

200.0000 CREDIT SALES AND REPOSSESSIONS—Regulation 1641

200.0020 **“Abandonment Charge”** made upon sale of used cars is not taxable if separately stated and not disproportionate to selling price of car. 4/18/50.

200.0040 **Assignment of Conditional Sales Contract.** Retailer entered in to a conditional sales contract with buyer for the sale of tangible personal property. Subsequently, buyer wishes to assign his interest to another person who is willing to continue making payments on the balance due. Seller enters into a conditional sales contract with buyer’s assignee in regard to the same chattel and showing the balance due as a purchase price.

If there is any repossession by the retailer from the original vendee, the subsequent transaction is a sale. Furthermore, even though the dealer does not repossess, if the transaction is one where the dealer obtains the person who is to take possession of the tangible personal property by taking over the original buyer’s interest in the contract and directs the original purchaser to assign his interest to this new customer, there is a sale, since it is a transaction whereby the possession of the property is transferred, but the seller retains the title as security for the payment of the price. (Section 6006(c).)

However, where the conditional vendee of the tangible personal property independently assigns his interest to another person, and, subsequently, the assignee independently enters into a conditional sales contract with regard to the same property with seller, this latter transaction would not be a taxable sale, since the possession of tangible personal property passed to the conditional vendee’s assignee in the former transaction, wherein the conditional vendee was the seller. Hence, there would be no transfer of possession of tangible personal property by the retailer in the latter transaction.

Therefore, in the instant situation, if the original purchaser obtains the new buyer and assigns his interest to him prior to the making of a new conditional sales contract between the dealer and new buyer, then the latter transaction would not be taxable to the dealer. However, if it is the dealer who obtains the new buyer, enters into a conditional sales contract with him, and then directs the original purchaser to transfer the tangible personal property to the new buyer, then the transaction is taxable to the dealer. 11/18/57.

200.0060 **Chattel Mortgage, Repossession and Sale of Property Secured Under.** A mortgagor-manufacturer’s machinery, equipment, and fixtures secured under a chattel mortgage were repossessed and sold by the mortgagee. The mortgagor neither had a say in the sale nor located the buyer for the property sold. The mortgagor was not liable for sales tax on the property sold because the sale was not made by the mortgagor and the mortgagee who sold the property was not the agent of the mortgagor as a result of the repossession. 2/4/70.

200.0080 **Finance Companies.** Finance companies which make their own repossessions and resell the repossessed property are required to hold a seller’s permit. 5/3/50; 9/16/87.

200.0100 Financing as Condition Precedent. If purchase of a sales contract by a finance company is agreed to by the parties as a condition to the transaction and the finance company does not approve the buyer's credit, there is no sale for sales tax purposes. 10/2/58.

200.0106 Financing Contracts. A firm is in the business of financing woodworking machinery. Transactions are generated from customers who are not capable of obtaining credit directly from vendors or by vendors who refer customers to the taxpayer for financing of the machinery. After confirming the price quoted by the vendor of the machinery with its client, the firm obtains a loan commitment from a bank to acquire the machinery for its client. The firm then enters into a letter agreement with the client which is designated as a "lease." Under the agreement, the client is committed to make all payments required under the lease and can acquire the property outright at the termination of the "lease" for a nominal sum of \$25. The client, by contract, agrees to pay a higher rate of interest than the firm has to pay in its loan commitment to the bank. The higher rate of interest appears on the lease. Additionally, the cost of the machinery and sales tax on the face of the lease is identical to the amount the firm paid to the vendor. Shortly after execution of the lease, the firm discounts the lease to the bank which had provided the financing loan to acquire the machinery.

Under this scenario, the lease is actually a contract of sale in which the firm retains a security interest. The firm's purchase of the machinery from the vendor is a sale for resale by the firm to its client. Therefore, a taxable sale occurs between the firm and its client under Regulation 1641. Since the increased interest rate and the sales price of the machinery, including sales tax, is clearly shown on the lease agreement, there is sufficient accounting of principal and interest to allow the exclusion of interest from the measure of tax. The difference between the bank's interest charge and the interest paid by the customer does not constitute a mark-up on the machinery. 6/25/92.

200.0108 Financing Transaction. Company A entered into an agreement with Company B to purchase a mainframe computer for a cash price of \$4,895,800. The agreement indicated a \$100,000 reduction in the cash price (labeled "credit") on the first installment payment if A used B's financing plan. The installment payment agreement shows a finance charge of \$238,432.64 computed on the \$4,895,800 cash price at an annual percentage rate of 10.52%. Company A requested an opinion regarding the sales tax consequences.

