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**REVENUE ADMINISTRATIVE BULLETIN 2002-11**

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

(Replaces Revenue Administrative Bulletin 1993-07)

**RAB 2002-11.** This Revenue Administrative Bulletin (RAB) replaces RAB 1993-07. The discussion is limited to charges for delivery directly by the seller or delivery by a contract carrier. Delivery by common carrier or postal service is not discussed.

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 6% of the gross proceeds . . . .”

“Gross proceeds” is defined in MCL 205.51(1)(i) 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, R 205.124, 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 Corp v Michigan Dep't 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 (i.e., 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 (i.e., 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 five and six times the amount of the purchase price. Construing MCL 205.52(2); MSA 7.522, the court held that the retailer's delivery service was "some other kind of business" not taxable under the act.

In *Margaret H James Ltd v Michigan Department of Treasury*, Court of Appeals unpublished Opinion No. 132896 (June 26, 1992), the Court of Appeals cited *Natural Aggregates supra* and further explained the statute's definition of "some other kind of business." The court concluded that a delivery service is a separate business when delivery charges are at the market rate and the records from this business show a net profit. These facts indicated that the delivery service was operating as a separate commercial endeavor.

#### 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 that is 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 (thus, the delivery service is not always necessary to complete the transfer of tangible personal property or the performance of the transaction);
2. The delivery service charge is separately negotiated and contracted for on a competitive basis and is not a cost in calculating the merchandise price, as the customer pays a separate price (thus, the delivery service charge is not incidental to the purchase price – demonstrating a separate service transaction);
3. The taxpayer's books and records separately identify the transactions used to determine the tax on the sale at retail; and,
4. Delivery service records show a net profit (thus, the delivery service has evidence of a separate competitive, commercial endeavor).

All four conditions must be met for the seller to be considered simultaneously engaged in a nontaxable delivery service.

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

#### Examples

1. A retailer sells furniture and delivers it to the customer in trucks leased or owned by the seller, or occasionally contracts with a private delivery service. The delivery, which is optional to the customer, is priced and invoiced separately. The retailers records separately identify the sales transactions from the delivery service transactions, itemize delivery-related

expenses, and show a net profit from the delivery business. The delivery charge is not taxable.

2. A retailer sells furniture and delivers it to the customer in trucks leased or owned by the seller, or occasionally contracts with a private delivery service. The delivery, which is optional to the customer, is included in the invoiced price of the furniture. Should the customer opt to pick up the furniture, the price would be reduced by the amount of the delivery charge. The retailer's records separately identify the sales revenue from the delivery service revenue, itemize delivery-related expenses, and show a net profit from the delivery business. The delivery charge is not taxable.
3. A retailer sells furniture and delivers it to the customer in trucks leased or owned by the seller, or occasionally contracts with a private delivery service. The delivery, which is optional to the customer, is included in the invoiced price of the furniture. However, should the customer opt to pick up the furniture, the invoice would not be reduced by the cost for the available delivery service (i.e., the available delivery service is a cost in calculating the price of the furniture and is not negotiable). The delivery charge portion of the invoice price is taxable as part of gross proceeds.
4. A retailer contracts with a private delivery service to deliver its stone; this delivery service is not optional to the customer. The delivery charge is taxable as part of gross proceeds.
5. A customer contracts with a private delivery service to pick up and deliver the stone purchased from a retailer. Because this is a service cost incurred after the transfer of ownership, the delivery charge for this service is not taxable.