

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

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Sales Tax
November 13, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

MODIFIED ADVISORY OPINION PETITION NO. S920520A

On August 24, 1992 an Advisory Opinion was issued to Price Chopper Operating Co., Inc., P.O. Box 1074, Schenectady, New York 12301. On September 24, 1992 Petitioner, Price Chopper Operating Co., Inc. requested reconsideration of the Advisory Opinion issued on August 24, 1992.

Petitioner's basis for reconsideration is that the "Advantage Shelf Tag" is substantially different from the standard shelf label, which was held in the August 24, 1992 Advisory Opinion not to meet the disclosure requirements of Section 526.5(c)(4) of the Sales and Use Tax Regulations, so as to comply with the disclosure requirements of said regulation.

Petitioner has instituted an electronic coupon system called "Advantage" which allows for the automatic deduction at the point of sale of manufacturer's coupons which reduce the amount of the purchase price of the product without the physical presentation of a paper coupon. The coupon item is rung up on the register at full retail and at the bottom of its tape Petitioner's scanning system automatically deducts the amount of the coupon. Petitioner's register tape provides sufficient detail to identify the product to which the coupon applies.

Where there is no paper coupon available, Petitioner proposes to indicate that the product is a manufacturer's coupon item by replacing the standard shelf label with an "Advantage Shelf Tag".

The "Advantage Shelf Tag" differs from the standard shelf label in that:

1. It measures approximately 4 1/4" x 4" in size as opposed to the standard shelf label which measures approximately 3 7/8" x 1 1/8".
2. It is a different color from the standard shelf label.
3. It contains the phrases "Every Day We Save You More", "Advantage \$", "Take Advantage of Us!", "Retail Price \$ ___ with Membership Card", "Save ___¢ with Membership Card Until" ___ and "Retail Price \$ ___ without Card", which phrases do not appear on the standard shelf label.
4. It has the letters "MFG" or "M" printed on it to indicate that the item was the subject of a manufacturer's coupon which letters do not appear on the standard shelf label. Petitioner presently prints "MFG" or "M" on manufacturer coupons printed in its in-store circulars and newspaper inserts even though these letters are printed only to inform the customer of the available "Advantage" products for the week.

Section 526.5(c) of the sales and use tax regulations provides as follows:

(c) Coupons. (1) Where a manufacturer issues a coupon entitling a purchaser to a credit on the item purchased, the tax is due on the full amount of the receipt. The receipt is composed of the amount paid and the amount of the coupon credit. The coupon credit reflects a payment or reimbursement by another party to the vendor.

Example 1: A manufacturer issues coupons entitling the holder to credit allowances of 12¢ on the purchase of its products from a retailer. The tax is computed as follows by the retailer:

Regular price	63¢
Tax at 7% rate	<u>5¢</u>
	68¢
Credit for mfr. coupon	<u>12¢</u>
Amount due from purchaser	56¢

(2) Where a store issues a coupon, entitling a purchaser to a credit on the item purchased, for which it is reimbursed by a manufacturer or distributor, the tax is due on the full amount of the receipt. The receipt is composed of the amount paid and the amount of the coupon credit. The coupon must indicate, by "mfr" or some other code, that reimbursement is made. The reimbursement from the manufacturer or distributor to the store may be made in any form, such as cash or a credit against purchases or in additional merchandise.

Example 2: A store issues a coupon, labeled "mfr" entitling the holder to a credit allowance of 12 cents on the purchase of its products from a retailer. The purchaser is billed as follows by the retailer:

Regular price	63¢
Tax at 7% rate	<u>5¢</u>
	68¢
Credit for mfr. coupon	<u>12¢</u>
Amount due from purchaser	56¢

(3) Where a store issues a coupon entitling a purchaser to a discounted price on the item purchased, and receives no reimbursement, the tax is due from the purchaser on only the discounted price, which is the actual receipt.

Example 3: A store issues coupons entitling the holder to credit allowance of 12 cents on the purchase of its products from a retailer. The purchaser is billed as follows by the retailer:

Regular price	63¢
Store coupon	<u>12¢</u>
Tax at 7 percent rate	<u>4¢</u>
Amount due from purchaser	55¢

(4) Where a store issues a coupon involving manufacturer's reimbursement, but does not disclose that fact to the purchaser on the coupon or in the advertisement, the vendor will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax on the entire receipt--the amount of the price and the reimbursement received from the manufacturer or distributor.

Under Section 526.5(c)(4) of the Sales and Use Tax Regulations in order for the use of the manufacturer's coupon to be entitled to the method of tax computation set forth in Section 526.5(c)(1) of the Regulations, the manufacturer's reimbursement must be disclosed to the purchaser on the coupon or in the advertisement for the product. In the instant case, since there are no physical coupons, this information must be contained in Petitioner's advertisements. Petitioner may show that the item was the subject of a manufacturer's coupon by indicating "MFG" or "M" on manufacturer's coupons printed in-store circulars and newspaper inserts. The indication by a code such as "MFG" or "M" on the standard shelf label alone would not meet the disclosure requirements of Section 526.5(c)(4) of the Regulations. However the "Advantage Shelf Tag" substantially as described above would meet the disclosure requirements of said section of the Regulations.

DATED: November 13, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.