

The SSTP approved moving this issue Paper and proposed amendment to the Streamlined Sales and Use Tax Agreement to Implementing States at the Atlanta SSTP meeting on March 9, 2005. Implementing States approved this amendment on April 16, 2005. Member states are to amend their laws by January 1, 2008.

BUYDOWNS, MANUFACTURERS' COUPONS, STORE COUPONS

Amend Appendix C, Part I. 6, "sales price" by inserting the following language at line 17 on page 63:

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.

"Sales price" and "purchase price" include consideration received by the Seller from third parties if:

1. 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;
2. The seller has an obligation to pass the price reduction or discount through to the purchaser;
3. 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
4. One of the following criteria is met:
 - a. 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 third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
 - b. 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

- c. 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.

Examples:

1. **Seller's/in-store coupon.** The purchaser presents a coupon to the seller at the time of sale entitling the purchaser to a \$1.00 reduction in the sales price. The amount of the consideration is certain at the time of the sale. The purchaser has taken affirmative action to claim the discount. The discount is not included in sales price, however, because the seller is not reimbursed for the \$1.00 discount by any third party.
2. **Manufacturer's coupon.** The facts are the same as in Example 1, except the seller is entitled to receive \$1.00 in cash or credit from the product manufacturer on presentation of the coupon. The coupon is issued by the manufacturer and the manufacturer will reimburse any retailer who accepts the coupon from the purchaser. The \$1.00 discount is included in sales price.
3. **Manufacturer's coupon—special deal.** The facts are the same as in Example 2, except the manufacturer has authorized a specific retailer to distribute 1,000 coupons in its stores pursuant to a special marketing promotion. The \$1.00 discount is identified on the cash register tape provided to the purchaser, but it is not specifically identified as a manufacturer's discount. The manufacturer will not honor the coupons if presented to it by another retailer. The \$1.00 discount is not includable in the sales price under paragraph 4.a. because the coupon is not generally negotiable by any retailer. If, however, the discount is identified as a manufacturer's discount on the invoice or cash register tape, or on the coupon itself, the \$1.00 discount is includable in sales price under paragraph 4.c.
4. **Group discounts.** A seller offers a 10% discount to all members of a particular credit union. The credit union member must present an identification card or other evidence of membership in the credit union to claim the discount. If the seller is reimbursed by the credit union for the discount, the discount is included in the sales price. If the seller is not reimbursed by the credit union, the amount is not included in the sales price. Because the purchaser has taken affirmative action to claim the discount, it is not necessary that the purchaser know the terms of reimbursement between its organization and the seller. Failure to include the discount on the sales invoice, however, will not relieve the seller of liability for collecting the proper amount of sales tax.
5. **Volume discounts.** A seller purchases appliances from a manufacturer for \$1,000 each and resells them to customers at \$1,500. If the seller sells more than 100 appliances in a month, the manufacturer will provide a rebate of \$100 per item sold. In-store advertising indicates that "sales prices are slashed due to manufacturer's incentives." The amount of the rebate is not shown on the purchaser's invoice and all purchasers receive the reduced price. Accordingly, the rebate amount is not included in the sales price.

6. **Seller's "loyalty" cards—no reimbursement.** A grocer offers a "loyalty" or "preferred customer" discount card to its customers at no cost, which they can present at the cash register for selected discounts and savings whenever they patronize the grocer. The "preferred customer" card is available on request to any customer. The discounts are identified on the cash register tape, either on an item-by-item basis, or as a "total savings" amount at the end of the tape. None of the discounts are reimbursed by manufacturers or other third parties. Because a "preferred customer" card that is available to any patron does not constitute "special status" under paragraph 4.b, and there is no third party reimbursement under paragraph 1., the discounts are not included in the sales price.

7. **Seller's "loyalty" cards—reimbursement.** The facts are the same as in Example 6 except some of the discounts are based on the grocer's agreement with a manufacturer, pursuant to which the discount is reimbursed. As noted above, a "preferred customer" card that is available to any patron does not constitute "special status" under paragraph 4.b. Thus, although the seller is actually reimbursed by a third party, the discounts are not included in sales price unless the discount is actually identified on the cash register tape as a "manufacturer's discount" as provided by paragraph 4.c.

8. **Advertising incentives.** A manufacturer agrees to pay seller \$5.00 per case that must be used to cover the cost of advertising, shelf space and other promotional costs, but does not require or specify that the payment be in any way used to reduce the retail price of the product. The seller runs an in-store promotion discounting the product using the seller's purchase discount card. Because the seller must expend the consideration for purposes determined by the manufacturer and because the consideration is not directly related to the seller's promotional discount to the consumer, the consideration is not included in the sales price.

9. **Cigarette buy-downs.** A retailer sells cigarettes at its retail store. Pursuant to an arrangement with the distributor, the seller receives a discount of \$.50 per pack for every pack of cigarettes it sells. The retailer passes the discount through to the customer. There is advertising in the store indicating that the prices have been reduced because of a special promotion by the distributor. The discount is not shown on the customer's invoice or cash register receipt. The "buy-down" discount is not included in the sales price because the customer does not know and should not be expected to know that the retailer is being reimbursed by a third party.

10. **Cigarette buy-downs where the manufacturer's discount is identified.** The facts are the same as in Example 9, except the customer's receipt identifies the \$.50 per pack discount. The discount is not included in sales price unless the discount is specifically identified on the receipt as a "manufacturer's discount."

11. **Automobile rebate.** An automobile manufacturer provides a \$2,000 rebate to a customer on the purchase of a specific model of automobile. The customer negotiates a \$20,000 purchase price on the automobile. The customer then has a choice. She may pay

\$20,000 to the dealer and receive \$2,000 in cash directly from the manufacturer. In that event, the sales price is \$20,000. In the alternative, she may assign the rebate to the dealer and pay an additional \$18,000 for the automobile. Because the dealer will be reimbursed for the \$2,000 rebate by the manufacturer, the \$2,000 rebate is passed through to the customer, the amount of the rebate is known by the dealer at the time of the sale, and the rebate is identified as a manufacturer's rebate on documentation received by the purchaser, the rebate is included in the sales price. Thus, the sales price is \$20,000 whether the customer cashes in the rebate or applies the rebate to the purchase price. A state, however, has the option to provide that manufacturer's rebates on automobile purchases are not included in the sales price. If a state exercises that option, the taxable amount of the sale in the second scenario would be \$18,000, even though the dealer was reimbursed for the rebate.

12. **Employee discount-automobiles.** An automobile manufacturer has an automobile purchase plan for its employees. Pursuant to the program, the employee may purchase a vehicle from an authorized dealership at a predetermined price. The manufacturer provides some additional compensation to the dealer. Because the dealer receives the additional compensation from the manufacturer, the benefit of the price reduction is passed through to the customer, the amount of the consideration received by the dealer from the manufacturer is known by the dealer at the time of the sale, and the purchaser has identified herself as a member of a group entitled to a special price, the consideration received by the dealer from the manufacturer is included in the sales price. A state, however, has the option to provide that employee discounts on automobile purchases are not included in the sales price. If a state exercises that option, the amount of consideration received from the manufacturer would not be subject to tax.