

**SURVEY
DISCLOSURE OF PRACTICES – POST-TRANSACTION ISSUES**

Background:

The Streamlined State and Local Advisory Council (SLAC) is working to develop disclosed practices relating to post-transaction issues. These issues generally involve state refund practices after the sale has been completed. This survey is intended to obtain information on state practices in order to help guide the SLAC in developing the disclosed practices. Unless indicated otherwise, this survey does not apply to sales of motor vehicles.

When completing this survey unless the question indicates otherwise, it is assumed that the seller has charged and the purchaser has paid the correct tax on the original sale.

“Tax” as stated throughout this document means the tax paid by the purchaser to the seller.

1 Claiming Credits or Refunds of Tax

1.1 No Limited Refund Period for Returned Product

Assuming the refund request is within a state’s normal statute of limitations, does your state require a product to be returned within a certain period of time in order for the seller to receive credit or refund of tax? If so, what is the time limitation?

Example 1.1

- Seller makes a \$100 sale on January 15th, 2015 that is subject to the 6% state sales tax.
- Seller collects the \$6 in sales tax from the customer.
- Seller records the \$100 sale and \$6 in sales tax owed to the state in its books and records.
- Customer returns the product at a later date that might be the next day, the next month, the next year, etc.
- Seller refunds the \$106 to the customer.

State response (include legal citations if any) _____

1.2 Seller Claims Deduction for Returned Product

Subject to any limitation in 1.1 above, in your state can a seller that provides a customer with a full refund for a returned product, in the same or a subsequent tax reporting period, deduct from its gross sales on that return the amount the seller reported when the customer purchased the product?

For purposes of this question, assume all requirements for a seller to claim a credit/refund are met and the seller is still remitting more tax than it deducts on its return

Example 1.2:

- Seller makes a \$100 sale in January that is subject to the 6% state sales tax.
- Seller collects the \$6 in sales tax from the customer.
- Seller records the \$100 sale and \$6 in sales tax owed to the state in its books and records.
- Customer returns the product in March.
- Customer receives a full refund (\$106) from seller that month.

State response (include legal citations if any) _____

1.3 Documentation to Support Sales Tax Paid for Returned Product

~~a-~~ Absent a concern with fraud, for purposes of a refund claim, in your state is the seller's paper or electronic invoice showing tax was charged on a transaction sufficient to establish that a purchaser paid sales tax on a transaction?

~~b-(1)- If additional documentation other than a paper or electronic invoice is needed, please specify what documentation is required. Also specify if there are any special limitations based on the tax amount and/or the product.~~

Example 1.3a- Refund Being Claimed by Seller

- Seller makes a \$100 sale in January that is subject to the 6% state sales tax.
- Seller provides customer an invoice itemizing the \$100 sale and \$6 of sales tax for a total amount paid by the customer of \$106.
- Seller records the \$100 sale and \$6 in sales tax owed to the state in its books and records.
- Customer subsequently returns the product for a full refund of \$106.
- ~~and s~~ Seller claims a credit for the \$100 sale on its sales and use tax return.
- State requests documentation to prove that tax was collected and paid to the state.

Example 1.3b – Refund Being Claimed by Purchaser

- ~~Seller makes a \$100 sale in January that is subject to the 6% state sales tax.~~
- ~~Seller provides customer an invoice itemizing the \$100 sale and \$6 of sales tax for a total amount paid by the customer of \$106.~~
- ~~Seller records the \$100 sale and \$6 in sales tax owed to the state in its books and records.~~
- ~~Purchaser returns the product to the seller but the seller only refunds the amount the purchaser paid less the sales tax (e.g., \$100).~~
- ~~Purchaser contacts the state for a refund of the \$6 in sales tax.~~

State response (include legal citations if any) _____

2 Restocking Fees

States differ on how they treat restocking fees for sales tax purposes. Some sellers separate the refund and billing of a restocking fee into two transactions: the first transaction is a full refund, including tax, and the second transaction is a separate charge for the restocking fee. Because the restocking fee can be a nontaxable service, a state may still allow a seller to claim a credit for the full amount of tax paid on the original sale transaction. A state may also treat a restocking fee as a reduction in the full purchase price, impacting whether the purchase is subject to a full sales/use tax credit/refund.

For purpose of this survey, a “restocking fee” refers to the amount that is charged by the seller for the acceptance of any merchandise that is returned for a refund

2.1 Restocking^[TD2] Fee Deducted from Refund Amount

If a Seller imposes a restocking fee on items returned by purchaser, in your state can the seller obtain a full refund of tax on the original transaction when the restocking fee is deducted from the amount refunded to the purchaser?