The \$100,000 is not the type of credit referred to in section 6012 as part of the taxable measure since A would not receive additional consideration of \$100,000 from B over and above the sales price for the computer. Instead, A would deduct the amount due on the first installment payment by \$100,000.

However, not all of the \$100,000 would constitute a nontaxable discount allowance. A portion of the \$100,000 must be allocated to a reduction in the finance charges. The allocation is the difference between the finance charge on the \$4,895,800 and the amount of finance charges computed based on the stated interest rate of 10.52% computed on the discounted price. 9/27/89.

200.0120 Installment Payment Plan. Equipment is sold on an installment payment plan. The purchaser is unable to keep up his payments and lets the equipment go to another customer who will make the balance of the payments.

Since the full sales price has not been credited or refunded to the original purchaser, no deduction is allowable based upon inability to make full payment. 6/13/73. (Am. 2004–2).

200.0124 Interest Charge. When at the time of sale the price for the merchandise is paid in full, an amount termed an “interest payment” is not excludable from the measure of tax. The interest charge is not attributable to a credit sale of the merchandise.

The taking over of the contract by the second customer is regarded as a sale to that customer. If such sale was made by the original vendor, it is subject to tax. If the sale was made by the original purchaser, it may or may not be taxable, but the original vendor would not be liable. 6/26/53. (Am. 2004–2).

200.0160 Lay-Away Sales. The application of the 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 receives delivery of the merchandise. The intent of the parties can be determined by how the initial transaction is handled on the seller’s books and records and by the custom of the trade.

According to the custom of the trade a lay-away transaction is considered as a contract to sell at a future date; the initial payment is considered as a deposit and the parties understand that future payments must be made prior to delivery. If the deposit is forfeited, the full sales price is not includable in the taxpayer’s gross receipts.

Even if the taxpayer keeps his books in such a fashion as to indicate that present sales were made, there is no taxable sale until the full purchase price is paid, unless the parties agree that title will pass at an earlier date. 5/27/59.

200.0165 Lease and Leaseback. A company has paid California sales tax reimbursement on equipment it proposes to use in a lease-leaseback financing arrangement with a financing organization. The company will lease this previously acquired equipment (in the same form as acquired) to a financing organization for a limited term of 32 years (the “lease.”) Simultaneously with the lease of the equipment, the financing organization will sublease it back to the company for a period up to 14 years (the “sublease.”) The leaseback does not exceed 80 percent of the estimated useful life of the equipment.

During the term of the sublease, the company will retain possession, control, and risk of loss of the equipment. The sublease will be on a “net” basis to the financing organization, i.e., the company will be responsible for all maintenance, insurance, property taxes, etc. At the end of the sublease, the company will have the option (but not the obligation) to acquire all of the financing organization’s remaining rights under the lease. In addition, the company will have the option, during the term of the sublease, to acquire the financing organization’s then-remaining interest in the lease at a price sufficient to preserve the financing

organization's anticipated return on the sublease. The lease and the sublease will be noncancellable. If any equipment is destroyed, the company will be obligated to pay the financing organization an amount which will be sufficient to preserve the financing organization's anticipated return with respect to that item of equipment.

Although the company will retain title to the equipment, the company anticipates that the financing organization will depreciate its economic interest in the leased equipment for both federal and state income tax purposes. The equipment involved in the lease has a useful life of 20 years.

It is true that the initial lease transaction is for a term of 32 years, which far exceeds the useful life of the equipment. In other circumstances, especially where there has been a transfer of possession, such transaction would be recharacterized for sales and use tax purposes as a sale (title transfer) transaction at inception. Here, however, the transaction must be looked at in its entirety. The term of the leaseback is 14 years, a period shorter than the expected life of the equipment. This is a financing transaction which has been structured to produce an income tax benefit. The circumstances here are not sufficient to justify application of the sales and use tax recharacterization rules. Instead, the transaction will be recognized as structured and, since the lessor (company) paid sales tax reimbursement on the purchase price of the equipment, neither the lease and nor the sublease are subject to taxation. 3/15/96.

200.0180 **Repossession.** A taxable sale occurs where property is delivered to a customer pursuant to a contract which provided for a substantial down payment and the balance in equal installments. It is immaterial that contract was cancelled and property repossessed due to customer's failure to make agreed down payment.

No exclusion from gross receipts may be made because the seller failed to give customer full credit for the sales price upon repossession, having deducted therefrom an amount for damages for breach of contract. 1/27/55.

200.0220 **Tagging and Reservation of Goods.** Where a conditional sale contract is executed and specific goods are tagged with the customer's name, to be held until the customer requests delivery or picks up the goods, no sale takes place until possession of the goods is transferred to the purchaser. 8/14/67.