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Letter Ruling 97-3: Card Scanning

August 25, 1997

You request a letter ruling on behalf of ***** ("Company") to the effect that for purposes of computing the sales tax imposed by G.L. c. 64H, § 2 upon the Company's sales of merchandise subject to tax, cash discounts taken at the time of sale upon presentation of an encoded and electronically readable card ("Card") are excluded from the sales price upon which the sales tax is based.

Facts

The Company, a ***** corporation, owns and operates numerous supermarkets in Massachusetts. The supermarkets sell at retail a wide variety of non taxable (food) and taxable (non food) items. Taxes collected by the supermarkets on sales of taxable items are remitted by the Company to the Commonwealth in accordance with G.L. c. 64H.

The remaining facts as set forth below are taken verbatim from your ruling request.

[T]he Company recently has developed and implemented (and is continuing to develop and implement) a retail customer specific discount program Under this program, the Company issued an encoded electronically readable card ["Card"]) to all of its existing check cashing and courtesy card customers, and 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.

When a customer purchases goods at one of the Company's supermarkets, he or she 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. . . announced by the Company on a periodic basis; the discounts are promoted by a number of methods, including, e.g., advertising circulars distributed by direct mail and at displays located in the supermarkets themselves. Customers who do not present the Card when they make their purchases do not receive the discounts.

. . . Card user discounts are allowed in addition to any price reductions the customer may

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receive by presenting a manufacturer's coupon for a specific item (including items for which a Card user discount is offered)

. . . [T]he 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 negotiated in the ordinary course of the Company's business for the applicable products from the products' manufacturers, distributors, promoters, and other suppliers (. . . "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 \$10.00 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 the company a fixed amount to be featured in Company produced periodic 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.[\[1\]](#)

These supplier discount programs often are combined; 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.

Discussion

A. Statutory and Regulatory Authority

Under the Massachusetts General Laws, a 5% sales tax is imposed on all retail sales of tangible personal property in Massachusetts, unless otherwise exempted. G.L. c. 64H, § 2. The sales tax is measured by 5% of a vendor's gross receipts from sales of tangible personal property. *Id.* The term "gross receipts" is defined as "the total sales price received by a vendor as a consideration for retail sales." G.L. c. 64H § 1. As defined, "gross receipts" is the equivalent of "sales price," which is defined in relevant part as "the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money or otherwise." *Id.*

In determining the sales price of property on which the sales tax is based, G.L. c. 64H, § 1 also provides that cash discounts allowed and taken on sales are excluded from the sales price. Regulation 830 CMR 64H.1.4, entitled Discounts, Coupons and Rebates, clarifies the meaning of "cash discounts allowed and taken on sales." As a general rule, the regulation provides that cash discounts allowed and taken at the time of sale, and trade discounts allowed and taken on sales by

certain customers of a business, are excluded from the sales price upon which the sales tax is based. 830 CMR 64H.1.4(1). However, cash discounts after the time of sale are not excluded from the sales price. Id.

Regarding discounts allowed to retail customers who present manufacturers' or retailers' coupons at the time of sale, the regulation states that:

If a retail vendor offers customers, upon presentation of a coupon, merchandise unconditionally free of charge, merchandise free of charge with the purchase of other merchandise, two items for the usual price of one, or a discount from the usual price of merchandise, and the retail vendor receives any reimbursement from a manufacturer, distributor, promoter or other source for the coupon, the sales tax is levied on the usual sales price of the property. . . . If a vendor receives no reimbursement for the coupon from any source, the sales price subject to tax is the amount the vendor charges the customer. . . .

If a vendor offers customers, upon presentation of a coupon, a discount on the usual sales price of tangible personal property at double the value of the coupon, and the vendor receives any amount of reimbursement from any source for the coupon, the tax is levied on the usual sales price of the property.

830 CMR 64H.1.4(2).

A "manufacturer's coupon" is defined by the regulation as "a coupon issued by a manufacturer, distributor, or promoter." Id. A "retailer's coupon" means "a coupon issued by a retail vendor." Id. Webster's Third New International Dictionary 522 (1986) also is of guidance. In Webster's, "coupon" is defined as "a form, slip, or section of a paper resembling a bond coupon in that it may be surrendered in order to obtain some article, service, or accommodation: as . . . a token or certificate given with a purchase and redeemable in merchandise or cash . . ." Id.

