

A motion by Utah and Kansas to amend the Rules relating to sourcing direct mail.

COMPREHENSIVE DIRECT MAIL SOURCING RULE

Article III – REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

Rule 313. Direct Mail Sourcing

Rule 313. Use of Uniform Direct Mail Sourcing Rules

1. Use tax on mail from remote vendors.

A printer or service provider is not required to collect use tax on direct mail delivered into a state when the direct mail user is not otherwise required to register for use tax in a jurisdiction and the sale is sourced to the seller's location.

2. Relation to other exemptions.

The direct mail sourcing rules do not take precedence over interstate commerce exemptions or any other state specific exemptions that would otherwise apply to the sourcing of the direct mail and its components including, printed materials, lists or mailing services. Examples of other state specific exemptions may include promotional materials exemptions, shopper exemptions, media-related exemptions and printed materials delivered out-of-state exemptions.

3. Correspondence not qualifying as direct mail.

Business correspondence such as paychecks, deposit notification advices, correspondence, privacy notices, invoices, benefit statements, stockholder reports, and account statements are mailed using addresses derived from an account data base and do not constitute direct mail. Services and materials used in producing and mailing business correspondence are sourced to the seller's location. The inclusion of advertising material in the business correspondence has no bearing on the determination of whether the correspondence qualifies as direct mail.

4. Documentation of direct mail sourcing.

- A. Access to a mailing list or account data base provided by the direct mail user or a third party to a printer or service provider for use in relation to direct mail does not constitute receiving "information to show the jurisdictions to which the direct mail is delivered."
- B. Allocation of distribution among jurisdictions using a system-generated summary distribution report constitutes a safe-harbor method for use tax reporting by the direct mail user.
Allocation of distribution among jurisdictions using the purchase order for a mailing list rental constitutes a safe-harbor method for use tax reporting by the direct mail user.

5. Mailing lists used in direct mail distributions.

Sales of mailing lists provided on labels, paper, computer tape, diskette, CD or other electronic storage device are sourced under Section 310.

Sales of mailing lists provided or accessed electronically are sourced to the seller's location.

6. Direct Mail Form.

If an exemption certificate for direct mail is issued by the direct mail user or its agent and the exemption certificate does not specify the direct mail component to which it applies, the exemption certificate shall apply to all direct mail components provided and/or billed by the seller to whom the exemption certificate is presented.

7. Direct mail campaign and agent.

- A. Definition of Direct Mail Campaign: Solely for purposes of this rule, a “direct mail campaign” is a direct mail distribution planned and procured by a third party with an agency-principal relationship with a direct mail user. The printed materials distributed in a direct mail campaign must also meet the definition of “direct mail.”
- B. Definition of Direct Mail Agent: Solely for purposes of this rule, such persons acting on behalf of the direct mail user are identified as “direct mail agents.” The following requirements apply to determine if a service provider or advertising agent qualifies for treatment as a direct mail agent:
1. The agency relationship must be documented in writing and the agent must have the authority to bind the principal in the transaction; and
 2. The agency relationship must exist prior to or at the time of the purchase of the components of the direct mail campaign on behalf of its principal; and
 3. The direct mail agent must disclose its principal in writing to the supplier of the components of the direct mail campaign.
- C. Direct Mail Form: A direct mail agent may sign an exemption certificate for direct mail on behalf of its principal which binds the principal to sourcing the direct mail according to Section 313. The direct mail agent must retain a copy of the exemption certificate.
- D. Seller’s Liability for Tax: If the requirements in paragraph B. are met, the direct mail agent may pay tax to the seller(s) on its purchase(s) on behalf of its principal of the components of the direct mail campaign.
1. If tax is paid to the seller of the components of the direct mail campaign by the direct mail agent, the direct mail agent is not required to provide information to any state regarding the tax jurisdictions to which the direct mail campaign was delivered. However, the seller must retain information pertaining to the tax jurisdictions for which tax is collected.
 2. The direct mail agent’s invoice to its principal shall disclose that tax has been paid to the seller of the components of the direct mail campaign.
 3. The direct mail agent must retain documentation of the tax paid to the seller of the components of the direct mail campaign purchased on behalf of its principal.

