

This letter discusses layaway service charges and cancellation fees. See 86 Ill. Adm. Code 130.430. (This is a GIL.)

January 31, 2012

Dear Xxxxx:

This letter is in response to your letter dated August 15, 2011, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is to request a formal letter ruling on the taxability of layaway service fees and layaway cancellation fees. The facts are as follows:

ABC will be resuming its layaway service for general merchandise. ABC will be collecting a \$5.00 layaway service fee when the layaway service is initiated along with a 10% down payment. Should a customer cancel the layaway, the customer will be refunded the down payment and any subsequent payments made. However, ABC will retain the layaway service fee and charge the customer a \$10 layaway cancellation fee.

Please advise if either the layaway service fee or layaway cancellation fee are subject to sales, excise, or gross receipts tax in your state.

We appreciate your assistance in determining the taxability of these fees.

**DEPARTMENT'S RESPONSE:**

Generally, if a buyer in a sale at retail makes a binding commitment to purchase tangible personal property and the tangible personal property has been identified, any payment on the purchase price must, at the time of such payment, be included in the measure of the seller's tax liability. The giving of a binding purchase order by the purchaser, identification of the tangible

personal property and the making of a payment on the price are sufficient to establish that a sale is intended for the purpose of determining that the seller has received taxable "gross receipts". 86 Ill. Adm. Code 130.430(a).

As indicated at 86 Ill. Adm. Code 130.410, service costs are not deductible in computing ones Retailers' Occupation Tax liability. The non-refundable layaway fee appears to be very similar to a handling charge. Handling charges are also not deductible when computing one's Retailers' Occupation Tax liability. It is nothing more than a cost of doing business which you have chosen to pass on to your customers.

After the seller has paid Retailers' Occupation Tax on the amount of such payment on the price, if the transaction is rescinded and the seller refunds such payment to the purchaser, the seller is in the same position as when he makes a refund on account of the return of merchandise after having paid Retailers' Occupation Tax on the amount so refunded and so may take a deduction on his return for the return period in which such a refund is made. 86 Ill. Adm. Code 130.430(b). The seller would not be allowed to refund the tax previously paid on a non-refundable layaway fee. A cancellation fee is not taxable because the fee is imposed only if the sale of tangible personal property is not completed.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:msk