

A motion by Kansas to amend Appendix C, Part I, Administrative Definitions, to allow states the option of excluding manufacturer coupons from the definition of “sales price”.

“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:

- A. The seller's cost of the property sold;
- B. 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;
- C. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- D. Delivery charges;
- E. Installation charges; and
- F. Credit for any trade-in, as determined by state law.

Notwithstanding (B) 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.

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. A state may exclude from “sales

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price” the amounts received for charges included in paragraphs (C) through (F) above, if they are separately stated on the invoice, billing, or similar document given to the purchaser. A state may exclude from (C) 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:

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

“Sales price” shall not include:

- A. 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;
- B. 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
- C. 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.

“Sales price” shall include consideration received by the seller from third parties if:

- A. 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;
- B. The seller has an obligation to pass the price reduction or discount through to the purchaser;
- C. 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
- D. One of the following criteria is met:

1. 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;
2. 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
3. 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.

States may also exclude from “sales price” ~~either~~ any or all of the following:

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- a. employee discounts that are reimbursed by a third party on sales of motor vehicles,
- b. manufacturer rebates on motor vehicles, or
- c. any consideration received by sellers from a party other than the purchaser that is directly related to a price reduction or discount to the purchaser. Any amount paid by the purchaser or donee, including amounts paid to a third party, to obtain the discount or price reduction is not excluded.

(Drafter’s Note: The intent of this amendment is to eliminate the sales tax on any amounts a purchaser did not pay but for which the seller is reimbursed by a third party.)

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