

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(11)S
Sales Tax
June 2, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether, in calculating the sales tax due on a sale of cigarettes, a vendor should take into account a manufacturer’s funded price reduction (buy-down) applicable to that sale. We conclude that, because the buy-down is a reimbursement after the fact, when calculating the sales tax on a carton of cigarettes the entire sales price, with the buy-down added in, is subject to sales tax.

Facts

Petitioner is a retail dealer of cigarettes and tobacco products with various locations throughout New York State. Some cigarette manufacturers provide cigarette retailers with a price reduction or “buy-down” in the amount of a specified number of dollars per carton of a specified brand of cigarettes sold by the retailer. The retailer charges the customer a reduced price for a carton of cigarettes and, in addition, receives a buy-down payment from the manufacturer.

Analysis

Article 28 imposes a sales tax on receipts from every retail sale of tangible personal property, which includes sales of cigarettes. *See* Tax Law §§ 1103 and 1105 (a). The sales tax imposed under Article 28 also includes any tax imposed on cigarettes under Article 20. *See* Tax Law § 1111 (h). Article 20-A of the Tax Law (Cigarette Marketing Standards Act or CMSA), mandates that cigarettes be sold within New York State at a minimum price, or any price in excess of the minimum. *See* Tax Law §§ 483, 484, & 488; 20 NYCRR 80.1 (a). The basic cost of cigarettes to the agent is the manufacturer’s list price, less all trade discounts, plus the face value of any tax stamps required to be affixed to the packages of cigarettes. *See* TSB-M-00(2)M; *also* Tax Law § 483 (a) (1); 20 NYCRR 80.2 (a) (1) & (2).

Generally, under a manufacturer’s funded price reduction (buy-down), a manufacturer or a manufacturer’s representative offers a retail dealer a rebate for sales of a particular brand of cigarettes either for a specific quantity of cigarettes or for the quantity of cigarettes sold over a predetermined period of time. *See* TSB-M-00(2)M. These rebates are not deducted from the manufacturer’s list price shown on the invoice to the retailer, but rather are paid or credited separately subsequent to the sales. *Id.* Under the CMSA, buy-downs cannot be used to reduce the minimum resale price of cigarettes. *See Id.*; *see also* Tax Law §§ 484 & 485 (a) (2).

Sales tax applies to the “receipts” from a taxable sale. See Tax Law § 1105(a). The term “receipt” is defined as the “[t]he amount of the sale price of any property.” See Tax Law § 1101(b)(3). Where a store issues a coupon involving a manufacturer's reimbursement, but does not disclose, on the coupon or in the advertisement, to the purchaser that the discount is funded by the manufacturer, the vendor will collect from the purchaser only the tax due on the reduced price, but is required to pay the tax on the entire receipt—the amount of the price and the reimbursement received from the manufacturer or distributor. See 20 NYCRR 526.5 (c) (4).

Here, as a retail dealer of cigarettes, Petitioner is barred by the CMSA from reducing the selling price below the minimum price to reflect the buy-down. However, Petitioner is still receiving the buy-down amount as a result of selling a carton of cigarettes. Therefore, the amount of the buy-down is includible in its receipts subject to tax and Petitioner must collect tax on the amount it receives from the customer and pay tax itself on the amount of the buy-down. See 20 NYCRR 526.5 (c) (4).

Petitioner provided an example of premium brand cigarettes sold to a customer at the minimum price of \$99.63 per carton where the retailer received \$6.40 in a buy-down per carton. The customer pays sales tax on \$99.63, which, assuming an 8% combined state and local sales tax rate, is \$7.97. To calculate the additional sales tax owed by the retailer, the cost of the buy-down is added to the cost per carton and tax is calculated on that amount. The total sales price becomes \$106.03, which would result in a sales tax of \$8.48. Since the tax due from the customer remains \$7.97, the retailer is required to remit the additional tax due of \$0.51.

DATED: June 2, 2020

/S/
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Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.