State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214
Website Address: http://www.sctax.org

SC REVENUE RULING #08-4

SUBJECT:	Federal Coupons for Television Converter Boxes (Sales and Use Tax)
EFFECTIVE DATE:	Applies to all periods open under the statute.
SUPERSEDES:	All previous advisory opinions and any oral directives in conflict herewith.
REFERENCES:	S. C. Code Ann. Section 12-36-910(A) (2000) S. C. Code Ann. Section 12-36-90 (2000; Supp. 2007) S. C. Code Ann. Section 12-36-1310(A) (2000) S. C. Code Ann. Section 12-36-130 (2000; Supp. 2007) S. C. Code Ann. Section 12-36-2120(2) (2000)
AUTHORITY:	S. C. Code Ann. Section 12-4-320 (2000) S. C. Code Ann. Section 1-23-10(4) (2005) SC Revenue Procedure #05-2
SCOPE:	The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

How does the use of a federal coupon in purchasing a digital-to-analog converter, as described in the facts, affect the measure of the sales tax – "gross proceeds of sales" – and the measure of the use tax – "sales price?"

Conclusion:

It is the department's opinion that the entire charge by a retailer for a digital-to-analog converter is subject to the sales and use tax.

In other words, if a consumer purchases a digital-to-analog converter from a retailer using a federal coupon as described in the facts, and the price charged the consumer by the retailer is reduced or eliminated by the $40 federal coupon, then the total amount received by the retailer from the consumer (if any) and the federal government is includable in "gross proceeds of sales" for sales tax purposes or "sales price" for use tax purposes, and therefore, subject to the sales and use tax.

For example:

> (1) If a digital-to-analog converter normally sells for $50.00 and the customer pays $10.00 and presents a $40 federal coupon as described in the facts, then the sales tax is based on $50.00 ("gross proceeds of sale" or "sales price") since the retailer receives $10.00 from the consumer and $40.00 from the federal government.
>
> (2) If a digital-to-analog converter normally sells for $35.00 and the customer presents a $40 federal coupon as described in the facts, then the sales tax is based on $35.00 ("gross proceeds of sale" or "sales price") since the retailer receives $0.00 from the consumer and $35.00 from the federal government.

Note: If a South Carolina consumer travels to another state and purchases a converter from a retailer in the other state for use, storage or consumption in South Carolina, the South Carolina consumer would only owe the use tax on the difference between the sales tax paid in the other state and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina. See Code Section 12-36-1310(C) and SC Revenue Ruling #07-5.

Facts:

The Digital Television Transition and Public Safety Act of 2005 requires full-power television stations to cease analog broadcasts and switch to digital after February 17, 2009. The Act also authorizes Commerce's National Telecommunications and Information Administration (NTIA) to create the TV Converter Box Coupon Program.

By February 17, 2009, consumers need to look at each analog television set in their home that is not connected to cable, satellite, or other pay television service and make a decision:

- They may connect it to cable, satellite, or pay television service;
- They may replace it with a TV with a digital tuner, or
- They may keep it working with a TV converter box.

Households may request two coupons, which are worth $40 each and can be used toward the purchase of up to two, digital-to-analog converter boxes. Between now, and March 31, 2009, households can request two coupons while funding is available.

The coupon distribution process begins February 17, 2008, when retailers are expected to accept coupons and have certified converters on shelves. NTIA will provide consumers a list of eligible converters and participating retailers when coupons are mailed. Coupons expire 90 days after they are mailed, and only one coupon can be used to purchase each converter.

Under the NTIA program, coupons can only be used towards the purchase of "coupon eligible digital-to-analog converter boxes." These converter boxes contain only those features or functions necessary to convert any channel broadcast in the digital television service into a format that the consumer can display on a television receiver designed to receive and display signals only in the analog television service.

Upon receipt of a coupon, a consumer may use the coupon at a participating retailer to receive up to $40 off the purchase price of a converter. If the converter costs $40 or less, the customer will not be required to pay any of the selling price of the converter. If the converter costs more than $40, the customer will be required to pay the difference between the selling price and the $40 coupon.

The retailer will then seek reimbursement from the NTIA for the coupons accepted by the retailer from consumers. The retailer will receive the lesser of the purchase price or $40 for each of the converters sold by the retailer under this program.

