

**CHAPTER 33. COMPUTATION OF TAX**

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| Sec.  |   |
| 33.1. | Definitions.                                      |
| 33.2. | Scope.  |
| 33.3. | Cancellations, returns, allowances and exchanges. |
| 33.4. | Credit and lay-away sales.                        |

**§ 33.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Credit sales*—Sales in which the purchaser pays part of the total purchase price subsequent to the time of purchase. A sale shall be deemed to be on credit whether by open credit—including the use of a credit card—or a secured transaction such as a chattel mortgage, conditional sale or bailment lease.

*Layaway sales*—A transaction in which a seller agrees to transfer title and possession of tangible personal property to a purchaser for an agreed price, with the transfer of the title and possession conditioned upon payment by the purchaser of the agreed price in a series of deposits to be made within a specified period.

*Purchase price*—The total value of anything paid or delivered or promised to be paid or delivered, whether it be money or otherwise, in consideration of a sale at retail or purchase at retail not including a rental or license to use. See § 31.4 (relating to rentals or leases of tangible personal property).

**Source**

The provisions of this § 33.1 amended January 14, 1994, effective January 15, 1994, 24 Pa.B. 354. Immediately preceding text appears at serial page (105781).

**Cross References**

This section cited in 61 Pa. Code § 46.9 (relating to financial institution security equipment).

**§ 33.2. Scope.**

(a) *Taxable portion of purchase price.* Amounts included in the taxable portion of the purchase price include:

- (1) *Property or service.* The charge for the property or service.
- (2) *Delivery costs.* The charge for handling, delivery or other transportation services, including mailing costs.
- (3) *Labor and installation services.* The charge for labor, service or alteration.
- (4) *Taxes.* The charge for taxes imposed by the Commonwealth.
- (5) *Restocking.* The charges for restocking in connection with the return of merchandise.

(6) *Amounts representing costs to vendor.* Charges, whether or not separately stated, representing reimbursement to the vendor for expenses paid by the vendor, such as manufacturer's excise tax, gross receipts tax, fuel adjustment charges, mercantile tax, insurance, meals, lodging, mileage or similar expenses.

(7) *Miscellaneous.* Other charges which are not exempt from tax.

(b) *Exclusions.* Amounts which are excluded from the taxable portion of purchase price, if separately stated and identified, include:

(1) *Returnable containers.* Deposit charges for returnable containers.

(2) *Discounts.* Amounts representing on-the-spot cash discounts, employe discounts, volume discounts, store discounts such as "buy one, get one free," wholesaler's or trade discounts, rebates and store or manufacturer's coupons shall establish a new purchase price if both the item and the coupon are described on the invoice or cash register tape. An amount representing a discount allowed for prompt payment of bills which is dependent upon an event occurring after the completion of the sale may not be deducted in computing the tax. A sale is completed when there is a transfer of ownership of the property or services to the purchaser.

EXAMPLES:

(i) "A" purchases two hamburgers from "R" restaurant with a "buy one, get one free" coupon. The price of one hamburger is \$1. "R" rings up \$2 on the cash register. "R" enters a credit in the cash register for the amount of \$1 resulting in an adjusted price of \$1. The acceptance of the coupon by "R" establishes a new purchase price of \$1 which is subject to 6¢ tax.

(ii) "A" purchases 15 grocery items from "B" grocery. All of the items are exempt from tax except a bottle of soft drink. The price of the soft drink is \$1. "A" gives "B" a manufacturer's coupon having a face value of 50¢ for the soft drink. "B" totals the 15 items on the cash register including \$1 for the bottle of soft drink. None of the items are described or identified on the cash register tape. "B" reduces the total sale by \$1—double the amount of the coupon. The coupon is not described or identified on the register tape. Therefore, the acceptance of the coupon by "B" does not establish a new purchase price. The \$1 purchase price of the soft drink is subject to 6¢ tax. The redemption of the coupon represents a refund which does not affect the purchase price of the soft drink.

(iii) "A" purchases a coffee pot from "C" department store. The price of the coffee pot is \$30. "A" pays sales tax upon the purchase of the coffee pot in the amount of \$1.80. The sale includes a \$10 manufacturer's mail-in-rebate form. "A" completes the form, mails it to the manufacturer and receives a \$10 check from the manufacturer. The receipt of the rebate check by "A" does not establish a new purchase price of the coffee pot. "C" properly collected sales tax in the amount of \$1.80.

