

**[J-64A-2022 and J-64B-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

JOHN G. MYERS,	:	No. 67 MAP 2021
	:	
Appellee	:	Appeal from the Order from the
	:	Commonwealth Court at No. 274 FR
	:	2016 dated August 6, 2021
v.	:	overruling the exceptions filed on
	:	June 10, 2020 and entering
COMMONWEALTH OF PENNSYLVANIA,	:	judgment on the May 11, 2020 order
	:	which Affirmed in Part/Reversed in
Appellant	:	Part the decision of the PA Board of
	:	Finance of Revenue at No. 1511266
	:	dated March 30, 2016.
	:	
	:	ARGUED: October 25, 2022
JOHN G. MYERS	:	No. 68 MAP 2021
	:	
	:	Appeal from the Order from the
	:	Commonwealth Court at No. 274 FR
v.	:	2016 dated August 6, 2021
	:	overruling the exceptions filed on
COMMONWEALTH OF PENNSYLVANIA	:	June 10, 2020 and entering
	:	judgment on the May 11, 2020 order
	:	which Affirmed in Part/Reversed in
APPEAL OF: BJ’S WHOLESALE CLUB,	:	Part the decision of the PA Board of
INC.	:	Finance of Revenue at No. 1511266
	:	dated March 30, 2016.
	:	
	:	ARGUED: October 25, 2022

OPINION

JUSTICE MUNDY

DECIDED: February 22, 2023

This direct appeal concerns the efforts of Appellee John G. Myers to obtain a refund of sales tax he paid in the amount of 38 cents on purchases he made with

redeemed coupons at BJ's Wholesale Club, Inc. (BJ's). To resolve the issues on appeal, the parties ask us to interpret Section 33.2(b) of the Pennsylvania Department of Revenue Code, which excludes "from the taxable portion of the purchase price, **if separately stated and identified[:]**"


(2) Discounts. Amounts representing on-the-spot cash discounts, employe discounts, volume discounts, store discounts such as "buy one, get one free," wholesaler's or trade discounts, rebates and store or manufacturer's coupons **shall establish a new purchase price if both the item and the coupon are described on the invoice or cash register tape.** An amount representing a discount allowed for prompt payment of bills which is dependent upon an event occurring after the completion of the sale may not be deducted in computing the tax. A sale is completed when there is a transfer of ownership of the property or services to the purchaser.

61 Pa. Code § 33.2(b) (emphasis added). Because we conclude the coupons were not described on the receipts Appellee presented, we reverse the order of the Commonwealth Court.

I. FACTUAL AND PROCEDURAL HISTORY

The facts, as stipulated to by the parties, are as follows. On June 24, 2015, Appellee filed a petition with the Pennsylvania Department of Revenue Board of Appeals (BOA) requesting a refund of sales tax he paid on three separate purchases of tangible property at BJ's in Downingtown, Pennsylvania on June 13, 2013, August 22, 2014, and August 25, 2014, which were made utilizing coupons. In the first transaction, Appellee purchased six items. Per the receipt, Appellee used five coupons of varying amounts, however, none of those coupons were linked to a specific item. As to the second and third transactions, Appellee purchased a single item and used one coupon. On all three receipts, each coupon he redeemed was listed as "SCANNED COUP." The sales tax on

each purchase was calculated based on the full price of the items before the coupons were applied. Appellee claimed that he should have paid sales tax on the discounted price, rather than the full price, of the items purchased for each of these transactions. Those three receipts, as contained in the stipulations of fact filed in the Commonwealth Court, are reproduced here:




1008 E. Lancaster Avenue
Downingtown, PA
(610) 518-5000

Club: 86 Reg: 5 Trans: 732
Cashier: 604 06/18/13 12:21pm

466071644	CLADE	2.99 T
466072392	CLAD PULGII	11.49 T
378047478	KIDS WAJURY	13.29 T
378047163	PIZZA BADA	15.49 T
621448837	ARMCH DEFL	11.99 T
621448836	ARMCH DEFL	11.99 T
6523304129	SCANNED COUP	1.00-T
67300131427	SCANNED COUP	2.00-T
67300131419	SCANNED COUP	1.00-T
67300131417	SCANNED COUP	1.00-T
67300131416	SCANNED COUP	1.00-T
****	SUBTOTAL	78.04
PA STATE TAX 6%		4.68
****	TOTAL	78.66

