



MULTISTATE TAX COMMISSION

Working together since 1967 to preserve federalism and tax fairness

Report of the Hearing Officer

Principles Governing State Transactional Taxation—Vendee and Vendor Versions (1993)

In November 2008, the Uniformity Committee undertook a review of the Commission’s sales and use/transactional tax uniformity regulations to assess their continued relevancy, as well as whether they present any conflict with the Streamlines Sales and Use Tax Agreement (SSUTA). The Committee determined that the Uniform Principles Governing State Transactional Taxation of Telecommunications—Vendee and Vendor Versions (1993) should be repealed as outdated in light of current regulatory structures and thus no longer relevant.

The Principles are drafted in the form of two versions of a model statute. Each model version has three sections: definitions, imposition/credits/exemptions from tax, and tax collection. The only difference between the two versions is that the “vendee version” is designed for states where the tax is imposed on the consumer (and constitutes a debt by the vendor to the state), and the “vendor version” is designed for states where the tax is imposed on the vendor (and the vendor is entitled to reimbursement of the tax by the purchaser).

Both model versions are based on a distinction between “basic” and “enhanced” services. The Telecommunications Reform Act of 1996 eliminated this distinction, and instead developed a three-tiered regime that categorizes “telecommunications services”, “cable services” and “Internet services,” each subject to its own regulations. For example, video programming services provided by telecommunications companies on a common carrier basis are governed by a different set of regulations than video programming services provided by a cable company.¹ It is the different means by which the services are delivered, not the services themselves, that places them into one category or another. In addition, other provisions conflict with existing federal law such as the Internet Tax Nondiscrimination Act² and the Mobile Telecommunications Sourcing Act.³ The Internet tax moratorium does not expire until 2014, and the sourcing mechanism for mobile telecommunications has been in place for nearly ten years.

¹ 1996 Act, §302

² 47 U.S.C. 609 (2007)

³ 4 U.S.C. 116 (2000)

The Uniformity Committee found that the substantive changes in the law governing communications warrants repeal of the Uniform Principles. The Committee did not propose substitute language because the Streamlined Sales and Use Tax Agreement provides language on this point that is consistent with current regulatory structures and thus there is not a pressing need for an additional model at this time.

The Uniformity Committee's recommendation to repeal was presented to the Executive Committee in December, 2009, which in turn referred the recommendation to the public hearing process.

Public Hearing

A hearing was held on February 8, 2010, via teleconference. Jaime Fenwick, Time Warner Cable, Inc. attended the hearing, as did Shirley K. Sicilian of the Multistate Tax Commission. No public comment was received.

Recommendation

The Hearing Officer recommends that the uniformity recommendation, Principles Governing State Transactional Taxation of Telecommunications—Vendee and Vendor Versions (1993) as adopted be repealed, and referred to the Bylaw 7 survey of Compact States.

Uniform Principles Governing State Transactional Taxation of Telecommunications—Vendee Version

Adopted July 30, 1993

INTRODUCTORY NOTE

This uniformity recommendation proposes uniform principles to govern state transactional taxation of *basic* telecommunication services, as distinguished from *enhanced* services. The uniformity recommendation does not advise or endorse (i) the adoption of a state transactional tax on the provision of telecommunications of any type; (ii) the limitation of any adopted state transactional tax on telecommunications to basic, as distinguished from enhanced, telecommunication services, should a State impose a transactional tax on the provision of any telecommunications; or (iii) the implementation of any adopted state transactional tax on telecommunications either as a special industry (telecommunications) excise tax or as an integral part of a general sales and use tax. These policy choices remain within the sovereign discretion of the adopting States. The uniformity recommendation reflects principles thought to be applicable to transactional taxation of the provision of telecommunications regardless of the form of transactional tax implemented.

The uniformity recommendation contains some provisions that are expressed as alternatives. The options afforded by these alternatives are labeled by number, so that an adopting State may relate an alternative change in one portion of the recommendation that requires a correlative change in another part of the recommendation if the alternative is adopted. The included alternatives do not affect the core provisions of the recommendation and are included to provide possible language for States desiring to modify the uniformity recommendation in discrete areas.

The uniformity recommendation is presented in statutory form to facilitate understanding of the intended effect of the recommendation. As a statute, the recommendation contains general provisions that necessarily apply to transactional taxation of other segments of a State's economy in addition to telecommunications. *See*, for example, the definition of "person" in the recommendation. Inclusion of these generally applicable provisions in the recommendation does not suggest that an adopting State should abandon its own currently effective provisions, if a State is satisfied that they adequately serve the State's purposes and the State's provisions are consistent with the results to be achieved by the recommendation.

