

A motion by Kentucky and South Dakota to amend Article III of the Streamlined Sales Tax Governing Board’s Rules and Procedures

Rule 336.1. Authorization Codes

- A. Section 336.A. provides that the tax treatment of an “authorization code” shall be the same as the tax treatment (including sourcing) of the “product or service” to which the “authorization code” relates.
- B. Section 336.E. provides that the retail sale of the “authorization code” shall be considered the transaction for purposes of the Agreement. Additionally, the transfer of the “authorization code” to the customer is the taxable event; no taxable event occurs when the purchaser later exercises the “authorization code” and receives the product or service.
- C. The sourcing of the authorization code is based upon where the customer receives the related product or service if known by the seller at the time of the sale of the authorization code.
- D. The term “voucher,” as used in Section 336.4.BD.2, shall be interpreted in a manner consistent with how that term is used in Disclosed Practice 1.
- E. The following examples illustrate the application of Section 336.

Example 1: Game Credits – Downloaded Software

GameCo develops and sells computer games that are downloaded and played solely on gamers' devices. GameCo allows its customers to download copies of its basic game for no charge. Gamers can purchase codes from third-party sellers that allow for higher levels of play and other enhancements to the game’s play, which are obtained by downloading the enhancements to the gamers' devices. The higher levels of play and other game enhancements are downloaded prewritten computer software. Customers can purchase game credits in various increments (i.e., “GameCoCredits”).

Scenario: Customer C purchases a card at a third-party retailer’s business location with a code that gives Customer C 100 GameCoCredits. GameCo has no knowledge of the price the retailer charged Customer C for the 100 GameCoCredits. The retailer has no knowledge of where the customer will use the credits. Customer C loads the 100 GameCoCredits into his or her GameCo online account. The GameCoCredits are deducted from Customer C’s account as Customer C uses the credits to download and obtain enhancements to the game.

Conclusion: The code for the GameCoCredits is an authorization code. Since neither GameCo nor the retailer billscharges or obtains payment from Customer C at the time the GameCo Credits are used, there is no opportunity for GameCo or the retailer to collect sales tax. If sales of downloaded computer software are taxable at the retailer’s business location, the retailer must collect sales tax on the sale of the card containing the code.

Example 2: Symphony Performance Ticket (NET)

The local symphonic orchestra holds concerts during the concert season. Concert tickets can be purchased on a website. The concert tickets sold on the website are for concerts on a specific

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date and are for a specific seat in the concert hall. When a patron buys a ticket from the website, the patron receives a "QR" code that the patron can either print or have available for display on a smart phone. The patron receives the service when the QR code is used to enter the concert hall.

Scenario: Upon arrival at the concert hall, the patron displays the QR code and the ticket taker scans the code and lets the patron into the concert. The patron enters the concert hall and proceeds to his or her assigned seat. The patron is not obligated to make any additional payment.

Conclusion: The QR code is an authorization code. Since neither the seller of the QR code nor the ticket taker bills-charges or obtains payment from the patron when the QR code is presented there is no opportunity for the seller or ticket taker to collect sales tax. If sales of concert tickets are taxable at the concert location, the seller must collect sales tax on the sale of the "QR" code.

Example 3: Haircut (services)

A barber charges \$50 for a haircut. The barber, through a social media website, pre-sells haircuts at her barbershop. The social media website transmits money received from purchasers to the barbershop. The barber has only one location. Customers have the option of purchasing an authorization code entitling the customer to (1A) a certain dollar amount towards the purchase of a haircut or (2B) a \$50 haircut without any further paymentcharge.

Scenario A: Customer Y buys a code that allows Customer Y to receive \$30 towards the cost of a haircut. Customer Y gets a \$50 haircut. Customer Y uses the \$30 code and pays the \$20 difference.

Conclusion: The code in Scenario A is not an authorization code for at least two reasons. First, it is a "gift card" specifically excluded from the definition of authorization codes by Section 336.D.1. Second, the barber charges Customer Y for the difference between the price of the code and the price of the haircut at the time the barber service is provided giving the barber an opportunity to collect sales tax at that time. The code is excluded from the definition of "authorization code" by Section 336.D.4.

The social media website that Customer Y bought the code through is not obligated to collect sales tax on the sale of the code because it is the sale of a gift card. The barber is obligated to collect the sales tax on the \$50 price of the haircut at the time the customer receives the haircut if barber services are subject to tax in the barber's state.