AUTH 012588		




1008 E. Lancaster Avenue
Downingtown, PA
(610) 518-5000
Gen.Mgr. Chris Ott

Club: 86 Reg: 64 Trans: 4078
Cashier: 604 08/22/14 10:58am

*** MEMBERSHIP ID. 08643723339 ***		
*** MEMBERSHIP EXPIRES ON 03/15 ***		

7023012202	TIDY CAT 38#	13.49 T
670230149068	SCANNED COUP	3.00-T
****	SUBTOTAL	10.49
PA STATE TAX 6%		0.81
****	TOTAL	11.30
*****1942		
AUTH 022718		

MasterCard		11.30
CHANGE		0.00
TOTAL NUMBER OF ITEMS SOLD = 1		



1008 E. Lancaster Avenue
Downingtown, PA
(610) 518-5000
Gen.Mgr. Chris Ott

Club: 86 Reg: 54 Trans: 4749
Cashier: 604 08/25/14 08:27pm

*** MEMBERSHIP ID. 08643723339 ***		
*** MEMBERSHIP EXPIRES ON 03/15 ***		

1780043119	ONE CAT 16#	21.99 T
517800202211	SCANNED COUP	1.00-T
****	SUBTOTAL	20.99
PA STATE TAX 6%		1.32
****	TOTAL	22.31
*****1942		
AUTH 025698		

MasterCard		22.31
CHANGE		0.00
TOTAL NUMBER OF ITEMS SOLD = 1		

Stipulations of Fact, No. 274 FR 2016, 3/29/19, at Exs. B-D.

Appellee petitioned the BOA, seeking a refund of 38 cents, the difference of the sales tax paid on the full purchase price versus the discounted purchase price.¹ The BOA held a hearing, after which it denied Appellee's request. The BOA concluded that BJ's

¹ Appellee also filed a class action against BJ's in the Philadelphia Court of Common Pleas, which has been stayed during the pendency of these cases. See *Myers v. BJ's Wholesale Club, Inc.*, No. 546 August Term 2013 (C.P. Phila., filed June 25, 2014). Appellee commenced the class action suit before he made the second and third single-item, single-coupon purchases involved in this case.

acceptance of the coupons did not establish a new purchase price. In reaching this conclusion, the BOA relied on Section 33.2, which permits amounts represented by coupons to establish a new purchase price “if both the item and the coupon are described on the invoice or cash register tape.” 61 Pa. Code § 33.2(b)(2). The BOA concluded that the coupons were not adequately described on the receipts, and nothing indicated which items the coupons were related. BOA Decision, 9/1/15, at 2.

Appellee filed a petition for review with the Board of Finance and Revenue (Board). The Board denied the petition for review, finding that Appellee failed to demonstrate that Section 33.2(b)(2) was contrary to the plain language of the Tax Reform Code of 1971 (Tax Code), Act of March 4, 1971, P.L. 6, as amended, 72 P.S. §§ 7101–10004. See Board Decision, 11/15/15, at 4 (citing 72 P.S. §§ 7201(g)(1)-(2)). As a result, the Board affirmed the BOA’s conclusion that Appellee owed sales tax on the full price of the items, as opposed to the discounted price, because the coupons were not sufficiently described. *Id.* Appellee filed a petition for review with the Commonwealth Court.

A unanimous three-judge panel of the Commonwealth Court reversed the Board’s order and found Appellee was entitled to a refund of overpaid sales tax. See *Myers v. Commonwealth*, Nos. 274-275 F.R. 2016, 2020 WL 2313808, at *1 (Pa. Cmwlth. May 11, 2020). The panel recited the language of Section 33.2(b), which provides that a coupon “shall establish a new purchase price if both the item and the coupon are described on the invoice or cash register tape.” *Id.* at *7 (citing 61 Pa. Code § 33.2(b)(2) (emphasis omitted)). In its view, the Commonwealth Court concluded the Board erred in finding that the receipt must specify to which taxable items the coupons relate, as opposed to requiring a description that allows one to discern that a taxable item was purchased and that a coupon was accepted and applied to that item. *Id.* at *8. Accordingly, the panel

determined “[t]here is no requirement within the regulation that the receipt indicate to precisely which taxable item the coupon relates.” *Id.*

The panel then examined all three receipts in light of its interpretation. As an initial matter, the panel observed that each receipt signified whether an item purchased is taxable or nontaxable, denoted by either “T” or “N” next to the item. *Id.* The panel first considered the receipts corresponding to the transactions on August 22nd and August 25th, both of which involved the purchase of a single item. In both transactions, the item purchased was taxable. Appellee utilized one coupon for each transaction. Each coupon was listed on their respective receipts as “SCANNED COUP.” Both transactions also charged six percent sales tax on the original purchase price instead of the discounted price. *Id.*