Uniform Principles Governing State Transactional Taxation of Telecommunications— Vendee Version

1. Definitions.

As used in this [identify adopting State's codified law where the uniform principles are to be placed], unless the context clearly requires otherwise:

(a) "Bad debts" means any portion of a debt related to a sale of intrastate, interstate, or international telecommunication, the gross revenue for which is not otherwise deductible or excludable, that has become worthless or uncollectible, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made.

(b) "Department" means _____.

(c) "Director" means _____.

(d) "Gross revenue" means, subject to the exclusions of this §1(d), the amount charged or paid for the purchase of intrastate, interstate, and international telecommunication. Gross revenue is expressed and valued in money, whether the amount charged is paid in money or otherwise, and includes cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunication, the cost of materials used, labor or service costs or any other expense whatsoever. **Alternative #1:**[In case credit is extended, the amount thereof shall be included only as and when paid.]:**Alternative #1.** Gross revenue for private line services includes charges imposed at each channel termination point within this State, charges for the total channel mileage between each channel termination point within this State, and fifty percent (50%) of charges for the interstate inter-office channel provided between the last channel termination point in this State and the first channel termination point outside of this State. However, gross revenue shall not include:

(1) Any charges or amounts paid that are (i) the tax imposed by this Act; **Alternative #2:**[or]:**Alternative #2.** (ii) the tax imposed by Section 4251 of the Internal Revenue Code, 26 U.S.C. §4251; **Alternative #2:**[or (iii) surcharges imposed by statute, ordinance or regulatory authority for the purpose of financing programs such as assistance to the economically disadvantaged (TAP), 911, TDD, or similar programs developed and financed through surcharges on telecommunications.]:**Alternative #2.**

(2) Charges or amounts paid for customer equipment, including such equipment that is leased or rented by the customer from any source, where such charges or amounts paid are disaggregated and separately identified from other amounts charged or paid for the provision of intrastate, interstate, and international telecommunications.

(3) Charges or amounts paid that are for the sale of property or any service that is provided by an information provider where such charges or amounts paid are disaggregated from the amount charged or paid for the provision of intrastate, interstate, and international telecommunications **Alternative #3:**[; *provided, however*, charges or amounts paid for services that are entirely ancillary to the provision of telecommunications, such as services for telephone directory information, connection or disconnection, calls forwarding, caller-identification, calls waiting, and the like, are not excluded from gross revenue]:**Alternative #3.** An information provider is a person who provides information, services or products, either through prerecorded or interactive means, utilizing a network of telecommunications to provide the same. **Alternative #4 &/or #5:**[And.]:**Alternative #4 &/or #5.**

(4) Bad debts.

Alternative #4:[(5) Charges or amounts paid by direct deposits of money into a telecommunication device requiring such direct deposits in order to operate.]**Alternative #4.**

Alternative #4 &/or #5:[And,]:**Alternative #4 &/or #5.**

Alternative #5:[(6) [Specify other exclusions, if any, to be provided by the adopting State.]]:**Alternative #5.**

(e) "Intrastate telecommunication" means all telecommunications regardless of routing that both originate and terminate within this State.

(f) "Interstate telecommunication" means all telecommunications that either (i) originate in this State and terminate in another State or (ii) originate in another State and terminate in this State, where, in either instance, a service address of the telecommunication is in this State.

(g) "International telecommunication" means all telecommunications that either (i) originate in this State and terminate outside of the United States or (ii) originate outside of the United States and terminate in this State, where, in either instance, a service address of the telecommunication is in this State.

(h) "Person" means, without limitation, any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, limited liability company, corporation, cooperative, Indian tribe, or receiver, trustee, guardian or other representative appointed by order of any court, the federal and state governments, governmental instrumentalities, including, without limitation, federal or state universities created by statute, and any political subdivisions of a State.

(i) "Purchase at retail" means the acquisition, consumption or use of telecommunication, provided that purchasing at retail does not include (i) the provision of telecommunications among members of an affiliated group of entities by a member of the group for their own exclusive use and consumption; and (ii) carrier access charges, right of access charges, charges for use of intercompany facilities, and charges for all telecommunications resold in the subsequent provision of telecommunications, all of which charges are non-taxable sales for resale. For purposes of applying clause (i), members of an affiliated group include a parent entity and all of the parent entity's wholly owned entities, including wholly owned, sub-tier entities; and "entity" means a non-natural person. For purposes of applying clause (ii), the following are not sales for resale: the acquisition of telecommunications by the member of the group providing the telecommunications to an affiliated group of entities within the meaning of clause (i); and the acquisition of telecommunications by a provider of enhanced services, even when the cost of the telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary object of the purchase of the telecommunications by the provider is the provision of enhanced services and not telecommunications.

