

Indirect/Sales/Use:

New York Appellate Court Denies Sales Tax Refunds on Device Sales in Gift Card Promotion

Case No. 531284, N.Y. App. Div. (4/14/22). The New York Appellate Division, Third Department (Court), recently affirmed a 2019 New York Tax Appeals Tribunal (Tribunal) decision [see Decision DTA No. 827287, N.Y. Tax App. Trib. (12/24/19) for details on the earlier ruling] addressing the proper method for computing sales tax on sales made in a taxpayer's "back-to-school" (BTS) promotion for two tax years at issue. Under the BTS promotion, some customers received, as applicable, either a \$100 or \$50 gift card with purchases of certain computers/electronics. The Court essentially agreed with the Tribunal that, under the facts, state sales tax should be computed on the full price of the qualifying purchase, without regard to the value of the gift card. Under the BTS promotion, if an individual declined the gift card, he/she would be charged for the entire price of the taxpayer product and the individuals were unable to return the gift card separately. The Court explained that because the gift card was given, rather than sold, upon the purchase of qualifying products, no sales tax collected at the time of that purchase was attributable to the card's value. In this respect, the Court reasoned that sales tax would be owed on the card's value only when it was applied toward a later purchase, and thus "it follows that the Tribunal rationally determined that such value was not subjected to double taxation."

Please contact us with any questions.

URL: https://nycourts.gov/reporter/3dseries/2022/2022_02459.htm

URL: <https://www.dta.ny.gov/pdf/decisions/827287.dec.pdf>

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