E. **Direct Mail Agent's Liability for Tax:** If the seller fails to collect tax on the sale of components of the direct mail campaign and the direct mail agent did not provide an exemption certificate, tax liability shall reside either with the seller or the principal, according to applicable state law. The jurisdiction for sourcing shall be the seller's location. The direct mail agent shall not be liable for tax under these circumstances.

F. **Charges for the direct mail agent's services** are not included as part of the sales price of the printed material or other components of the direct mail campaign. Such charges may include placement fees, up-charges, service fees, surcharges or commissions.

8. Mailing services.

A. Mailing services provided in connection with "direct mail" are not part of the sales price of the direct mail printed material if separately negotiated and separately stated on the invoice to the purchaser.

B. Materials, such as labels or Detached Address Labels, used in the provision of mailing services are supplies used by a service provider in the provision of services.

9. Multiple items delivered to a single address.

A. Separate, non-duplicative pieces of printed material delivered in a single envelope, packet or wrap to an address on a United States Postal Service (USPS) delivery route or post office box constitute "direct mail" and are not considered to be "multiple items delivered to a single address." The following examples illustrate this rule:

1. An envelope containing advertising inserts and an invoice is delivered to a residential address. This package constitutes "direct mail" and is not considered to be "multiple items delivered to a single address."
2. A wrap containing flyers, circulars, an over-the-counter medication sample and other advertising is delivered to a Post Office box. This package constitutes "direct mail" and is not considered to be "multiple items delivered to a single address."

Printed material may not be classified as "multiple items delivered to a single address," yet that same material may fail to meet the definition for "direct mail" if the printed material does not satisfy the other criteria for "direct mail."

B. A pallet, box or other container of multiple items of printed material delivered to a single address as required by contract does not constitute "direct mail." The following examples illustrate this rule:

1. Under the contract, a printer is required to deliver printed material to a mailing service provider for processing. The printed material is delivered in pallets to the mailing service provider. The pallets contain duplicate copies of the same printed material. This printed material is not classified as "direct mail."

2. A printer produces 1,000 copies of a standard statement, each personalized with customer information. Under the contract, the printer is required to shrink-wrap the pallet and release the statements to the custody of a carrier selected by the customer. The customer has contracted separately with a third party for the delivery of the statements. This printed material is not “direct mail.”
3. A printer produces 10 million advertising flyers for its customer. Of this print job, the printer’s customer requires the printer to ship 1,000 copies of the flyer to each of the customer’s 100 stores situated in various states. The customer will make these flyers available to customers as they enter the store. The flyers shipped to the customer’s stores are not “direct mail.”
4. A printer produces 100,000 copies of an advertising brochure for a customer. The printer ships the brochures to the customer’s headquarters. The customer then repackages the brochures into 1,000 packages containing 100 brochures each. The customer then mails each of the packages to the individual members of its sales force. The flyers do not constitute “direct mail” when shipped from the printer to the customer or when shipped from the customer to its sales force.

10. Postage purchased by Mailing Agent.

“Delivery charges” does not include the actual cost of postage purchased by a Mailing Agent on behalf of its customer. The agency relationship must be disclosed to the United States Postal Service (USPS) prior to or at the time of the postage purchase. Disclosure of the Mailing Agent on USPS forms or attachments thereto is satisfactory evidence of the principal-agency relationship. For example, the Mailing Agent discloses its agency relationship on USPS Postage Statement Form 3602 when entering bulk mail into the mail stream.

“Delivery charges” does not include the actual cost of postage paid through use of a postage meter licensed by the USPS for the delivery of direct mail or business correspondence.

11. Direct mail delivery charges.

“Direct mail delivery charges” includes all delivery charges associated with the delivery of direct mail or printed materials which will ultimately be distributed as direct mail. For example, transportation charges for delivery from the mailing service provider’s facility to the United States Postal Service facility and charges for delivery from a printer’s facility to a mailing service provider’s facility would be included in direct mail delivery charges.

12. Delivery charges incurred after the sale of printed material to a business purchaser.

“Delivery charges” does not include those charges for delivery services incurred after the transfer of title to (or ownership of as may be applicable per state law) the printed material or direct mail from the printer to a business purchaser or direct mail user. If the contract requires the printer to deliver the goods but does not require him to deliver them to destination, delivery charges are not part of the sale of printed material. If the contract does not specify when the printer completes his performance with reference to the physical delivery of the printed material, ownership passes at the printer’s facility and delivery charges are not part of the sale of printed material.