Scenario B: Customer Y buys a code through a social media website that allows Customer Y to receive a haircut from the barber for no additional charge. Customer Y gets the haircut, uses the code and pays nothing to the barber shop.

Conclusion: The code in Scenario B is an authorization code because the barber does not bill charge Customer Y when the haircut is provided. The barber is obligated to give the haircut for no additional paymentcharge and Customer Y is not obligated to make any additional payment upon receipt of the haircut.

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Customer Y receives the service at the barber's shop. The social media website that Customer Y purchased the code through is obligated to collect sales tax on the sale of the code based upon where the barber services will be received if barber services are subject to tax in the barber's state.

Example 4: Flat screen TV (TPP)

TV Shop, with a single location, maintains a website where customers can buy codes redeemable for a flat screen TV. Customers have the option of purchasing a code that entitles the holder to receive either (A) a specific dollar amount for the purchase of a flat screen TV; or (B) a specific model flat screen TV without any further payment. Customers must go to TV Shop's business location to redeem the code.

Scenario A: Customer X buys a code for \$300 towards the cost of any flat screen TV from TV Shop. Customer X gives the code to his son as a birthday present. Customer X's son takes the code to TV Shop and shops for a new flat screen TV. Customer X's son selects the model he wants which retails for \$700, uses the \$300 code and pays the \$400 difference.

Conclusions: The code in Scenario A is not an authorization code, because for at least two reasons. First, it is a "gift card" specifically excluded from the definition of authorization codes by Section 336.D.1. Second, Section 336.D.4, deems the transaction is not an authorization code.

Because TV Shop charges Customer X for the difference between the price of the code and the price of the TV at the time the TV is delivered to Customer X such that there is an opportunity to collect sales tax at that time, the code is excluded from the definition of "authorization code" by Section 336.D.4.

TV Shop is not obligated to collect sales tax on the sale of the code at the time the code was sold. TV Shop is obligated to collect the sales tax from Customer Y's X's son on the \$700 sales price of the flat screen TV, if sales of flat screen TVs are subject to tax in the state of the TV Shop's business location.

Scenario B: Customer Y buys a code that allows the holder of the code to receive a specific flat screen TV from TV Shop. Customer Y gives the code to his son as a birthday present. Customer Y's son takes the code to TV Shop, uses the code and receives the specific flat screen TV without making any additional payment.

Conclusions: The code in Scenario 2 is an authorization code because it is for a specific item and there is no opportunity for TV Shop to collect sales tax at the time of delivery of the flat screen TV. TV Shop is obligated to give Customer Y's son the flat screen TV for no additional payment charge by either Customer B-Y or his son.

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The flat screen TV must be picked up at TV Shop's location. The TV Shop is obligated to collect sales tax on the sale of the code based on the location of the TV Shop and if sales of flat screen TVs are subject to tax in the state of TV Shop's business location.

Example 5: Preorder for Pickup

StoreCo is a retailer of general merchandise and grocery products with storefronts in various states. StoreCo maintains their own website where customers can purchase items for pick up. Customers place orders on the website, provide payment information, and selects an available day and time to pick up the order at a store location. Customers authorize the payment, but the customer is not charged by StoreCo until the order is fulfilledpicked up. CustomersAt the time the order is placed, customers receive a barcode, that must be presented to pick up the order, at the time the order is placedat the time the order is picked up.

Scenario: Customer A places an order for products on StoreCo's website. Customer A selects location, date and time to pick up the products ordered. Customer A provides their payment information when they place the order. StoreCo sends Customer A a barcode for the order that is placed, acknowledging the location, date and time for pickup. Prior to Customer A's designated pickup day and time, StoreCo fulfills the orderemployees will select the items from the store shelves making any necessary adjustments for out-of-stock or weight-based products. Once the order is fulfilledpicked up, Customer A's payment method is charged for the adjusted total. Customer A arrives at the selected location, date and time and receives the products ordered.

Conclusion: The barcode is not an authorization code because StoreCo did not bill-charge the customer at the time the barcode was issued. Customer A is billed-charged once-when the order is fulfilledpicked up. StoreCo is obligated to collect sales tax on the products that are subject to tax in the state where the products are picked up by Customer A.