The panel concluded that, consistent with Section 33.2(b), the items and coupons were sufficiently described on the receipt. It observed that the second line of each receipt “identified” that a coupon was used and “described” the amount of the coupon. It further indicated that the coupon related to a taxable item and showed that the coupon reduced the total purchase price owed to complete the transaction. *Id.* In response to the Commonwealth’s argument that nothing on the receipt identified the nature of the coupon, the panel explained that there is no such requirement. *Id.* It further reasoned that “[w]hen one taxable item is purchased and one coupon for a taxable item is scanned, there can be no question that the coupon related to a taxable item purchased.” *Id.* The Commonwealth Court thus concluded that Appellee was entitled to a refund of overpaid sales tax as to these two transactions. Turning to the remaining transaction, which took place on June 13th, the panel observed that Appellee purchased six taxable items and used five coupons, all of which also related to taxable items. As a result, the panel

similarly concluded Appellee was entitled to a refund of overpaid sales tax as to this transaction. *Id.* at *9.

In conclusion, the panel reiterated:

[W]hen there is only one coupon applied prior to the consummation of the sale or during the sales transaction, where only one taxable item was purchased, like [Appellee's] August 22nd and August 25th transactions, it is evident that the coupon applied to that single taxable item. When all items are described as taxable and all of the coupons relate to taxable items, as is the case with [Appellee's] June 13th transaction, no further description is required. It is evident from the receipts that the coupons applied to taxable items and the description was adequate, which means that an overpayment of tax was paid when the coupon amount was not excluded from the original purchase price for calculation of sales tax owed.

Id. Thus, the panel opined that while the Board correctly interpreted the word “described,” it erred in its application of Section 33.2(b) by concluding that the coupon needed to relate to a specific item, as the regulation merely requires that the item and coupon be described on the invoice or cash register tape. *Id.* at *10. It went on to state “[r]eason dictates that the description need only be in a manner sufficient to show that the amounts reflected by the coupon apply to a taxable item to allow for the reduction from the taxable portion of the purchase price.” *Id.* Accordingly, the panel reversed the Board’s denial of Appellee’s request for a refund.

Following this decision, both the Commonwealth and BJ’s, as intervenor, (collectively Appellants) filed exceptions to the Commonwealth Court’s decision. An *en banc* panel of the Commonwealth Court overruled Appellants’ exceptions and again concluded the receipts in this case were sufficient to establish an entitlement to a refund of overpaid sales tax. See *Myers v. Commonwealth*, 260 A.3d 349 (Pa. Cmwlth. 2021) (*en banc*). Appellants essentially claimed that Appellee failed to present sufficient

evidence, as a matter of law, demonstrating that the coupon discounts were among those authorized by Section 33.2(b). More specifically, Appellants asserted that certain types of discounts – such as percentage reductions of entire purchases, specific dollar-amount discounts from a minimum purchase amount, discounts for shopping on a specific day, and other discounts not limited to specific items purchased – would not establish a new purchase price under Section 33.2(b). Although such discounts may be given via coupons, they cannot be linked to specific items. Accordingly, Appellants argued it follows that the regulation requires a taxpayer to present a receipt showing specific items and a connection between those items and the discount.

A majority of the panel disagreed with Appellants, explaining that such examples would still constitute on-the-spot discounts and therefore qualify for exclusion of sales tax under Section 33.2(b). *Id.* at 355. It also disagreed with Appellants that Section 33.2(b) requires that the discount be linked to a specific item. The majority explained that “[t]o the contrary, every discount, by definition, reduces the purchase price, whether of a single item or a group of items.” *Id.* It further concluded that the sufficiency of a receipt to entitle a taxpayer to a reduction in sales tax must be considered on a case-by-case basis. *Id.* In this case, the majority reiterated that two of Appellee’s transactions involved the purchase of one item, making it easy to discern the reduced purchase price and establish a new purchase price. As for the third transaction where Appellee purchased several items, the amount of the excess sales tax paid was the same irrespective of the items discounted by the coupons. *Id.* It therefore overruled Appellants’ exceptions and concluded the receipts here were sufficient to establish an entitlement to a refund of excess sales taxes paid. *Id.*

Judge McCullough authored a dissenting opinion. In her view, Appellee failed to establish that BJ’s overcharged sales tax in violation of Section 33.2(b)(2). She

specifically disagreed with the *en banc* majority panel's conclusion that a discounted purchase price is established where the receipt does not link the coupon to a specific item. *Myers*, 260 A.3d at 356 (McCullough, J., dissenting). She went on to explain that Section 202(a) of the Tax Code requires vendors to assess and collect a six percent tax of the "purchase price" upon "each separate sale at retail" to be paid to the Commonwealth. *Id.* (citing 72 P.S. § 7202(a)). A vendor owes the state sales tax on the full price of the item unless it can establish a "new purchase price" of the item, which may be established where "both the item and the coupon are described on the invoice or cash register tape." *Id.* at 357 (citing 61 Pa. Code § 33.2(b)(2)). She further noted that along with this regulation, the Pennsylvania Department of Revenue (Department) has published certain guidelines:

Q: How do I calculate sales tax on an item a customer purchased with a coupon?

