

**STATE BOARD OF EQUALIZATION**

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Interim Executive Director

August 4, 2003

Mr. [T]
Director, Excise Tax
[N]
P.O. Box XXXX
---, -- XXXXX-XXXX

Re: [N]
S- -- XX-XXXXXX

Dear Mr. [T]:

This is in response to your letter dated April 15, 2003 inquiring as to how tax applies to [N] Merchandise Certificates.

You state:

“[B] fsb (The Bank), a wholly owned subsidiary of [N], Inc., ([N]) began a promotion for its [N] credit cardholders and [N] Visa card holders in 1999 which has continued to the present. The promotion rewards cardholders with points for purchases made on their credit card. [N] Merchandise Certificates (Certificates) are issued to the cardholder for points. Certificates are redeemable at [N] stores. The value of the Certificates is applied against the total purchase price, including any applicable taxes and fees. They are not redeemable online and cannot be used as payment on a [N] credit card account. The Certificates are given a 90-day expiration date.

“Certificates issued to a single customer can amount to \$1,000’s of dollars depending on their use of the credit card. The Certificates can be used for any merchandise or service sold in a [N] store including restaurants, spa services, alterations and the purchase of gift certificates or gift cards. Certificates can also be used in conjunction with other discount promotions including sales, markdowns and employee discounts.

“The reward promotion in place today is:

“[N] Classic Visa, [N] Credit Card and [N] --- Credit Card – Two points are earned for every \$1 in net [N] purchases; a \$20 Merchandise Certificate is issued for every 2,000 points. The certificates come in multiples of \$20, and a single certificate can be over \$1,000.

“[N] Platinum Visa – Two points are earned for every \$1 in net [N] purchases and one point for every \$1 in net purchases made outside of [N]; a \$20 Merchandise Certificate is issued for every 2,000 points.

“[N] Platinum Credit Card and [N] Platinum --- Credit Card – Three points are earned for \$1 in net [N] purchases; a \$20 Merchandise Certificate is issued for every 2,000 points.

“When the customer redeems the Certificate at a [N] store, they are able to apply it to all or part of any [N] purchase. [N] records the sale at full price, collecting sales tax reimbursement on the full sales price and remitting it to the State. The Certificate is treated as tender. If the purchase price plus sales tax is less than the amount of the Certificate(s), the customer receives cash back. If the purchase price plus sales tax is more than the Certificate(s), the customer pays the difference. If the customer returns the merchandise, the full purchase price plus the sales tax is refunded to the customer.

“The sale is recorded at the full purchase price on [N]’s books. Until recently, the cost of the Certificate was not incurred by [N] but was incurred by [N]’s financing subsidiaries. The Bank incurred the cost of the Certificates in fiscal year ended January 31, 2000. [N] C---, Inc. (C---), a wholly owned subsidiary of [N], Inc. incurred the cost of the Certificates in fiscal years ended January 31, 2001 and 2002. [N] recorded the cost of the Certificates on its books in fiscal year ended January 31, 2003.”

Based on the above facts, you conclude that a Certificate is not a cash discount but instead is a rebate. In order to confirm your conclusion, you request “a ruling on whether the Certificate is treated as a discount reducing the selling price for the calculation of sales tax or is treated as a rebate and is fully subject to sales tax.”

DISCUSSION

As a starting point some background on California Sales and Use Tax Law may be helpful. Sales tax is imposed on all retailers measured by their gross receipts from the retail sale of tangible personal property in this state, unless some exemption applies. (Rev. & Tax. Code, § 6051.) Even though sales tax is imposed on the retailer, the retailer may, by agreement with the purchaser, collect sales tax reimbursement from the purchaser. (Civ. Code, § 1656.1.) When sales tax does not apply, use tax applies to the storage, use or other consumption of tangible personal property purchased from any retailer for the storage, use or other consumption in this state, measured by a percentage of the sales price, unless that use is specifically exempt by statute. (Rev. & Tax. Code, § 6201.) “Gross receipts” (for purposes of the sales tax) and “sales price” (for purposes of the use tax) generally include all amounts received with respect to the sale or use of tangible personal property, with no deduction for the cost of materials used, labor or service costs, or other expenses of the retailer, unless there is a specific statutory exclusion. (Rev. & Tax. Code, §§ 6011, 6012.)

A gift certificate can be purchased with cash or other tender or it can be issued pursuant to some form of awards, loyalty, or promotional program. (Cf., Civ. Code § 1749.5.) Civil Code section 1749.6, subdivision (a) states that “a gift certificate constitutes value held in trust by the issuer of the gift certificate on behalf of the beneficiary of the gift certificate.” For sales and use tax purposes, we have held that gift certificates are a species of credit memorandum and as such the value of the certificate is included in the measure of tax when used as consideration for the purchase of tangible personal property at retail. (See Sales and Use Tax Annotations 280.0350 [12/19/78], 280.0580 [01/25/61].) In other words, a gift certificate is considered to be the same as cash when used to purchase tangible personal property. (See Sales and Use Tax Annotations 280.0828 [05/25/75], 295.1070 [05/26/76].)

In determining whether an instrument is a gift certificate, if in practice the retailer refunds the customer cash or credit when the customer uses the instrument to purchase merchandise of lesser value than the instrument’s assigned value, this is a clear indication that the retailer and the customer consider the instrument to be some form of credit memorandum. Under those circumstances, we would probably conclude that the instrument is a gift certificate. Here, you state that [N] treats the Certificates as cash. To that extent, [N]’s policy is to refund any difference between the purchase price of merchandise and the Certificate’s assigned value to the customer. You also state that the customer can use Certificates to pay any applicable tax on the merchandise, and the customer can exchange Certificates for gift certificates. Based on your description of how [N] treats these Certificates, we would consider them to be a form of credit memorandum like other gift certificates and not a rebate or a cash or trade discount. Thus, for sales and use tax purposes, when the Certificates are used as consideration in the sale of tangible personal property at retail the Certificate’s value that is used as consideration will be included in the measure of tax.

I hope that the foregoing answers your specific questions. If you have any additional questions do not hesitate to write again.

Mr. [T]

-4-

August 4, 2003
280.0585

Sincerely,

Chris A. Schutz
Tax Counsel

CAS/ef

cc: --- District Administrator (--)