A motion by Tennessee, Kentucky, Oklahoma, South Dakota, Washington, and Wisconsin 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 an instrument that is:

1. sold to a purchaser for an amount that is less than the face value and both the face value and amount paid by the purchaser are 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 a specific agreement with the seller, and the seller determines the price at which the voucher is to be sold and allows redemption of the specific voucher for personal property or services ("third party agreement");
5. not the sale of a digital code as defined by the Agreement or its rules; and
6. not the sale of a ticket for an admission to a specific performance or event on a specific date and time.

C. Any tax due on the redemption of the voucher will be paid to the state where the sale of personal property or services is sourced pursuant to Section 310 or Section 310.1.

D. 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 face value of the voucher, 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.

E. Where the discount 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.

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