

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 02-020

This document may not be used or cited as precedent. Code of Ala. 1975, §40-2A-5(a) (1998 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: January 16, 2003

RE: The launch of a coupon campaign that will allow the customer a certain "\$ amount off the total order."

FACTS

The facts as represented in your request for a revenue ruling are as follows:

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

In a typical transaction the customer will take their basket of goods to the checkout lane where the order will be entered into the cash register. The customer will hand the "\$ amount off the total order" coupon to the cashier along with any traditional product based store or manufacturer coupons they might have. The cashier will first deduct any traditional product based store coupon amounts and 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 exempt from sales tax as well as items that are subject to sales tax.

Currently, point-of-sales systems (cash register systems) are not designed with the ability to allocate coupons between taxable and non-taxable sales. The cost of re-engineering the system to do so would be cost prohibitive.

ISSUE

A customer may use a "\$ amount off the total order" coupon to purchase items that are subject to sales tax and items that are not subject to tax. Since the coupon is not item specific, may we assume that the coupons hierarchically apply first to items that are taxable and then to tax exempt items? This would have the effect of reducing the transaction's tax base by the amount of the coupon in most cases. If this is not acceptable, what is the proper Alabama sales tax treatment of this new coupon amount?

LAW AND ANALYSIS

Sections 40-23-2, Code of Alabama 1975, provide as follows:

There is levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(1) Upon every person, firm, or corporation... engaged or continuing within this state, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character... an amount equal to four percent of the gross proceeds of sales of the business except where a different amount is expressly provided herein. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not kept he or she shall pay the tax as a retailer, on the gross sales of the business.

Rule 810-6-1-.47, Alabama Department of Revenue - Sales and Use Tax Rules, provides in pertinent part as follows: A retail dealer's total receipts in cash, goods, or by credit from the redemption of coupons issued by manufacturers or distributors are to be included in the measure of tax to be paid where the coupons are accepted by him in exchange for, or as part payment for tangible personal property.

Although manufacturer's coupons are included in the taxable measure for sales tax purposes, store coupons reducing the price of an item are not because store coupons are tantamount to a sale at a discounted price. Company A desires to issue coupons that allow the customer a certain "\$ amount off the total order" irrespective of the product or products being purchased. Although the "\$ amount off the total order" is not related to the

purchase of a specific product, Company A's proposed method of application, i.e. allowing the coupons to apply first to items that are taxable and then to tax-exempt items, is within the retailer's discretion. A retailer may offer to sell its products to consumers for whatever price and under whatever conditions that it chooses. Company A may even allocate the "\$ amount off coupon" between tax-exempt and taxable items based upon the ratio of tax-exempt and taxable items, if it wishes to do so.

For purposes of determining the taxable amount for sales tax, the method proposed by Company A is no different than the use of a store coupon to reduce the sales price of a product. Whether the use of a store coupon is tied to a specific product or applied to the purchase of all products, the taxable consequences are the same. Even where a retailer chooses to sell its product at a loss, or even at a nominal price of one cent, the Department of Revenue does not have the authority to question the manner in which a retailer chooses to market its products. The legislature has endorsed this concept by providing in §40-23-1(a) (6) and (10) that the gross proceeds of sales for sales tax purposes "shall only include the stated sales price" in referencing commercial mobile services, and satellite television services. Accordingly, a retailer may offer through the use of coupons to reduce the purchase price of specific products or the total price at the checkout. The coupons will reduce the taxable measure, except where used to buy tax-exempt items.

However, in order to prevent double deductions, if Company A does elect to allocate a portion of the "\$ amount off the total order" to tax-exempt items, Company A may only use the net tax-exempt amounts after the coupons have been applied when filing its monthly sales tax returns. For example:

If a tax-exempt item cost \$8 and "\$ amount off the total order" coupon has a value of \$3, that is applied to the tax-exempt item, when Company A files its monthly sales tax returns, it will report a tax-exempt amount of \$5.

HOLDING

Based upon an analysis of Alabama's laws and regulations, it is the position of the Department of Revenue that Company A may apply its "\$ amount off the total order" to either taxable or tax-exempt items in whatever manner it chooses. However, when Company A reports its monthly sales taxes, it must only apply the net tax-exempts, after the coupon has been applied, in order to determine the taxable measure.

DWIGHT CARLISLE
Commissioner, Alabama
Department of Revenue