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## Gift Cards, Vouchers and Layaway Fees Issue Paper

Assigned by Governing Board October 2011

### Overview:

The definition of sales price is found in Appendix C, Part I, Library of Definitions. The “sales price” definition requires states to include in the measure subject to tax the following:

- “total amount of consideration,”
- “without any deduction” for costs and expenses of the seller, and
- excluding discounts that are not reimbursed by a third party that are allowed by the seller and taken by a purchaser on a sale.

### The Agreement’s “sales price” definition:

“**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. . .

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;

“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.

States may exclude from “sales price” the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.

C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

## **Gift Cards, Vouchers Discussion**

Several SLAC delegates have indicated that their states have received questions concerning what is the measure subject to tax when the customer tenders a deal voucher, such as provided by Groupon or Living Social, to make purchases of products from a retailer. The issue has also been raised by members of the business community. In particular, the following questions have arisen:

(1) Do the deal vouchers represent consideration?

(2) If the vouchers represent consideration, is the value of the consideration equal to the face value of the voucher, the actual amount paid by the purchaser to obtain the voucher, or some other measure?

When discussing these types of vouchers available to customers, additional questions arise when comparisons are made to states laws, rules and policies concerning scrip and gift cards and gift certificates to the vouchers being sold today. To insure consistent application among member states of the definition of “sales price,” SLAC has been assigned to develop an interpretative rule related to the “sales price” definition addressing the sale of gift cards and vouchers to be used by the purchaser to make a subsequent purchase from the retailer of taxable and nontaxable products.

### **How Deal of the Day Vouchers Work**

A retailer contracts with a Deal-of-the Day company (Deal Company) to advertise and sell a discounted voucher for the retailer. The Deal Company and the retailer come to an agreement on the price to be charged customers for the voucher. The Deal Company provides advertising and marketing services and processing services such as retailer customer billing & collection and distribution of receipts to the retailer. According to the service agreement, the Deal Company receives compensation for its services by retaining a percentage of the voucher receipts prior to distribution to the retailer.

The Deal Company then emails its subscribers that the voucher is available for purchase. A subscriber purchases the voucher from the Deal Company’s website and pays the Deal Company directly. If enough subscribers do not sign up to purchase the retailer’s voucher, the deal is canceled and the subscriber’s credit card is not charged. Customer’s may purchase the vouchers with cash, credit cards, cash equivalents, reward or loyalty points or credits earned from friend referrals. The customer can then redeem the deal voucher at the retailer’s business, either on-line or in the physical place of business, for merchandise or services. The retailer receives payment from the Deal Company when the customer redeems the voucher for merchandise or services.

Limitations on the customer's use of the voucher include: redemption only at the retailer's business, may not be combined with other promotions or coupons offered by the retailer; may be limited to specific products sold by the retailer; is not convertible to cash, gift cards or gift certificates, is limited to use in a one visit, and customer's may not receive cash back for partial redemption.

When the period that a voucher discount is available expires, the voucher may used to redeem for merchandise or services at the amount the customer paid for the voucher.

*What happens to receipts that Deal Company A is in possession of because the customer did not redeem the voucher?*

### **Example A**

Deal Company A's website showcases Retailer B in its deal-of-the day offer. Deal Company A sends an email to all of its subscribers notifying them of the opportunity to purchase a \$100 voucher for food at Retailer B's restaurant for a payment of only \$50. Deal Company A will retain \$10 of the \$50 paid as a marketing fee and remit the remaining \$40 to Seller B when the customer redeems the voucher.

- 1) Who is the seller of the Deal of the Day Voucher? Deal Company A or Retailer
- 2) Is the sale of the Deal of the Day voucher a sale of tangible personal property? Yes or No
- 3) Is the sale subject to tax when the voucher is redeemed for taxable merchandise or services at the retailer's business? Yes or No
- 4) Is the \$10 compensation fee retained by Deal Company A, a cost or expense of Retailer B and included in the sales price (measure) as part of total consideration paid for merchandise or services purchased through the redemption of the voucher?
- 5) When the offer is redeemed by the customer at Retailer B, what is the sales price (measure) subject to tax?
  1. \$100
  2. \$50
  3. \$40
  4. Some other amount
- 6) Is there a difference in the sales price (measure) if the voucher is for a particular product or service (value of product), or if the voucher is for a specifically stated dollar value?

### **How Gift Cards and Gift Certificates Work?**

(Reserved)

## **Layaway fees Discussion**

States have been asked questions regarding the treatment of layaway fees in determining the sales price (measure) subject to tax. Most states have laws, rules and policies regarding layaway fees. However, with the adoption of the uniform definition of sales price, questions have arisen as to what provisions of the uniform sales price definition apply to layaway fees. In particular, the following questions have arisen:

- 1) Is the layaway fee part of the “total amount of consideration, including cash, credit ..., for which the personal property is sold...” and may not be excluded from sales price; or
- 2) Is the layaway fee included in sales price as “charges by the seller for any services necessary to complete the sale, other than delivery and installation charges and for states electing this option (toggle), layaway fees would be excluded from “sales price” when separately stated on the invoice, bill of sale, or similar document given to the purchaser?