(j) "Private line" means a dedicated, non-traffic sensitive, service for a single customer that entitles the customer to the exclusive or priority use of a communications channel or group of channels from one or more specified locations to one or more specified locations.

(k) "Retailer" means and includes every person engaged in the business of making sales of intrastate, interstate, or international telecommunication.

(l) "Sale of intrastate, interstate, or international telecommunication" means the transmitting, supplying or furnishing of intrastate, interstate, or international telecommunication, respectively, and all services and equipment provided in connection therewith for a consideration to persons other than the federal and state governments, federal and state universities created by statute, and federal governmental instrumentalities which may not be subjected to a state transactional tax on telecommunications under applicable law.

(m) "Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a taxpayer. The foregoing rule is amplified, but not limited, by the following special provisions, which are listed in order of priority of application so that only the first applicable special provision will apply, if more than one potentially applies: (i) if the gross revenue is paid through a credit or payment mechanism that does not relate to a service address of the interstate or international telecommunication (as may be the case when payment of the gross revenue is accomplished by a bank, travel, credit or debit card or when the telecommunication is charged to telecommunication equipment whose location does not constitute a service address of the telecommunication), the service address is deemed to be the location of the origination of the interstate or international telecommunication; (ii) if the service address is not a defined location as in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location in this State where bills are sent, *provided, however*, the location of the mobile telephone switching office or similar facility in this State that receives and transmits the signals of the telecommunication will be deemed the service address when the mobile telephone switching office or similar facility is outside the subscriber's assigned service area; and (iii) the service address of private line telecommunication services is deemed to be in this State to the extent gross revenues of such services are attributed to this State.

(n) "State" means either this State or any other State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(o) "Taxpayer" means a person who individually or through agents, employees, independent contractors, officers, representatives, or permittees originates or receives intrastate, interstate, or international telecommunications and who incurs a tax liability under this Act.

(p) "Telecommunication," subject to the exclusions stated in this §1(p), includes, without limitation,

(1) any one way transmission or any two way, interactive transmission of sounds, signals, or other intelligence converted to like form, which effect or are intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or otherwise;

(2) the transmission of messages, programming or information through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunication services; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages, programming or information by electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities.

Notwithstanding the foregoing definition of this §1(p), telecommunication does not include enhanced services that are defined as services that employ computer processing applications to act on the format, content, code, or protocol or similar aspects of the information to be transmitted, provide additional, different, or restructured information, or involve the taxpayer's interaction with stored information. Under this exception, telecommunication does not include the use of equipment based upon lease or time-sharing agreements, storage of data or information for subsequent retrieval on equipment, or processing of data or information by equipment. Equipment includes, but is not limited to, calculators, computers, data processing equipment, tabulating equipment, or accounting equipment.

2. Imposition of tax-Credit-Exemptions.

(a) A tax is imposed upon the purchase at retail of intrastate, interstate, and international telecommunication by a person where the sale of the intrastate, interstate, and international telecommunication is charged to the taxpayer's service address in this State at the rate of ___% of the gross revenue for such telecommunication.

(b) To prevent actual multijurisdictional taxation of purchases subject to tax under this Act, any taxpayer, upon proof that taxpayer or the taxpayer's seller has previously paid the same tax in another State on such purchase, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other State, *provided, however*, the amount of credit will not exceed the tax owed to this State on such purchase.

(c) However, the tax is not imposed to the extent that the purchase of intrastate, interstate, and international telecommunications may not, under the Constitution, statutes, or treaties of the United States, be made the subject of transactional taxation by this State. Any taxpayer claiming exemption from the tax by reason of the Constitution, statutes, or treaties of the United States shall file with the Director such claim of exemption as may be prescribed by rule or regulation.

3. Collection of tax

The tax imposed hereunder shall be collected from the taxpayer by the retailer making sales of intrastate, interstate, or international telecommunications and remitted to the Department

pursuant to this §3. The tax required to be collected by this Act and any such tax collected by such retailer shall constitute a debt owed by the retailer to this State. Retailers shall collect the tax from the taxpayer by adding the tax to the gross revenue for originating from, or receiving at, a service address in this State intrastate, interstate, or international telecommunications, when sold for use, in the manner prescribed by the Department. Whenever possible, the tax imposed by this Act shall, when collected, be stated as a distinct item separate and apart from the gross revenue for telecommunications. **Alternative #4:**[In the case of telecommunication devices requiring the direct deposits of money to operate, the tax collections may be combined with the charge for the service. If the tax imposed by this Act is paid by direct deposit of money in telecommunication devices requiring such direct deposits, the tax shall be computed each time money is directly deposited in the telecommunication device.]:**Alternative #4.** The tax imposed by this Act shall constitute a debt of the purchaser to the retailer who provides such taxable services until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such taxable services.

