

**A motion by SLAC for a rule related to bundling:**

**ARTICLE III – REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE**

**Rule 330. Bundled Transactions**

**Rule 330.1. Definition of a Bundled Transaction**

**A. Application and Severability of the Definition.** Member states shall adopt and use all parts of the definition of a “bundled transaction” set forth in Part I of the Library of Definitions to determine whether a transaction is a bundled transaction and none of the definition’s parts shall be severable when making such a determination. Except as provided in this rule, a transaction that does not comply with any single part of the definition shall not be a bundled transaction.

**B. Types of Products Included in a Bundled Transaction.** For purposes of the “bundled transaction” definition found in Part I of the Library of Definitions, “products” shall include all types of products except real property and services to real property. Types of products include; tangible personal property, services, intangibles, digital goods, and products that a member state has directly imposed tax on the retail sale thereof but the imposition of tax on the retail sale of such products may not itself be considered tangible personal property, services, or digital goods. Member states may continue current sales and use tax treatment for transactions that include real property or services to real property. Services to real property include, for purposes of example only, such services as building framing, roofing, plumbing, electrical, painting, janitorial, pest control and window cleaning.

**1. Distinct and Identifiable Products.** A “bundled transaction” is a retail sale of two or more products that are “distinct and identifiable.” Packaging that accompanies the retail sale of a product, products provided free of charge and items included in a member state’s definition of “sales price” and “purchase price” are not distinct and identifiable products.

**a.** Packaging is not a separate and distinct product when such packaging is the wrapping or packing that accompanies the retail sale of a product(s) and such packaging is incidental or immaterial to the retail sale of the product(s). Member states may exempt from tax the purchase or use of packaging or subject to tax the purchase of packaging that will accompany retail sales of products by limiting the seller’s authority to utilize a resale exemption.

**b.** A product provided free of charge is not a separate and distinct product. A product shall be considered to be provided free of charge in a retail sale if, in order to obtain the product, the purchaser is required to make a purchase of one or more other products and the price of the purchased products does not change based on the seller providing a product free of charge. Such products provided free of charge with the necessary purchase of another product (e.g. a free car wash with the purchase of gas or free dinnerware with the purchase of groceries) shall be considered “promotional products”. Member states may exempt from the tax the purchase by a seller of products that will be provided free of charge to a purchaser of another product or subject to tax the purchase of products that will be provided free of charge to the purchaser of another product by limiting the seller’s authority to utilize a resale exemption. Member states may have from having different tax treatments for different types of promotional products.

**c.** A retail sale is not considered to be for “two or more distinct and identifiable products” if the items are included in a member state’s definition of “sales price” and “purchase price.” For example, if a member state includes “delivery charges,” whether separately itemized or not, in its definition of “sales price,” the retail sale of a product and the delivery of that product for a single price shall not be considered a bundled transaction because the delivery charges are included in the sales price of the product under the definition of “sales price” adopted by the member state.

**2. One Non-itemized Price.** The sales price or purchase price of a bundled transaction is for one non-itemized price. If a retail sale of two or more products is not made for “one non-itemized price,” then the retail sale is not a “bundled transaction.” A transaction shall not be considered to be a bundled transaction if, by negotiation or otherwise, the sales price varies with the purchaser’s selection of the distinct and identifiable products being sold. A retail sale shall not be considered made for “one non-itemized price” if the purchaser has the option of declining to purchase any of the products being sold and, as a result of the purchaser’s selection of products, the sales price varies or a different price is negotiated.

**a.** A retail sale shall not be considered a bundled transaction if the price is separately identified by product on binding sales documents or other supporting sales-related documentation made available to the purchaser because the sale is not being made for “one non-itemized price.” The sales-related documents made available to a purchaser in paper or electronic form shall provide enough information for the purchaser to determine the price(s) of taxable and exempt products.

**b.** A transaction shall not be considered a bundled transaction if a seller bills or invoices one price for the sale of distinct and separate products but the price invoiced is equal to the total of the individually priced or itemized products contained in supporting sales-related documentation, such as a catalog, price list, or service agreement.

