

M e m o r a n d u m

295.0941

To: Mr. Jerry W. Cornelius
Supervisor, Audit
Evaluation & Planning

Date: March 13, 1996

From: Warren L. Astleford
Staff Counsel

Subject: F---, Inc.
Account No. SY -- XX-XXXXXX

This is in response to your memorandum dated February 14, 1996 regarding the application of tax to discount coupons sold by F---, Inc. (hereafter "FM"). We understand that FM is selling their own coupon booklets for \$1.00 which contain multiple discount coupons entitling the purchaser to various discounts on meals or other food products sold by FM.¹ FM charges \$1.00 for the booklet which is used to recover the cost of printing and to provide a partial donation to charity. You ask whether the sale of these coupon books is subject to tax.

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property inside this state unless the sale is specifically exempted from taxation by statute. (Rev. & Tax. Code § 6051.) Taxable gross receipts include all amounts received with respect to the sale, with no deduction for the cost of materials, service, or other expense of the retailer passed on to the purchaser unless there is a specific statutory exclusion. (Rev. & Tax. Code § 6012(a).) Taxable gross receipts do not include cash discounts allowed and taken on sales. (Rev. & Tax. Code § 6012(c)(1).)

You note that FM is selling coupon books. Consistent with the annotations you provided us, however, we regard FM as selling non-taxable rights to discounts on their food products. The actual coupons are a record of the rights to receive the discounts and do not constitute a sale of tangible personal property. (See, e.g., Business Taxes Law Guide Annots. 540.0180 (10/22/56), 280.0380 (8/31/66); see also 280.0580 (1/25/61) (a gift certificate is evidence of an intangible right and is not subject to tax).)

¹ You state that these coupons are not "buy one - get one free" coupons. As such, our analysis below does not discuss the possible application of Regulation 1603(r) "Free Meals" to the taxpayer's situation.

FM's customers present these coupons at FM stores for the purchase of food products at a discounted rate. We assume that FM's food sales are subject to tax pursuant to Regulation 1603. The remaining issue is what is the measure of tax on FM's sale of taxable food products to customers who present a discount coupon from a coupon booklet previously purchased from FM.

The application of tax in this situation is based on the nature of the coupon presented by FM's customers. With a traditional manufacturer's coupon, the retailer is reimbursed the face amount of the coupon by the coupon issuer and must include in its measure of taxable gross receipts all amounts received from the manufacturer and customer on the sale of the property subject to that coupon. (Business Taxes Law Guide Annot. 295.0430 (5/9/73).) With a store coupon (i.e., a coupon in which the retailer receives no reimbursement from any third party), the retailer accepts a reduced amount plus a coupon towards the sale of property subject to that coupon. Since the retailer does not receive the amount of the discount, the discounted amount is not part of the retailer's taxable gross receipts. (Rev. & Tax. Code §§ 6011(c)(1), 6012(c)(1).)

We regard the coupons presented by customers in this case like that of a manufacturer's coupon since FM will have received compensation from a third party (i.e., the customer) via the amounts previously paid by that customer for the coupons. This means that FM's gross receipts from the sale of food products to a customer presenting a coupon will consist of any amounts received by the customer plus an amount representing a pro-rata share of the \$1.00 coupon booklet allocated to the coupon used by that customer. This pro-rata share equals the \$1.00 sales price of the coupon booklet divided by the number of coupons in that booklet that the retailer, in good faith, believes a customer might redeem toward the purchase of food items.² Thus, if a coupon booklet contains ten coupons, an additional \$0.10 should be allocated to the gross receipts from FM's sale of taxable food products to a customer presenting a discount coupon. Tax does not apply on the pro-rata share allocated to coupons that are not redeemed for discounted food items since FM is not regarded as having received additional compensation from the customer as part of the sale of taxable food items at a discounted rate.

Please let me know if you have any further questions.

WLA:rz

cc: Ms. Carolyn A. Insalaco
Mr. David H. Levine

² We would not allow the retailer to reduce this "pro-rata" share by simply adding several coupons that it would not reasonably expect a customer to redeem.