

A motion by Michigan to adopt a Rule relating to Delivery Charges

ARTICLE III – REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

Rule 327.4 Delivery Charges.

“**Delivery charges**” is defined in Part I of the Library of Definitions, conjunctively with the definitions of “sales price” and “purchase price.” “Sales price” and “purchase price” include “delivery charges” unless a member state elects to exclude them. A member state may choose to exclude from “delivery charges” any of the following, if the charges are separately stated on an invoice or similar billing document given to the purchaser:

- A. The charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service, including but not limited to handling, crating and packing;
- B. The charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee, including but not limited to transportation, shipping and postage, or;
- C. The “delivery charges” for “direct mail.”

A. Direct mail.

A state that does not choose to exclude “delivery charges” in their entirety from the definitions of “sales price” and “purchase price” may opt to exclude from “delivery charges” all “delivery charges” for “direct mail,” as that term is defined in Part I of the Library of Definitions, if such charges are separately stated on an invoice or similar billing document given to the purchaser. If elected, this option would establish the taxability of “delivery charges,” excluding those properly separately stated “delivery charges” for “direct mail.”

A state that, prior to adoption of the definitions of “sales price” and “purchase price” in Part I of the Library of Definitions, excluded elements of delivery charges (including postage) from the sales price or purchase price of printed material, such as advertising material, while including delivery charges in the sales price or purchase price of other products, may continue to exclude delivery charges for direct mail by adopting the definitions for “delivery charges” and “direct mail” and excluding from “delivery charges” the “delivery charges” for “direct mail.”

Illustration 1: State A’s definition of “delivery charges” excludes “delivery charges” for “direct mail” from the definition of “delivery

charges.” All components of “delivery charges” are taxable as part of sales/purchase price, except that all “delivery charges” for “direct mail” are excluded from sales/purchase price and are not taxed.

B. Preparation for delivery.

A state may opt to exclude from “delivery charges” charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service, including but not limited to handling, crating and packing, if such charges are separately stated on an invoice or similar billing document given to the purchaser. *Election of this option would permit the taxation of the charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping and postage), while exempting charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of personal property or service (including but not limited to handling, crating and packing).*

Illustration 2: State B adopts the definition of “delivery charges,” but excludes from the definition of “delivery charges” charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service, including but not limited to handling, crating and packing. Charges for transportation, shipping and postage are taxable as part of sales/purchase price, while charges for handling, packing and crating, if separately stated on an invoice or similar billing document given to the purchaser, are not taxable. A separate charge for storage or warehousing prior to shipment is not a charge for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee.

Illustration 3: State C adopts the definition of “delivery charges” and “direct mail,” but excludes from “delivery charges” both charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service, (including but not limited to handling, crating and packing) and “delivery charges” for “direct mail.” For items other than “direct mail,” “delivery charges” (which do not include charges for handling, crating or packing separately stated on an invoice given to the purchaser) are taxable as part of the sales/purchase price. For “direct mail,” “delivery charges” separately stated on an invoice or similar billing document given to the purchaser are not part of the sales/purchase price and are not taxable.

C. Delivery.

A state that has adopted the definition of “delivery charges” may opt to exclude from “delivery charges” charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping and postage), if such charges are separately stated on an invoice or similar billing document given to the purchaser. *Election of this option would permit the taxation of charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service (including but not limited to handling, crating and packing), while exempting charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping and postage).*

Illustration 4: State D adopts the definition of “delivery charges,” but excludes charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping and postage). Charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service, such as handling, crating and packing, are taxable as part of sales/purchase price, while charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping and postage), if separately stated on an invoice or similar billing document given to the purchaser, are not taxable.

Illustration 5: State E adopts the definition of “delivery charges” and “direct mail,” but excludes both charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee (including but not limited to transportation, shipping and postage) and “delivery charges” for “direct mail” from the definition of “delivery charges.” For items other than “direct mail,” “delivery charges” (which do not include charges for transportation, shipping or postage separately stated on an invoice given to the purchaser) are taxable as part of the sales/purchase price. For “direct mail,” “delivery charges” separately stated on an invoice or similar billing document given to the purchaser are not part of the sales/purchase price and are not taxable.

D. Reasonable and customary mark-up.

A state which exempts from tax properly separately stated “delivery charges” for “direct mail,” properly separately stated charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service (including but not limited to handling, crating and packing), or

properly separately stated charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee (including but not limited to transportation, shipping and postage) shall allow as exempt, in addition to the seller's actual cost, such mark-up as is reasonable and customary in the seller's industry.

E. Seller's billing practices.

Where the seller does not separately state on an invoice or similar billing document given to the purchaser "delivery charges" for "direct mail," charges for activities necessary for preparing personal property or a service for delivery to a location designated by the purchaser of the personal property or service (including but not limited to handling, crating and packing), or charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser's designee (including but not limited to transportation, shipping and postage), such charges shall not be excluded from "delivery charges," and shall be subject to tax in the same manner as "delivery charges." A seller's decision not to separately state on an invoice or similar billing document given to a purchaser any such charge which, if so separately stated, could have been exempted from tax, shall be presumed to be a reasonable business practice.