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March 2012

Gift Cards, Vouchers and Layaway Fees Issue Paper

Assigned by Governing Board October 2011

Overview:

The definition of sales price is found in Appendix C, Part I, Library of Definitions. The “sales price” definition requires states to include in the measure subject to tax the following:

- “total amount of consideration,”
- “without any deduction” for costs and expenses of the seller, and
- excluding discounts that are not reimbursed by a third party that is allowed by the seller and taken by a purchaser on a sale.

The Agreement’s “sales price” definition:

“**Sales price**” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following. . .

B. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

“Sales price” shall not include:

A. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.

States may exclude from “sales price” the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.

C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

Gift Cards, Vouchers Discussion

Several SLAC delegates have indicated that their states have received questions concerning what is the measure subject to tax when the customer redeems or tenders a deal voucher, such as provided by

Groupon or Living Social, to make purchases of products from a retailer. The issue has also been raised by members of the business community. In particular, the following questions have arisen:

(1) What is the measure of the tax base of a redeemed deal voucher, the face value of the voucher, the actual amount (consideration) paid by the purchaser to obtain the voucher, or some other measure?

(2) When the vouchers are sold by a retailer for less than the stated value of the products to be received on redemption, does the difference between the stated value and amount paid for the voucher represent a seller's discount?

When discussing these types of vouchers available to customers, additional questions arise when comparisons are made to states laws, rules and policies concerning scrip and gift cards and gift certificates to the vouchers being sold today. To insure consistent application among member states of the definition of "sales price," SLAC has been assigned to develop an interpretative rule related to the "sales price" definition addressing the sale of gift cards and vouchers to be used by the purchaser to make a subsequent purchase from the retailer of taxable and nontaxable products.

How Deal of the Day Vouchers Work

A retailer contracts with a Deal-of-the Day company (Deal Company) to advertise and sell a discounted voucher for the retailer. The retailer sets the price of the voucher and the Deal Company and the retailer come to an agreement on the amount to be retained by the Deal Company for marketing the voucher. The price charged a customer for the voucher is less than the stated value of the voucher upon redemption.

The Deal Company provides various methods through which the retailer's discounted vouchers are advertised and marketed to the Deal Company's subscribers (i.e. website, email, etc.). In addition to the advertising and marketing services, the Deal Company performs the transaction processing for the retailer selling the discount voucher. The Deal Company receives compensation for its services by retaining a percentage of the voucher receipts prior to distribution to the retailer as provided by contract.

The Deal Company notifies its subscribers that a discount voucher is available for purchase. The subscriber purchases the discount voucher by paying the Deal Company directly. Customer's may purchase the vouchers with cash, credit cards, cash equivalents, reward or loyalty points or credits earned from friend referrals. In some cases, the deal is canceled if enough subscribers do not sign up to purchase the retailer's discount voucher.

Generally, customers redeem the discount vouchers with the retailer for merchandise or services at the stated value of the voucher during the promotional period. At the end of the promotional period customers may redeem the discount voucher for merchandise or services at the discounted amount paid for the voucher. Subsequent to the expiration date of the voucher, the Deal Company refunds customers for purchased vouchers that are not redeemed.

The retailer receives payment from the Deal Company when the customer redeems the voucher for merchandise or services.

Limitations on the customer's use of the voucher include: redemption only at the retailer's business, may not be combined with other promotions or coupons offered by the retailer; may be limited to specific products sold by the retailer; is not convertible to cash, gift cards or gift certificates, is limited to use in a one visit, and customer's may not receive cash back for partial redemption.

A motion by Nebraska to adopt an interpretive rule relating to the Sales Price Definition – Vouchers

Rule 327.10 Sales Price – Prepaid Vouchers

A. **Definition of Sales Price.** “Sales Price” is defined in Part I of the Library of Definitions. “Sales price” and “purchase price” include the total amount of consideration received, whether received in money or otherwise, without deduction for costs or expenses of the seller. Discounts allowed by a seller that are not reimbursed by a third party and taken by a purchaser on a sale are not included in the measure subject to tax (sales price).

B. **Definition of Voucher.** For purposes of this interpretive rule, a voucher is:

1. sold to a purchaser for an amount that is less than the face value noted on the voucher;
2. redeemable for personal property or services;
3. redeemable either for a specific product or for a certain dollar amount towards the purchase price of any product sold by the seller;
4. sold, marketed, or distributed by a third party pursuant to an agreement with the seller that allows redemption of the voucher for personal property or services (“third party agreement”);
5. not a digital code as defined in the Agreement; and
6. not a ticket to a time sensitive event.

