A motion by Oklahoma to amend the SSUTA by adopting a new "~~best~~ <u>common</u> practice" relating to Vouchers:

~~Best~~ <u>Common</u> Practices Number 1 - Vouchers

This document is limited to the specific types of transactions described herein.

<u>As used herein, a voucher is</u> ~~For purposes of this best practice and completing the best practice matrix~~ an instrument that ~~meets the following requirements~~ is ~~a voucher~~:

a. ~~sold~~ <u>issued</u> 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;
b. redeemable for personal property or services in a single visit only at the seller's business;
c. redeemable either for a specific product or for a certain dollar amount towards the purchase price of any product sold by the seller;
d. ~~sold~~ <u>issued</u>, 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~~ <u>issued</u> and allows redemption of the specific voucher for personal property or services ("third party agreement");
e. not the sale of a digital code as defined by the Agreement or its rules;
f. not the sale of a ticket for an admission to a specific performance or event on a specific date and time;
g. not <u>a gift card or gift certificate nor is it</u> convertible, in whole or in part, to gift cards, gift certificates or cash;
h. not usable in combination with other promotions or coupons offered by the seller; and
i. not a prepaid calling service or a prepaid wireless calling service.

<u>Vouchers may be provided to purchasers in the form of an electronic "instrument" that is scanned by the seller from the purchaser's electronic device.</u>

~~Best~~ <u>Common Practice 1.1</u>

The <u>member state administers the</u> difference between the value of a voucher allowed by the seller and the amount the purchaser paid for the voucher ~~is~~ <u>as</u> a discount ~~should~~ <u>that is</u> not ~~be~~ 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 <u>A</u>.** A voucher is ~~sold~~ <u>issued</u> 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, 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 by Third Party from the ~~sale~~ issuance of the voucher and the additional $50 paid in cash by the purchaser directly to Seller B.

Example B. ~~A~~$20 worth of deal certificates are ~~is sold~~ issued by Third Party for $10. The purchaser is issued two $10 certificates by Third Party for a specific seller. The two $10 deal certificates do not disclose amount paid by the purchaser for each certificate. The purchaser presents $20 of taxable items to the seller and tenders the two $10 deal certificates to pay for the items. Since the amount paid by the purchaser to Third Party is not on the face of the certificate; the deal certificate is not a "voucher". If the seller can substantiate the amount the purchaser paid to the third party for the certificate, the member state would only require the seller ~~is only required~~ to charge sales tax on the amount the purchaser paid for the certificate, regardless of the value of the certificate.

Example C. A voucher is ~~sold~~ issued for $20 by Third Party which entitles purchaser to $50 towards food and drinks for a specific seller. The face value of the voucher is $50 and the amount paid ($20) by the purchaser to Third Party is indicated on the voucher. Purchaser redeems the voucher for $50 of food and drinks after the stated expiration date. The seller honors the voucher for the face value of $50. Pursuant to the agreement between Third Party and the seller, Third Party retains the $20 paid by the purchaser and does not remit any of the purchase price to the seller. The sales price would be $20. Since the voucher indicates the amount the purchaser paid for it, the difference ($30) between the face value of the voucher allowed by the seller ($50) and the amount the purchaser paid to Third Party for the voucher ($20) is not included in the sales price.

Even though the seller is not receiving any portion of the purchase price from Third Party, sales tax ~~would apply~~ applies to the amount paid by the customer ($20) to Third Party as evidenced on the voucher. The fact that Third Party does not transfer any amount ~~of the purchase price~~ to the seller does not impact the sales price upon the customer's redemption of the voucher.

Example D. A voucher is ~~sold~~ issued for $19 which entitles purchaser to $99 of services for a specific seller. The face value of $99 and the amount paid by the purchaser ($19) is indicated on the voucher. Upon ordering $99 of services, ~~P~~purchaser attempts to redeem the voucher after the stated expiration date. The seller only honors the voucher in the amount of $19 and the purchaser pays the remaining $80 in cash. Pursuant to the agreement between Third Party and the seller, Third Party retains the $19 paid by the purchaser and does not remit any of the purchase price to the seller.