Under the regulation, where the retail vendor receives any reimbursement from any source for a coupon submitted by a purchaser at the time of sale (as, for example, reimbursement from a manufacturer equal to the face value of the manufacturer's coupon), then the sales price on which the tax is based equals the usual undiscounted price, namely, the amount paid by the purchaser plus the face value of the manufacturer's coupon. The reimbursement can be in any form, including a direct cash payment back to the vendor or a credit to the vendor towards the purchase of additional merchandise. 830 CMR 64H.1.4(2).

B. Company's Position

The Company asserts that for purposes of computing the sales tax imposed by G.L. c. 64H, § 2 upon the Company's sales of merchandise subject to tax, Regulation 830 CMR 64H.1.4 is not controlling. Two reasons are maintained. First, the Company contends that the Card is not a coupon: it is not surrendered at the time of purchase; it is not part of a printed advertisement; and it is not detached or cut off from an advertisement or other document in order to obtain the discounts in question. Second, the Company contends that supplier discount programs do not result in any reimbursements to the Company. In contrast to the coupon reimbursement programs addressed in the regulation where the manufacturer agrees to repay the retailer a specified amount for each coupon presented, the Company states that, under the supplier discount programs, there is no reimbursement by the suppliers to the Company. Supplier payments to the Company under such programs are for various promotional activities relating to the supplier's products. These payments are not linked to card discounts. Rather, most often, suppliers agree to fund such promotional activities by providing the Company trade credits.

Conclusions

A. The Card is a Coupon.

Although the Card is not a coupon as coupons traditionally have been perceived, it functions as a coupon. Coupons result in price discounts at the cash register to customers who surrender them; the Card produces the same result when it is presented. The Company states that, eventually, the Card will replace all store and paper coupons. Coupons typically have a fixed life and express limitations; the Card does as well discounts available through use of a coupon or Card generally have limited effective dates; quantity restrictions (as, for example, three triple coupons per customer) typically apply when using a coupon, and may apply when using the Card; and the Company expressly states in its weekly advertising circular, "we reserve the right to limit quantities." Because, in effect, the Card operates as a coupon, we conclude that it is a "coupon" within the meaning of Regulation 830 CMR 64H.1.4(2).

B. The Enumerated Card Discounts are not Reimbursements.

With respect to the Company's second assertion, we agree that the supplier discount programs discussed in the Facts above result in no reimbursements (as that term is used in Regulation 830 CMR 64H.1.4) to the Company. The requisite tie to a Card discount is missing.

The Facts state that, as part of its normal business practices, the Company enters into agreements with suppliers to participate jointly in promotional campaigns of specific products. With respect to 1) off invoice allowances, 2) bill back allowances, and 3) net price product adjustment arrangements, the suppliers are simply providing different forms of up front "cost of goods purchased savings" to the Company. Regarding the fourth arrangement, advertising sponsorships, these programs provide the Company with money to be used for various promotional activities relating to suppliers' products, including print advertising and in store announcements. There is nothing in the facts that suggests that the Company will be reimbursed for the customer Card discounts resulting from these price reductions on the suppliers' products. Finally, with respect to the fifth category of Card discount program, scan buy down arrangements, suppliers participate by paying the Company a fixed amount per product unit sold to customers. Such payments are determined solely on cash register data, not upon card usage. In other words, regardless of whether the customer presents a Card and receives a discount, the Company receives a payment from the supplier for each sale, simply by virtue of having sold its product. Thus, in contrast to the customer's use of a manufacturer's coupon, use of a Card is irrelevant to the payment from the supplier to the Company; the Company receives an amount from the supplier based on the fact of the sale, and not on the use of a Card.

C. The Computation of the Sales Tax.

Having concluded that the Card is a "coupon" within the meaning of Regulation 830 CMR 64H.1.4(2) but that the supplier discount programs discussed above result in no "reimbursements," as that term is used in the Regulation, we rule that in computing the sales tax imposed by G.L. c. 64H, § 2 upon the Company's sales of merchandise subject to tax to customers presenting a Card, the sales price subject to tax is the amount the Company charges the customer. The enumerated cash discounts allowed and taken on sales are excluded from the sales price.^[2]

Very truly yours,

/s/Frederick A. Laskey

Frederick A. Laskey
Acting Commissioner of Revenue

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[1] The statement quoted in the text is a revised statement submitted by the Company on August

21, 1997.

[\[2\]](#) This ruling does not affect the taxation of transactions involving traditional manufacturer coupon arrangements or any other transaction in which the vendor receives reimbursement in connection with a retail sale.