(iv) “A” purchases and accepts delivery of a load of lumber from “D” lumber company. “D” sends “A” a billing invoice which states “lumber—\$1,000, sales tax—\$60.” The invoice also states “if invoice paid within 30 days, customer entitled to a 1% discount.” “A” pays the invoice within 5 days. “A” is entitled to a discount of 1% of \$1,000, but is required to pay the sales tax in the amount of \$60 as a new purchase price has not been established.

(3) *Trade-in or exchange.* The amount allowed by the vendor for the acceptance of tangible personal property taken in exchange at the time of sale.

(4) *Finance charges.* Reasonable interest or finance amounts charged to the purchaser.

(5) *Gratuity.* A voluntary payment by the purchaser or a reasonable mandatory charge by the vendor in lieu of the voluntary payment, which is billed to the purchaser for services rendered in connection with the purchase of food or beverages or hotel or motel accommodations.

(c) *Constructive purchase price.* If a sale at retail or purchase at retail is not at arm’s length, the tax shall be computed upon a constructive purchase price. For the purpose of determining whether a transaction is not at arm’s length, the Department will consider the affiliation of interests between the vendor and the purchaser or whether the purchase price is indicative of the true value of the article sold. The constructive purchase price shall be the prevailing market price of the property sold, that is, the price at which similar property in similar quantity and of similar quality would be sold upon the open market at the time and place of the taxable sale or use of the property.

(d) *Optional methods of tax payment.* The following optional methods of tax payment are available:

(1) *Registered motor vehicle dealers.* A registered motor vehicle dealer (See definition of registered dealer in § 31.41 (relating to definitions)), may elect to report tax on the taxable use of certain vehicles using an alternate basis of tax.

(2) *Commercial aircraft operators.* A person engaged in the charter of aircraft, leasing of aircraft, aircraft sales, aircraft rentals, flight instruction, air freight or other flight activities for compensation may pay tax on the taxable use of aircraft using an alternate method. Refer to § 58.8 (relating to commercial aircraft operators).

(3) *Nonresidents establishing a residency or business in this Commonwealth.* A nonresident of this Commonwealth, not actually doing business within this Commonwealth, is not required to pay tax on the value of property originally purchased outside this Commonwealth and brought into this Commonwealth for the purpose of establishing a permanent residency or business if the property was purchased 6 months or more prior to either its first use in this Commonwealth or the date on which the permanent residence or business was established, whichever occurs first. Property which has been purchased within

6 months of its first use in this Commonwealth shall be subject to tax on its original purchase price and the amount of tax paid to another state may be applied as a tax credit against the Pennsylvania tax if the amount of credit applied was legally due and paid to the other state and that state has tax credit reciprocity with the Commonwealth.

(4) *The purchase of property outside of this Commonwealth by a resident or the purchase of property which was exempt from tax at the time of purchase.* Property purchased outside of this Commonwealth by a resident within 6 months of its first taxable use within this Commonwealth is subject to tax upon the purchase price. If the property was purchased more than 6 months prior to its first taxable use in this Commonwealth, a resident may elect to pay tax on the fair market value of the property. This election may be made by filing a tax return and paying the applicable tax, interest and penalties to the Department within 6 months of the return due date following the first use in this Commonwealth. The amount of tax paid to another state may be applied as a tax credit against the Pennsylvania tax if the amount of credit applied was legally due and paid in the other state and that state has tax credit reciprocity with the Commonwealth.

#### Source

The provisions of this § 33.2 amended January 14, 1994, effective January 15, 1994, 24 Pa.B. 354. Immediately preceding text appears at serial pages (105781) to (105782) and (179279).

#### Notes of Decisions

Petitioner's challenge to constitutionality of Department of Revenue's application of policy to compute sales tax on price of automobile without deducting manufacturer's rebate failed to exhaust administrative remedies and was not within court's jurisdiction. *Smolow v. Department of Revenue*, 547 A.2d 478 (Pa. Cmwlth. 1988); affirmed 557 A.2d 1063 (Pa. 1989).

