
Opinion of the Tax Commissioner

Date Issued: May 9, 2003

Opinion No: 02-0004

Tax: Sales

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Subject: Total Order Coupons

This opinion is in response to your request for an Opinion of the Tax Commissioner dated October 31, 2002. Your company is the operator of a number of grocery stores in Ohio. You have requested an opinion of items purchased using one of your company's coupons.

STATEMENT OF FACTS

Traditionally the coupons issued by grocery stores have been issued to promote the sale of a particular product and develop customer loyalty. The coupons are intended to reduce the selling price of a specific promoted product to entice customers to purchase that product. XXXX is considering issuing coupons that allow the customer a certain "\$ amount off the total order" irrespective of the product or products being purchased. The coupon campaign is targeted and designed to foster and reward customer loyalty.

In a typical transaction the customer would take their basket of goods to the checkout lane where the order would be entered into the cash register. The customer would then hand the "\$ amount off the total order" coupon to the cashier along with any traditional product based store coupons they might have. The cashier would first deduct any traditional product based store coupon amounts then deduct the "\$ amount off total order" coupon from the order total before tax. However, a question arises on how to apply the coupon when the "\$ amount off total order" coupon is used to purchase a mixture of goods that include items that are sales taxable and items exempt from sales tax.

Point-of-sales systems of XXXX are not designed to have the ability to allocate coupons between taxable and non-taxable sales. The cost of re-engineering the system to do so would be prohibitive. The only method of allocation that XXXX has available to our system is hierarchical.

QUESTIONS FOR WHICH AN OPINION IS REQUESTED

- 1) Since the coupon is not item specific may we assume that the coupons hierarchically apply first to items that are taxable then to tax exempt items? This would have the effect of reducing the tax base by the amount of the coupon in most cases.

2) If not, what is the proper Ohio Sales Tax treatment of this new coupon amount?

ANSWER TO QUESTIONS

The circumstance you describe is similar to the situation in the case Mindy's Inc. v. Lindley (1981), B.T.A. Case Nos. 80-A-41 through 46, in that you indicate that the "\$ amount off the total order" discounts your stores give are deducted from the total purchase by the consumer. Effectively, your coupon functions like a gift certificate. Rule 5703-9-15(A) of the Ohio Administrative Code defines a gift certificate as "a document which has a face value toward the purchase of tangible personal property or services." Division (D) of the same rule states:

When a purchased coupon, coupon book, or gift certificate is used to purchase tangible personal property or services, the price for tax purposes is the selling price of such property or services before application of the discount or gift certificate amount

While your "\$ amount off the total order" coupons are not sold in the way other gift certificates are, the customer obtains them by purchasing a certain amount of product from you company's stores. The use of the coupon, to the consumer, is exactly like a gift certificate in that the coupon is worth a fixed dollar amount against any purchase at the store. As such, it does not affect the amount of tax charged to the consumer on the transaction. The coupon should not be viewed as a reduction in price of any specific items in the purchase. Rather, it should be viewed as a partial payment for the total order. Tax on the order should be computed and added to the total before application of a "\$ amount off the total order" coupon.

Given the facts as you presented them, the discount granted by the "\$ amount off the total order" coupon is not directly applied to the purchase of specific items. Rather, it is applied to the final total of the order. In this situation, the tax will apply to the order before application of the coupon.

This Opinion applies to the taxpayer only. It may not be transferred or assigned. In addition, the tax consequences state in this Opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of such changes. R.C. 5703.53(E).

Thomas M. Zaino
Tax Commissioner