**c.** If the seller bills or invoices one price for a transaction that includes a bundle of products and also includes one or more additional products that are individually priced or itemized in a catalog or price list, the additional products individually priced or itemized shall not be considered to be a part of the bundled products sold for one non-itemized price.

**d.** If a transaction does not qualify as a bundled transaction because of the provisions in this subsection (B.2.a-c), the transaction shall not be considered a bundled transaction as a result of the seller offering a subsequent discount of the total sales price without itemizing the amount of the discount for each product. In such a situation, if there is no sales-related documentation showing the allocation of the discount, the discount shall be considered to be allocated evenly among the otherwise separately itemized products.

**3. Records Required to be Maintained by the Seller.** In order to show whether a retail sale was for one or more distinct and identifiable products and whether the products were sold for one non-itemized price, a seller shall maintain copies of invoices, service agreements, contracts, catalogs, price lists, rate cards and other sales-related documents given to, or made available to, the purchaser. A member state shall not be restricted in assessing tax because the seller or purchaser failed to provide documentary proof that the price varied based on the purchaser's selections of products.

**4. Exclusions of Transactions that Otherwise Would Qualify as Bundled Transactions.** Part C of the definition of a "bundled transaction" contains exclusions for transactions that would otherwise qualify as bundled transactions. Part C-1 does not apply to transactions that include only tangible personal property. Part C-3 may be applied to transactions that include all types of products, except a member state may exclude the application of Part C-3 to transactions that include royalty or franchise fees. Part C-3 of the definition shall not apply to a transaction if Part C-1, C-2 or C-4 is applicable to the transaction.

**5. True Object Part C-1 and C-2.** “True object,” as the term is used in Part C-1 or C-2 of the definition, shall mean the main product or item in the transaction. If as a result of applying Part C-1 or C-2 a transaction is not a bundled transaction, then the transaction shall be considered a retail sale of the service that is the object of the transaction, and the taxability of the transaction shall be determined by the member state’s applicable laws for such service.

**a.** Parts C-1 and C-2 of the definition of a bundled transaction are subjective in nature and shall be applied on a case-by-case basis to the particular facts involved in each situation. Examples, not intended to be all inclusive, of factors that might be considered are as follows:

- The business in which the seller is engaged.
- Whether the tangible good or service that is essential to a service being sold is available for sale without such service or is available exclusively in connection with providing of the service.
- The purchaser’s object in engaging in the transaction.

**b.** Member states are not prohibited from imposing tax or exempting from tax a seller’s purchase of a tangible good or service that is essential to the use of a service that is the object of the transaction and that is provided exclusively in connection with such service. Member states are not prohibited from subjecting such tangible good or service to tax by limiting the seller’s authority to utilize a resale exemption.

**6. De minimis Test Part C-3.** A seller may use the sales price or the purchase price of each product in the transaction to measure or quantify whether the taxable products are de minimis under Part C-3 of the definition. A seller shall not use the sales price for some products in the transaction and the purchase price for other products in the transaction to measure or quantify whether the taxable product(s) in the transaction are de minimis.

**a.** If services have been sold under a service contract, the full contract price for the services shall be used to determine whether products in the transaction are de minimis regardless of the time period covered by the service contract. For the purpose of determining whether services in the transaction are de minimis, the price of the services shall not be prorated based on the term of the service contract.

When the taxable products in a transaction that includes both taxable and non-taxable products are equal to or less than \$10,000 and

10% or less of the total sales price or purchase price, the taxable products

Such a transaction is not a “bundled transaction” and the taxability of the transaction shall be determined by the member state’s laws for the non-taxable or exempt products in the transaction. The price of the de minimis taxable products included in the transaction is not subject to tax.

c. A member state shall not limit the application of the de minimis test under Part C-3 of the definition by using any of the following methods:

i. Placing a cap on the price of the transactions to which the test would apply.

ii. Using thresholds for the purpose of taxing a portion of the sales price of a transaction in which taxable products are determined de minimis.

iii. Taxing the total sales price or total purchase price of a transaction that includes both taxable products and non-taxable products and the taxable products in the transaction are de minimis.

iv. Requiring sellers to price or itemize taxable products that are otherwise de minimis separately from the non-taxable products included in the transaction for purposes of subjecting the sales price of the taxable products to tax.