If you have the capability to link coupons to specific items on the receipts, you may charge sales tax on the lower, after-coupon price. However, if your system does not link a coupon to a specific item, state law requires you to charge sales tax on the full purchase price of the item. For more information, review Chapter 33 of the Pennsylvania Code.

Id. (quoting Pennsylvania Department of Revenue Tax Update, "Sales & Use Tax: 12 Common Questions & Filing Errors," No. 137, August/September 2008, https://www.revenue.pa.gov/News%20and%20Statistics/TaxUpdate/Documents/taxupdate_137.pdf (last visited December 27, 2022)). In light of the foregoing, Judge McCullough opined that the majority panel's interpretation of the regulation contravenes the plain language of the Tax Code and Section 33.2(b)(2). *Id.*

She further explained that sales tax is assessed upon "each separate sale at retail," making it necessary that the receipt make clear reference to each discounted item

and to coupon to which it relates. *Id.* at 358. In support of this conclusion, Judge McCullough discussed *Commonwealth v. Morris Half Hour Laundromat*, 277 A.2d 149 (Pa. 1971). There, Morris owned several coin-operated laundromats. The only significant difference at each location was the capacity and cost per use of the washing machines, which ranged from 25 cents to 75 cents per use. Morris's practice was to remit four or five percent of the gross receipts to the Commonwealth. *Morris*, 277 A.2d at 149. Our Court determined, however, that this practice was "clearly wrong" because "[t]he Act imposes a tax upon each 'separate' sale at retail, and [Morris's] computations necessarily assume, contrary to fact, that the entire gross receipts from one laundromat reflects a single sale at retail or, alternatively, that all separate sales at each location in each tax reporting period were in even dollar amounts." *Id.* at 151.

According to Judge McCullough, "[t]he important takeaway from [*Morris*] is that all purchases made at a single visit do not represent one inseparable sale at retail." *Myers*, 260 A.3d at 358 (McCullough, J., dissenting). To determine the correct amount of sales tax in *Morris*, the Department's auditor looked at the single use of a washing machine as one separate sale at retail because, based on the statute in effect at the time, sales tax amounts for purchases under one dollar were based on a graduated scale, making it impossible to apply the correct amount based on the gross figure. Based on this, Judge McCullough maintained that the majority panel's conclusion adopts an interpretation that has been expressly rejected by this Court. *Id.*

The dissent then recognized that, similar to the statute in effect when *Morris* was decided, Section 203 of the Tax Code similarly computes sales tax on purchases under one dollar based on a graduated scale. *Id.* at 358-59 (citing 72 P.S. § 7203). Judge McCullough then provided an example to demonstrate that the majority's conclusion does not work when applied to purchases involving several items less than one dollar with the

use of a coupon not linked to a specific item. *Id.* at 359. In these cases, it would be impossible to determine the correct amount of sales tax from the gross receipt amount. She provided several additional examples concerning scenarios involving percentage-off discounts and single-item, single-coupon transactions. *Id.* Finally, Judge McCullough explained that Pennsylvania law does not require vendors to have the capability of linking coupons to a particular item on the receipt. In these instances, however, there can be no reduction of the purchase price and therefore no reduction in sales tax. If a taxpayer is dissatisfied with this practice, they are free to take their business elsewhere. *Id.* at 360.

II. ISSUES AND STANDARD OF REVIEW

The Commonwealth and BJ's each filed a direct appeal. The Commonwealth raises the following issue:

Did the Commonwealth Court Majority misinterpret [61 Pa. Code § 33.2(b)(2)] when it conflated the separately stated and identified element with the description element, which lowers the evidentiary standard required by the regulation, usurps the [Department of Revenue's] enforcement function, and results in the erroneous calculation and collection of sales tax?

Similarly, BJ's presents the following issues:

1. Does 61 Pa. Code § 33.2(b)(2) require that a vendor's register receipt indicate precisely to which taxable item the coupon relates in order to charge and remit sales tax on less than the original, non-discounted price of the item?
2. Do any of the register receipts [Appellee] received upon making his June 13, 2013, August 22, 2014, and August 25, 2014 purchases at BJ's indicate precisely to which taxable items the coupons at issue relate so as to establish a reduced taxable purchase price pursuant to 61 Pa. Code § 33.2(b)(2)?