The entire $99 is subject to sales tax because the voucher indicates the face value of $99 and the amount the purchaser paid for the voucher. The $19 paid for the voucher issued by Third Party and the additional $80 paid by the purchaser to the seller are included in sales price. Amounts reimbursed by the Third Party, if any, are not relevant in determining consideration included in sales price.

~~Best~~ Common Practice 1.2
The member state provides that when ~~Where~~ the discount on a voucher will be fully reimbursed by a third party (i.e., same as the treatment of a manufacturer's coupon) the seller ~~will~~ is to use the face value of the voucher and not the price paid by the purchaser as the measure (sales price) that is subject to tax.

> **Example.** Same facts as Example A in ~~Best~~ Common Practice 1.1 ~~1.2~~, except Seller B received consideration from a third party 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 consideration received as a direct reimbursement of the discount and the $50 paid in cash by the purchaser directly to Seller B.

~~Best~~ Common Practice 1.3
The member state provides that costs and expenses of the seller are not deductible from the sales price and are included in the measure (sales price) that is subject to tax. Further, reductions in the amount of consideration received by the seller from the third party that ~~sold~~ issued, 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 deducted from the sales price and are included in the measure (sales price) that is subject to tax.~~

> **Example A.** ~~Using the s~~Same facts as ~~e~~Example A in ~~Best~~ Common Practice 1.1~~2~~, 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 regardless of how the seller records the amount retained by the Third Party in its books and records. The measure (sales price) subject to sales tax is $70 which is made up of the $20 in consideration received from the ~~sale~~ issuance of the voucher (the seller may not reduce the consideration received by the $10 ~~paid to~~ retained by Third Party for advertising and marketing) and the additional $50 paid in cash by the purchaser directly to Seller B.

> **Example B.** A $20 voucher is ~~sold~~ issued by Third Party for $10 for a specific seller. The voucher indicates a face value of $20 and that the purchaser paid $10 for the voucher. By contract, the Third Party is required to remit $8 to the seller and allowed to retain~~s~~ $2 for advertising and marketing the voucher. The purchaser presents $20 of taxable items to the seller and tenders the $20 voucher to pay for the items. The sales price on which the sales tax is levied is $10, which includes the $2 retained that is a cost or expense of the seller not deductible from the sales price. The difference between the value of the voucher and the amount the purchaser paid to Third Party is a discount that is not included in the sales price.

~~Best Practice 1.4~~

~~Additional fact patterns or business models are provided below in applying the best practices provided herein. In each example below, it is assumed that the deal certificate meets the definition of a “voucher” unless otherwise noted in the facts.~~

~~**Example A.** $20 deal certificate sold by Third Party for $10. The purchaser is issued two $10 certificates for a specific seller. The two $10 deal certificates do not disclose amount paid by the purchaser for each certificate. The purchaser presents $20 of taxable items to the seller and tenders the two $10 deal certificates to pay for the items.~~

~~Since the amount paid by the purchaser to Third Party is not on the face of the certificate; the deal certificate is not a “voucher”. If the seller can substantiate the amount the purchaser paid to the third party for the certificate, the seller is only required to charge sales tax on the amount the purchaser paid for the certificate, regardless of the value of the certificate.~~

~~**Example B.** $20 deal certificate sold by Third Party for $10 for a specific seller. The deal certificate indicates the face value of $20 and that the purchaser paid $10 for the certificate. By contract, the Third Party is required to remit $8 to the seller and retains $2 for advertising and marketing the deal certificate. The purchaser presents $20 of taxable items to the seller and tenders the $20 deal certificate to pay for the items.~~

~~The sales price on which the sales tax is levied is $10. The difference between the value of the deal certificate and the amount the purchaser paid to Third Party is a discount that is not included in the sales price.~~

