**Opinion Letter**

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| **Letter Number:** | **O-2012-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales promotions.** |
| **Keywords:** |  |
| **Approval Date:** | **09/11/2012** |

**Body:**

Office of Policy & Research

September 11, 2012

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RE: Your e-mail received August 16, 2012

Dear XXXX:

Thank you for your recent e-mail. You ask how Kansas retailers’ sales tax applies to different sales promotions such as: “Two for the Price of One”; “Buy One, Get One Free”; “Twenty Percent Off Sale”; “Buy One, Get One for a Penny”; “Buy Two, Get a Different Product or Service for Free”; etc. These sales promotions are intended to increase sales of specific products during a limited time period. Retailers use them to: (1) clear out products, such as when a product is discontinued, the product’s formula is changed, a product-line is repackaged, etc.; (2) sell produce before its expiration date; (3) encourage consumers to try a new products; (4) increase the number of walk-in customers, and so forth.

When a retailer discounts the selling price of goods, sales tax is charged on the amount actually paid by the customer. In Kansas, delivery charges are part of the “sales or selling price” and, when charged on a discounted sale, are added to the discounted price to determine the tax base for the sale and delivery of the goods *K.S.A. 79-3602(ll).* K.A.R. 92-19-46 provides:

(b) Any discounts allowed and credited by the retailer are excludable from the selling price. However, all transportation, freight, handling, drayage or other similar charges are to be included in the selling price, regardless of how any contract, invoice or other evidence of the transaction is stated or computed, and whether the charges are separately billed or segregated on the same bill.

This rule applies even if the discounted selling price charged for the goods is less than the amount the retailer paid for them.

K.A.R. 92-19-46 applies regardless of whether the sales promotion is advertised as “Buy One, Get One *Free,*” rather than “Two for the Price of One.” Some other states apparently require retailers to accrue sale or use tax on a product when a sales promotion suggests the customer will receive the product free of charge with the taxable purchase of another product. *See Sec. 77.52(21), Wis. Statutes (2009-10) as amended and renumbered by 2011 Wis./ Act 32; Wisconsin Department of Revenue, Tax Release: Sales and use:*Taxability of persons and transactions: Retailing materials, business supplies, gifts, and promotional merchandise: “Buy one, get one free” and similar promotions *(Dec. 8, 2011).*

K.A.R. 92-19-46 applies whether the sales promotion is for two or more of the same goods, two or more different goods, or for a combination of taxable goods and services, such as “Buy Two Tires, Get an Oil Change Free.” If a customer buys tires during a “Buy Two Tires, Get an Oil Change Free” sales promotion and is given a voucher for the oil change, sales tax is not imposed when the voucher is redeemed at a later date. However, any charges that exceed the value of the voucher are taxable. Examples of such charges are up-charges for synthetic oil or for more oil than was advertised as free under the promotion.

Retailers are required to pay or accrue tax on promotional items they give away if the items are not treated as part of a discounted taxable retail sale. For example, promotional items provided for the purchase of gasoline are subject to Kansas sales tax because gasoline purchased for highway use is not subject to Kansas sales tax. Similarly, Kansas sales or use tax must be paid or accrued on seasonal items that a retailer gives to established customers or wholesalers and to products a retailer gives to walk-in customers regardless of whether they buy anything at retail.

Your also ask about how Kansas sales tax applies when Groupons are redeemed. The department has published the following Q&A that explains how Kansas sales tax applies to Groupons:

**Are purchases of retail promotional deals (“deals-of-the-day”) taxable?**

Retail promotional deals, sometimes referred to as “deals-of-the-day,” can include offers on everything from vacation packages to restaurant meals. Purchases of these promotional deals from advertisers, such as online businesses, local radio stations, and newspapers, which generally take the form of a certificate issued to the purchaser and redeemable at the promoting retailer’s business location, are treated in the same manner as purchases of gift certificates for sales tax purposes. The payment made by the purchaser to the advertiser for the promotional “deal” certificate is not subject to sales tax.

When the promotional deal certificate is redeemed by the customer at the promoting retailer’s location, sales tax is first calculated on the full selling price of the taxable sale. The value of the promotional deal certificate is then applied to the transaction. See K.A.R. 92-19-16a(f).

**Example 1:** A restaurant in a city with a 1.5% local sales tax contracts with an online advertiser to sell $50 promotional deals for $25. The state sales tax rate in effect is 6.3%. When a promotional deal is purchased, a certificate is issued to the customer. The promotional deal certificate is redeemable on the purchase of meals. The customer orders meals with a total selling price of $70 and redeems the promotional deal certificate at the promoting restaurant. The restaurant must calculate and collect sales tax on the full selling price of $70 before deducting the $50 value of the promotional deal as indicated on the certificate.

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| Meals | $ 70.00 |
| Sales Tax | +$ 5.46 |
| Subtotal | $ 75.46 |
| Deal | -$ 50.00 |
| **Total Due** | **$ 25.46** |

**Example 2:** A clothing store in a city with a 1% local sales tax contracts with a radio station to sell $20 promotional deals for $10. The state sales tax rate in effect is 6.3%. When the promotional deal is purchased, the radio station issues a certificate to the customer. The promotional deal is redeemable for a specific article of clothing. The customer comes into the clothing store to purchase the specified article of clothing which has a selling price of $20. The clothing store must calculate and collect sales tax on the full selling price of $20 before deducting the $20 value of the promotional deal certificate.

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| Article of clothing | $ 20.00 |
| Sales Tax | +$ 1.46 |
| Subtotal | $ 21.46 |
| Deal | -$ 20.00 |
| **Total Due** | **$ 1.46** |

Please note that the total amount due from the customer consists only of the tax calculated and collected by the clothing store on this transaction. The tax is still due from the customer even if the deal certificate covers the full price of the article redeemed.

Please call me or submit another e-mail inquiry if you have any additional questions.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 09/18/2012 Date Modified: 09/18/2012**