As these issues require the interpretation of an administrative regulation, they are questions of law over which our standard of review is *de novo* and our scope of review is plenary. See *S & H Transp. v. City of York*, 210 A.3d 1028, 1038 (Pa. 2019).

III. THE DESCRIPTION REQUIREMENT OF 61 PA. CODE § 33.2(b)(2)

A. PARTIES' ARGUMENTS

The parties each suggest that the unambiguous language of Section 33.2(b) supports their respective positions. For their part, Appellants argue the plain text of Section 33.2(b) establishes that sales tax is owed on the full purchase price unless objective evidence demonstrates a lower purchase price.² To meet this evidentiary standard, Appellants contend a challenger must satisfy the two requirements of Section 33.2(b): (1) the amount of the item and coupon must be “separately stated and identified” (61 Pa. Code § 33.2(b)); and (2) “both the item and the coupon [must be] described” on the invoice or receipt (61 Pa. Code § 33.2(b)(2)). Commonwealth’s Brief at 22. The description requirement, in Appellants’ view, contains a “linking” element such that the coupon must be adequately described to show that it applied to a specific item. *Id.* at 23 (noting the Department’s guidance to retailers has consistently highlighted the linking prerequisite); *accord* BJ’s Brief at 18.

Appellants criticize the Commonwealth Court for conflating these two requirements by concluding that a coupon that is identified on a receipt is automatically also adequately described, which renders the “description” element surplusage. Commonwealth’s Brief at 23-25. Appellants argue this is contrary to the structure of Section 33.2, which contains the “separately stated and identified” element in paragraph (b) and the “description”

² Appellants filed separate briefs, and we group their arguments together for ease of discussion.

element in subparagraph (b)(2), showing that the drafters intended that both elements must be satisfied and must carry a different meaning. *Id.*

Appellants further fault the Commonwealth Court for not recognizing that Section 33.2(b) does not apply to every type of coupon or discount. *Id.* at 26. Appellants highlight that even though it was not disputed that certain discounts or coupons fall outside Section 33.2(b)—such as reductions of entire purchases, specific dollar-amount discounts from a minimum purchase amount, and sales tax absorption coupons³—the Commonwealth Court nonetheless concluded they would all qualify under the regulation’s “on-the-spot cash discounts” language. *Id.* Such a construction, Appellants posit, must be erroneous because Section 33.2(b) enumerates specific types of coupons, which implies that other types are excluded. *Id.* at 26-27 (citing *Thompson v. Thompson*, 223 A.3d 1272, 1277 (Pa. 2020) (invoking “the doctrine of *expressio unius est exclusio alterius*, [meaning] the inclusion of a specific matter in a statute implies the exclusion of other matters.”)).

By not giving effect to the description element, Appellants argue that “the Commonwealth Court Majority has usurped the Department’s enforcement function and lowered the evidentiary standard set by Section 33.2(b)(2).” Commonwealth’s Brief at 27. A consistent and objective way to ensure the coupon and the item are linked is essential to the administration of the sales tax law, in Appellants’ view. *Id.* Appellants claim that the two “one item, one coupon” transactions in this case cannot alter the evidentiary standard in Section 33.2(b). Instead, without a description of the coupon, it is impossible for the Department to determine whether the coupon Appellee redeemed qualifies under the regulation. *Id.* at 29; *accord* BJ’s Brief at 19. Thus, Appellee did not

³ A sales tax absorption coupon is one in which the seller pays all or part of the state sales tax on behalf of the purchaser. The Commonwealth notes that the practice of sales tax absorption was prohibited until 2019 but is now permitted. See Commonwealth’s Brief at 26 n.7; Commonwealth’s Reply Brief at 12 n.4 (citing 72 P.S. § 7268(b)).

meet his burden to prove that he overpaid sales tax. Commonwealth's Brief at 29. Likewise, Appellee did not meet his burden in the first transaction involving six items and five coupons because the receipt shows only that the coupons were redeemed, but does not describe them. *Id.* at 30. For these reasons, Appellants request that we reverse the Commonwealth Court.