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Adopted July 30, 1993

INTRODUCTORY NOTE

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recommendation. Inclusion of these generally applicable provisions in the recommendation does not suggest that an adopting State should abandon its own currently effective provisions, if a State is satisfied that they adequately serve the State's purposes and the State's provisions are consistent with the results to be achieved by the recommendation.

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(b) "Department" means _____.

(c) "Director" means _____.

(d) "Gross revenue" means, subject to the exclusions of this §1(d), the amount charged for the sale of intrastate, interstate, and international telecommunication. Gross revenue is expressed and valued in money, whether the amount charged is paid in money or otherwise, and includes cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunication, the cost of materials used, labor or service costs or any other expense whatsoever. **Alternative #1:**[In case credit is extended, the amount thereof shall be included only as and when paid.]:**Alternative #1.** Gross revenue for private line services includes charges imposed at each channel termination point within this State, charges for the total channel mileage between each channel termination point within this State, and fifty percent (50%) of charges for the interstate inter-office channel provided between the last channel termination point in this State and the first channel termination point outside of this State. However, gross revenue shall not include:

(1) Any charges for (i) reimbursement of the tax imposed by this Act; **Alternative #2:**[or]:**Alternative #2.** (ii) the tax imposed by Section 4251 of the Internal Revenue Code, 26 U.S.C. §4251; **Alternative #2:**[or (iii) surcharges imposed by statute, ordinance or regulatory authority for the purpose of financing programs such as assistance to the economically disadvantaged (TAP), 911, TDD, or similar programs developed and financed through surcharges on telecommunications.]:**Alternative #2.**

(2) Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, where such charges are disaggregated and separately identified from other amounts charged for the provision of intrastate, interstate, and international telecommunications.

(3) Charges that are for the sale of property or any service that is provided by an information provider where such charges are disaggregated from the amount charged for the provision of intrastate, interstate, and international telecommunications **Alternative #3**: *provided, however, charges for services that are entirely ancillary to the provision of telecommunications, such as services for telephone directory information, connection or disconnection, calls forwarding, caller-identification, calls waiting, and the like, are not excluded from gross revenue*:**Alternative #3**. An information provider is a person who provides information, services or products, either through prerecorded or interactive means, utilizing a network of telecommunications to provide the same.

Alternative #4 &/or #5:*[And,]*:**Alternative #4 &/or #5**.

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Alternative #4 &/or #5:*[And,]*:**Alternative #4 &/or #5**.

Alternative #5:*(6) [Specify other exclusions, if any, to be provided by an adopting State.]*:**Alternative #5**.

(e) "Intrastate telecommunication" means all telecommunications regardless of routing that both originate and terminate within this State.

(f) "Interstate telecommunication" means all telecommunications that either (i) originate in this State and terminate in another State or (ii) originate in another State and terminate in this State, where, in either instance, a service address of the telecommunication is in this State.

(g) "International telecommunication" means all telecommunications that either (i) originate in this State and terminate outside of the United States or (ii) originate outside of the United States and terminate in this State, where, in either instance, a service address of the telecommunication is in this State.

(h) "Person" means, without limitation, any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, limited liability company, corporation, cooperative, Indian tribe, or receiver, trustee, guardian or other representative appointed by order of any court, the federal and state governments, governmental instrumentalities, including, without limitation, federal or state universities created by statute, and any political subdivisions of a State, and foreign governments, including their political subdivisions, instrumentalities or agencies.

(i) "Private line" means a dedicated, non-traffic sensitive, service for a single customer that entitles the customer to the exclusive or priority use of a communications channel or group of channels from one or more specified locations to one or more specified locations.

(j) "Retailer" means the taxpayer and includes every person engaged in the business of making sales of intrastate, interstate, or international telecommunications.

(k) "Sale at retail" means the sale, acquisition, consumption or use of telecommunications, provided that sale at retail does not include (i) the provision of telecommunications among members of an affiliated group of entities by a member of the group for their own exclusive use and consumption; and (ii) carrier access charges, right of access charges, charges for use of intercompany facilities, and charges for all telecommunications resold in the subsequent provision of telecommunications, all of which charges are non-taxable sales for resale. For purposes of applying clause (i), members of an affiliated group include a parent entity and all of the parent entity's wholly owned entities, including wholly owned, sub-tier entities; and "entity" means a non-natural person. For purposes of applying clause (ii), the following are not sales for resale: the acquisition of telecommunications by the member of the group providing the telecommunications to an affiliated group of entities within the meaning of clause (i); and the acquisition of telecommunications by a provider of enhanced services, even when the cost of the telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary object of the sale of the telecommunications to the provider is the provision of enhanced services and not telecommunications..

