

117-310 Freight and Delivery Charges

117-310.1. Transportation Costs, Sellers

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Whether or not freight, delivery, or transportation charges may be deducted by the seller from the selling price of tangible personal property sold for use or consumption, in computing his liability for tax under the sales and use tax law, does not depend upon the separate billing thereof, but depends upon whether or not the services rendered by the railway company or other transporting agency are rendered to such seller or to the purchaser.

If the seller contracts to deliver tangible personal property to some designated place, or is obligated under the contract to pay transportation charges to some designated place, the transportation services are rendered to the seller or user and the selling price of the tangible personal property so transported must include the amount of the transportation charges. In this event such charges are not deductible by the seller in computing his tax liability under the law.

On the other hand, if the seller contracts to sell tangible personal property FOB origin, the title to the property passing at such point to the buyer and the buyer pays the transportation charges, then the transportation services are rendered to the buyer and are not a part of the selling price of the vendor. Therefore, such transportation charges should not be included by the vendor in computing his tax liability under the law. These principles will apply irrespective of whether such charges are separately billed by the seller from the tangible personal property sold.

For example:

(a) If the sale is made F.O.B. point of destination or place of business of the buyer, for a lump sum price or a price or a price per unit, in such manner as to indicate that the cost of transportation is a cost to be borne by the seller, the total amount received by the seller constitutes "gross proceeds of sale," within the meaning of the law. In such case, the seller is not permitted to separate the cost of the goods from the cost of the transportation nor may the seller deduct any estimated or actual cost of transportation from such gross proceeds in making returns under the law.

(b) If the goods are F.O.B. destination under terms by which the purchaser is to pay the freight and deduct such amount from the invoice, the transaction should be treated in the same manner as in paragraph (a) hereinabove, namely the gross proceeds of sale should include the total amount of the agreed sales price, without deduction for freight whether paid by the seller in the first instance or paid by the buyer for the seller and deducted from the invoice.

(c) If the sale is made F.O.B. point of origin, the delivery of the goods to the carrier is generally construed as equivalent to the delivery of the goods to the buyer, and the gross proceeds of sale in such case would not include the freight, whether the freight is by agreement of the parties advanced or prepaid by the seller for the buyer or whether such freight is paid at destination by the buyer. In such cases, the "gross proceeds of sale" only include the agreed sales price of the goods. Any freight so advanced, billed as a special item, is not included as proceeds of the sale, but upon payment is properly treated as a reimbursable expense paid by the seller at the instance and request of the buyer.

(d) No practice of invoicing or billing will entitle the seller to deduct from gross proceeds of sale any cost or expense, actual or estimated, in cases where the seller, by use of his own means of transportation, effects such delivery.

(e) No tax is due on delivery charges by a lessor who, by means of his own transportation facilities, delivers tangible personal property which is the subject of a written lease expressly providing that the lessee assumes all risk of loss or damage to the property from the effective date of the lease. Conversely, when the lessor agrees to assume responsibility for loss or damage to the property during transit, charges by the lessor for such transportation must be included in the tax base. These same principles apply to sale when delivery is by means of the seller's own transportation facilities for a consideration separate and apart from the sales price of the property.

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In no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

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