**7. Primary Test Part C-4.** A seller may use the sales price or the purchase price of each product in the transaction to measure or quantify whether the taxable products in the transaction are the primary products (more than 50% of the total sales price or purchase price) under Part C-4 of the definition. A seller shall not use the sales price for some of the products in the transaction and the purchase price for other products in the transaction to measure or quantify whether the taxable product(s) in the transaction are the primary products.

a. Part C-4 may be applied only to transactions that contain multiple products that are only tangible personal property and at least one product is: food and food ingredients including soft drinks, candy, and dietary supplements; drugs including over-the-counter and grooming and hygiene products; durable medical equipment; mobility enhancing equipment; prosthetic devices, all of which are defined in the Agreement; and medical supplies. The term “medical supplies” is not a defined term under the Agreement. Member states may define “medical supplies” according to its state laws for purposes of applying Part C-4. Part C-4 does not apply to transactions that include products that are not tangible personal property or the products are tangible personal property but none of the tangible products are of the kind of products specified in Part C-4.

b. When the taxable products in the transaction are not the primary products (more than 50%) under Part C-4 of the definition, then the transaction is not a “bundled transaction.” If the full or partially exempt food or medical products are 50% or more of the total price, the taxability of the transaction shall be determined by the member state’s laws for the full or partially exempt food or medical products in the transaction. The price of the taxable products that are not the primary portion of the transaction is not subject to tax.

c. A member state shall not limit the application of the primary products (more than 50%) test under Part C-4 of the definition by using any of the following methods:

i. Placing a cap on the price of the transactions to which the test would apply.

ii. Using thresholds for the purpose of taxing a portion of the sales price of a transaction in which exempt products are determined to be the primary products (more than 50%) of the transaction.

iii. Taxing the total sales price or total purchase price of a transaction that includes only tangible personal property and at least one of the products is a product specified in Part C-4(a) of the definition and the taxable products are not the primary products (more than 50%) in the transaction.

iv. Requiring sellers to separately price or itemize taxable products that are not the primary products (more than 50%) of the retail sale under Part C-4 of the definition for purposes of subjecting the otherwise taxable products to tax.

## **Rule 330.2**

**A. Member States’ Requirements Under § 330 of the Streamlined Sales and Use Tax Agreement.** Member states shall be required to adopt the definition of a bundled transaction and adopt provisions for the tax treatment of bundled transactions.

1. A member state may adopt provisions that would treat the taxation of some bundled transactions in one manner while treating the taxation of other bundled transactions differently. A member state may adopt provisions that provide for different tax treatment of bundled transactions based on the distinct and separately identifiable products included in the transaction.

2. A member state shall be prohibited from adopting provisions for the tax treatment of bundled transactions that are not in compliance with other provisions of the Streamlined Sales and Use Tax Agreement (i.e. imposing different tax rates or having caps or thresholds that apply to bundled transactions).

**B. Telecommunication service, Ancillary service, Internet access and Audio Video Programming service.** A member state shall be required to adopt the provisions of § 330(C) of the Streamlined Agreement that are applicable to bundled transactions that include all types of products except real property and services to real property when at least one product is a telecommunication service, ancillary service, internet access, or audio or video programming service.

1. A member state shall not be prohibited from imposing tax on the total non-itemized price of a bundled transaction unless the bundled transaction includes the distinct and separately identifiable products specified in Section 330(C) of the Streamlined Agreement and the seller has maintained books and records identifying through reasonable and verifiable standards that portion of the price attributable to the distinct products.

2. When the taxable portion of a bundled transaction's non-itemized price is subjected to taxation under § 330(C), a member state shall use only books and records maintained by the seller in the regular course of business. Books and records shall be considered to be maintained primarily for tax purposes when such books and records identify taxable and nontaxable portions of the price, but the seller maintains other books and records that identify different prices attributable to the distinct products included in the same bundled transaction. Generally, books and records kept in the regular course of business and that are acceptable for use by a member state for subjecting the taxable portion of a bundled transaction's non-itemized price to taxation under § 330(C) include financial statements, general ledgers, invoicing and billing systems and reports, and reports for regulatory tariffs and other regulatory matters; provided, however, that the books and records named herein shall not be considered all inclusive.