



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

REVENUE ADMINISTRATIVE BULLETIN 2015-17

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**SALES TAX TREATMENT OF DELIVERY AND INSTALLATION SERVICES
PROVIDED BY RETAILERS**

(Replaces Revenue Administrative Bulletin 2002-11)

Pursuant to MCL 205.6a, a taxpayer may rely on a Revenue Administrative Bulletin issued by the Department of Treasury after September 30, 2006, and shall not be penalized for that reliance until the bulletin is revoked in writing. However, reliance by the taxpayer is limited to issues addressed in the bulletin for tax periods up to the effective date of an amendment to the law upon which the bulletin is based or for tax periods up to the date of a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired that overrules or modifies the law upon which the bulletin is based.

RAB 2015-17. This bulletin replaces Revenue Administrative Bulletin (RAB) 2002-11. The discussion in this bulletin is limited to charges for delivery or installation directly by the seller or delivery by a contract carrier. Delivery by common carrier or postal service is not discussed.

BACKGROUND

The General Sales Tax Act (Act) provides that “there is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business...”¹

For tax periods after September 1, 2004, the Act was amended to provide that “gross proceeds” (or “sales price”) includes delivery and/or installation charges in certain instances. Specifically, it provides that “sales price” includes the following:

Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser.

[and]

Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.²

¹ MCL 205.52(1).

² MCL 205.51(1)(d)(iv), (v). However, delivery charges for the shipment of exempt property are not subject to sales tax.

The Act defines “delivery charges” to mean “charges by the seller for preparation and delivery to a location designated by the purchaser of tangible personal property or services.” The definition also includes certain specific items in, and excludes certain specific items from, delivery charges:

Delivery charges include, but are not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges do not include the charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.³

ISSUES

- I. What factors will be considered to determine if delivery or installation charges are taxable?
- II. What is the tax treatment of single deliveries containing both taxable and exempt goods?

CONCLUSIONS

- I. The tax base includes delivery or installation charges that are incurred prior to the completion of transfer of ownership of tangible personal property subject to the Act.⁴ Therefore, whether ownership of the property is transferred *before* or *after* the delivery or installation charges are *incurred* determines if those charges are subject to tax. The Department will consider all facts and circumstances of the transfer of ownership of the property to determine if delivery or installation charges are taxable, including, but not limited to:
 1. Whether the customer has the option to either pick up the property or have the property delivered;
 2. Whether the delivery or installation charge is separately negotiated and contracted for on a competitive basis;
 3. Whether the property and delivery or installation charges are separately invoiced;
 4. Whether the taxpayer’s books and records separately identify the transactions used to determine the tax on the sale at retail;
 5. Whether delivery or installation service records indicate a net profit (i.e., the delivery or installation service is a commercial endeavor separate from the retail business);
 6. The time at which risk of loss transfers from seller to buyer;
 7. The time at which title to the property passes from seller to buyer;
 8. Any other information that is relevant in determining when ownership transfers.

None of the above factors, standing alone, conclusively determine the taxability of delivery or installation charges; the Department will look at the entire transaction when making its determination.

³ MCL 205.51a(e).

⁴ MCL 205.51(1)(d)(iv) and(v).

II. The tax base does not include “delivery charges allocated to the delivery of exempt property.”⁵ Therefore, when there is a single delivery charge incurred prior to transfer of ownership of the property and the property includes both taxable and exempt items, the tax base must be allocated using one of the following methods:

1. A percentage based on the total sales price of the taxable property compared to the total sales price of all property in the delivery; or
2. A percentage based on the total weight of the taxable property compared to the total weight of all property in the delivery.⁶

LAW AND ANALYSIS

The Act imposes tax on retail sales of tangible personal property at a rate of 6% of the gross proceeds of the business. Specifically:

[T]here is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business....⁷

The Act defines “gross proceeds” as “sales price.”⁸ Therefore, any item included in the definition of “sales price” is included in the tax base, or gross proceeds. “Sales price” is defined as:

[T]he total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sales tax.

Sales price includes, among other things:

Delivery charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property subject to the tax levied under this act from the seller to the purchaser.

[and]

Installation charges incurred or to be incurred before the completion of the transfer of ownership of tangible personal property from the seller to the purchaser.⁹

⁵ MCL 205.51(1)(d)(iv).

⁶ See IPD 2004-8.

⁷ MCL 205.52(1).

⁸ MCL 205.51(1)(c).

⁹ MCL 205.51(1)(d)(iv), (v). However, delivery charges for the shipment of exempt property are not subject to sales tax.

