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## *States starting to address sales taxation of 'deal of the day' transactions*

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As 'Deal of the Day' offers become increasingly more popular, states are taking notice and are beginning to respond to the difficult tax issues involved with these transactions. In addition to most states offering informal guidance to concerned taxpayers, to date, four states have provided written guidance to address the applicable issues: Kansas, Texas, Massachusetts and New York.

According to all four states, the act of purchasing the deal certificate is not taxable. The states recognize that the taxable event occurs when the certificate is redeemed for products or services. In general, the states are imposing sales tax on the face value of the certificate or the retail value of the taxable goods or services received. Interestingly, New York is the only state that differentiates the sales tax consequences based on how the voucher is classified. The discussion below will detail the specific guidance provided by these states [[Questions and Answers: Retail Promotional Deals, Kansas Department of Revenue \(6/8/2011\)](#); [Tax Policy News, Texas Comptroller of Public Accounts \(June 2011\)](#); [Working Draft Directive 11-XX: Application of Sales Tax to Sales and Redemption of Third Party Coupons, Massachusetts Department of Revenue \(9/16/2011\)](#); [Technical Memorandum TSB-M-11\(16\)S: Sales Tax Treatment Relating to the Sale and Redemption of Certain Prepaid Discount Vouchers, NY State Dept. of Tax'n. and Finance \(9/19/2011\)](#)].



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## Background

Generally, a 'Deal of the Day' transaction involves the sale of a certificate, coupon or voucher by a web-based company that is later redeemed by the purchaser at the third party vendor identified on the certificate, coupon or voucher. The certificates are typically priced significantly lower than the face value of the certificate or the usual selling price of the product or service. In most arrangements, the deal site retains a portion of the price paid for the certificate, coupon or voucher and the remaining portion is paid to the third party vendor.

## Kansas

In its [Questions and Answers: Retail Promotional Deals \(6/8/2011\)](#), the Kansas Department of Revenue was the first state to provide written guidance on this issue. The publication provides that, "Retail promotional deals, sometimes referred to as 'deals-of-the-day,' ... are treated in the same manner as purchases of gift certificates for sales tax purposes. The payment made by the purchaser to the deal of the day provider 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 should be calculated on the full selling price of the taxable sale before applying the value of the promotional deal certificate to reduce the sales price [K.A.R. 92-19-16a(f)].

To illustrate, Kansas offers the following example:

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. Thus, the total amount due from the customer will be calculated as follows:

<b>Clothing</b>	<b>\$20</b>
<b>Tax (7.3%)</b>	<b>\$1.46</b>
<b>Subtotal</b>	<b>\$21.46</b>
<b>Less Deal Certificate</b>	<b>(\$20.00)</b>
<b>Total Due</b>	<b>\$1.46</b>

The Department clarifies that tax is due from the customer even if the deal certificate covers the full price of the article redeemed.

## Texas

Shortly after Kansas issued its publication, the Texas Comptroller of Public Accounts stated in its [Tax Policy News \(June 2011\)](#) that daily deals offered by sellers through

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third parties, such as social media networks and radio stations, should be treated as the sale of gift certificates. Consequently, sales tax is not due on the sale of a deal by a third party deal of the day provider, according to the Comptroller. When the deal is redeemed for a taxable item (either by the original purchaser or someone who may have received rights to the deal as a gift), the deal is treated like cash given for the purchase of the item. If the item purchased is taxable, sales tax is due on the full sales price, including any amount paid with the use of the deal.

Texas offers the following example:

A customer purchases a daily deal through an online site that offers \$50 worth of food for \$25 at a local restaurant. Tax is not due on the customer's purchase of the deal from the online site. When the customer redeems the deal at the restaurant, tax is due on the menu price of the meals and drinks. The value of the daily deal is then applied against that amount.

## Massachusetts

On September 16, 2011, The Massachusetts Department of Revenue issued [Working Draft Directive 11-XX: Application of Sales Tax to Sales and Redemption of Third Party Coupons](#). In similar fashion to Kansas and Texas, the Department stated that, "the sale of a third party certificate that may be redeemed for taxable property or meals at face value is not subject to tax" but should be treated similarly to a non-taxable gift certificate. Further, the Department explained that a third party certificate does not reduce the sales price subject to tax. If a taxable item has a sales price equal to or greater than the face value of the certificate, the sales price includes the face value of the certificate as well as any cash or other consideration paid. The vendor is required to report that amount as gross receipts subject to tax on its sales and use tax return and separately state the sales tax on any receipt issued to the customer [G.L. c. 64H, § 5].