In contrast, Appellee argues that the plain language of Section 33.2(b) does not support Appellants' position. Appellee points out that the regulation does not contain the words "type," "link," or "relate." Appellee's Brief at 12-13. Instead, Appellee notes that the only requirement in Section 33.2(b) is that the item and the coupon must be described on the receipt. *Id.* at 13. Appellee relies on Black's Law Dictionary to define a description simply as "[a]n enumeration or specific identification of something." *Id.* (quoting Black's Law Dictionary at 456 (7th ed. 1999)). Applying this definition, Appellee reasons that "the proper way to describe a coupon is with its 'value,' which is exactly what [his] receipts do: each shows 'SCANNED COUP' and a value[.]" *Id.* (footnote omitted). Moreover, Appellee agrees with the Commonwealth Court that the category of "on-the-spot" discounts "subsumes many kinds of possible discounts." Accordingly, Appellee contends that the receipts he submitted into evidence satisfied the requirements of Section 33.2(b) because the single-item, single-coupon transactions indisputably establish that the coupon applies to the item, and the remaining transaction reflected five coupons applied to reduce the purchase price of six taxable items. *Id.* at 8.

Further, Appellee disputes Appellants' claim that the Department's guidance has been consistent in requiring a link or connection between the item and the coupon. *Id.* at 14-15. Appellee acknowledges that the Department issued a news publication and a

2005 letter ruling⁴ but maintains they are “comprehensively rebutted” by an August 13, 2014 letter ruling in this case regarding single-item, single-coupon receipts: “In the context of a transaction where only one item is being purchased and only one coupon is being redeemed, it may be reasonable to conclude that the coupon relates to the item.” *Id.* at 15 (quoting Stipulation of Facts, at Ex. F, letter ruling, 8/13/14). Appellee reads this letter ruling as clearly stating that the Commonwealth would accept that a single-item, single-coupon transaction meets the requirements of Section 33.2(b). *Id.* Appellee also dismisses Appellants’ sales tax enforcement concerns by proposing that this case is limited to its facts. *Id.* at 18-19.

In response, Appellants criticize Appellee’s reading of Section 33.2(b), which aligns with the Commonwealth Court’s interpretation. They accuse Appellee’s argument of ignoring the separately stated and identified requirement and discussing only the description requirement. Commonwealth’s Reply Brief at 7. In Appellants’ view, this constitutes a concession from Appellee that Appellants’ interpretation of the separately stated and identified requirement is correct. *Id.* Looking at Appellee’s definition of “description,” Appellants note that it includes a “specific identification of something.” *Id.* Highlighting the word “specific,” Appellants contend that Appellee’s receipts do not contain a specific identification of any of the coupons. Noting that Section 33.2(b)’s description requirement applies to both the item and the coupon, Appellants contrast the lack of specificity of the coupon’s identification with the specific descriptions of the items purchased, such as “Tidy Cat 38#” as opposed to “SCANNED ITEM.” *Id.* at 9.

⁴ The 2005 letter ruling was responding to an inquiry from Wal-Mart Stores, Inc. regarding Wal-Mart’s point of sale (POS) software that would identify the item purchased and the coupon by their individual, 12-digit Universal Price Code (UPC). Department letter ruling, 8/11/05, R.R. at 150a. The Department advised Wal-Mart that its proposed POS system could not reduce the purchase price under 61 Pa. Code § 33.2(b) because “it is impossible to tie a specific coupon to a specific item.” *Id.*, R.R. at 152a.

Additionally, Appellants argue that a specific description of the coupon is required because under Section 33.2(b), not every coupon reduces the taxable purchase price of an item. *Id.* at 11. Appellants reassert that “[i]f every coupon qualified, the [r]egulation would not include an enumerated list; indeed, a description would be unnecessary.” *Id.* Appellants’ reading of Section 33.2(b)(2) is that a coupon must be related to an item in order to reduce the taxable purchase price. *Id.* at 12. Thus, Appellants posit that coupons related to conduct do not qualify, which include “a reduction for shopping on a certain day, spending a certain amount of money, or absorbing sales tax[.]” *Id.* (footnotes omitted). Applying this to the single-item, single-coupon transactions, Appellants argue that the inadequate descriptions did not prove that the coupons are related to items. BJ’s Reply Brief at 6.

Responding to Appellee’s invocation of the Department’s 2013 letter ruling, Appellants observe that it came after Appellee’s first transaction, before the single-item, single-coupon transactions occurred. Further, Appellants characterize the ruling as conditional because it stated only that “it *may* be reasonable to conclude that the coupon relates to the item.” Commonwealth’s Reply Brief at 12 (emphasis in original) (quoting Stipulation of Facts, at Ex. F, letter ruling, 8/13/14); *accord* BJ’s Reply Brief at 10. However, when confronted with the subsequent single-item, single-coupon purchases, Appellants note the Department ruled that the receipts were insufficient to warrant a refund. Commonwealth’s Reply Brief at 13. Appellants agree with the Department that once the regulation is properly construed, this case is reduced to a failure of proof in that the receipts insufficiently described the coupons. *Id.* at 14; *accord* BJ’s Reply Brief at 11.