For periods before September 1, 2004, delivery charges were subject to tax under limited circumstances based on the Court of Appeals holding in *Natural Aggregates Corp v Dep't of Treasury*.¹⁰ In *Natural Aggregates*, the Court of Appeals held that certain delivery charges were not taxable because the retailer was simultaneously engaged in a nontaxable business (i.e., delivery). The Court of Appeals characterized the delivery as a transaction separate from the sale of property, both conceptually and temporally. However, MCL 205.51(1)(d)(iv) now specifically includes delivery charges in the tax base;¹¹ therefore, the analysis used in *Natural Aggregates* does not apply for periods after September 1, 2004.¹²

After September 1, 2004, delivery and installation charges are subject to tax if they are *incurred* or are to be *incurred* before the completion of transfer of ownership of the property; the charges are “incurred” when the purchaser becomes legally liable for the charge. The dispositive determination is, therefore, when the delivery or installation charges were incurred, not necessarily when the actual act of delivery or installation occurs. As noted above, the Department will look at any relevant information to determine whether charges are incurred prior to the completion of transfer of ownership.

If a single shipment contains both exempt and taxable property the tax must be allocated between exempt and non-exempt property.¹³ A taxpayer may choose to allocate the delivery charges by either of the methods set forth in the Conclusions section of this RAB.

EXAMPLES

1. ABC Inc. makes retail sales of office furniture. When a customer purchases property from ABC, it may either arrange for its own delivery or ABC, for an additional cost, will provide delivery. If the customer chooses ABC for delivery, a separate contract is entered into by the customer and ABC after the sale which passed all rights of title and ownership of the property to the customer. Because the delivery charge is incurred after the transfer of ownership of the property, the delivery charge is not taxable.
2. ABC Inc. makes retail sales of office furniture. When a customer makes a purchase, it may either arrange for its own delivery or ABC, for an additional cost, will provide delivery. If the customer chooses ABC for delivery, no separate contract is entered and the delivery charges are itemized as “Shipping and Handling” on the same invoice as the office furniture. Under the terms of the sale, risk of loss remains with ABC until the property is delivered. The customer pays the entire invoice at the time of purchase. Because the delivery charge is incurred before the completion of transfer of ownership it is taxable.

¹⁰ 133 Mich App 441 (1984).

¹¹ 2004 PA 173 explicitly added delivery charges to the tax base.

¹² *Unger Enterprises, Inc v Dep't of Treasury*, MTT Docket No. 343303, (2010) (Michigan Tax Tribunal decisions are not precedential; however, *Unger Enterprises* provides a thorough discussion regarding the taxability of delivery charges after 2004 PA 173.).

¹³ 2008 PA 438. See also, IPD 2004-8.

3. ABC Inc. makes retail sales of office equipment, supplies, and furniture. ABC makes a sale to IP Inc., an industrial processor. The delivery charge is incurred prior to the completion of transfer of ownership; therefore, it is taxable. However, only 70% of the sales price of the transaction is subject to sales tax while the remaining 30% of the sales price is exempt under the industrial processing exemption. On the other hand, 50% of the weight of the delivery is subject to sales tax while the remaining 50% of the weight is exempt under the industrial processing exemption. It is in ABC's discretion to determine the allocation of taxes for the taxable delivery charge. It may choose to remit sales tax based on the taxable percentage of the sales price of the delivery (70% of the delivery charge) or it may instead elect to remit sales tax based on the taxable percentage of the weight of the delivery (50%).
4. ABC Inc. makes retail sales of office furniture. When a customer purchases property that requires installation (such as cubicle walls), ABC, for an additional cost, will provide that service. If the customer chooses to purchase installation services, a separate contract is entered into by the customer and ABC after the sale which passed all rights of title and ownership of the property to the customer. Because the installation charge is incurred after completion of transfer of ownership, it is not taxable.
5. ABC Inc. makes retail sales of office furniture. When a customer purchases property that requires installation (such as cubicle walls), ABC, for an additional cost, will provide that service. If the customer chooses to purchase installation services, no separate contract is entered into and the sale of the property and installation are listed on the same invoice. The sales contract provides that title to the property passes to the customer prior to installation. The contract further provides that risk of loss passes to the customer prior to installation except in the case of loss or damage due to negligence or intentional actions by ABC during the course of installation. Because the installation charge is incurred prior to the completion of transfer of ownership, it is taxable.
6. ABC Inc. leases office furniture and equipment. The lease provides that ABC retains title to all leased furniture and equipment. However, the lease gives the customer the option to purchase the furniture and equipment for fair market value at any time throughout the duration of the lease. ABC provides for optional delivery and installation. Because complete transfer of ownership of the property does not occur until after delivery and installation are completed, any delivery and/or installation charges are taxable.
7. ABC Inc. sells office furniture. ABC sells furniture to XYZ Inc. and delivery charges are incurred before the completion of the transfer of ownership of the furniture. The terms of the sale allow XYZ 30 days to obtain financing for the property. When this option is exercised the sale is "unwound" and title reverts to ABC, and is then transferred to the third-party financier (Bank) for the original purchase price, including the delivery charge. XYZ exercises this option and enters an agreement with Bank to lease the property to XYZ on a conditional sale. The agreement provides that XYZ has a purchase option of \$1 at the conclusion of the lease; XYZ is not required to exercise the \$1 purchase option. The delivery charges are taxable because they were incurred before the completion of transfer of ownership of the property.