

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-99(10)S
Sales Tax
March 1, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S981019A

On October 19, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from PricewaterhouseCoopers LLP, One Post Office Square, Boston, Massachusetts 02109.

The issue raised by Petitioner, PricewaterhouseCoopers LLP, is whether cash discounts taken at the time of sale upon presentation of an encoded and electronically readable card are excluded from the sales price upon which the sales tax is based.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A supermarket chain (the "Company") has implemented a retail customer-specific discount program. Under this program, the Company issued an encoded electronically readable card (the "Card") to all of its existing check-cashing and courtesy card customers. The Company continues to offer Cards to any customers who request one. Each Card, which is similar in shape, appearance, and function to a bank automatic teller machine (ATM) card, carries unique information that enables the Company to identify the customer to whom the Card was issued and to use the data gathered with the Card for various marketing purposes.

A customer who purchases goods at one of the Company's supermarkets may present the Card for scanning at the cash register. Purchases made by a customer who has presented a Card are eligible for price discounts which are announced by the Company on a periodic basis. The discounts are promoted by a number of methods, including advertising circulars distributed by newspaper inserts and displays located in the supermarkets. Customers who do not present the Card when they make their purchases do not receive the discounts. The Card-user discounts are allowed in addition to any price reductions the customer may receive by presenting a manufacturer's coupon for a specific item (including items for which a Card-user discount is offered).

The choice of products to be discounted during any particular period is based upon a number of factors. In determining whether to discount a particular product, the Company considers the availability of supplier price discounts and reductions, as well as other supplier promotions, allowances, sponsorships, or reimbursements (collectively referred to below as "supplier discount programs"). These supplier discount programs are only a portion of the market factors considered when discounting products. These supplier discount programs are negotiated in the ordinary course of the Company's business to reduce the cost of the applicable products from the products' manufacturers, distributors, promoters, and other suppliers who desire the Company's promotional

services with respect to their products. These supplier discount programs may take any number of forms, including the following:

1. Off-invoice allowances, where the supplier reduces the invoice cost of a product to the Company for a limited period (e.g., a reduction from \$10 to \$8.00 in the Company's invoice cost to purchase a case of product units);
2. Bill-back allowances, which are similar to off-invoice allowances, except the allowance is made separately from the invoice, which reflects the usual cost of the product to the Company;
3. Net price product adjustments, where the supplier permanently reduces a product's invoice price to reflect a promotional allowance;
4. Advertising sponsorships, where the supplier pays money to the Company so that the Company will feature their products in Company produced promotional and advertising materials; and
5. "Scan buy-downs", where the supplier pays the Company a fixed amount per product unit sold to the customer determined solely based on products sold (i.e. "scanned" at the register), adjusted for lost sales, and are not dependent on Card usage.

All the above supplier discount programs are often implemented in various combinations. For example, a supplier desiring to promote a particular product might grant an "off-invoice" allowance for that product for a specified period and might simultaneously pay the Company an additional sum in order to have the Company feature the product as a sale item for Card participants in the Company's weekly advertising circular.

Applicable Law and Regulations

Section 1101(b)(3) of the Tax Law defines the term "Receipt" as follows:

The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery is provided by such vendor or a third party, but excluding any credit for tangible property accepted in part payment and intended for resale....

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax.-On and after June first, nineteen hundred seventy-one, there is hereby imposed and shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article....

Section 526.5 of the Sales and Use Tax Regulations states in part:

(a) *Definition.* The word *receipt* means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(c) Coupons. (1) Where a manufacturer issues a coupon entitling a purchaser to a credit on the item purchased, the tax is due on the full amount of the receipt. The receipt is composed of the amount paid and the amount of the coupon credit. The coupon credit reflects a payment or reimbursement by another party to the vendor.

