This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of August 13, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Loren Chumley. The request was made on June 29, 2009.

**Issue**

Client owns and franchises store locations worldwide and has locations in all of the SST member states. Client sells services and tangible personal property (“TPP”) at its store locations. Client is starting a program to sell TPP through catalogs and its Website. At this time, the TPP generally consists of tools used in delivering services to customers but Client expects to expand the TPP offerings. Employees, franchisees and the general public may make purchases from Client through a catalog or through the Client’s Website the internet. Client purchases the inventory on a resale certificate.

Client has implemented an Employee Points Program that serves as an incentive for employees to reach specific goals set by Client’s management. The points accumulated by each employee may be redeemed for cash, travel, or discounts on purchases of TPP sold through catalog or the Website. Neither franchisees nor members of the general public are allowed to purchase tools through the use of points.

An employee may use points to discount the regular price of a tool as shown on the catalog or Website. Depending on the number of points that an employee redeems, the price could be partially discounted or could be reduced to zero. Client does not receive consideration from a third party as reimbursement for the discount.

Client charges a separately stated fee for delivery of the TPP. In some cases, the Client may permit an employee to offset the delivery charge by use of the points. In other words, if a tool is $100 and the delivery charge is $10, an employee could use points to offset the $100 but would still have to pay $10 for delivery of the TPP. In some cases, an employee could use points to offset both the $100 plus the $10 delivery charge, in which case the price paid by the employee would be $0.
For purposes of this interpretation request, assume that no entity-based, product or use-based exemptions exist with respect to the purchases of TPP. For purposes of this interpretation request, assume that no services are necessary to complete the sale, no installation charges are made and no trade-in credit is applicable.

**Issue:**

1) Are the points which are allowed by the Client and taken by the employee on the sale considered a discount that is excluded from the sales price of the TPP?
2) If the sale is made in a member state that includes delivery charges in the definition of the sales price, is the measure of the tax base subject to sales tax equal to the discounted charge for the TPP (which could be zero) plus the delivery charge (which could be zero)?
3) If the sale is made in a member state that excludes delivery charge from the definition of the sales price, and the state does not separately tax delivery charges as a service, is the measure of the tax base subject to sales tax equal to the discounted charge for the TPP (which could be zero)?

**Proposed Interpretations:**

1) Based on the facts submitted, the points that are allowed by the Client and taken by the employee as a reduction to the published price of the TPP are considered a discount that is excluded from the sales price of the TPP.
2) If the sale is made in a member state that includes delivery charges in the definition of the sales price, the measure of the tax base subject to sales tax is equal to the discounted charge for the TPP (which could be zero) plus the delivery charge (which could be zero).
3) If the sale is made in a member state that excludes delivery charge from the definition of the sales price, and does not separately tax delivery charges as a service, the measure of the tax base subject to sales tax is equal to the discounted charge for the TPP (which could be zero).

**Public Comment**

No state or public written comments were received.

**Recommendation**

By a vote of four to two, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester be accepted.

**Rationale**

The Agreement definition of “sales price” excludes “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.” The definition of “sales price” includes delivery charges unless the member state elects to exclude delivery charges from its definition of “sales price.” The points allowed by the Client

August 28, 2009
and taken by the employee as a reduction to the published price of the TPP would meet the definition of discount. The sales price and delivery charges would be reduced by the amount of this discount.

**Participating Committee Members**

The interpretation was supported by Myles Vosberg, Tony Mastin, Rep. Deb Peters, and Joe Vandevender. The interpretation was not supported by Tom Atchley or Larry Wilkie.