



Legislative News Affecting Florida Employers

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DO YOU OFFER COUPONS, DISCOUNTS OR OTHER PROMOTIONAL GIFTS? (PART II)

In last month's edition of ISSUES, we explained how the Department of Revenue had issued a Taxpayer Information Bulletin explaining how to handle the sales tax treatment of coupons, gifts and other promotions. Since we explained the sales tax treatment for manufacturers' and retailers' coupons last month, this month we are explaining rebates and gifts.

Rebates: Rebates provided by manufacturers to purchasers are not discounts allowed between the seller and the purchaser. The initial purchase of the item and the honoring of a rebate claim by the manufacturer are two separate and distinct transactions. Sales tax is computed on the total sales price, without any deduction for the manufacturer's rebate.

Gifts and Other Promotional Items:

Retailers may offer "two for the price of one" or "buy one get one free" sales and other similar offers. In many cases, the "free" item is transferred only in connection with the purchase of another item. In these cases, the "free" item is actually being sold. The retailer may purchase the item for resale without paying tax.

Sometimes a retailer gives an item to a customer at no charge and the transfer is not connected to a sale of another item. The retailer must pay use tax on its purchase of the item that is given away.

Free gifts given to customers as promotions.

When a retailer purchases promotional items that it intends to distribute free of charge, but not in connection with the sale of other items, the promotional items are subject to use tax. A retailer may provide free gifts to all shoppers, such as calendars, pens, and key chains.

The retailer may also offer a promotion where certain products are given away to the first 100 shoppers to enter the store. In either case, the retailer is responsible for paying use tax on the goods given away, because the customers are not required to purchase anything in order to receive the free items.

Buy one, get one free: In promotions where a customer purchases an item and receives another item of the same kind at no additional charge, the retailer is actually selling both products at the full sales price and offering a seller's discount equal to the value of one of the items. The retailer should collect sales tax on the actual sales price paid by the customer. Use tax is not applicable to the item sold at no charge.

Complimentary gift with purchase of an item:

If a retailer provides an extra item or gift to a customer at the time of, and in connection with the sale of, taxable merchandise, the extra item or gift is considered part of the sale. The retailer should collect sales tax on the actual sales price paid by the customer. The retailer is not required to accrue use tax on the cost of the extra item or gift. However, if the item being purchased is exempt from tax and the extra item or gift is a taxable item, the retailer is responsible for use tax on the extra gift or item.

Example: A retailer offers a free set of sheets to customers who purchase a mattress set. A customer purchases a mattress set for \$999.00 and receives a free set of sheets. Sales tax is due on \$999.00. No use tax is due on the set of sheets.

Example: A retailer gives a cheese cutter to customers who purchase a package of cheese. The sale of the cheese is not subject to sales tax because it is an exempt food. Therefore, the retailer is required to pay use tax on the cost price of the cheese cutter.

If you have any questions about if you should pay sales tax or use tax on gifts or rebates, please contact your local accountant or tax professional.

The following bills are currently being considered by the Florida Legislature in Tallahassee. We will provide you with a summary of all business-related legislation approved by the Legislature in next month's legislative wrap-up edition of ISSUES.

Health Care:

Senate Bill 2910 (Senator Peaden, R-Crestview) and House Bill 1629 (Representative Farkas, R-St. Petersburg) include recommendations from the Governor's Task Force on Access to Affordable Health Insurance. Most significantly, the legislation would create the Small Employers Access Program to provide health insurance options for small employers by pooling them together. The bills would also expand the Health Flex Program statewide to offer basic, high deductible health plans to uninsured workers with low incomes.

Workers' Compensation:

Senate Bill 2270 (Committee on Banking & Insurance) and House Bill 1251 (Representative Berfield, R-Clearwater) would significantly revise the Joint Underwriting Association ("JUA"), the state pool that issues workers' compensation insurance to businesses who cannot find private coverage. Subplan D of the JUA is facing a financial crisis because so many businesses are unable to find coverage in the private market. Under current law, businesses insured through subplan D are held responsible for any deficits in the subplan, which are predicted to be as high as \$35 million. These two bills would make a one-time appropriation to cover the existing deficits so that businesses in the subplan would not be assessed. The proposed legislation also changes the structure of the JUA to make the rates employers pay more equal to their safety record.

Tort Reform:

Senate Bill 1394 (Senator Smith, D-Gainesville) and House Bill 333 (Representative Simmons, R-Altamonte Springs) would provide immunity to companies that make food and non-alcoholic beverages if they are sued by individuals who sustain health problems from the long-term consumption of certain food and beverages.

Senate Bill 1654 (Senator Bennett, R-Bradenton) and House Bill 573 (Representative Kottkamp, R-Cape Coral) would give commercial businesses immunity from civil liability when a crime is committed on their property, presuming proper

precautions have been taken.

Unemployment Compensation:

Senate Bill 2148 (Senator Hill, D-Jacksonville) and House Bill 953 (Representative Holloway, D-Miami) would make it harder to disqualify someone from receiving unemployment benefits.

Senate Bill 1606 (Committee on Military and Veterans' Affairs) and House Bill 1183 (Representative Green, R-Ft. Myers) would grant unemployment benefits to military spouses who voluntary relocate in connection with their spouse's military obligation.

Taxes:

House Bill 171 (Representative Ryan, D-Dania Beach) would create the Joint Legislative Sales and Use Tax Exemption and Exclusion Review Committee. This committee would review exemptions from the Florida sales tax to determine whether they should be retained or eliminated.

Senate Bill 1668 (Senator Haridopolos, R-Melbourne) and House Bill 391 (Representative Brummer, R-Apopka) would reduce the interest taxpayers pay on their delinquent tax payments. Currently, tax deficiencies are paid back to the state at a rate of 4 percent over prime. These two bills would cut the 4 percent and require payment of interest at the prime rate.

Senate Bill 2838 (Senator Miller, D-Tampa) and House bill 1553 (Representative Bucher, D-West Palm Beach) would require subchapter S corporations and Limited Liability Companies to pay corporate income tax in Florida. Currently, only subchapter C corporations must pay the Florida corporate income tax.

Senate Bill 244 (Committee on Finance & Taxation) and House Bill 237 (Representative Kilmer, R-Marianna) would reinstate the "sales tax holiday." The Senate Bill would exempt school supplies, clothing, wallets, and school bags from state sales tax from July 24th through August 1st. Books would be exempt from sales tax the entire month of May 2004. The House version is similar but does not contain the provision exempting books from tax.

If you have any questions about any of these bills, please call the FUBA offices at 1-800-262-4483 and ask for Karen or Lance.