(l) "Sale of intrastate, interstate, or international telecommunication" means the transmitting, supplying or furnishing of intrastate, interstate, or international telecommunication, respectively, and all services and equipment provided in connection therewith for a consideration to other persons.

(m) "Service address" means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by the taxpayer's purchaser. The foregoing rule is amplified, but not limited, by the following special provisions, which are listed in order of priority of application so that only the first applicable special provision will apply, if more than one potentially applies: (i) if the gross revenue is paid through a credit or payment mechanism that does not relate to a service address of the interstate or international telecommunication (as may be the case when payment of the gross revenue is accomplished by a bank, travel, credit or debit card or when the telecommunication is charged to telecommunication equipment whose location does not constitute a service address of the telecommunication), the service address is deemed to be the location of the origination of the interstate or international telecommunication; (ii) if the service address is not a defined location, as in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment as defined by telephone number, authorization code, or location in this State where bills are sent, *provided, however*, the location of the mobile telephone switching office or similar facility in this State that receives and transmits the signals of the telecommunication will be deemed the service address where the mobile telephone switching office or similar facility is outside the subscriber's assigned service area; and (iii) the service address of private line telecommunication services is deemed to be in this State to the extent gross revenues of such services are attributed to this State.

(n) "State" means either this State or any other State of the United States, the District of

Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(o) "Taxpayer" means a person who individually or through agents, employees, independent contractors, officers, representatives, or permittees engages in the business of providing the service of originating or receiving intrastate, interstate, or international telecommunications and who incurs a tax liability under this Act.

(p) "Telecommunication," subject to the exclusions stated in this §1(p), includes, without limitation,

(1) any one way transmission or any two way, interactive transmission of sounds, signals, or other intelligence converted to like form, which effect or are intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or otherwise;

(2) the transmission of messages, programming or information through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunication services; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages, programming or information by electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities. Notwithstanding the foregoing definition of this §1(p), telecommunication does not include enhanced services that are defined as services that employ computer processing applications to act on the format, content, code, or protocol or similar aspects of the information to be transmitted, provide additional, different, or restructured information, or involve the taxpayer's purchaser's interaction with stored information. Under this exception, telecommunication does not include the use of equipment based upon lease or time-sharing agreements, storage of data or information for subsequent retrieval on equipment, or processing of data or information by equipment. Equipment includes, but is not limited to, calculators, computers, data processing equipment, tabulating equipment, or accounting equipment.

2. Imposition of tax-Credit-Exemptions.

(a) A tax is imposed upon the sale at retail of intrastate, interstate, and international telecommunication where the telecommunication is charged to the taxpayer's purchaser's service address in this State at the rate of ___% of the gross revenue for such telecommunication.

(b) To prevent actual multijurisdictional taxation of sales subject to tax under this Act, any taxpayer, upon proof that taxpayer or the taxpayer's purchaser has previously paid the same tax in another State on such purchase, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other State, *provided, however*, the amount of credit will not exceed the tax owed to this State on such purchase.

(c) However, the tax is not imposed to the extent that the sale of intrastate, interstate, and international telecommunications may not, under the Constitution, statutes, or treaties of the

United States, be made the subject of transactional taxation by this State. Any taxpayer claiming exemption from the tax by reason of the Constitution, statutes, or treaties of the United States shall file with the Director such claim of exemption as may be prescribed by rule or regulation.

3. Reimbursement of tax.

(a) The taxpayer may be reimbursed for the tax from his purchaser by adding the tax, whenever possible, as a separate and distinct item to the gross revenue charged for the sale of intrastate, interstate, and international telecommunications. **Alternative #4:**[In the case of telecommunication devices requiring the direct deposits of money to operate, reimbursement of the tax may be combined with the direct deposit for the service. The tax imposed by this Act for the sale of intrastate, interstate, and international telecommunication to a person who purchases such service by directly depositing money in telecommunication devices requiring such direct deposits shall be computed each time money is directly deposited.]:**Alternative #4.**

(b) If the tax is separately stated on the books of the taxpayer and the total amount of tax that is separately stated with respect to transactions reportable within one reporting period is in excess of the amount of tax otherwise payable on the transactions on which the tax was separately stated, the excess amount of tax stated on the transactions within that reporting period shall be included as a part of the gross revenues.