



DIRECT MAIL  
COALITION

*Printers, mailers, billing service providers,  
suppliers & direct mail marketers united to address  
direct mail issues in the Streamlined Sales Tax Agreement  
Managed by Dow Lohnes Price Tax Consulting Group, LLC*

***Sent via Electronic Mail to [scott.peterson@SSTGB.org](mailto:scott.peterson@SSTGB.org)***

March 29, 2008

Mr. Scott Peterson, Executive Director  
Streamlined Sales Tax Governing Board

Dear Mr. Peterson:

We apologize for any inconvenience caused by filing this public comment so close to the Reston meeting date but we chose to wait until after the final SLAC conference calls so that our comments may be a current reflection of our views on these issues going into the meetings, taking into consideration recent developments.

**AM07033 (SLAC) and AM07035 (BAC) – Delivery Charge Amendments**

We appreciate Sherry Harrell's responsiveness in scheduling several conference calls on the "reverse toggle" sponsored by West Virginia, Utah and Wyoming and for following up with both Kristi Magill and me to provide additional feedback. We have a much better understanding of what is needed for successful resolution of this issue and have recently drafted several versions in an attempt to respond to SLAC suggestions and concerns, culminating in "the Latest Proposal" forwarded to Sherry on March 28 and not yet noticed. It is our understanding that the BAC will vote on the Latest Proposal during its meeting on April 1. Please note the following points with regard to our understanding of how the Latest Proposal will work:

1. The March 28 Delivery Charge Amendment combines all significant elements of the SLAC and BAC delivery charge amendments referenced above; if it is adopted the amendments referenced above will not be necessary.
2. The imposition language is included in the sales price definition and provides a mechanism for states to "toggle on" for defined "direct mail delivery charges" as "services necessary to complete the sale." By using a defined "toggle on" definition, the Latest Proposal promotes uniformity: the original "reverse toggle" allowed states to draft their own imposition language and was dropped at the request of the states participating in the SLAC work group, particularly those most interested in toggling on.
3. There is precedence to this structure in that "services necessary to complete the sale" already has an optional "toggle off" provision for defined "telecommunications nonrecurring charges."

4. If the Latest Proposal is adopted, it is likely that states which have enacted the current “direct mail delivery charge exclusion” will not need to pass legislation as a result of this amendment. The “exclusion” may be interpreted as a clear signal that the state has not “toggled on” under the sales price definition for “services necessary to complete the sale.”
5. The Latest Proposal contains commentary specifying that it is adopted by the Governing Board without implication meaning that it can not be used as a barometer in interpreting the current delivery charge definition or direct mail delivery charge exclusion. It reflects a significant compromise from the industry proposal voted on at the Seattle meeting and is entirely neutral with regard to how states interpret the current language.

While the Latest Proposal is not our first choice for resolution of this issue, it does meet our most basic concerns. We are concerned that postage on mail has been unintentionally included in the tax base without clear legislative intent or perhaps as a result of not understanding the current definition. The Kansas and North Carolina legislatures enacted the “direct mail delivery charge exclusion” as soon as this issue was brought to their attention. The North Carolina Department of Revenue worked cooperatively with taxpayers to ensure that legislative intent was recognized for the two-year period between adoption of original SSTA legislation and adoption of the “exclusion” through administrative policy, for example, by recognizing mailing agency relationships.

More powerful examples exist in the legislative histories of both Minnesota and Michigan, where the legislatures retroactively enacted the “exclusion” upon learning that the standard delivery charge definition could be interpreted to apply to postage on mail. The Latest Proposal will ensure that state legislatures will not unintentionally “toggle on” a tax on the delivery of mail through a misunderstanding of what is included in what is otherwise regarded as a standard delivery charge definition. While we do not regard retroactive legislation on a state-by-state basis as a viable dispute resolution process, even if this remedy were implemented, it would still not address our most fundamental concern.

We are concerned that the current “direct mail delivery charge exclusion” puts us in the position of lobbying for an “exemption” for something that was not regarded as a component of sales price in the vast majority of states before 2001. We do not want to be in a position of having to constantly lobby for and explain why we need an “exemption” or special treatment for something that has historically not been taxed as part of the sales price of bulk printed materials and is not commonly regarded as such by our customers.

On the other hand, if a legislature clearly wants to “toggle on” delivery of direct mail, then enactment of the “toggle” under the sales price definition in the Latest Proposal allows this option. The “toggle on” provides an indicator of legislative intent that, in our opinion, does not clearly exist under the current delivery charge definition. For these reasons, the Latest Proposal exemplifies good tax policy process and is an improvement over the current ambiguity.

**AM07034A01 – Direct Mail Definition and Sourcing**

We requested an interpretive rule on Section 313 from CRIC in the fall of 2006. We followed current procedures at that time but CRIC declined to act and instead referred the request directly to the Governing Board.

Concurrently, trade association representatives, and in many cases local taxpayers, met with each Member state in the fall of 2006. After those meetings, we concluded that two or three paragraphs out of the thirteen paragraphs in our proposed rule were controversial and the other paragraphs appeared to be mutually understood by both taxpayers and administrators. In fact, approximately 2/3 of the Member states agreed with substantially all the paragraphs in the proposed rule.

