

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, and similar 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;~~

B. ~~The charges for movement of personal property or a service from possession by the seller to possession by the purchaser of the purchaser’s designee, including but not limited to transportation, shipping and postage, and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee, 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 treatment 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/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 the “delivery charges” for “direct mail” from the definition of “delivery charges.” All components of “delivery charges” are included in 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 Handling, crating, packing, and similar charges.

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, and similar 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,~~ 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 inclusion in sales/purchase price 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~~ excluding from sales/purchase price 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, including but not limited to handling, crating and, packing, and similar charges.~~ Charges for transportation, shipping and postage are ~~taxable~~ included as part of sales/purchase price, ~~while e.~~ Charges for handling, packing, crating, **and similar 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,** if separately stated on an invoice or similar billing document given to the purchaser, are not ~~taxable~~ part of the sales/purchase price of a product or service. 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 similar charges as well as** and the “delivery charges” for “direct mail.” For items other than “direct mail,” “delivery charges” (which do not include ~~charges for handling, crating or, packing,~~ **and similar charges** separately stated on an invoice or similar billing document given to the purchaser) are ~~taxable~~ included as part of the sales/purchase price of a product or service. 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~~ **of a product or service that meets the definition of direct mail.**

C. **Delivery Transportation, shipping, postage, and similar charges.**

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,~~ **and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee,** 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~~ inclusion in sales/purchase price 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~~ excluding from sales/purchase price 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,~~ **and similar 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, such as handling, crating and packing~~ are ~~taxable~~ included 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,~~ **and similar charges for movement of personal property or a service from possession by the seller to possession by the purchaser or the purchaser’s designee),** if separately stated on an invoice or similar billing document given to the purchaser, are not ~~taxable~~ part of the sales/purchase price of a product or service.

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 similar charges as well as the “delivery charges” for “direct mail.”~~ ~~from the definition of “delivery charges.”~~ For items other than “direct mail,” “delivery charges” (which do not include transportation, shipping ~~or~~, postage, **and similar charges** separately stated on an invoice **or similar billing document** given to the purchaser) are ~~taxable~~ **included** as part of the sales/purchase price **of a product or service**. ~~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~~ **of a product or service that meets the definition of “direct mail.”**

D. Reasonable and customary mark-up.

A state which ~~exempts from tax~~ excludes **from the sales/purchase price of a product or service** 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), and similar charges,~~ 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, and similar charges,~~ shall allow as ~~exempt~~ **excluded from the sales/purchase price of a product or service**, in addition to the seller’s actual cost for such charges, 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 the “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, and similar charges,~~ 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, and similar charges,~~ such charges shall not be excluded from “delivery charges,” and shall be ~~subject to tax~~ **included in or excluded from the sales/purchase price** 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 excluded from the sales/purchase price, shall be presumed to be a reasonable business practice.