

A motion by Michigan for a rule relating to Delivery Charges:

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’s continuing use of the definition of “delivery charges” as set forth in Part I of the Library of Definitions prior to the amendment adopted by the Governing Board on June ____, 2007 shall not be a basis for determining that the member state is not in compliance with the Agreement.

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” (State A may use the definition of “delivery charges” set forth in Part I of the Library of Definitions either before or after the amendment adopted by the Governing Board on June ____, 2007) 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 that has adopted the definitions of “delivery charges” and “preparation for delivery” as set forth in Part I of the Library of Definitions in accordance with the amendment adopted by the Governing Board on June ____, 2007 may opt to exclude from “delivery charges” charges for “preparation for delivery” 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 “delivery charges” while exempting charges for “preparation for delivery.”*** “Preparation for delivery” includes but is not limited to handling, packing and crating, but does not include transportation, shipping or postage.

Illustration 2: State B adopts the definitions of “delivery charges” and “preparation for delivery” as set forth in Part I of the Library of Definitions in accordance with the amendment adopted by the Governing Board on June ___, 2007, and excludes charges for “preparation for delivery” from the definition of “delivery charges.” Charges for transportation, shipping and postage are taxable as part of sales/purchase price, while charges for “preparation for delivery” such as handling, packing and crating, if separately stated on an invoice or similar billing document given to the purchaser, are not taxable. Separate charges for storage or warehousing prior to shipment are not a component of charges for “preparation for delivery.”

Illustration 3: State C adopts the definitions of “delivery charges,” “direct mail,” and “preparation for delivery” as set forth in Part I of the Library of Definitions in accordance with the amendment adopted by the Governing Board on June ___, 2007, and excludes charges for “preparation for delivery” 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 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 definitions of “delivery charges” and “delivery” as set forth in Part I of the Library of Definitions in accordance with the amendment adopted by the Governing Board on June ___, 2007 may opt to exclude from “delivery charges” charges for “delivery” 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 “delivery charges” while exempting charges for “delivery.”*** “Delivery” includes but is not limited to transportation, shipping and postage, but does not include handling, packing and crating.

Illustration 4: State D adopts the definitions of “delivery charges” and “delivery” as set forth in Part I of the Library of Definitions in accordance with the amendment adopted by the Governing Board on June ___, 2007, and excludes charges for “delivery” from the definition of “delivery charges.” Charges for “preparation for delivery” such as handling, packing and crating are taxable as part of sales/purchase price, while charges for “delivery” (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 definitions of “delivery charges,” “direct mail,” and “delivery” as set forth in Part I of the Library of Definitions in accordance with the amendment adopted by the Governing Board on June

____, 2007, and excludes charges for “delivery” as well as “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 “preparation for delivery,” or properly separately stated charges for “delivery” 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 “preparation for delivery,” or charges for “delivery,” 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.