sale until the full purchase price is paid, unless the parties agree that title will pass at an earlier date.

We have noted that the Annotation on "lay-away" sales, dated March 8, 1951, states (at page 440), "If full sales price is entered as an account receivable and the initial deposit is treated as a down payment, the transaction will be treated as a sale at its inception." To the extent that this statement does not conform to the views expressed herein, it is superseded. The Annotations will be revised accordingly.

George Trigueros

GAT"o'b