

**Motion by Michigan to amend the Library of Definitions, Part I, definitions of “delivery charges” and “sales price” to allow a toggle for separately stated charges related to the delivery of electricity, natural gas, or artificial gas by a utility, as “utility” is defined by the state.**

## **Library of Definitions**

### **Part I**

“**Delivery charges**” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

A. A member state may (i) exclude all delivery charges from the sales price of all personal property and services; (ii) exclude all delivery charges from the sales price of all personal property and services except for delivery charges involving or related to the sale of electricity, natural gas, or artificial gas by a utility, as “utility” is defined by the state; or (iii) choose to exclude from the sales price of personal property or services one or more of the following components, and may amend the definition of delivery charges accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges; or
2. Transportation, shipping, postage, and similar charges.

B. In addition, a member state may treat “delivery charges” for “direct mail” differently than it treats “delivery charges” for other personal property or services. A member state may exclude all “delivery charges” from the “sales price” for “direct mail” or choose to exclude from the “sales price” of “direct mail” one or more of the following components, and may amend the definition of “delivery charges” accordingly:

1. Handling, crating, packing, preparation for mailing or delivery, and similar charges;
2. Transportation, shipping, and similar charges; or
3. Postage.

C. Unless a seller separately states the “delivery charges” or components of “delivery charges” on the invoice or similar billing document given to the purchaser, those non-separately stated charges will not qualify for the exclusion from “sales price.” No member state may require a seller to separately state any “delivery charge” or component thereof.

D. The exclusion of “delivery charges” for “direct mail” shall apply to any sale involving the delivery or mailing of: “direct mail;” printed material that would otherwise be “direct mail” that results from a transaction that a state considers the sale of a service; or printed material delivered or mailed to a mass audience when the costs of the printed materials are not billed

directly to the recipients and is the result of a transaction that includes the development of billing information or the provision of data processing services.

E. If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

1. A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or
2. A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property.

“**Sales price**” applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) The seller's cost of the property sold;
  - (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
  - (iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
  - (iv) Delivery charges;
  - (v) Installation charges; and
  - (vi) Credit for any trade-in, as determined by state law.
- A. Notwithstanding (ii) above, a state may elect, by statute or administrative regulation, to exclude from sales price the following types of taxes, but only if that tax is separately stated on the invoice, bill of sale or similar document given to the purchaser:
1. Any or all state and local taxes on a retail sale that are imposed on the seller if the state statute authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer. If there is no state statute authorizing or imposing the local tax, the language in the local ordinance will determine if the local tax may, but is not required, to be collected from the consumer; and/or

2. Tribal taxes on a retail sale that are imposed on the seller if the Tribal law authorizing or imposing the tax provides that the seller may, but is not required, to collect such tax from the consumer.

Under paragraphs 1. and 2., the exclusion of a specific tax from sales price may not be based on the type of consumer or product sold.

3. Federal excise taxes or fees that are not directly imposed on a consumer that a state specifically lists on its taxability matrix. While a state may designate a category of federal excise taxes or fees that are excluded from sales price, only those specific federal excise taxes and fees listed on the state's taxability matrix are excludable, which shall include a reference to the specific law (*e.g.*, diesel fuel and special excise taxes imposed under 26 U.S.C. § 4041).

Under paragraph 3., the exclusion of a specific tax or fee from sales price may not be based on the type of consumer.

B. All exclusions from sales price shall be listed on the state's taxability matrix. Unless a seller seeks an exclusion from sales price, a seller is not required to separately state an exclusion on an invoice, billing or similar document given to the purchaser.

1. a. A state may exclude from "sales price" the amounts received for charges included in paragraphs (iii) through (vi) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser.

b. For charges included in paragraphs (iv) and (v) above, a state may include in the "sales price" either or all of the following charges even if the state otherwise excludes such charges from the "sales price" if separately stated on the invoice, billing statement, or similar document given to the purchaser:

(i) delivery charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility, as "utility" is defined by the state.

(ii) installation charges involving or relating to the sale of electricity, natural gas, or artificial gas by a utility, as "utility" is defined by the state.

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2. a. A state may exclude from (iii) above, "telecommunications nonrecurring charges" if they are separately stated on the invoice, billing, or similar documents. A state doing so must define "telecommunications nonrecurring charges" as follows:

**b. "Telecommunications nonrecurring charges"** means an amount billed for the installation, connection, change or initiation of "telecommunications service" received by the customer.

- C. "Sales price" shall not include:
1. Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
  2. Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and
  3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.
- D. "Sales price" shall include consideration received by the seller from third parties if:
1. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
  2. The seller has an obligation to pass the price reduction or discount through to the purchaser;
  3. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
  4. One of the following criteria is met:
    - a. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
    - b. The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group), or
    - c. The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.
- E. Notwithstanding D. above, States may exclude from "sales price" any or all of the following:
1. Employee discounts that are reimbursed by a third party on sales of motor vehicles,
  2. Manufacturer rebates on motor vehicles, or
  3. All coupons issued by a manufacturer, supplier or distributor of a product(s) that entitle the purchaser to a reduction in sales price and allowed by the seller who is

reimbursed by the manufacturer, supplier or distributor. When the seller accepts such coupons, only the amount paid by the purchaser is included in the sales price.