



Department of  
Taxation

**Sales and Use Tax Division**  
30 E. Broad St., 20<sup>th</sup> Floor  
Columbus, OH 43215  
(614) 466-4810 Fax (614) 995-5797  
[www.tax.ohio.gov](http://www.tax.ohio.gov)

October 21, 2011

Benjamin G. Edelman  
Assistant Professor  
Harvard Business School  
Soldiers Field  
Boston, MA 02163

Dear Mr. Edelman:

This is in response to your letter of May 23, 2011. This response is not a binding "Opinion of the Tax Commissioner" as provided for in Ohio Revised Code ("R.C.") 5703.53. Any comments in this letter are of an advisory nature from the Sales and Use Tax Division.

***Facts as Provided in your Letter of May 23, 2011***

I write to inquire as to the tax treatment of certain online restaurant discount vouchers. See, for example, Groupon.com. For specificity, consider a typical offer: A consumer pays \$20 on the Groupon web site and receives a printable voucher for \$50 of food at a participating restaurant. The consumer dines at the restaurant, ordering exactly \$50 of food (based on ordinary posted prices). Groupon reimburses the restaurant \$15 (having deducted a \$5 fee for itself). The resulting question of sales tax: Should such a consumer pay tax on the amount the full menu price of the meal (\$50) or only on the amount the consumer actually paid (\$20)?

Importantly, note that the underlying source of the discount is restaurants, not Groupon. A restaurant agrees to accept reduced payment, below its ordinary menu price, as a marketing strategy to attract customers. In this regard, the discount looks like an ordinary restaurant coupon (printed in newspapers, mailed, etc.). However, notice that a consumer must pre-purchase a Groupon voucher online - yielding payments flowing from consumers to Groupon to the restaurant.

Reviewing the Ohio Administrative Code 5703-9-15, I see potential arguments for application of provisions (B), (C), and (D)(2). On one hand, (B) is relevant in that the restaurant itself funds the amount of the discount; the restaurant is not reimbursed for the discount by a manufacturer or anyone else. The restaurant's discount also tracks the "unreimbursed enhancement" flagged in (C). That said, a restaurant does receive a partial payment - a portion of the consumer's prepayment - from Groupon, in some respects similar to (D)(2). My sense, then; is that the consumer's prepayment (in the example above, \$20) should be taxed, but the amount of the discount (\$30) should not be subject to tax. But I look forward to your thoughts on this question.

Note that I write as a lay person (an occasional user of such discounts, and an educator who discusses such marketing methods with students), not as a restaurant owner or operator.

### *Applicable Law*

R.C. 5739.02 levies an excise tax on each retail sale made in Ohio. R.C. 5739.01(B)(1) defines “sale” for Ohio sales and use tax purposes to include any transfer of title, possession, or a right to use tangible personal property in Ohio and certain enumerated services. Only food that is consumed on the premises is subject to sales tax. Ohio Const. Art. XII, §3.

R.C. 5739.01(PPP) defines “gift card” as follows:

“Gift card” means a document, card, certificate, or other record, whether tangible or intangible, that may be redeemed by a consumer for a dollar value when making a purchase of tangible personal property or services.

R.C. 5739.01(H)(1)(c)(v) excludes from price:

The dollar value of a gift card that is not sold by a vendor or purchased by a consumer and that is redeemed by the consumer in purchasing tangible personal property or services if the vendor is not reimbursed and does not receive compensation from a third party to cover all or part of the gift card value. For the purposes of this division, a gift card is not sold by a vendor or purchased by a consumer if it is distributed pursuant to an awards, loyalty, or promotional program. Past and present purchases of tangible personal property or services by the consumer shall not be treated as consideration exchanged for a gift card.

Further, Ohio Admin. Code 5703-9-15(D) provides:

(D)(1) Coupons, coupon books, and gift certificates which are sold, either by the vendor which anticipates redeeming them or by any corporation, association, or other person for use among a variety of vendors, are not to be treated as the sale of tangible personal property and no tax should be collected on such sales.

(2) When a purchased coupon, coupon book, or gift certificate is used to purchase taxable tangible personal property or services, the price for tax purposes is the selling price of such property or services before application of the discount or gift certificate amount.

### *Question Asked and Response*

*Please explain how Ohio sales tax applies to Groupon.*

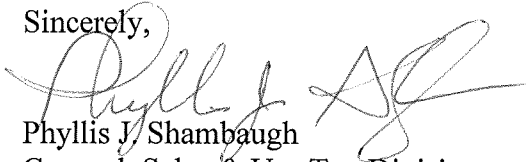
Benjamin G. Edelman  
Harvard Business School  
October 21, 2011  
Page 3 of 3

For purposes of Ohio sales tax, a Groupon is treated like a purchased gift card or gift certificate. The sale of the Groupon is not subject to sales tax. However, at the time the Groupon is redeemed, sales tax is due on the entire value of the tangible personal property or food consumed on the premises. In other words, if a consumer purchases \$50 worth of tangible personal property or food that is consumed on the premises with a Groupon that was purchased for \$20, the consumer must pay sales tax on the full \$50. The value of the Groupon is not excluded from the tax base under R.C. 5739.01(H)(1)(c)(v) because the consumer purchases the Groupon.

Please be aware that my answers in this letter are based on my understanding of the facts as you provided them. If the facts are different or change, my responses could change.

I hope this information is helpful. If you need anything further, please contact me.

Sincerely,



Phyllis J. Shambaugh  
Counsel, Sales & Use Tax Division  
614-466-4810  
phyllis\_shambaugh@tax.state.oh.us