

This notice was modified on November 5, 2012.

Department of Revenue

Modification of Revenue Notice # 03-15: Sales and Use Tax – Taxation of Incentive Items Purchased with Scrip

Background

The Minnesota Tax Court, in the consolidated cases of *St. Paul Abrasives, Inc., Tri-City Distributing, Inc., Scandia Abrasives & Supplies, Inc., and M & N Supply, Inc. v. Commissioner of Revenue* (Minnesota Tax Court Docket Numbers 6815, 6817, 6816, and 6814, October 12, 1998), found that where customers were able to earn points for products purchased, the redemption of the points for various incentive items was consideration, similar to the use of trading stamps. Therefore, the sale of the incentive items was subject to sales tax based on the value of the redeemed points.

This revenue notice is being issued to set forth the department's position on when the sale of incentive items occurs, and how to calculate the sales price on which the tax is based.

Statutory Authority

Minnesota Statutes, section 297A.62, subdivision 1, provides, in relevant part, that the sales tax is imposed upon the gross receipts from retail sales. *Minnesota Statutes*, section 297A.61, subdivision 8, provides that gross receipts means the total amount received, in money or by barter or exchange, for all sales at retail as measured by the sales price.

Minnesota Statutes, section 297A.61, subdivision 7, paragraph (a) provides, in part, that “sales price” means the measure subject to sales tax, and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.

Minnesota Statutes, section 297A.61, subdivision 4, paragraph (a), provides that “retail sale” means any sale, lease, or rental made in the normal course of business for any purpose other than resale, sublease, or sub rent.

Issues and Positions

The Department of Revenue takes the following positions on the taxation of incentive items. For purposes of this revenue notice, the assumption is that the incentive items are otherwise subject to sales tax:

I. Sale of Merchandise or Services Under Customer Incentive Programs ~~The Sale of an Incentive or Promotional Item Under a Program That Encourages Customers to Purchase Merchandise or Services~~

A. When the Sale Occurs

Issue: In a sales incentive program that encourages customers to purchase merchandise or services by giving the customer points, trading stamps, box tops or other types of proof-of-purchase, scrip, etc. (hereafter “scrip”) when they purchase the merchandise or services, and the customer may redeem the scrip for an incentive or promotional item (hereafter “incentive item”), when does the sale of the incentive item occur for purposes of applying sales tax?

Position: Generally, if an incentive item is transferred to a customer in exchange for consideration, it is a sale at retail and consequently is subject to tax. Consideration may be in the form of scrip, and it does not matter whether the scrip is purchased or earned by the customer or is given free to the customer. Incentive items purchased by a retailer to use in this type of sales incentive program are treated as items purchased for resale. At the time the item is transferred to the customer in exchange for scrip, with or without additional cash, sales tax is due.

B. Value of Consideration – Value of Scrip

Issue: When the customer redeems scrip in exchange for an incentive item, what is the sales price on which the sales tax is calculated?

Position: “Sales price” is the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise. Scrip should have an assigned value. The sales price, where scrip is exchanged for an incentive item, is determined as follows:

- (a) If the retailer has provided a fixed value for the scrip (for example, \$5 per point), then that is the money value of the scrip, and the consideration is that fixed value plus any additional cash required for the redemption of the incentive item.
- (b) If there is no fixed value per unit of scrip, but a dollar amount is given by which the customer may purchase the item without any scrip, then the sales price is the dollar amount given.
- (c) If neither (a) nor (b) apply, but information is given as to the value in money for the item, then the sales price is the money value given.
- (d) If neither (a), (b), or (c) apply, then the sales price is equal to the cost of the incentive item to the retailer.

II. Transfer or Sale of Merchandise or Services Under Employee Incentive Programs

A. Incentive Item Transfers

Issue: ~~In an incentive program to encourage employees to perform at a certain level, or to reach a goal or sales quota [hereafter “reach a goal”], whereby an incentive item is transferred to an employee or other company representative upon reaching a goal or on redemption of points that were given when a goal was reached, when does the sale of the incentive item occur for purposes of applying sales tax?~~

Position: If an incentive item is transferred from a company to its employee or other company representative in recognition of and to encourage certain employee behavior, it is not a sale at retail, and thus no sale or exchange for consideration has taken place. For sales tax purposes, the sale occurs when the company purchases the item for distribution to its employee. This is not an exchange of a service by a customer in consideration for the item being sold by a vendor. Rather, the transaction between the employer and the employee is that of fringe benefit or compensation from the company to its employee for services provided. Even if the value of the incentive item is nominal, such that it would not be reportable for income tax purposes, the transaction is not subject to sales tax as it is not a sale at retail. Incentive items purchased by an employer to use in this type of incentive program are subject to sales tax when purchased. The incentive item may not be purchased exempt for resale by the employer since no further sale occurs.

B. Incentive Purchases Through Authorized Employer Sources

Issue: If an employer structures an employee incentive program so that an employee or other company representative earns credits (either as dollars or points) which the employee or other company representative can use to redeem tangible personal property or services sold through a source authorized by the employer, are the program credits included in the total consideration for which personal property or services are sold, leased or rented?

Position: If an employer structures an employee incentive program so that an employee or other company representative can redeem the earned program credits for tangible personal property or services sold through a source authorized by the employer, the value of the credits used by an employee or other company representative is included in the consideration received by the seller on the sale, and the employee or other company representative must pay sales tax on the full price of the item, including the amount purchased with the program credit. Under these circumstances, the seller should have purchased the incentive item exempt for resale.

For example, an employee receives bonus points for every dollar of sales that the employee makes in a given month that exceeds the predetermined quota. The points accumulated by the employee can be redeemed on purchases of tangible personal property sold through the employer-authorized catalog or website. The allowance for the earned points on the sale to the employee is included in the consideration received by the seller on the sale. An employee redeeming \$50 in points towards the purchase of a \$200 taxable item must pay tax on the full selling price of \$200.

C. Employee Discounts

Issue: Are employee discounts, which are available to all employees by virtue of their employment, and which are taken by the employee, but not reimbursed by a third party, subject to sales tax?

Position: No. Employee discounts which are available to all employees by virtue of their employment, and which are not reimbursed by a third party, are discounts that are excluded from the sales price of the merchandise purchased by the employee, and thus the discount amount is not subject to sales tax.

For example, a retailer offers all of its employees a 20 percent discount on regularly priced merchandise it sells and a 10 percent discount on sale merchandise. One of the employees purchases a television from the retailer, on sale for \$800, for the price of \$720 after applying the 10 percent discount. There is no third party reimbursement by the television manufacturer to the seller on the 10 percent discount applied to the television. The employee must pay sales tax on the discounted sales price of the television which is \$720.

The modifications in parts II. A. and II. B. of this Revenue Notice regarding the sales tax treatment of points earned in an employee incentive program, and redeemed by the employee to pay for part or all of the purchase price of an item as part of the program, reflect a change in policy and therefore are effective for purchases made by employees after the date of publication.

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