

A motion by Oklahoma and Tennessee to amend the Rule 327.4 relating to delivery charges:

Interpretive Rule 327.4

5-1-09 Amend Rule 327.4, Delivery Charges

Rule 327.4 Delivery Charges:

A. “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~~ all delivery charges from the computation of sales and purchase price. A member state may choose to exclude from ~~“delivery charges”~~ the computation of “sales price” and “purchase price” of all personal property and services other than direct mail any of the following components of delivery charges, if the charges are separately stated on an invoice or similar billing document given to the purchaser:

1. handling, crating, packing, preparation for mailing or delivery, 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; or
2. transportation, shipping, 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.”~~

B. A member state may choose to exclude from the computation of “sales price” and “purchase price” of direct mail all or any of the following components of delivery charges, if the charges are separately stated on an invoice or similar billing document given to the purchaser.

1. handling, crating, packing, preparation for mailing or delivery, and similar charges for activities necessary for preparing direct mail for delivery to a location designated by the purchaser of direct mail; or
2. transportation, shipping, and similar charges for movement of direct mail from possession by the seller to possession by the purchaser or the purchaser’s designee; or
3. postage.

C. 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.” may treat the “delivery charges” for sales of personal property or services that meet the definition of “direct mail”, including both “advertising and promotional direct mail” and “other direct mail” differently than with respect to sales of other personal property or services. Thus, a state may generally require that “sales price” include all “delivery charges” (or one or more components thereof) but exclude “delivery charges” (or one or more components thereof) from the computation of “sales price” of sales of products that meet the definition of “direct mail.” In order for a seller to exclude “delivery charges for direct mail” (or component thereof) from the computation of “sales price” with respect to direct mail such charge must be separately stated on an invoice or similar billing document given to the purchaser.

The exclusion for delivery charges for direct mail applies only to sales of personal property and services that meet the definition of “direct mail.” In addition, the exclusion includes separately stated delivery charges for:

- 1) retail sales that include both the printing and delivery of “direct mail,” including sales characterized under state law as the sale of a service when that sale results in printed material that meets the definition of “direct mail;”
- 2) retail sales of services for only mailing or delivering of “direct mail” not printed or sold by the delivery or mailing service provider, and
- 3) retail sales of services for the development of billing information or data processing services that results in printed materials delivered or mailed to a mass audience where the costs of the printed materials are not directly billed to the recipients.

Prior to its adoption of the definitions of “sales price” and “purchase price,” a state may have excluded “delivery charges” (or one or more components thereof) from “sales price” with respect to sales of personal property or services that meet the definition of “direct mail” while at the same time including “delivery charges” (or one or more components thereof) with respect to sales of other personal property or services. Such a state may continue to exclude “delivery charges” (or one or more components thereof) with respect to sales of personal property or services that meet the definition of “direct mail” by (1) adopting the definitions of “delivery charges” and “direct mail” and (2) excluding from the definition of “delivery charges”, “delivery charges” (or one or more components thereof) with respect to “direct mail”.

Example 1: State A has adopted the definition of “direct mail” from Part I of the Library of Definition. Its definition of “delivery charges” reads as follows:

“Delivery charges” means all of the charges (including but not limited to charges for transportation, shipping, postage, handling, crating and packing) by the seller of personal property or services for preparation and delivery thereof to a location designated by the purchaser. “Delivery charges” does not include any charge by the seller with respect to direct mail delivery charges.

State A’s definition of “delivery charges” is sufficient to exclude all “delivery charges” from the computation of “sales price” with respect to sales of personal property or services that meet the definition of “direct mail” so long as such charges are separately stated on the invoice or bill given to the purchaser.

Example 2: State B has adopted the definition of “direct mail” found in Part I of the Library of Definition. State B’s definition of “delivery charges” reads a follows:

“Delivery charges” means all of the charges (including but not limited to charges for transportation, shipping, postage handling, crating and packing) by the seller of personal property or services for preparation and delivery thereof to a location designated by the purchaser. “Delivery charges” does not include postage for delivering personal property or a service that meets the definition of “direct mail.”

State B’s definition of “delivery charges” is sufficient to exclude from the computation of “sales price” charges for postage for delivery of personal property or a service that meets the definition of “direct mail” so long as such charges are separately stated on the invoice or other billing document given to the purchaser.

