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To State and Local Advisory Council

Date October 26, 2009

From Loren L. Chumley, Principal

Ref

RE **Employee Sales – Discount Request for Interpretation**

**CRIC Interpretative Opinion 2009-05**

This memorandum is provided in response to questions raised by members of the State and Local Advisory Council regarding the CRIC Interpretation Opinion 2009-05, and includes both the original facts set forth in the Interpretation Request as well as additional information as requested.

**Facts from Interpretation Request:**

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.



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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.

**Information Requested by SLAC:**

Questions were raised about federal personal income tax matters regarding redemption of points:

- 1) The amount of payments to an employee when points are redeemed for cash is included in the employee's W-2 for federal income tax purposes.
- 2) As mentioned above, employees may redeem the points for travel that is arranged by the Client. Client is not in the travel business. Employees may not purchase travel from third parties – but instead may only use the points to defray the costs of participating in a Client-arranged travel excursion. Example: Client purchases from travel company a cruise for 50 people. Client awards top employees with the trip and gives employees option of using points to have spouse accompany employee on cruise. When points are redeemed in this manner, the points are included in the employee's W-2 for federal income tax purposes.
- 3) Employees may purchase TPP from Client through its Website or catalogs and may use the points to discount the price of the TPP. When an employee uses points to discount the price of TPP from the Client's Website or catalog, there are no federal income tax implications for the employee and the points are NOT included in the W-2 wages of the employee.

Client has provided further clarification around when employees are entitled to redeem points for cash. Client operates retail concepts under different brand names. Employees who are store managers for two of Client's brand concepts are eligible to redeem points for cash. Employees who are not at a manager level at these stores are not entitled to redeem points for cash. Neither managers nor employees at other brand concepts are permitted to redeem points for cash.

An employee is not permitted to transfer points and the points are only available to discount the purchase price of TPP from Client's Website or catalog. Neither franchisees nor members of the general public are allowed to discount TPP through the use of points.



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Employees, franchisees and members of the general public use the same Website and catalog for purchasing goods from Client. There is a different price list for members of the general public, for employees and for franchisors.

When an employee uses points to discount the regular price of a tool as shown on the catalog or Website, the price could be partially discounted or could be reduced to zero depending on the number of points redeemed. The value of the points is consistent across the range of products available for point redemption.

The billing system for purchases by employees is the same system that is used for purchases from franchisors and members of the public.

The originally-submitted Interpretation Request asked the Compliance Review and Interpretations Committee to assume that no entity-based, product or use-based exemptions exist with respect to the purchases of TPP and that no services are necessary to complete the sale, no installation charges are made and no trade-in credit is applicable.

**Questions Raised in Interpretation Request:**

1. Should the points redeemed by the employee be considered a discount in sales price in the sales transaction?
2. Do the points redeemed by the employee constitute consideration for the sales transaction?
3. 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?

**Applicable provisions of the SSUTA:**

“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:

- A. The seller's cost of the property sold;



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- 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;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

\* \* \*

***“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;***
- B. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
- C. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

**“Sales price” shall include consideration received by the seller from third parties if:**

- A. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- B. The seller has an obligation to pass the price reduction or discount through to the purchaser;
- C. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- D. One of the following criteria is met:
  - 1. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a



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- third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
2. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group), or
  3. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

States may also exclude from “sales price” either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles, or both.

### **Discussion:**

In the previous discussion with the State and Local Advisory Council, representatives of various states expressed concern that the value of the points program described above should be included in the definition of “sales price” because the redemption of the points for merchandise should be viewed as “consideration.”

The definition of “sales price” adopted in the Streamlined Sales and Use Tax Agreement, and required to be adopted by all member states, sets forth what is included and what is excluded in the measure of the tax base. Under the definition, a discount is excluded from the “sales price” when it is provided by the seller and it is included in the sales price when there is reimbursement from a third party. While it is possible to construe “consideration” in both instances, the Agreement prohibits a state from taxing the “consideration” given by a seller to reduce its price to a customer.

In this case, similar to a discount coupon, the employee presents its points to the Client/Seller and receives a price reduction on the TPP. The Client/Seller receives no reimbursement from a third party. The points constitute a discount that is explicitly excluded from the definition of “sales price.” Accordingly, the interpretations proposed by CRIC should be adopted.

### **Proposed Interpretations by CRIC:**



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- 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).