For more details on this coupon program (including frequently asked questions), visit the NTIA website at http://www.ntia.doc.gov/.

Discussion:

Code Section 12-36-910(A) imposes "a sales tax, equal to [six] percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

Code Section 12-36-90 defines the term "gross proceeds of sales" and reads, in part:

> Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.
>
> (1) The term includes:
>
> * * * *
>
> (b) the proceeds from the sale of tangible personal property without any deduction for:
>
> (i) the cost of goods sold;
>
> (ii) the cost of materials, labor, or service;

(iii) interest paid;

(iv) losses;

(v) transportation costs;

(vi) manufacturers or importers excise taxes imposed by the United States; or

(vii) any other expenses.

(2) The term does not include:

(a) a cash discount allowed and taken on sales;

* * * *

Code Section 12-36-1310(A) imposes the use tax at the rate of six percent of the sales price of the property "on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State."

Code Section 12-36-130 defines the term "sales price" and reads:

> "Sales price" means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.
>
> (1) The term includes:
>
> (a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; and
>
> (b) any manufacturers or importers excise tax imposed by the United States.
>
> (2) The term does not include:
>
> (a) a cash discount allowed and taken on the sale;
>
> (b) an amount charged for property, which is returned by the purchaser, and the full amount is refunded in cash or by credit;
>
> (c) the value allowed for secondhand property transferred to the vendor in partial payment; and

> (d) the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or consumer, except for manufacturers or importers excise taxes.

Opinion of the Attorney General S-OAG-45 (SC Department of Revenue Manual of Regulations and Opinions of the Attorney General) concerns a manufacturer's rebate paid to the purchaser, and reads in part:

> There is nothing in the sales tax statutes or regulations permitting a seller to deduct from his gross proceeds an amount paid by a third party to or for the benefit of a purchaser, even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price.

While the rebate in question was paid to the purchaser, there is still nothing in the sales and use tax statute permitting the retailer to deduct from "gross proceeds" or "sales price" an amount that is paid to the retailer by a third party.

Also, in *Meyers Arnold v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

> Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs." But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

Therefore, but for the sales, the retailer would not receive the reimbursement from the coupon.

Furthermore, SC Revenue Ruling #99-9 provides guidance with respect to manufacturer's coupons, and concludes in part:

> If a consumer purchases a product from a local retailer using a manufacturer's coupon as described in the facts, and the price charged the consumer by the retailer is reduced by the value assigned the coupon by the manufacturer, then the total amount received by the retailer from the consumer and the manufacturer is includable in "gross proceeds of sales," and therefore, subject to the sales tax. For example, if an item normally sells for $5.00 and the customer pays $4.00 and presents a manufacturer's coupon valued at $1.00, then the sales tax is based on $5.00 ("gross proceeds of sale") since the retailer receives $4.00 from the customer and $1.00 from the manufacturer

Based on the above, the amount received by the retailer for the coupon under the NTIA program and the amount received from the consumer (if any) are a part of "gross proceeds of sales" or "sales price" and subject to the sales and use tax.

However, one additional issue must be considered – does the use of the federal coupon in purchasing a converter make the sale an exempt sale to the federal government under Code Section 12-36-2120(2).

Commission Decision #93-2 provides an analogous situation with respect to purchases involving Medicare and Medicaid funds. In that decision, the commissioners held:

> Section 12-36-2120(2) exempts sales to the federal government from sales tax. According to the taxpayers, transactions involving medicare and medicaid funds are actually sales to the federal government and thus exempt under this provision.
>
> There are two reasons why this argument is incorrect. First, the federal government is not the purchaser of the items in question. The mere fact medicare or medicaid funds are involved is of no consequence. Stripped of their highly regulated guidelines, these programs do nothing more than reimburse the taxpayer for purchases made by the program's recipients.

Based on the above, the federal government is not the purchaser of the coupon and the NTIA program does nothing more than reimburse the retailer for the purchase of a converter made by a consumer. Therefore, such sales are subject to the sales and use tax and not exempt under Code Section 12-36-2120(2).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

March 28, 2008
Columbia, South Carolina