

## Sales/Use:

### New York Trial Court Dismisses Suit Against Retailer on Tax Treatment of Instant Savings Program

*Case Index No. 452106/2019*, N.Y. Sup. Ct. (9/21/21). In a lawsuit brought forth by the State of New York Attorney General seeking claims and penalties pursuant to the New York State False Claims Act and Tax Law Articles 28 and 29 for a retailer's alleged failure to collect and remit certain New York sales taxes, a New York Supreme Court (Court) judge granted the taxpayer's motion to dismiss and held that manufacturer disbursements from the retailer's "instant savings" program at issue constitute a wholesale discount reduction against the retailer's underlying cost of goods sold (COGS) rather than taxable "receipts" and thus are *not* subject to sales tax. In doing so, the Court stated that it focused on the mechanics of the transactions between the manufacturer and retailer and that, under the facts, the retailer's advertising of "instant savings" is "merely a marketing tactic to attract customers to a storewide sale, rather than evidence of a manufacturer's coupon." According to the Court, there is no privity between the manufacturer and the ultimate customer and thus the retailer's instant savings program cannot be considered a manufacturer's coupon. Also relevant to the Court was the fact that the retailer receives payment from the manufacturer under its instant savings program based on the volume of those manufacturers' goods sold and regardless of whether the underlying customers receive a discount. Under the facts, the retailer could retain the manufacturer disbursements at issue – for example, use them to pay for advertisements or other expenses – and was *not* required to pass the sums received on to its customers. Please contact us with any questions.

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