The entire rule did not go to a vote in Seattle and we agree with the Board's decision that additional work was needed. We understood the December 2006 charge by the Governing Board to SLAC was to form a work group to develop a rule based on the current language in the Agreement. AM07034A01 does not meet the Board's directive to SLAC because it represents an amendment to the Agreement, accompanied by a prospective rule, rather than a rule interpreting current Section 313.

From our perspective, AM07034A01 significantly increases complexity and deviates from tax administration policy in areas which we anticipated were generally agreed to when we met individually with each state. Nonetheless, significant progress has been made. We believe that successful completion of the direct mail project will depend upon the establishment of high-level tax policy goals by the Governing Board which can then guide SLAC and BAC over the next few months. We request that the Governing Board clarify its charge to SLAC and we respectfully request a rule interpreting the current Section 313 which minimizes disruption to commerce. We do not support any amendment to Section 313 until we have guidance on the current Agreement and can evaluate whether amendments are a justifiable departure from industry tax administration practice.

That being said, we wish to thank Judy Niccum, Ellen Thompson and Kristi Magill for their devotion to these issues over the past year and we recognize that many significant issues have been favorably resolved.

**AM08002 – Optional Origin Direct Mail Sourcing**

We affirm the need for this option and celebrate Washington's initiative in proposing an optional provision to simplify sourcing in states with local tax jurisdictions. However, we cannot support this amendment without a clear agreement that it is part one in a two-part process and that part two will embody similar provisions to simplify interstate direct mail and provide parity for printers located out-of-state.

March 29, 2008

Page 4

We ask your consideration in adding the following notes to the proposal:

1. Upon [designated future date] this amendment will expire if part two has not been adopted. Part two will provide similar optional sourcing simplification for interstate direct mail and/or out-of-state sellers and purchasers.
2. It is anticipated that any state adopting the optional rule in AM08002 will be required to adopt part two according to the effective dates included in part two.

It is our understanding that Washington is amenable to drafting a proposal for part two in consultation with other states with local tax jurisdictions which choose to pursue an optional simplification provision. We understand their immediate need for adoption of the direct mail origin sourcing rule and hope that consensus on this proposal may be adopted at Reston. Due to the expedited nature of this proposal, we would assume that it could be amended in June should deficiencies be noted or should adjustments be necessary upon completion of the rule for Section 313.

### **Conclusion**

We are very appreciative of the time and effort devoted to understanding the nuances of what is one of the more complex areas of sales tax administration. We recognize that our industry is unique in involving custom manufacturing, the provision of time sensitive services, significant interstate commerce, privacy concerns, communication policies in compliance with various regulatory authorities, dominance by small business sellers, complex Federal postal regulations and rapidly changing technology. Any simplification brought by the SSTA is very much appreciated.

In summary, we support adoption of AM08002 within the parameters noted above at the Reston meeting. We hope to celebrate a marriage of AM07033 and AM07035 at the Reston meeting. With these accomplishments in hand, and with additional guidance from the Governing Board, we are certain that agreement may be reached on business correspondence and other direct mail sourcing issues in the next few months.

Sincerely,



Melanie Hill, CMI  
Direct Mail Coalition  
Dow Lohnes Price Tax Consulting Group

Cc: Mr. Stephen Kranz, President, BAC  
Ms. Kristi Magill, BAC Direct Mail Workgroup

Mr. Gene Del Polito, Ph.D, The Association for Postal Commerce, a/k/a PostCom  
Mr. David Weaver, Mailing & Fulfillment Service Association  
Ms. Lisbeth Lyons, Printing Industries of America/Graphic Arts Technical Foundation  
Mr. Maynard Benjamin, Envelope Manufacturers Association  
Mr. Harold Yankelevitz, Printing Association of Florida  
Mr. Joe Polanco, Printing and Imaging Association Mid America (serving TX, OK, KS, western MO)  
Ms. Donna Hanbery, Saturation Mailers Coalition  
Ms. Kathy Lauerman, Printing & Imaging Association Mountain States (serving WY, CO, NM)  
Ms. Marge Baumhauer, Graphic Arts Association  
Mr. John Scibelli, Printing Industries of New England (serving VT, RI, MA, ME, CT, NH)  
Mr. Jeff Stoudt, Printing Industries of the Carolinas  
Mr. Gerry Bonetto, Printing Industries of California  
Mr. Ed Chalifoux, Printing Industry Association of the South (serving WV, KY, TN, LA, AL, MI, AR)  
Ms. Joanne Rock, Printing Industry of Illinois/Indiana Association  
Ms. Vicki Keenan, Printing Industries Alliance (serving NY, upper NJ)  
Mr. Dick Clark, Printing Industries of the Midlands (serving SD, NE, IA)  
Mr. David Radziej, Printing Industry of Minnesota  
Mr. Jim Cunningham, Printing Industries Association Northern Kentucky & Ohio  
Mr. Jim Prendergast, Mailing & Fulfillment Service Association of NY & NJ  
Mr. Jeff Robinson, Dallas Fort Worth Mailers Association  
Ms. Kathy Siefken, Nebraska Grocery Industry Association  
Ms. Laurie Ehlbeck, New Jersey National Federation of Independent Businesses  
Mr. Roger Geiger, Midwest Region National Federation of Independent Businesses  
Mr. Robert Hallstrom, Nebraska National Federation of Independent Businesses