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SALES TAX TREATMENT OF DELIVERY CHARGES

RAB-90-11. This Bulletin describes the taxability of delivery charges collected by a seller of tangible personal property.

Background

The Michigan Sales Tax Act [MCL 205.52(1)] provides that "there shall be collected from all persons engaged in the business of making sales at retail . . . an annual tax for the privilege of engaging in that business equal to 4% of the gross proceeds thereof"

"Gross proceeds" is defined in MCL 205.51(1)(h) as "the amount received in money, credits, subsidies, property, or other money's worth in consideration of a sale at retail within this state, without a deduction for the cost of the property sold, the cost of material used, the cost of labor or service purchased . . . or other expenses."

Department of Treasury Sales and Use Tax Rule, 1979 AC, R205.124, states:

"For the purpose of computing the tax, no deduction is allowable on account of freight, express, mail, cartage or other transportation or delivery charges incurred or to be incurred on tangible personal property prior to completion of transfer of ownership of such property from the seller to the purchaser for use or consumption. It is immaterial whether such transportation charges are billed separately or whether they are paid by the seller or the purchaser."

In Natural Aggregates Corporation v Michigan Department of Treasury, 133 Mich App 441;350 NW2d 272 (1984); lv den 419 Mich 949 (1984), the Michigan Court of Appeals held that certain delivery charges were not taxable, because the retailer was engaged simultaneously in a non-taxable business (viz., delivery). The court characterized the delivery as a transaction separate from the sale, both conceptually and temporally. The court noted that the purchase price of the tangible personal property (viz., sand and gravel) was the same for all customers regardless of the delivery method. Customers who used the retailer's delivery service negotiated and contracted separately for the service and paid a separate price. The trucking charges were not a cost used to calculate the gross price of the product. The delivery charge was not an incidental cost of the purchase price, running between 5 and 6 times the amount of the purchase price. Construing MCL 205.52; MSA 7.522, the Court held that the retailer's delivery service was "some other kind of business" not taxable under the Act.

Department of Treasury's Position

When determining the taxability of delivery charges, the Department considers all of the facts and circumstances surrounding the retailer's business activities.

A retailer will be deemed simultaneously engaged in a separate delivery service business (for which delivery charges are not taxable) if all of the following conditions are met:

1. The customer has the option to either pick up or have the merchandise delivered;
2. The delivery service charge is separately negotiated and contracted for and is not a cost in calculating the merchandise price, as the customer pays a separate price;
3. The taxpayer's books and records separately identify the transactions used to determine the tax; and
4. Delivery service is available without the purchase of merchandise from the seller.

If all four conditions are not met, then the seller is not simultaneously engaged in a delivery service business and the delivery charges are taxable.

Delivery charges on merchandise delivered by a seller who is not engaged in a separate delivery service business are taxable if the charges are incurred prior to the transfer of ownership. The delivery charges are not taxable if incurred after the transfer of ownership.

Examples

In examples 1 and 2 below, the retail seller is also engaged in a delivery service business. A customer could contract for delivery services only and would not be required to purchase merchandise from the seller.

1. A retailer sells sand and delivers it to the customer in trucks leased or owned by the seller. The delivery, which is optional to the customer, is priced and invoiced separately. The seller's records separately identify the sales transactions from the delivery service transactions. The delivery charge is not taxable.
2. A retailer sells stone and delivers it to the customer in trucks leased or owned by the seller. The delivery, which is optional to the customer, is priced separately. However, on the invoice, the delivery charge is included in the merchandise price. The seller's records separately identify the sales transactions from the delivery service transactions. The delivery charge is not taxable.

In examples 3 through 5 below, the retail seller (also referred to as retailer) is not engaged in a delivery service business. The delivery is merely incidental or necessary to effectuate the retail sale. Accordingly, the statutes and administrative rule described at the beginning of this rule govern.

3. A retailer sells furniture. The retailer's employees deliver furniture to the customer's home in trucks leased or owned by the retailer. Title passes at the customer's home. The delivery charge is taxable. The delivery charge is an expense incurred by the retailer prior to the transfer of ownership.
4. A retailer sells furniture and contracts with a private delivery service to deliver it. The delivery charge is taxable, because the retailer incurred the delivery expense before the transfer of ownership.
5. A retailer sells furniture; however, the customer contracts with a private delivery service to deliver the furniture. The delivery charge is not taxable.