~~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 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.”~~

The following illustrations demonstrate the applicability of the direct mail delivery charge exclusion from sales price and purchase price in a state that has adopted that exclusion.

Illustration 1: State A excludes all components of direct mail delivery charges from the computation of sales price. A printer enters into a contract to print and mail advertising and promotional material to a mass audience. The material is printed, sorted, inserted into an envelope, addressed, and mailed via the United

States Postal Service to a mass audience at the direction of the purchaser. The advertising and promotional direct mail sale qualifies for the direct mail delivery charge exclusion. Charges separately stated on the customer's bill or invoice for preparation for delivery, transportation and postage with respect to the direct mail is excluded from the computation of "sales price."

Illustration 2: State B excludes the handling and postage components of direct mail delivery charges from the computation of sales price. A purchaser contracts with a printer to perform data processing services, print billing invoices, prepare the invoices for mailing, and deliver them to the U. S. Postal Service for delivery to the address on each invoice. Each envelope is mailed to a residential address and contains an invoice and an advertising insert. The mailing qualifies for the direct mail delivery charge exclusion. Separately stated charge(s) on the customer's bill or invoice for preparing the mailing for delivery and postage for delivery to the residential addresses are excluded from the computation of "sales price."

Illustration 3: State C excludes the transportation and postage components of direct mail delivery charges from the computation of sales price. A mail service provider enters into a contract with a customer to perform mailing services for advertising flyers which have been printed by a third party. The flyers are to be distributed to a mass audience at the direction of the customer. The mail service provider folds and sorts the flyers according to the jurisdictions to which they will be delivered, applies the appropriate postage to each flyer and delivers the flyers to the United States Postal Service. This mailing service sale qualifies for the direct mail delivery charge exclusion. Separately stated charge(s) for transporting the mailing to the United States Postal Service and postage are excluded from the computation of "sales price."

Illustration 4: State W excludes only the postage component of direct mail delivery charges from the computation of sales price. Company B is a hair products company that just released a new shampoo product. As part of a nationwide campaign to inform the public about its new shampoo, it acquires a mailing list of potential customers and hires a company that does printing and mailing to print and mail promotional materials to all of the people on the mailing list. Included with the promotional materials is a free sample of the shampoo. The promotional materials qualify as direct mail because the recipient is not charged for the sample of the shampoo or other materials in the mailing and therefore separately stated charge(s) for the postage paid with respect to mailing the promotional materials and free sample are excluded from the computation of sales price.

Illustration 5: State X excludes only the postage component of direct mail delivery charges from sale price. A purchaser contracts with a service provider to perform data processing services, print paychecks and pay stubs, prepare the checks and stubs for mailing, and deliver them to the U. S. Postal Service or other

delivery service for delivery to the address on each. Each envelope containing a check and pay stub is mailed to each of the purchaser's employees' home addresses. This sale will qualify for the exclusion of the postage component of the direct mail delivery charge depending on whether the U.S. Post Office delivers the direct mail or whether some other delivery service is used. If the mailing is sent through the U.S. Postal Service, then the exclusion for postage will apply if the postage is separately stated on the invoice given to the purchaser. If some other delivery service is used to deliver the checks and pay stubs, then the exclusion for postage will not apply.

Illustration 6: *Same facts as in Illustration 4 [above] except that State X, in addition to postage, also excludes the transportation, shipping and similar charges components of direct mail delivery charges from sales price.* With this broader exclusion, whether the sale will qualify for the exclusion of direct mail delivery charges will not depend on whether the U.S. Post Office delivers the direct mail or whether some other delivery service is used; the delivery charge exclusion will apply regardless of which mode of delivery is used, as long as the charges are separately stated on the invoice."

Illustration 7: *State Y excludes only the "transportation, shipping, and similar charges" component of direct mail delivery charges from the computation of sales price.* Company A sells men's clothing and markets its products through catalogs and through an Internet website. Customer orders a sweater that will be shipped using a courier service. Company A includes with the package containing the sweater one of its catalogs and other promotional materials. The catalog and other promotional materials included in the package do not qualify as direct mail since it is not being mailed to a mass audience and since Customer is being billed for the sweater. Therefore, the fees charged by the courier service for delivering the package are not excluded from the computation of sales price.

