

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). ~~The purpose of this section of the sales price definition rule is to clarify the treatment of vouchers which are sold/marketed/distributed by third parties; redeemed by the purchaser at a business selling property or services; and where states treat the stated face value of the voucher as consideration towards the selling price of the property or services.~~

~~The definition of “Sales Price” as found in Appendix C, Part I, Administrative Definitions, of the Library of Definitions, 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 deduction for”.~~

~~Vouchers with a stated face value are treated as cash up to the stated value for states that treat vouchers in the same manner as gift cards and gift certificates. The stated face value of the voucher is deemed to be “consideration” provided by the customer towards the selling price of the property or services upon redemption, regardless of the amount the purchaser paid to a third party to acquire the voucher.~~

~~The retailer is required to compute sales tax on the selling price of the items before the stated value of the voucher is applied against the selling price.~~

~~For example:~~

~~(Example to be inserted)~~

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 merchandise 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.

RP12004A01

5/9/12

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. States are permit to choose from one of the following Options for transactions involving vouchers. The laws of the state where the voucher is redeemed will govern the tax treatment of the transaction.~~

All Examples for Option A and Option B 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. ~~This option applies to those states that~~ **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. Seller is required to remit sales tax on the selling price of the items before the stated value of the voucher is applied towards the selling price.

Example 1. The sales price is \$70 and the sales tax related to the sale is \$4.90 ($\$70 \times 7.0\%$). 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. ~~This option applies to those states which~~ **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 paid by Customer to Deal and the value that will be allowed by Seller towards the selling price of the **personal** property or services, the difference between the value of the voucher allowed by Seller and the amount Customer 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 Seller is not reimbursed by a third party, in money or otherwise, for some or all of that difference.

Example 2. The measure (sales price) subject to sales tax is \$45 which consists of the \$25 paid by Customer to Deal to acquire the voucher and the additional \$20 paid by Customer directly to Seller. Sales tax of \$3.15 ($\$45 \times 7.0\%$) is due on the sale.

RP12004A01

5/9/12

2. Where the voucher **or third party agreement** identifies the amount paid by Customer to Deal and a reduction in the **amount sales price** that will be fully reimbursed by a third party (i.e., a manufacturer's coupon), Seller must use the face value or stated value of the voucher as the measure that is subject to tax (sales price).

Example 3. The measure that is subject to tax (sales price) is \$70 which consists of the \$25 paid by Customer to Deal to acquire the voucher, the \$25 received as a full reimbursement of the discount from the third party; and the \$20 paid in cash by Customer directly to Seller.

3. ~~Where the voucher does not identify the amount paid by Customer to Deal, but Seller's agreement with Deal specifies the price Deal must charge Customer for the voucher,~~ Seller must maintain the documentation necessary to identify the amount paid by Customer to Deal for the voucher and the discount given by Seller to Customer when the voucher is redeemed. The amount paid by Customer to Deal for the voucher plus any additional amount required to be paid to Seller upon redemption is the measure subject to tax (sales price).

Example 4. The measure (sales price) subject to sales tax is \$45 which consists of the \$25 paid by Customer to Deal to acquire the voucher and the additional \$20 paid by Customer directly to Seller. Sales tax of \$3.15 ($\$45 \times 7.0\%$) is due on the sale.

4. Where the voucher does not identify the amount paid by Customer to Deal and Seller does not know or does not maintain documentation identifying the amount paid by Customer to Deal to acquire the voucher or the discount given by Seller to Customer when the voucher is redeemed, the measure subject to tax (sales price) is the stated face value of the voucher.

Example 5. The sales price is \$70 and the sales tax related to the sale is \$4.90 ($\$70 \times 7.0\%$). 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 C. Distinct treatment for Stated Face Value or Specific Product or Service Voucher. **A state may distinguish between stated face value vouchers and product specific vouchers.** ~~This option applies for states who want to be able to distinguish stated face value vouchers from product specific vouchers.~~

C1. Stated Face Value. Where the voucher is issued for a stated face value and does not identify a specific product, the stated face value is the consideration received by Seller for purposes of determining the selling price of the personal property or services subject to tax. Seller is required to remit sales tax on the selling price of the items before the stated value of the voucher is applied towards the selling price.

Example 6. Using the fact pattern under Option A, the sales price is \$70 and the sales tax related to the sale is \$4.90 ($\$70 \times 7.0\%$). 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.

C2. Specific Product or Service Voucher. Where the voucher does not contain a stated face value and may be redeemed only for a specific product or service, even though the regular selling price of the product or service may be stated on the voucher, Seller must follow the provisions under Option B for determining the measure subject to tax (sales price).

D. 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).

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

~~The purpose of this section of the sales price definition rule is to clarify the treatment of vouchers which are sold/marketed/distributed by third parties; redeemed by the purchaser at a business selling property or services; and where states treat the difference between the stated face value and amount paid by purchaser for the voucher as merchant discount (seller's in-store coupon). The laws of the state where the voucher is redeemed will govern the tax treatment of the redemption transaction.~~

~~The definition of "Sales Price" as found in Appendix C, Part I, Administrative Definitions, of the Library of Definitions, excludes discounts that are not reimbursed by a third party that are allowed by a seller. For states that treat the difference between the stated faced value of a~~

RP12004A01

~~voucher and the amount paid for the voucher as a merchant discount, sales tax is required to be computed on the net amount of the sale, after deduction for the merchant discount.~~

RP12004

4/19/12

2

~~When the voucher is redeemed for taxable property or services, sales tax is due at the time the voucher is redeemed by the purchaser on the amount paid by the purchaser for the voucher, if known to the seller, and any additional amount required to be paid by the purchaser at the time of the sale. If the amount paid by the purchaser is not known, the retailer is required to follow the provisions in A.~~

~~For example:~~

~~(Example to be inserted)~~

~~C. States must disclose in their Taxability Matrix their method of taxing transactions involving vouchers, whether alternative A or B described above.~~

RP12004A01

5/9/12