

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

Rule 327.10 – Sales Price – ~~Discounts and~~ Prepaid Vouchers

- 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 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.
- C. Where the voucher or third party agreement identifies the amount of consideration paid by the purchaser to the third party and the value of the voucher that will be allowed by amount of the seller, ~~’s in-store coupon,~~ 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. The voucher presented by the purchaser at the time of sale (redemption) must identify the reduction in the sales price the purchaser is entitled to and given by the seller allowing redemption for merchandise and services. The seller must not be reimbursed by any third party whether such reimbursement is received in money or otherwise.

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 sales price 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. Where the voucher does not identify the amount of consideration paid by the purchaser to the third party or the voucher does not identify such amount, but the agreement specifies the price the third party must charge purchasers for the voucher, 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 ~~the~~ 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 ~~the~~ 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.

- EF. 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.