Example 2.1

- Seller imposes 20% restocking fee on items returned by purchaser.
- Purchaser paid \$100 for goods along with \$6 in tax, a total of \$106.
- Seller refunds purchaser \$86 (\$100-\$20+\$6).

State response (include legal citations if any) _____

2.2 Restocking Fee Charged Separately

If a Seller imposes a restocking fee on items returned by purchaser as a separate transactions, in your state can the seller obtain a refund of tax on the original transaction?

Example 2.2

- Seller imposes 20% restocking fee on items returned by purchaser.
- Purchaser paid \$100 for good along with \$6 in tax, a total of \$106.
- Seller refunds purchaser \$106 (\$100+\$6) and in a separate transaction impose a \$20 restocking fee.

State response (include legal citations if any) _____

3 Return of Product & Delivery Charges

Member states are required to indicate on their respective taxability matrices whether delivery charges are included or excluded from sales price. Per rule 327.4, for non-direct mail, a state can impose a delivery charge on one or both of the following: (1) handling, crating, packing, preparation for mailing or delivery, and similar charges; and (2) transportation, shipping, postage, and similar charges.

3.1 Returned Product—No Refund of Delivery Charges

When a product is returned to the seller, the seller does not refund/credit the purchaser the amount charged for delivery of the product. In your state is a full sales/use tax refund allowed for returned product less delivery charges?

Example 3.1

- Seller makes a \$1,000 sale, plus \$100 for delivery of the product that is subject to the 6% state sales tax.
- The state includes “delivery charges” in its definition of “sales price.”
- Seller collects the \$66 in sales tax from the customer for a total amount collected of \$1,166.
- Seller records the \$1,000 sale, \$100 delivery charge and \$66 in sales tax owed to the state in its books and records.
- Customer returns the product.
- Seller gives customer a refund of \$1,060 (\$1,166 - \$100 (delivery charge) - \$6 (tax on \$100)).

State response (include legal citations if any) _____

3.2 [TD3] Returned Product—Separate Transaction for Delivery Charge

Purchaser returns product and seller refunds/credits the full amount originally charged; however, in a separate transaction, seller charges the purchaser the original delivery fee for the returned product. In your state is such a return subject to a full sales/use tax refund?

Example 3.2

- Seller makes a \$1,000 sale, plus \$100 for delivery of the product that is subject to the 6% state sales tax.
- The state includes “delivery charges” in its definition of “sales price.”
- Seller collects the \$66 in sales tax from the customer for a total amount collected of \$1,166.
- Seller records the \$1,000 sale, \$100 delivery charge and \$66 in sales tax owed to the state in its books and records.
- Customer returns the product.
- Customer receives a refund of \$1,166 from the seller.
- Seller then charges the customer \$50 for the delivery of the returned product (a returned product delivery fee).

State response (include legal citations if any) _____

3.3 Returned Product—Delivery Charge Only when Product is Returned

a. Seller does not charge purchaser a delivery charge for the initial sale. When product is returned, seller imposes a delivery charge on the return. Seller reduces the purchaser’s refund amount by the delivery charge. Is such a return subject to a full sales/use tax refund?

b. Is the answer the same if the seller provides a credit on the original transaction and charges the purchaser separately for the delivery charge?

Example 3.3 [JA4]

State response (include legal citations if any) _____

4 Exchanges

For purposes of this section, an “exchange” is when a purchaser returns a product to have it replaced with a similar item (e.g., different size or color) or a different item which may have a higher or lower sales price.

[An exchange is not a trade-in as included in the definition of sales price per the state’s law.](#)

4.1 Exchange-No Price Difference

In an exchange transaction with no price difference, in your state does it matter for sales/use tax purposes whether the seller: 1) exchanges the item for no charge or 2) exchanges the item for no additional charge but provides the purchaser with a credit on the original transaction and issues a new invoice for the exchanged product?

Example 9

- Seller makes a \$100 sale that is subject to the 6% state sales tax.
- Seller collects the \$6 in sales tax from the customer for a total amount collected of \$106.
- Seller records the \$100 sale and \$6 in sales tax owed to the state in its books and records.
- Customer exchanges the product because it is defective and receives a new product.

