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March 20, 2008

Mr. Scott Peterson
Executive Director
Streamlined Sales Tax Governing Board
4205 Hillsboro Pike
Hobbs Building, Suite 305
Nashville, TN 37215-3339

Re: Public Comment OPPOSED to AM07034A01, direct mail amendment
Public Comment OPPOSED to RP07016A01, direct mail Rule 313

Dear Mr. Peterson:

The Mailing & Fulfillment Service Association (MFSA) supports the direct mail roadmap presented by the Business Advisory Council (BAC) in September. This support is based on the understanding that all five items on the BAC roadmap must be resolved and that no amendments should be adopted without a plan for resolving all the issues on this roadmap.

We commend the State and Local Advisory Council (SLAC) for the progress which has been made but oppose the amendments and rules as currently drafted on the basis that they fall short in providing simplification, uniformity and equal protection under the law. *Rule 313 includes in direct mail only those catalogs and promotional materials which are printed and mailed by the same service provider.* This creates major problems for our members. Please consider the following:

1. Printers and mailers may be competitors or complementary service providers—the proposed rule does not provide uniform tax administrative policy between competitors and creates an unequal playing field. The Printing Industries of America and MFSA are firmly in agreement on this issue and do not want tax administration policy to influence purchaser buying decisions. Attached as Exhibit B is an Alabama court case which clearly identifies our concerns. It should be noted that while the taxpayer in this case provided separate invoices for mailing services, we do not believe this is necessary under historical tax administration policy in most jurisdictions. In our experience, the most common business practice is to separately state mailing services on the same invoice and it is our understanding that most states have accepted this industry practice.

2. This interpretation is not justified by language in the Agreement. The definition for “direct mail” does not state that it must be printed and mailed by the same service provider. It is a departure from the common understanding of how Section 313 was intended to work.
3. Our industry is very competitive and we believe the proposed amendment and rule may result in a disruption of the current pattern of bulk mail entry into the mail stream and may create localized operating inefficiencies if sufficient volume of mail shifts from one preparer to another.

Exhibit A illustrates this issue from the perspective of state tax revenue streams. We believe the proposed amendment and rule has the unintended potential to impact tax revenues between the states which have higher concentrations of mailing service providers and those which do not. We are concerned that this provision may not reflect legislative intent in adopting the direct mail sourcing rules.

While we are naturally concerned with the fiscal impact on the states where we do business, we have greater concerns that the free market will adjust buying patterns to avoid using mailing service providers in SSTA states, particularly those states with high tax rates and those states which have not clearly indicated that they will continue to allow interstate commerce, processing, printed material delivered out-of-state or other exemptions when the sale is sourced under Section 313.B. We need guidance on this issue in order to properly collect tax under Section 313.B and request your consideration in adding this information to the taxability matrix.

We are also concerned about how the current language in Section 313 is or will be interpreted and continue to wait on guidance with regard to the current language. If the proposed amendment and rule ultimately become the basis for interpreting the current Agreement, it may create unintended retroactive tax exposure if SSTA tax administration policy differs from historical tax administrative policy in specific SSTA states. It is important to us that direct mail issues be resolved appropriately and in a manner which is simple, uniform and least disruptive to business. If the Board needs additional time to understand these issues, we are willing to wait until the next meeting—we would rather get it right than get it fast.

We oppose pulling business correspondence out of the direct mail sourcing rules. The relevant postal regulations and procedures are identical regardless of the content of the mailpiece. Creating different sourcing regimes outside the safe harbors of Section 313 based on the type of direct mail will add significant complexity to tax administration for our industry. Any clarification or changes with regard to sourcing business correspondence needs to be implemented within Section 313 and we support the establishment of two types of direct mail within Section 313 if this is the desire of the broader business community.

We oppose pulling stand-alone mailing services out of the direct mail definition. These services are identical regardless of whether the service provider prints the material or uses customer-supplied materials. Pulling stand-alone mailing services out of Section 313 will add complexity to tax administration for our industry.

Does the Governing Board intend to interpret the current Section 313 as requiring that separately-stated mailing services be sourced to the recipient's mailbox location? If so, then any amendment to Section 313 should be drafted with the goal of changing and simplifying this tax policy.

Are the current direct mail sourcing rules only intended to apply to sales of printed material rather than separately-stated sales of mailing or other services? If so, this should be clarified in Rule 313. If not, then any amendment to Section 313 should be drafted with the goal of simplifying this tax policy.

This amendment and the proposed rule should not be adopted without further consideration of purchaser responsibility and seller safe harbors. We do not sell direct mail – we custom produce business correspondence and/or promotional materials to the exact specifications of the purchaser and comply with USPS postal regulations for the subsequent processing of this material as mail.

We understand the significant investment of time by SLAC and we appreciate the priority given to direct mail over the past few months. Thank you for being responsive to our concerns.

Sincerely,

A handwritten signature in black ink that reads "David A. Weaver". The signature is written in a cursive, flowing style.

David A. Weaver
President & CFO

Cc: Ms. Lisbeth Lyons, Printing Industries of America