
REQUEST LETTER

07-014

December 13, 2007

R. Bruce Johnson
Commissioner
Utah State Tax Commission
210 North, 1950 West
Salt Lake City, UT 84134

RE: Federally Funded Coupon Taxability

The DEPT, a department of the federal government, is administering the Digital-to-Analog Converter Box Coupon Program as authorized in the Digital Television Transition and Public Safety Act of 2005. Between Jan. 1, 2008, and March 31, 2009, eligible U.S. households can request up to two coupons, worth \$\$\$\$\$\$ each, to be used towards the purchase of up to two coupon-eligible converter boxes. Information regarding the program may be viewed at www.ntiadtv.gov.

CORPORATION requests guidance on the taxability of the above mentioned coupons in the State of Utah. We currently have a process in place to accurately collect and remit tax on manufacturer's coupons in your state, but clarification is needed on this situation due to the fact that the Federal Government will reimburse CORPORATION. for the dollar value of the coupon.

Will the coupon reduce the taxable base of the converter; example converter is \$\$\$\$\$\$ coupon is \$\$\$\$\$\$; taxable amount to the customer on the receipt is \$\$\$\$\$\$

Your immediate attention is requested on this matter due to the timing of the program. CORPORATION will begin processing coupons as early as mid January 2008 as individuals are able to request the coupons beginning January 1, 2008. Programming must be in place to account for a decision on the taxability.

Thank you in advance for timely attention and reply. I may be contacted at PHONE with any questions. Also, replies may be sent to EMAIL or faxed to NAME, FAX.

Sincerely,

NAME
ADDRESS.

RESPONSE LETTER

NAME
ADDRESS

Re: Private Letter Ruling 07-014

Dear NAME,

This letter is in response to your request for tax guidance. This letter ruling is not intended as a statement of broad Tax Commission policy. It is an interpretation and application of the tax law as it relates to the facts presented in your request letter and the assumptions stated in the Analysis portion of this ruling letter. If the facts or assumptions are not correctly described in this letter ruling, please let me know so we can assure a more accurate response to your circumstances.

Facts

The DEPT , a department of the federal government, is administering the Digital-to-Analog Converter Box Coupon Program as authorized in the Digital Television Transition and Public Safety Act of 2005. Between Jan. 1, 2008, and March 31, 2009, eligible U.S. households can request up to two coupons, worth \$\$\$\$\$\$ each, to be used towards the purchase of up to two coupon-eligible converter boxes. Information regarding the program may be viewed at www.ntiadtv.gov.

COMPANY requests guidance on the taxability of the above-mentioned coupons in the State of Utah. COMPANY indicates that it currently has a process in place to accurately collect and remit tax on manufacturer's coupons in Utah, but requests clarification on this situation because the Federal Government will reimburse COMPANY for the dollar value of the coupon.

COMPANY poses its question with the example of a converter box with a \$\$\$\$\$\$ selling price to the consumer. It requests guidance on whether the taxable amount would be the full \$\$\$\$\$\$ or whether it would be the amount left after deducting the \$\$\$\$\$\$ coupon, which in this example would be \$\$\$\$\$\$.

Relevant Authority

Utah Code §59-12-103(1)(a) imposes sales tax on amounts paid or charged for “retail sales of tangible personal property made within the state;”

Utah Code §59-12-102(72) defines purchase/sales price as the total amount of consideration, valued in money, for which tangible personal property or services are sold. This definition makes an exception, indicating that a reduction in price for a discount or coupon is not part of the purchase/sales price. However the discount exception is limited to the portion of a discount or coupon “that is not reimbursed by a third party.”

Analysis and Ruling

The converter boxes CORPORATION plans to sell in the state of Utah are tangible property and are thus subject to sales tax on the amount of the purchase price. Whether the amount of the \$\$\$\$\$\$ coupon from the federal government should be included in the purchase price depends on whether CORPORATION is extending a discount or whether the \$\$\$\$\$\$ is an amount that is reimbursed by a third party. In this case, the U.S. Department of Commerce is funding the coupon. Accordingly, the amount of the coupon is “reimbursed by a third party” and is part of the taxable purchase price under Utah Code §59-12-102(72). While this subsection is not directly on point with respect to coupons reimbursed by the federal government, we find that the term “reimbursed by a third party” is sufficient to cover such instances.

The Utah State Tax Commission is not aware of federal legislation that may have preempted state and local taxation of amounts that the federal government pays to retailers under the Digital-to-Analog Converter Box Coupon Program. We have not undertaken exhaustive research of federal tax legislation with respect to this issue, nor do we presume to be expert in such matters. We have, however, contacted several other states to determine whether a federal preemption would apply. Those responses that we have received are consistent with our position. Nonetheless, if there has been a federal preemption that would prohibit state and local taxation, it would apply to all 50 states.

Conclusion

Under Utah law, CORPORATION will need to collect sales tax on the full purchase price of the converters it sells under the Digital-to-Analog Converter Box Coupon Program. Utah law indicates that while the purchaser of that box may not ultimately pay the full sales price, the portion not paid by the consumer is reimbursed by a third party and thus needs to be considered part of the sales price for purposes of sales tax computation. However, if there has been a valid federal preemption that would be superior to Utah law under the supremacy clause and related legislation, Utah will naturally cede authority to the federal government in this area.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/CDJ
07-014