B. ANALYSIS

Generally, in construing a regulation, we apply the principles of the Statutory Construction Act, 1 Pa.C.S. § 1921-39. *S & H Transp.*, 210 A.3d at 1038. In performing

our interpretive function, our objective is “to ascertain and effectuate the intention of” the governmental body that promulgated the regulation. *Id.* The plain language is the best indication of the drafter’s intent. However, when the language is ambiguous, we resort to the factors listed in Section 1921(c) to discern intent. 1 Pa.C.S. § 1921(c). Further, when a tax enactment is ambiguous, there are special rules of construction which require strict construction in favor of the taxpayer and against the taxing authority. 1 Pa.C.S. § 1928(b); *S & H Transp.*, 210 A.3d at 1038.

We begin by putting Section 33.2 into the context of the Tax Code. Section 202(a) of the Tax Code provides for a sales tax as follows:

(a) There is hereby imposed upon each separate sale at retail⁵ of tangible personal property or services, as defined herein, within this Commonwealth a tax of six per cent of the purchase price, which tax shall, except as otherwise provided, be collected by the vendor or any other person required by this article from the purchaser, and shall be paid over to the Commonwealth as herein provided.

72 P.S. § 7202(a). Thus, a vendor is statutorily obligated to collect six percent of the purchase price of “each separate sale at retail” and remit that sales tax to the Commonwealth.

Section 33.2(b) permits the exclusion of amounts representing certain discounts from the purchase price. Section 33.2(b), quoted in part above, states:

(b) *Exclusions.* Amounts which are excluded from the taxable portion of purchase price, if separately stated and identified, include:

(1) *Returnable containers.* Deposit charges for returnable containers.

⁵ The Tax Code defines a “sale at retail” as, *inter alia*, “[a]ny transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.” 72 P.S. § 7201(k)(1).

(2) *Discounts*. Amounts representing on-the-spot cash discounts, employe discounts, volume discounts, store discounts such as “buy one, get one free,” wholesaler’s or trade discounts, rebates and store or manufacturer’s coupons shall establish a new purchase price if both the item and the coupon are described on the invoice or cash register tape. An amount representing a discount allowed for prompt payment of bills which is dependent upon an event occurring after the completion of the sale may not be deducted in computing the tax. A sale is completed when there is a transfer of ownership of the property or services to the purchaser.

. . .

(3) *Trade-in or exchange*. The amount allowed by the vendor for the acceptance of tangible personal property taken in exchange at the time of sale.

(4) *Finance charges*. Reasonable interest or finance amounts charged to the purchaser.

(5) *Gratuity*. A voluntary payment by the purchaser or a reasonable mandatory charge by the vendor in lieu of the voluntary payment, which is billed to the purchaser for services rendered in connection with the purchase of food or beverages or hotel or motel accommodations.

61 Pa. Code § 33.2(b).

From the plain language of subsection 33.2(b)(2), it is clear that only certain, specified discounts or coupons qualify to establish a new purchase price, *i.e.*, “on-the-spot cash discounts, employe discounts, volume discounts, store discounts such as ‘buy one, get one free,’ wholesaler’s or trade discounts, rebates and store or manufacturer’s coupons.” *Id.* § 33.2(b)(2). Further, per subsection 33.2(b), the amount excluded must be “separately stated and identified,” and under subsection 33.2(b)(2), both the item and the coupon must be “described on the invoice or cash register tape.” *Id.* Therefore, we agree with Appellants that Section 33.2(b) is unambiguous and contains two separate

and distinct requirements that must be met in order for an amount of a discount or coupon to be excluded from the purchase price.

As the amount excluded must be separately stated and identified, both the amount of the discount and the fact that it is a discount or coupon must appear on the receipt. Section 33.2(b) contains four other subsections with different exclusions from the purchase price, and its separately-stated-and-identified requirement applies to those as well, such that the category of the exclusion and its amount must be separately stated and identified. See 61 Pa. Code § 33.2(b)(1) (returnable containers); *Id.* § 33.2(b)(3) (trade-in or exchange); *Id.* § 33.2(b)(4) (finance charges); *Id.* § 33.2(b)(5) (gratuity). Subsection 33.2(b)(2) contains the additional requirement, which applies only to discounts, that the item and the coupon must be described on the invoice or cash register tape. To give effect to subsection 33.2(b)(2), its description requirement must be a description of the discount or coupon in addition to separately stating and identifying it as a discount or coupon. Otherwise, the description requirement is rendered surplusage, which contravenes “the axiom of statutory construction that ‘whenever possible each word in a statutory provision is to be given meaning and not to be treated as surplusage.’” *Commonwealth v. Lassiter*, 722 A.2d 657, 661 (Pa. 1998) (quoting *In re Emp. of Student Servs.*, 432 A.2d 189, 195 (Pa. 1981)).