C. **Options.** The laws of the state where the voucher is redeemed will govern the tax treatment of the transaction. States can choose one of the following Options for transactions involving vouchers.

The Example for Option A will utilize the following fact pattern:

1. The selling price of the food and drinks at Restaurant (Seller) is \$70;
2. The stated face value of the voucher is \$50;
3. The amount paid by Customer to third-party Deal Company (Deal) to acquire the voucher is \$25;
4. The amount retained by Deal is \$10;
5. The amount dispersed from Deal to Seller is \$15;
6. The voucher is redeemed prior to the expiration date; and
7. The sale tax rate at Seller’s location is 7.0%.

Option A. Specific Stated Face Value. A state may treat a voucher with a stated face value as the consideration received by Seller for purposes of determining the selling price of the personal property or services subject to tax. The measure (sales price) subject to sales tax is \$70 which is the stated face value of the voucher.

Example 1. The sales price is \$70 and the sales tax related to the sale is \$4.90 (\$70 x 7.0%). The total amount due from Customer is \$74.90. Customer uses the voucher to pay for \$50 of the bill and pays the remaining amount of \$24.90 in cash.

Option B. Seller's In-store Coupon. A state may treat a voucher as incorporating a seller's in-store coupon.

1. Where the voucher or third party agreement identifies the amount of consideration paid by the purchaser to the third party and the value allowed by the seller, the difference between the value of the voucher allowed by the seller and the amount the purchaser paid for the voucher is a discount that is not included in the sales price (i.e., same treatment as a seller's in-store coupon), provided the seller is not reimbursed by a third party, in money or otherwise, for some or all of that difference.

Example 2. A voucher is sold for \$20 by Third Party pursuant to an agreement with Seller B that entitles the purchaser to \$50 towards the purchase of any food and drink sold by Seller B. The agreement provides that Third Party will retain \$10 of the amount paid by the purchaser for advertising and marketing the voucher. The voucher identifies the amount paid by the purchaser, the seller discount amount (\$30) and the expiration date for the period that the discount is available. The purchaser buys \$100 of food and drink prior to the expiration of the \$30 discount offered by the seller and tenders the voucher plus enough money to pay for the food and drink. The measure (sales price) subject to sales tax is \$70 which is made up of the \$20 in consideration received from the sale of the voucher and the additional \$50 paid in cash by the purchaser directly to Seller B.

2. Where the voucher or third party agreement identifies the amount of consideration paid by the purchaser to the third party and a reduction in the amount that will be fully reimbursed by a third party (i.e., a manufacturer's coupon), the seller must use the face value or stated value of the voucher and not the price paid by the purchaser as the measure (sales price) that is subject to tax.

Example 3. Same facts as Example 2 except Seller B received consideration directly reimbursing Seller B for the \$30 discount taken by the purchaser. The measure (sales price) subject to sales tax is \$100 which is made up of the \$20 received from the sale of the voucher, the \$30 in compensation received as a direct reimbursement of the discount and the \$50 paid in cash by the purchaser directly to Seller B.

3. The seller must maintain the documentation necessary to identify the amount paid by the purchaser to the third party for the voucher and the discount given by the seller to the purchaser

when the voucher is redeemed. Sellers that do not know the amount paid by the purchaser to the third party for the voucher must use the face value or stated value of the voucher as the measure (sales price) that is subject to tax.

Example 4. Same facts as Example 2 except the amount paid by the purchaser to Third Party for the voucher is not identified on the voucher or specified in the agreement. Seller B does not know the amount paid by the purchaser to Third Party for the voucher. The measure (sales price) subject to tax is \$100 which is made up of the face or stated value of the voucher (\$50) and the \$50 paid in cash by the purchaser directly to Seller B.

4. Reductions in the amount of consideration received by the seller from the third party that sold, marketed, or distributed the vouchers, such as advertising or marketing expenses, are costs or expenses of the seller. Costs and expenses of the seller are not deductible from the sales price and must be included in the measure (sales price) that is subject to tax.

Example 5. Using the same facts in Example 2, the \$10 retained by Third Party for advertising and marketing the voucher is a cost or expense of the seller and may not be deducted from the measure (sales price) that is subject to tax.

C. Costs and Expenses of Seller. Reductions in the amount of consideration received by Seller from the third party that sold, marketed, or distributed the vouchers, such as advertising or marketing expenses, are costs or expenses of the seller. Costs and expenses of Seller are not deductible from sales price and must be included in the measure subject to tax (sales price). In the fact pattern noted above, the amount retained by Deal for advertising and marketing the voucher (\$10) may not be deducted from the measure subject to tax (sales price).

