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## Opinion of the Tax Commissioner

Opinion No: 07-0006

Date Issued: February 25, 2008

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Tax: Sales

Subject: Point-Of-Sale Coupon Service

XXXX (“Company”) has requested an Opinion of the Tax Commissioner (“Opinion”) pursuant to section 5703.53 of the Ohio Revised Code (R.C.).

### FACTS

The Company indicates that it has recently begun offering a new marketing and data analysis service at the point-of-sale (“POS”) in retail stores. With this service, the Company contracts with numerous manufacturing companies to deliver manufacturer coupons free of charge to specified shoppers as they check-out at retail stores. The POS coupon service offering is based on what products the shoppers have purchased in the past 52 weeks and if the shopper meets certain purchase criteria. The service targets customers who hold the retail store’s “loyalty” card and that do not have a valid mailing address. The POS coupon service provides the retail store’s customers with twelve manufacturer coupons and two retail store coupons.

The Company’s POS coupon service consists of analyzing a customer’s purchases over a 52 week period which is then used in determining the printing of certain product and store coupons on qualifying purchases. The Company and its manufacturing clients establish the criteria for the qualifying purchases necessary to issue the manufacturer coupons. The criteria may be based on any combination of the following: quantity of purchases, products being purchased, and/or dollar amount of products purchased. In setting the criteria to be utilized, the Company utilizes its industry knowledge to consult with its manufacturing clients to offer insights as to the most beneficial POS coupon response criteria. In addition, the criteria may be changed over the course of time in order to generate a more favorable response. Once a customer’s purchases have met the specified criteria, certain POS coupons are generated via a computer system. By utilizing the computer system to analyze the customer’s shopping habits and determine if certain coupons should be generated for a particular customer, the manufacturing companies and retail stores have an effective way to market products to specified individuals and to develop and maintain customer loyalty. The following summarizes the POS coupons service:

- 1) The Company’s retail store client issues a loyalty card number to its customers.
- 2) When the loyalty card number is scanned through the retail store’s POS system, the customer purchases are recorded into the Company’s database via an on-line computer system; the database captures the items purchased by the loyalty card holder by utilizing the item’s Universal Product Code (“UPC”) or bar code.

- 3) The Company captures and maintains 52 weeks of purchase data by loyalty card holder which is utilized in analyzing and determining if a loyalty card customer qualifies for coupons to be printed at the POS.
- 4) Upon analyzing the purchase data one of the following actions will result:
  - a) loyalty card customer did not meet specified criteria, so the computer system generates a “no” response or action (i.e. no coupons are generated), or
  - b) loyalty card customer meets specified criteria, so the computer system generates twelve manufacturer redeemable coupons on behalf of multiple manufacturing companies, and two retail store coupons; the store coupons are not item specific, for example the coupon may state “\$10 off your next purchase of \$100 or more.”
- 5) When the analyzed data results in POS coupons being issued, the computer system generates the coupons via a printer which is located next to the store’s POS system; the coupons are printed on thermal paper.
- 6) Finally, upon completing the sale, the cashier will present the coupons, if generated, to the customer along with the sales receipt; the customer then has the option of retaining the coupons and redeeming them on their next store visit.

While the object of this service is to analyze the customer’s shopping behaviors in order to market specific products and generate customer loyalty with money saving coupons, the Company plans to charge its manufacturing clients for this service based on a set price for each manufacturer coupon generated (i.e. \$.07 per coupon printed). There is no charge for the two retail store coupons that are generated. Since the fees associated with this service are based on the number of POS coupons generated and the fact that the customer’s 52 week shopping behavior will determine if any POS coupons are generated or not, the amount the Company may invoice to its manufacturing clients will vary from month to month. In addition, since many costs are associated with the entire service, including labor and computer hardware/software costs, the actual cost of printing the thermal paper coupons is an insignificant portion of the total service cost being provided.

In providing this service, the Company outsources the service to an independent third-party. The outsourcing company performs all of the technical services on behalf of the Company. The outsourcing company maintains, owns and operates the entire computer hardware and software infrastructure necessary to provide the POS coupon service. In addition, all rights, title and interest in the software are retained by the outsourcing company and are never transferred to the Company or any of the Company’s clients. The outsourcing company invoices the Company for the services based on a set price for each manufacturer coupon generated (i.e. \$.04 per coupon printed). The Company does not bill for the retail store coupons generated. Thus, the Company generates a profit based on the marked-up cost of the POS coupon service invoiced to its manufacturing clients.

While part of Company's service is the generation of the POS coupons, the Company also provides services related to electronic processing and analyzing of customer purchase data.

The Company's representative indicated by telephone on October 17, 2007 that there is no additional charge separate from the per coupon charge to the manufacturer for the electronic processing and analyzing done by the computer in order to generate the coupon at the POS.

### **QUESTION FOR WHICH OPINION IS REQUESTED**

Company requests the Opinion of the Tax Commissioner on the proper sales and use tax treatment of its POS coupon service as described above. It asks for an opinion that it is providing a nontaxable personal service and that it should be considered the consumer of all materials and services purchased in providing this nontaxable service.

### **DISCUSSION**

Pursuant to R.C. 5739.02, the Ohio sales tax applies to all retail sales in this state. R.C. 5739.01(B) defines "sale" for Ohio sales tax purposes to include any transfer of title, possession, or a right to use tangible personal property in this state or the provision of a designated taxable service in this state for a consideration.

Further, R.C. 5741.02(A) levies the Ohio use tax on any storage, use or other consumption of tangible personal property or the receipt of the benefit of a taxable service in Ohio.

R.C. 5739.01(D) defines the term "consumer" for sales tax purposes.

"Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

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(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exemption under division (B)(42)(f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

Company is in the business of marketing. It sells to its customers an understanding of the marketing behavior of consumers making purchases at various retail stores. The offering by Company explained above is a marketing and data analysis service where Company contacts manufacturers to sell them the service of providing coupons to consumers checking out at a retail store based upon set criteria of purchases made by the particular consumer. Company and the manufacturers determine the criteria, which will vary from manufacturer to manufacturer but may include, for example, quantity of items purchased, brand being purchased and/or other criteria has noted in the facts above.

The facts show that Company is distributing, or out sourcing the distribution of, printed material (the coupons) to a designated segment of the public (those that meet certain criteria) without charge. Under these facts Ohio law provides the Company is the consumer, for purposes of Ohio sales and use tax, of purchases of the printed matter, R.C. 5739.01(D)(4)(b). Along with the service of printing the coupons at the POS, Company is providing the electronic processing and analysis that allows a particular coupon to be printed. This “behind the scenes” collection and analysis of data so that it is able to sell its coupon generating marketing tool is part of the service it offers to its clients. It is not selling an automatic data processing service to its manufacturing customers but rather a marketing service.

### **OPINION**

Accordingly, it is the Opinion of the Tax Commissioner that Company is the consumer of all materials, supplies, and taxable services purchased in providing its service at the POS terminals in retail stores. As the consumer, Company must pay tax on these items used in the State of Ohio. Company does not provide a taxable service on which it must collect sales tax from its customers.

This Opinion is limited to the legal issue addressed in this Opinion. This Opinion only applies to the taxpayer and it may not be transferred or assigned. In addition, the tax consequences stated 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. See R.C. 5703(E).

Richard A. Levin  
Tax Commissioner