In addition to being separately stated and identified, the coupon must be described. The description requirement is intended to ensure that the discount or coupon is one that the regulation specifies will qualify to establish a new purchase price. As Appellants have pointed out, and Appellee did not dispute, there are discounts or coupons that do not establish a new purchase price, such as a discount for shopping on a specific day, discounts from a minimum purchase amount, and sales tax absorption coupons. Further, subsection 33.2(b)(2)’s enumeration of specific types of discounts and coupons that

qualify implies the exclusion of unenumerated types of discounts and coupons. See *Thompson*, 223 A.3d at 1277 (“the inclusion of a specific matter in a statute implies the exclusion of other matters.”). For these reasons, we disagree with the Commonwealth Court that the regulation’s inclusion of “on-the-spot cash discounts” operates as a catchall such that all discounts or coupons qualify to establish a new purchase price.

Our interpretation is supported by the examples contained in the regulation. Specifically, the two pertinent examples contained in subsection 33.2(b)(2) are:

EXAMPLES:

(i) “A” purchases two hamburgers from “R” restaurant with a “buy one, get one free” coupon. The price of one hamburger is \$1. “R” rings up \$2 on the cash register. “R” enters a credit in the cash register for the amount of \$1 resulting in an adjusted price of \$1. The acceptance of the coupon by “R” establishes a new purchase price of \$1 which is subject to 6¢ tax.

(ii) “A” purchases 15 grocery items from “B” grocery. All of the items are exempt from tax except a bottle of soft drink. The price of the soft drink is \$1. “A” gives “B” a manufacturer’s coupon having a face value of 50¢ for the soft drink. “B” totals the 15 items on the cash register including \$1 for the bottle of soft drink. None of the items are described or identified on the cash register tape. “B” reduces the total sale by \$1--double the amount of the coupon. The coupon is not described or identified on the register tape. Therefore, the acceptance of the coupon by “B” does not establish a new purchase price. The \$1 purchase price of the soft drink is subject to 6¢ tax. The redemption of the coupon represents a refund which does not affect the purchase price of the soft drink.

61 Pa. Code § 33.2(b)(2)(i)-(ii).

In the first example, the restaurant is linking the “buy one, get one free” coupon to the item by accepting the coupon and then entering the coupon’s value as a credit in the cash register to establish a new purchase price. However, this example is of limited utility

in this case because it does not discuss the contents of the receipt. Of greater utility is the second example, in which a coupon does not establish a new purchase price for sales tax purposes because neither the item nor the coupon is “described or identified” on the register tape. This shows that a coupon that reduces the total sale price and that would otherwise qualify to establish a new purchase price cannot do so if it is not described and identified on the receipt. Further, the example’s use of “described or identified” shows that the drafters of the regulation intended identification and description as distinct requirements.

Applying the plain language of Section 33.2(b) to this case, none of the receipts Appellee presented satisfy subsection 33.2(b)(2)’s description requirement. The first receipt, dated June 13, 2013, shows that Appellee purchased six taxable items and redeemed five coupons. While the six items are described, all five coupons are listed as “SCANNED COUP.” Similarly, the second and third receipts, dated August 22, 2014, and August 25, 2014, reflect Appellee purchased a single item and redeemed a single coupon. Again, the items are described, but the coupons are recorded as “SCANNED COUP.” Thus, the coupons on all three receipts are identified as coupons but not described. Without a description of the coupons, it is impossible to determine whether any of the coupons were of the type that subsection 33.2(b)(2) authorizes to establish a new purchase price. Because it was Appellee’s burden to prove that he was entitled to a refund of sales tax, he did not meet his burden. See 72 P.S. § 7236; *Anastasi Bros. Corp. v. Commonwealth Bd. of Finance & Revenue*, 315 A.2d 267, 270 (Pa. 1974).⁶

⁶ The transactions in this case occurred in 2014. Advances in technology coupled with the Department’s consistent guidance that the coupon must be related to the item to establish a new purchase price have likely reduced the frequency with which this issue arises.

For these reasons, the order of the Commonwealth Court granting Appellee's petition for a refund is reversed and the petition is dismissed.

Jurisdiction relinquished.

Chief Justice Todd and Justices Donohue, Dougherty and Wecht join the opinion.

Justice Brobson did not participate in the consideration or decision of this matter.