D. Disclosure on Taxability Matrix. States must disclose which Option they are using to tax transactions involving vouchers in their Taxability Matrix.

A motion by _____ to amend the Governing Board rules relating to prepaid vouchers:

Rule 327.10 – Sales Price – Prepaid Vouchers

This interpretative rule is limited to the specific types of transactions described in the rule. There is a placeholder at the end of the rule to develop additional guidance for other fact patterns as needed or requested by states or businesses.

- A. “Sales price” is defined in Part I of the Library of Definitions. “Sales price” and “purchase price” include the total amount of consideration received, whether received in money or otherwise, without any deduction for costs or expenses of the seller. Discounts allowed by a seller that are not reimbursed by a third party and taken by a purchaser on a sale are not included in the measure subject to tax (sales price).
- B. For purposes of this interpretive rule, a voucher is:
 - 1. sold to a purchaser for an amount that is less than the face value noted on the voucher;
 - 2. redeemable for personal property or services;
 - 3. redeemable either for a specific product or for a certain dollar amount towards the purchase price of any product sold by the seller;
 - 4. sold, marketed, or distributed by a third party pursuant to an agreement with the seller that allows redemption of the voucher for personal property or services (“third party agreement”);
 - 5. not a digital code as defined in the Agreement; and
 - 6. not a ticket to a time sensitive event.
- C. Where the voucher or third party agreement identifies the amount of consideration paid by the purchaser to the third party and the value allowed by the seller, the difference between the value of the voucher allowed by the seller and the amount the purchaser paid for the voucher is a discount that is not included in the sales price (i.e., same treatment as a seller’s in-store coupon), provided the seller is not reimbursed by a third party, in money or otherwise, for some or all of that difference.

Example 1. A voucher is sold for \$20 by Third Party pursuant to an agreement with Seller B that entitles the purchaser to \$50 towards the purchase of any food and drink sold by Seller B. The agreement provides that Third Party will retain \$10 of the amount paid by the purchaser for advertising and marketing the voucher. The voucher identifies the amount paid by the purchaser, the seller discount amount (\$30) and the expiration date for the period that the discount is available. The purchaser buys \$100 of food and drink prior to the expiration of the \$30 discount offered by the seller and tenders the voucher plus enough money to pay for the food and drink. The measure (sales price) subject to sales tax is \$70 which is made up of the \$20 in consideration

received from the sale of the voucher and the additional \$50 paid in cash by the purchaser directly to Seller B.

- D. Where the voucher or third party agreement identifies the amount of consideration paid by the purchaser to the third party and a reduction in the amount that will be fully reimbursed by a third party (i.e., a manufacturer's coupon), the seller must use the face value or stated value of the voucher and not the price paid by the purchaser as the measure (sales price) that is subject to tax.

Example 2. Same facts as Example 1 except Seller B received consideration directly reimbursing Seller B for the \$30 discount taken by the purchaser. The measure (sales price) subject to sales tax is \$100 which is made up of the \$20 received from the sale of the voucher, the \$30 in compensation received as a direct reimbursement of the discount and the \$50 paid in cash by the purchaser directly to Seller B.

- E. The seller must maintain the documentation necessary to identify the amount paid by the purchaser to the third party for the voucher and the discount given by the seller to the purchaser when the voucher is redeemed. Sellers that do not know the amount paid by the purchaser to the third party for the voucher must use the face value or stated value of the voucher as the measure (sales price) that is subject to tax.

Example 3. Same facts as Example 1 except the amount paid by the purchaser to Third Party for the voucher is not identified on the voucher or specified in the agreement. Seller B does not know the amount paid by the purchaser to Third Party for the voucher. The measure (sales price) subject to tax is \$100 which is made up of the face or stated value of the voucher (\$50) and the \$50 paid in cash by the purchaser directly to Seller B.

- F. Reductions in the amount of consideration received by the seller from the third party that sold, marketed, or distributed the vouchers, such as advertising or marketing expenses, are costs or expenses of the seller. Costs and expenses of the seller are not deductible from the sales price and must be included in the measure (sales price) that is subject to tax.

Example 4. Using the same facts in Example 1, the \$10 retained by Third Party for advertising and marketing the voucher is a cost or expense of the seller and may not be deducted from the measure (sales price) that is subject to tax.

- G. . [Reserved] Additional Fact Patterns or Business Models