Massachusetts analyzed third party certificates with the following example:

A \$280 "golf package" certificate is sold on the Internet by a third party (not the golf course) for \$140. The consumer pays \$140 to the issuer and is e-mailed a certificate to redeem at the golf course for a package valued at \$280, which includes non-taxable greens fees regularly sold at \$200 and the taxable rental of golf carts regularly sold at \$80. The golf course receives a payment from the certificate issuer as well as advertising services. Upon redemption of the certificate, the golf course must collect and remit sales tax on the golf cart rentals of \$5.00 (\$80.00 x .0625) and report, on its sales and use tax return, gross receipts of \$80.00 subject to tax.

## New York

New York detailed its sales tax treatment of Deal of the Day certificates in [Technical Memorandum TSB-M-11\(16\)S: Sales Tax Treatment Relating to the Sale and Redemption of Certain Prepaid Discount Vouchers \(9/19/ 2011\)](#). Similar to the above states, the New York State Department of Taxation and Finance stated that "sales tax is not due on the sale of the voucher by the deal site. However, if the voucher is redeemed for taxable products or services, sales tax is due at the time the voucher is

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redeemed by the customer." New York segregates certificates into two different types: 1) specific product or service vouchers, and 2) stated face value vouchers.

#### *Specific product or service vouchers*

A "specific product or service voucher" is a voucher without a specific stated value (the regular selling price may be stated on the voucher) that may be redeemed only for a specified product or service or combination of products and/or services. When the voucher is redeemed for a taxable product or service, sales tax is imposed based on the price the customer paid for the voucher. If the voucher is redeemable more than once, sales tax is imposed based on the total amount paid for the voucher, divided by the number of times the voucher can be redeemed. If the voucher is redeemed to purchase a combination of taxable and non-taxable items, sales tax is computed on the total price paid to the deal site for the voucher.

New York offers the following examples of a specific product or service voucher:

Ms. Z purchases a voucher for \$20 which is redeemable for 2 oil change services at a business located in New York State. Because Ms. Z can use the voucher two times, the \$20 voucher price is divided in half to determine the amount subject to sales tax each time she redeems it for an oil change. Thus, the amount subject to sales tax when Ms. Z redeems the voucher for the first oil change service is \$10. Likewise, the amount subject to sales tax when she redeems the voucher for the second oil change service is \$10. Assuming a state and local combined sales tax rate of 8%, the business would be required to collect 80 cents of sales tax ( $8\% \times \$10$ ) each time the voucher is redeemed.

Ms. K purchases a voucher for \$6 which is redeemable for admission to a movie theatre to view a movie and for a box of popcorn and a fountain soda at the movie theatre's snack bar. Since the voucher that Ms. K purchased is redeemable for a combination of taxable and non-taxable products (i.e., the box of popcorn and fountain soda are taxable items but the admission charge to the movie theatre is non-taxable), the total amount paid for the voucher is subject to sales tax. Assuming a state and local combined sales tax rate of 7%, the movie theatre would be required to collect 42 cents of sales tax ( $7\% \times \$6$ ) from Ms. K when she redeems the voucher.

#### *Stated face value vouchers*

A "stated face value voucher" is a voucher with a specifically stated value that, when redeemed, is applied towards the price of the products or services purchased by the customer. The Department explained that the sales tax treatment of these types of vouchers is treated in the same manner as a gift card, namely, that sales tax is computed on the selling price of the items before the voucher is applied. The Department stipulated that for vouchers redeemed for taxable items that are roughly equal in price, sales tax due must be collected from the customer at the time of sale. For vouchers redeemed for products and services with a value less than the value of the voucher, the business can either: 1) choose to collect tax on the total sale, or 2) allow the customer to use the remaining voucher value to pay the sales tax. However, the Department emphasized that vendors must remit the full amount of the tax due

on the transaction even if the vendor did not collect any cash from the customer when it sold taxable products or services in exchange for the voucher.

The Department gave the following example of stated face value vouchers:

Mr. Jones purchases a voucher for \$50 which is redeemable for \$100 worth of food and drink at a local restaurant. Mr. Jones goes to the restaurant and purchases meals and drinks subject to sales tax that has a total price of \$90. The amount subject to sales tax is \$90. Assuming a state and local combined sales tax rate of 8%, the sales tax due from Mr. Jones through the redemption of the voucher would be \$7.20 (8% x \$90). Therefore, the total amount owed by Mr. Jones for the food, drink and sales tax is \$97.20. The restaurant allows Mr. Jones to use the voucher to pay the entire \$97.20. Even though the restaurant did not collect any money from Mr. Jones, the restaurant must include the \$7.20 of sales tax paid through the redemption of the voucher, when it files its sales tax return for the period during which the voucher was redeemed.

With the continuing expansion of retail promotional deals, taxpayers can expect to see more guidance from state departments of revenue. Interestingly, only New York, in certain circumstances, imposed sales tax based on the price the customer paid for the voucher rather than the full selling price.

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