Illustration 8: *State A excludes all components of direct mail delivery charges from the computation of sales price.* A printer produces 10,000 copies of an advertising brochure. Under the contract, the printer is required to shrink-wrap the pallet containing the brochures and deliver the pallet to the custody of a mailing service provider contracted by the purchaser. The sale of the brochures is not "direct mail" and does not qualify for the direct mail delivery charge exclusion, since the seller/printer is not delivering or distributing the printed material to a mass audience or to addressees on a mailing list at the direction of the purchaser.

Illustration 9: *State A excludes all components of direct mail delivery charges from the computation of sales price.* A printer produces 100,000 advertising flyers for a purchaser. For this print job, the purchaser requires the printer to ship 1,000 copies of the flyer to 100 stores located in various states that are owned by the purchaser. The flyers will be made available to customers as they enter the store. The sale of the flyers is not "direct mail," and does not qualify for the direct mail delivery charge exclusion, because multiple items of the same printed

material are delivered or shipped to a single address and because the printed materials are delivered to and billed to the recipient (store owner).

D. Handling, crating, packing, preparation for mailing or delivery, and similar charges.

A state may opt to exclude from “delivery charges” the component for handling, crating, packing, preparation for mailing or delivery, 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. In order for a seller to exclude the component of delivery charges for activities necessary for preparing personal property or a service from the computation of “sales price” with respect to the sale of any product or service such charge must be separately stated on an invoice or similar billing document given to the purchaser. *Election of this option would permit inclusion in sales/purchase price of 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 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 a service (including but not limited to handling, crating, packing, and preparation for mailing or delivery).*

Illustration 1: State D adopts the definition of “delivery charges,” but excludes handling, crating, packing, preparation for mailing or delivery, and similar charges. Charges for transportation, shipping, and postage are included as part of sales/purchase price. Charges for handling, packing, crating, preparation for mailing or delivery, 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 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 2: State E adopts the definition of “delivery charges” and “direct mail,” but excludes handling, crating, packing, preparation for mailing or delivery, and similar charges as well as the “delivery charges” for “direct mail.” For items other than “direct mail,” “delivery charges” (which do not include handling, crating, packing, preparation for mailing or delivery, and similar charges separately stated on an invoice or similar billing document given to the purchaser) are included as part of the sales/purchase price of a product or service. “Delivery charges” separately stated on an invoice or similar billing document given to the purchaser are not part of the sales/purchase price of a product or

service that meets the definition of direct mail described in subsection C of this Rule.

E. Transportation, shipping, postage, and similar charges.

A state may opt to exclude from “delivery charges” the component for transportation, shipping, 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. In order for a seller to exclude this component of delivery charges from the computation of “sales price” with respect to the sale of any product or service such charge must be separately stated on an invoice or similar billing document given to the purchaser. *Election of this option would permit 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, packing, and preparation for mailing or delivery), while 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 1: *State F adopts the definition of “delivery charges,” but excludes transportation, shipping, postage, and similar charges.* Charges for handling, crating, packing, and preparation for mailing or delivery are included as part of sales/purchase price. Charges for transportation, shipping, 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 part of the sales/purchase price of a product or service.

Illustration 2: *State G adopts the definition of “delivery charges” and “direct mail,” but excludes transportation, shipping, postage, and similar charges as well as the “delivery charges” for “direct mail.”* For items other than “direct mail,” “delivery charges” (which do not include transportation, shipping, postage, and similar charges separately stated on an invoice or similar billing document given to the purchaser) are included as part of the sales/purchase price of a product or service. “Delivery charges” separately stated on an invoice or similar billing document given to the purchaser are not part of the sales/purchase price of a product or service that meets the definition of “direct mail” described in subsection C of this Rule.

F. Reasonable and customary mark-up.

A state which excludes from the sales/purchase price of a product or service properly separately stated “delivery charges” for “direct mail,” properly separately stated handling, crating, packing, preparation for mailing or delivery, and similar charges, or properly separately stated transportation, shipping, postage, and similar charges, shall allow as

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.

G.. 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," handling, crating, packing, preparation for mailing or delivery, and similar charges, or transportation, shipping, postage, and similar charges, such charges shall not be excluded from "delivery charges," and shall be 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.