

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2014-02 ST  
September 22, 2014

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## ISSUE

## Sales Tax—Measure of Consideration

A company ("Taxpayer") is seeking an opinion as to the amount that is subject to Indiana sales tax based on certain transactions.

Authority: [IC 6-2.5-1-5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-3-2](#); [IC 6-2.5-3-3](#); Indiana Department of State Revenue v. Marsh Supermarkets, Inc., 412 N.E.2d 261 (Ind. Ct. App. 1980).

## STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling.

[Taxpayer] is a [company organized in and maintaining its principal place of business outside Indiana]. [Taxpayer] is registered with the Indiana Department of Revenue and files monthly sales and use tax returns based on its sales in Indiana.

[Taxpayer] is engaged in the business of selling tangible personal property (Product) to customers in Indiana and other states. [Taxpayer] sells Product through a network of independent sales consultants (Consultants) who solicit sales and facilitate orders. Any orders that are received by the Consultants are approved out of state.

[Taxpayer] generates the majority of its revenue through its Consultants' sales activities. Those activities include soliciting Hostesses - third-party sales organizers - to arrange events, at non-public settings (e.g., residences, private clubs, etc.). The Hostess is responsible for inviting potential customers and providing the venue for the event (e.g., the Hostess's residence). At the events, the Consultants display samples of [Taxpayer's] Products, provide potential customers Product sales price information provided to the Consultant by [Taxpayer], and take orders for Product from the attendees.

In return for hosting the events, Hostesses may receive: 1) discounts on certain purchases (e.g., 50% discount) of Product contingent on the volume of sales orders taken at the event and 2) non-transferable credits that can be used to purchase [Taxpayer's] Products at the event. Hostesses do not receive any other financial consideration. On completion of the event, Consultants enter orders into the Company's web-hosted order entry system. The Consultants do not have authority to accept purchase orders. All orders must be approved by [Taxpayer's] home office outside Indiana. Upon acceptance, [Taxpayer] ships all orders placed at an event to that event's Hostess. The Hostess makes final delivery of the purchases to the customer. The Consultants do not handle the Product in any way.

Title to Products transfers directly from [Taxpayer] to the ultimate consumer - the event attendees, including Hostesses. [Taxpayer] does not receive reimbursement from any third party on its discounted sales to Hostesses.

Consultants do not take title to or possession of Products being sold to the ultimate consumer. Consultants do receive a commission (20 - 30 percent) of all sales of full-price items. However, Consultants do not receive a commission for discounted sales to Hostesses.

## DISCUSSION

Taxpayer requests that the department rule on what amount is subject to Indiana sales tax. For instance, if Product has a resale value of \$100 but a Hostess purchases the item for \$60, is the amount subject to tax \$60 or

\$100? Alternatively stated, is the \$40 discount subject to Indiana sales and use tax?

Indiana imposes an excise tax, known as the state "gross retail tax" on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). The state also imposes a "use tax" when the retail transaction does not occur in Indiana, but tangible personal property is stored, used, or consumed in Indiana. [IC 6-2.5-3-2\(a\)](#). Both taxes are imposed at the rate of 7 percent on the "gross retail income" received in a retail unitary transaction. [IC 6-2.5-2-2\(a\)](#), 6-2.5-3-3.

[IC 6-2.5-1-5\(a\)](#) defines the term "gross retail income" as the:

total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
  - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
  - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

Indiana excludes from the definition of "gross retail income" charges attributable to "discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale[.]" [IC 6-2.5-1-5\(b\)\(3\)](#).

The Indiana Court of Appeals held in that "[c]ash discounts extended by [a retail merchant] to its retail customers are not subject to Indiana sales tax." *Indiana Department of State Revenue v. Marsh Supermarkets, Inc.*, 412 N.E.2d 261, 266 (Ind. Ct. App. 1980). The coupons involved included "straight discounts" on goods for which Marsh Supermarkets received no reimbursement. *Id.* at 265.

In this particular case, the Hostesses and Taxpayer are unrelated third parties engaged in a substantive transaction without any indicia of tax avoidance or evasion. Taxpayer is receiving only the amount actually paid for Product by the Hostesses. Accordingly, Taxpayer's "gross retail income" from the sales of Product to Hostesses is the amount actually paid by the Hostesses. The discount from listed price is not subject to Indiana sales tax.

### **RULING**

Taxpayer's gross retail income on the sales of Product to Hostesses is the amount paid by the Hostesses after any discount. The discount itself is not subject to Indiana sales tax.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the

taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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