State response (include legal citations if any) _____

4.2 Exchanges—Price Difference

- a. In an exchange with the replacement product having a higher (or lower) price, in your state can a seller treat the exchange as: 1) a return and refund the original transaction and bill the exchanged product as a separate transaction, or 2) to only bill (or refund) its customer for the price differential?

- b. Does the State provide full credit for the tax paid in the original transaction in both situations 1 and 2 above and the seller only has to remit any additional tax due to the State (or obtain credit from the State) when the seller files its next tax return to the State?

Example 10

- Seller makes a \$100 sale that is subject to the 6% state sales tax.
- Seller collects the \$6 in sales tax from the purchaser for a total amount collected of \$106.
- Seller records the \$100 sale and \$6 in sales tax owed to the state in its books and records.
- The purchaser returns the product for an item with a sales price of \$150.
- The seller charges (refunds) the purchaser for the price difference.

State response (include legal citations if any) _____

4.3 – Exchanges – Different Local Intrastate Jurisdiction

- a. A purchaser exchanges a product in a different local tax jurisdiction of the State. In your state can the seller adjust the tax due based on the exchange location and collect (or refund) the sales/use tax based on the tax rate at the local jurisdiction where the product was exchanged?

- b. In your state can the seller merely credit/debit the appropriate local jurisdictions on its next sales/use tax return?

If the state does not impose local sales/use tax, please indicate N/A.

Example 11

- A purchaser pays tax at a rate of 7% (6% state plus 1% local) on the original sale;
- The purchaser exchanges the item for the same price at another location of the seller that has a tax rate of 8% (6% state plus 2% local).
- Seller imposes additional 1% tax and credits/debits jurisdictions on the seller’s next return filed with the State(s).

State response (include legal citations if any)

Customer presents original receipt: _____

Customer does not have original receipt:

4.4 – Exchanges – Different State

a. A purchaser exchanges a product in a different State. Can the seller adjust the tax due based on the exchange location and collect (or refund) the sales/use tax based on the tax rate at the State where the product was exchanged?

b. In your state can the seller merely credit/debit the appropriate tax on its next sales/use tax return?

Example 12

- Customer buys a \$100 product in State A, subject to a combined 6% tax (4% state plus 2% local).
- Seller collects \$6 sales tax from Customer.
- Customer later exchanges the product in State B for a different color; State B has a 5% state sales tax and no local sales tax.

State response (include legal citations if any)

Customer presents original receipt: _____

Customer does not have original receipt:

5 Tax Refund Claim ~~Filed Without Return~~

5.1 Customer Refund Pending State Approval

A seller invoices and collects the tax from its customers which are subsequently remitted to the State. Can a seller that timely files a refund claim, based on a customer asserting the sale is not subject to the tax, wait to refund the tax to the purchaser until the State approves the refund? Seller will refund purchaser if the State approves the claim.

Example 13

- Seller makes a \$100 sale, subject to the 6% state sales tax; Seller collects the \$6 sales tax from Customer.
- Seller records the \$100 sale price and \$6 sales tax owed to the state in its books and records; Seller remits the tax to the state.
- Customer subsequently provides the seller with information that the transaction should not have been taxed.
- Seller files a refund claim with the state and gets the tax back from the state.
- Seller then refunds the tax to the purchaser.

State response (include legal citations if any) _____

5.2 Seller ~~Files for Refund Filed From~~ After Customer Short Pay

Seller's customer disputes the sales/use tax the seller invoiced to its customer and does not pay the seller the tax. Seller still remits the tax to the state and subsequently files a refund claim to ascertain if tax is due. In your state can seller obtain a refund if it is determined tax should not have been imposed on the transaction?

Example 14

- Seller makes a \$100 sale, and charges 6% sales tax.
- Customer claims that the sale is exempt and pays Seller only the \$100.
- Seller remits out-of-pocket the \$6 sales tax to the state.
- Seller then files a refund claim with the state.

State response (include legal citations if any) _____

5.3 Purchaser Files Claim Directly to the State

In your state is there a written procedure (*i.e.*, statute, rule or procedure posted on the agency's website) that allows a purchaser, ~~after contacting the seller~~, to directly file a refund claim to the State if the seller refuses to refund or is out of business? If so, is the purchaser required to contact the seller before requesting a refund through the state?

Example 15

- Seller makes a \$100 sale, subject to the 6% state sales tax.
- Seller collects \$100 plus \$6 sales tax.
- After the sale, the customer requests a refund from the seller claiming the purchase was tax exempt. Seller does not refund the customer.
- Customer files a refund claim directly with the state.

State response (include legal citations if any) _____