#### Cross References

This section cited in 61 Pa. Code § 31.6 (relating to persons rendering nontaxable services); 61 Pa. Code § 31.12 (relating to imposition of tax); 61 Pa. Code § 46.7 (relating to nonresident contractors); and 61 Pa. Code § 46.9 (relating to financial institution security equipment).

### § 33.3. Cancellations, returns, allowances and exchanges.

(a) *Tax not remitted to the Department.* The following deduction is permitted only if the tax has been returned to the purchaser or the purchaser's account has been credited for the amount of tax. The seller shall deduct from the amount of gross and taxable sales for a reporting period, a sale or allowance, when in the same reporting period as a taxable sale:

- (1) The contract of sale has been cancelled.
- (2) Property is returned.
- (3) Allowance is made by reason of the merchandise being defective.
- (4) An exemption certificate, executed under § 32.2 (relating to exemption certificates), is presented by the purchaser to the seller.

(b) *Tax remitted to the Department.*

(1) If the tax has not been returned to the purchaser or credited to his account, the purchaser may file a claim for credit or refund with the Department for the tax. If the tax has been returned to the purchaser or credited to his account, the purchaser may assign his rights to the seller for the tax remitted to the Department and the seller may file a claim for refund or credit for the tax.

(2) The following deduction is permitted if the sale amount and corresponding amount of tax has been returned to the purchaser or the purchaser's account has been credited for the sales amount and corresponding amount of tax. The seller shall deduct from the amount of gross and taxable sales for a succeeding reporting period, the amount of a sale or allowance, when in a prior reporting period it was reported as a taxable sale and one of the following applies:

- (i) The contract of sale has been cancelled.
- (ii) The property is returned.
- (iii) An allowance is made by reason of the merchandise being defective.
- (iv) An exemption certificate, executed under § 32.2, is presented by the purchaser to the seller.

(3) A seller claiming the credit shall maintain records of transactions for which the credit is claimed. The records shall show the name and address of the person to whom the tax was returned, the reason for the return and the amount of tax returned.

(c) *Repossession.* The repossession of property by a seller is not considered to be a cancelled or return sale. Therefore, sales tax shall be due upon the full original purchase price within 30 days of the sale whether or not the property was later repossessed by the seller.

(d) *Bad debts.* A seller may not be permitted to take a sales tax credit for amounts representing bad debts or uncollectible accounts. The tax remains due upon the original purchase price of the property sold.

**Authority**

The provisions of this § 33.3 issued under section 270 of the Tax Reform Code of 1971 (72 P. S. § 7270).

**Source**

The provisions of this § 33.3 amended March 14, 1986, effective March 15, 1986, 16 Pa.B. 814. Immediately preceding text appears at serial pages (40300) to (40301).

**Cross References**

This section cited in 61 Pa. Code § 33.4 (relating to credit and lay-away sales).

**§ 33.4. Credit and lay-away sales.**

(a) *Tax collection for credit sales.* If a sale, with respect to which a tax is required to be collected, is wholly or partly on credit, the seller shall require the

purchaser to pay the full amount of the tax due on the entire purchase price at the time the purchase is made or within 30 days thereafter. The failure of the purchaser to remit the tax due to the seller does not relieve the seller of the obligation of reporting the sale and paying to the Commonwealth the tax he should have collected. The tax shall be remitted by the seller with the tax return covering the period in which either the purchase was made or the tax was or should have been collected.

(b) *Tax collection for lay-away sales.* The tax shall be due on a lay-away sale when the seller appropriates the tangible personal property for the purpose of the sale. In these transactions, the seller shall collect the full amount of the tax as measured by the full agreed purchase price at the time the first payment following the appropriation is made under the plan or within 30 days following the appropriation, whichever shall first occur. If, within the same reporting period, the purchaser fails to make the agreed payment, or otherwise forfeits his rights to acquire title and possession under the terms of the agreement and receives a refund of the purchase price, he shall likewise be entitled to a refund of a sales tax paid. However, if the purchaser does not receive a portion of the purchase price from the seller, he may not be entitled to a refund of the sales tax applicable to that amount not returned to him. Reference should also be made to § 33.3 (relating to cancellations, returns, allowances and exchanges).

#### **Cross References**

This section cited in 61 Pa. Code § 34.3 (relating to tax returns).

[Next page is 34-1.]