Example 1: A manufacturer issues coupons entitling the holder to credit allowances of 12 cents on the purchase of its products from a retailer. The tax is computed as follows by the retailer:

Regular price	63¢
Tax at 7% rate	<u>5¢</u>
	68¢
Credit for mfr. coupon	<u>12¢</u>
Amount due from purchaser	56¢

(2) Where a store issues a coupon, entitling a purchaser to a credit on the item purchased, for which it is reimbursed by a manufacturer or distributor, the tax is due on the full amount of the receipt. The receipt is composed of the amount paid and the amount of the coupon credit. The coupon must indicate, by "mfr" or some other code, that reimbursement is made. The reimbursement from the manufacturer or distributor to the store may be made in any form, such as cash or a credit against purchases or in additional merchandise.

Example 2: A store issues a coupon, labeled "mfr" entitling the holder to a credit allowance of 12 cents on the purchase of its products from a retailer. The purchaser is billed as follows by the retailer:

Regular price	63¢
Tax at 7% rate	<u>5¢</u>
	68¢
Credit for mfr. coupon	<u>12¢</u>
Amount due from purchaser	56¢

(3) Where a store issues a coupon entitling a purchaser to a discounted price on the item purchased, and receives no reimbursement, the tax is due from the purchaser on only the discounted price, which is the actual receipt.

Example 3: A store issues coupons entitling the holder to credit allowance of 12 cents on the purchase of its products from a retailer. The purchaser is billed as follows by the retailer:

Regular price	63¢
Store coupon	<u>12¢</u>
	51¢
Tax at 7 percent rate	<u>4¢</u>
Amount due from purchaser	55¢

(4) Where a store issues a coupon involving manufacturer's reimbursement, but does not disclose that fact to the purchaser on the coupon or in the advertisement, the vendor will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax on the entire receipt--the amount of the price and the reimbursement received from the manufacturer or distributor.

Opinion

The use of the Card by a customer of the Company produces the same result as when the customer offers a coupon for an item. That is, when a coupon for an item is offered simultaneously with the purchase of the item, a discount equal to the face amount of the coupon is given to the customer. Like a coupon, discounts available through the use of the Card generally have limited effective dates as the discounts are available only during a particular time period. Therefore, the issuance of the Card is equivalent to the issuance of a continuous and generic store issued coupon for purposes of Section 526.5(c) of the Sales and Use Tax Regulations.

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Since the use of the Card by a customer for purposes of obtaining discounts on the purchase of items is the same as using a store issued coupon, we must determine whether the various supplier discount programs as described by Petitioner constitute a manufacturer's or distributor's reimbursement to the Company based on the use of the Card within the meaning and intent of Section 526.5(c) of the Sales and Use Tax Regulations. The Company enters into these supplier discount programs as part of its normal wholesale buying practices. Regarding the 1) off-invoice allowances, 2) bill-back allowances, and 3) net price product adjustment arrangements, the suppliers are providing different forms of up front reductions in the cost of goods purchased by the Company. With respect to 4) advertising sponsorships, the suppliers provide Company with money to be used for featuring their products in Company produced promotional and advertising materials. The facts of the Petition do not indicate that, with respect to these discount programs, the Company will be reimbursed for discounts given to customers that result from presenting the Card at the point of purchase.

Regarding 5) scan-buy downs, suppliers participate by paying the Company a fixed amount per product unit sold. The payments are determined solely on cash register data, not upon Card usage. That is, regardless of whether the customer presents a Card and receives the discount, the Company receives a payment from the supplier for each sale of its product. Use of a Card is irrelevant to the payment from the supplier, as the Company receives an amount from the supplier based on the occurrence of the sale, and not the use of the Card.

The various supplier discount programs described by Petitioner do not result in reimbursements by manufacturers or distributors related directly to customers' use of the Card. Therefore, the cash discounts taken at the time of sale are not included as receipts subject to sales tax under Section 1101(b)(3) of the Tax Law. See Section 526.5 of the Sales and Use Tax Regulations. The opinion expressed herein is limited to and relates only to the supplier discount programs specifically described in this Petition.

DATED: March 1, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.