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March 2012

## 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 is 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 redeems or 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) What is the measure of the tax base of a redeemed deal voucher, the face value of the voucher, the actual amount (consideration) paid by the purchaser to obtain the voucher, or some other measure?

(2) When the vouchers are sold by a retailer for less than the stated value of the products to be received on redemption, does the difference between the stated value and amount paid for the voucher represent a seller's discount?

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<sup>[SKH1]</sup>.

### **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 retailer sets the price of the voucher and the Deal Company and the retailer come to an agreement on the amount to be retained by the Deal Company for marketing the voucher. The price charged a customer for the voucher is less than the stated value of the voucher upon redemption.

The Deal Company provides various methods through which the retailer's discounted vouchers are advertised and marketed to the Deal Company's subscribers (i.e. website, email, etc.). In addition to the advertising and marketing services, the Deal Company performs the transaction processing for the retailer selling the discount voucher. The Deal Company receives compensation for its services by retaining a percentage of the voucher receipts prior to distribution to the retailer as provided by contract.

The Deal Company notifies its subscribers that a discount voucher is available for purchase. The subscriber purchases the discount voucher by paying the Deal Company directly. Customer's may purchase the vouchers with cash, credit cards, cash equivalents, reward or loyalty points or credits earned from friend referrals. In some cases, the deal is canceled if enough subscribers do not sign up to purchase the retailer's discount voucher.

Generally, customers redeem the discount vouchers with the retailer for merchandise or services at the stated value of the voucher during the promotional period. At the end of the promotional period customers may redeem the discount voucher for merchandise or services at the discounted amount paid for the voucher. Subsequent to the expiration date of the voucher, the Deal Company refunds customers for purchased vouchers that are not redeemed.

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.

**State Survey – States representatives are asked to respond by Monday, March 19<sup>th</sup>.**

**State:** \_\_\_\_\_

**Preparer:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

Survey Example

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. Potential customers are not a party to or otherwise made aware of the contract between Company A and Retailer B.

- 1) Who is the seller of the Deal of the Day Voucher?  
 Deal Company A or  Retailer B
- 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 at the time the voucher is redeemed for taxable merchandise or services at Retailer B'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 sold through the redemption of the voucher?  
 Yes or  No
- 5) When the voucher is redeemed at the stated value of the voucher for taxable merchandise or services by the customer at Retailer B during the promotional period, what is the sales price (measure) subject to tax?  
 1. \$100 – stated value  
 2. \$50 – total amount paid by the purchaser  
 3. \$40 – amount distributed to Retailer B by Deal Company A  
 4. Some other amount

**Explain**

1) When the voucher is redeemed for the amount paid by the purchaser for the voucher for taxable merchandise or services at Retailer B after the expiration of the promotional period, what is the sales price (measure) subject to tax?

1. \$100 – stated value

2. \$50 – total amount paid by the purchaser

3. \$40 – amount distributed to Retailer B by Deal Company A

4. Some other amount

**Explain**

1) Is there a difference in your state in the sales price (measure) if the voucher is for a particular product or service (\$50 paid for voucher redeemable for a specific bracelet regularly priced at \$100), or if the voucher is for a stated dollar value (\$100) for any merchandise or service sold by Retailer B (\$50 paid for voucher redeemable for \$100 of any of Retailer B's merchandise or services)?

Yes or  No

**Explain**