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January 3, 2005

Ms. Diane L. Hardt
Administrator
Wisconsin Department of Revenue
2135 Rimrock Road, 6-40
P.O. Box 8933
Madison, WI 53708-8933

Mr. Scott C. Peterson
South Dakota Department of Revenue and Regulation
445 E. Capitol Ave.
Pierre, SD 57501

Re: Buydowns, Manufacturers' Coupons, Store Coupons

Dear Ms. Hardt and Mr. Peterson:

The Food Marketing Institute¹ (FMI) is pleased to submit comments on the discussion draft on "Buydowns," which is currently before the SSTP Steering Committee. While FMI generally supports the direction of the changes the Steering Committee made on a discussion draft on "Buydowns, Manufacturers' Coupons, Store Coupons" dated November 2, 2004, we ask that the Steering Committee consider further changes.

FMI is concerned that current language will treat retail coupons, which can only be used in the store for which they are issued and advertised, as tender and therefore subject to taxation. Taxes are currently not required on these store-issued coupons because the states recognize that it is a business decision a retailer makes to reduce the price of an item and money is not paid by manufacturers to make up the reduction in price. It is also a marketing strategy, which should not be regulated by state government.

¹ FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

In addition to regular store-issued coupons, loyalty or bonus card customers may be at risk for new taxes based on the current “Buydown” draft. These loyalty cards are a way for a store to show appreciation to their faithful customers by rewarding them with special discounts.

The customer may not know if they are receiving discounts because of a manufacturer rebate or because of a store discount. In fact, a shelf tag may say, for example, “Retailer ‘A’ Club Price, \$1.99, Non-Member Price \$2.49,” or, “Save 5 ¢ with your Bonus Card.”

A receipt may say:

0.93 lb@ 3.99/lb. Cherries, Calif. Red \$3.71 Bonus
Reg Price \$5.57, Card Savings 1.86

Another example:

CBD Cheese Ravioli \$1.55
Bonus Card Savings -0.55
Price Paid \$1.00

A Savings Summary on the receipt could show the following:

Total: \$59.54
Total before savings: \$63.25
Your Total Savings: \$06.03

We believe that requiring retailers to disclose the reasons for the savings or allowing these items to be taxable when they traditionally have not will interfere with a retailer's marketing strategy and therefore their way of doing business. This will also cause customer confusion.

To that end, FMI supports changes made to the November 2, 2004 draft by Jim Olsen, Utah Food Industry Association, which he distributed to the SSTP during the November 2004 meeting in Chicago. Specifically, Mr. Olsen makes the following changes: (Added language is underlined, strikethrough indicates deletion.)

5. Seller’s discount cards—no reimbursement. A grocer offers a “preferred customer” discount card to its customers at no cost, which they can present at the cash register for selected discounts and savings whenever they patronize the grocer. The discounts are identified on the cash register tape, either on an item-by-item basis, or as a “total savings” amount at the end of the tape. A preferred customer card that is available upon request to any member of the general public at no cost does not qualify the purchaser as a member of a group or organization entitled to a price reduction or discount. ~~None of the discounts are reimbursed by manufacturers or other third parties.~~

Accordingly, the discounts are not included in the sales price.

~~6. Seller's discount cards—reimbursement. The facts are the same except some of the discounts are based on the grocer's agreement with a manufacturer, pursuant to which the discount is reimbursed. Because the customer has claimed entitlement to special treatment by presenting the card and because the discount is shown on the invoice, the customer is deemed to know about the discount. Because the seller is actually reimbursed by a third party, the discounts are included in sales price.~~

These changes will provide protection against government intrusion into marketing strategies involving loyalty cards and retain the tax-free discounts on store-issued coupons that states have traditionally recognized and customers are accustomed to.

FMI appreciates the opportunity to provide comments on this issue. Please do not hesitate to contact me at 703.560.5813 or etansing@fmi.org if I can provide further information.

Sincerely,

Elizabeth K. Tansing
Director, State Government Relations