~~**Example C.** As a frequent user of Third Party, the purchaser is issued a $20 deal certificate by redeeming reward points. The reward points program offer is between Third Party and the purchaser. The seller receives the same consideration regardless of the arrangement between the purchaser and Third Party and the reward points program is not part of the contract between the seller and Third Party. The deal certificate does not indicate certificate was obtained through a reward points program with Third Party. The $20 deal certificate is for a specific seller and indicates that the purchaser paid $10 for the certificate. For each deal certificate issued, the Third Party is contractually required to remit $8 to the seller and is allowed to retain $2 for advertising and marketing the voucher. The purchaser presents $30 of taxable items to the specific seller and tenders the $20 deal certificate plus $10 cash.~~

~~The sales price would be $20 ($10 cash plus $10 represented by the deal certificate). The difference in the face value and the amount paid as indicated on the deal certificate would is excluded from the sales price.~~

~~**Example D.** Deal certificate sold for $20 by Third Party entitles purchaser to $50 towards food and drinks for a specific seller. The face value of the certificate is $50 and the amount paid ($20) by the purchaser to Third Party is indicated on the deal certificate. Purchaser redeems the deal certificate for $50 of food and drinks after the~~

~~stated expiration date. The seller honors the deal certificate for the face value of $50. Pursuant to the agreement between Third Party and the seller, Third Party retains the $20 paid by the purchaser and does not remit any of the purchase price to the seller.~~

~~The sales price would be $20. Since the deal certificate indicates the amount the purchaser paid for it, the difference ($30) between the face value of the deal certificate allowed by the seller ($50) and the amount the purchaser paid to Third Party for the deal certificate ($20) is not included in the sales price.~~

~~Even though the seller is not receiving any portion of the purchase price from Third Party, sales tax would apply to the amount paid by the customer ($20) as evidenced on the deal certificate. The fact that Third Party does not transfer any amount of the purchase price to the seller does not impact the sales price upon the customer's redemption of the voucher.~~

~~**Example E.** Deal certificate sold for $19 entitles purchaser to $99 of services for a specific seller. The face value of $99 and the amount paid by the purchaser ($19) is indicated on the deal certificate. Upon ordering $99 of services, Purchaser attempts to redeem the deal certificate after the stated expiration date. The seller only honors the deal certificate in the amount of $19 and the purchaser pays the remaining $80 in cash. Pursuant to the agreement between Third Party and the seller, Third Party retains the $19 paid by the purchaser and does not remit any of the purchase price to the seller.~~

~~The entire $99 is subject to sales tax because the certificate indicates the face value of $99 and the amount the purchaser paid for the certificate. The $19 paid for the certificate and the additional $80 paid by the purchaser are included in sales price. Amounts reimbursed by the Third Party, if any, are not relevant in determining consideration included in sales price.~~

~~**Example F.** Third Party sells gift cards and gift certificates that may be redeemed by the holder for purchases from Seller. The gift cards or certificates are not prepaid calling services. Third Party sells the gift cards and gift certificates with a face value of $25 for $16.25. Third Party retains $16.25 and provides future advertising services to Seller. The amount paid by the purchaser to the Third Party is not shown on the gift card or gift certificate. The holder presents $40 of taxable items to Seller and tenders a $25 gift card or gift certificate and $15 cash as payment for the items.~~

~~The document does not apply to gift cards or gift certificates. When the holder of a gift card or gift certificate redeems the card or certificate, or a part thereof, for taxable items, sales tax is due on the total sales price of the taxable items before credit for any gift card of gift certificate redeemed by a purchaser.~~

~~**Best Practice 1.5**~~

~~Vouchers may be provided to purchasers in the form of an electronic "instrument" that is scanned by the seller from the purchaser's mobile device. The seller is unable to retain a copy of the instrument.~~

~~If an electronic instrument has the information as described herein, the discount from sales price would apply. The voucher need not be in print form. The seller's records, including contractual arrangements, cash register tapes and bank account records, should identify discounts provided to the purchaser and the amount paid to Third Party by a purchaser. During an audit, the seller must be able to provide the necessary information from the contractual agreements with third parties, number of vouchers redeemed and information to reconcile amounts remitted by third parties.~~