

A motion by the State and Local Advisory Committee for a rule relating to direct mail definitions and sourcing:

Rule 313. Direct Mail Definition and Sourcing

Rule 313.1. Use of Uniform Direct Mail Sourcing.

1. **Who is required to use.** The uniform sourcing rules pertaining to direct mail that are contained in Section 313 of the Streamlined Sales and Use Tax Agreement (Agreement) shall be used by all member states for transactions that involve printed materials or the printing of materials that are to be sent by the seller to recipients in the manner described in the definition of “direct mail” as defined in Appendix C, Library of Definitions, Part I, of the Streamlined Sales and Use Tax Agreement.
2. **Use of sourcing rules.** Sourcing requirements under Section 313 of the Agreement apply to retail sales of a product that meets the definition of direct mail regardless of the characterization or treatment of the product as tangible personal property or a service by a state. The sourcing rules are only used to determine a seller’s obligation to pay or collect and remit sales or use tax with respect to the retail sale of a product. The sourcing provisions do not affect the obligation of a purchaser to remit tax on the use of the product in a jurisdiction. Sourcing rules are not to be interpreted as tax imposition rules. They do not take precedence over exemptions provided by state law that apply to the retail sale of the product. Examples of state specific exemptions that may apply to direct mail include exemptions for advertising, promotional materials, shopper’s guides, and printed material shipped out-of-state. Although states may have adopted the Uniform Commercial Code (UCC) for contract law purposes and determining when title passes, the UCC has no bearing on determining the proper sourcing of a retail sale of a product that meets the definition of “direct mail” for sales and use tax purposes.

Rule 313.2. Direct Mail Defined.

1. **Direct mail definition.** The definition of “direct mail” is found in the Library of Definitions, Part I, of the Agreement. A product that meets the definition of

“direct mail” and is sourced in accordance with Section 313, shall:

- A. Be printed materials or the printing of materials;
- B. Be delivered or distributed via United States mail or other delivery service by the seller to a mass audience or addressees on a mailing list at the direction of the purchaser;
- C. Not be charged to or the cost of the product billed to the mass audience or addressees that are the recipients of the printed materials; and
- D. Not include multiple copies of the same of printed materials that are delivered or shipped to a single location.

A product that meets the definition of “direct mail” may include tangible personal property such as product samples and other marketing materials, supplied by the purchaser for inclusion with the printed materials in the packages or mailings.

For purposes of this definition, “printed material or the printing of materials” includes, but is not limited to, items such as advertising and promotional materials, catalogs, brochures, billing invoices, return envelopes, credit card statements, coupon booklets and other items printed on paper or similar stock.

Example 1: A purchaser enters into a contract with a printer where the printer is required to print advertising pieces and deliver them along with other tangible personal property provided by the purchaser to addressees on a mailing list provided by the purchaser. Each package mailed contains a single copy of an advertising flyer, an over-the-counter medication sample and other advertising. This constitutes direct mail and is not considered to be “multiple items delivered to a single address.”

Example 2: A purchaser enters into a contract with a printer where the printer is required to print and deliver materials to addressees on a mailing list provided by the purchaser. Each envelope is mailed to a residential address and contains an invoice and an advertising insert. This constitutes “direct mail” and is not considered to be “multiple items delivered to a single address.”

2. **Direct Mail Definition Uses.** The definition of “direct mail” applies only for

purposes of (a) determining proper sourcing, and (b) for determining whether delivery charges are excluded from the sales price of transactions that meet the definition of “direct mail.”

The definition is not intended to be a product definition as evidenced by the fact that the definition is found in Part I, Administrative Definitions, rather than the Part II, Product Definitions, of the Library of Definitions in the Agreement. States are not prohibited from exempting from tax some products that meet the definition of “direct mail” while imposing tax on other products that meet the definition of “direct mail.” For example, a state may impose sales and use tax on charges to print catalogs or on data processing services and printing of billing invoices, and at the same time exempt charges to print advertising materials. All three of these examples result in the creation of printed material that is included within the definition of “direct mail” provided the seller mails or distributes the printed materials via United States mail or other delivery service to a mass audience or to addressees on a mailing list as provided in the definition of “direct mail.”

Example: A purchaser contracts with a printer to perform data processing services and printing of billing invoices and mails them to the addressees on the invoices. Regardless of a state’s characterization of such a product as tangible personal property or a service, the retail sale results in printed material that is included in what is defined as “direct mail.” Assuming the other provisions of the definition of “direct mail” are met, the retail sale is sourced under the provisions of Section 313 and the exclusion from sales price of direct mail delivery charges is applicable if adopted by the member state to which the retail sale is sourced.

3. What is not included in “direct mail?”

- A. A retail sale of the mailing or delivery of the printed materials only, that does not include the sale of the printed materials or the printing of materials, is sourced under Section 310 of the Agreement and does not qualify for the exclusion from sales price of direct mail delivery charges.
- B. Separate, non-duplicative pieces of printed materials that are bundled or combined in a single envelope, packet, wrap or mailing to an addressee are not considered “multiple items delivered to a single address” for purposes of

the exclusion from the definition of “direct mail.” “Direct mail” does not include multiple copies of the same printed materials that are intended for distribution to a mass audience when the retail sale of such product is delivered or shipped to a single address or to the purchaser’s location(s). A retail sale of such a product(s) is sourced under the general sourcing rules found in Section 310 of the Agreement and does not qualify for the exclusion from sales price of direct mail delivery charges.

A pallet, box or other container of multiple copies of the same printed material delivered to a single address as required by the purchaser does not constitute “direct mail.” The following examples illustrate this rule.

1. A printer produces 1,000 copies of a standard billing 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 third party selected by the purchaser. The purchaser has contracted separately with the third party to fold, insert the billing statements into envelopes, and mail the statements. This printed material is not “direct mail” since the seller/printer is not delivering or distributing the printed material to a mass audience or to addressees on a mailing list at the direction of the purchaser.
2. A printer produces 100,000 advertising flyers for a purchaser. For this print job, the purchaser requires the printer to ship 1,000 copies of the flyer to each of the purchaser’s 100 stores situated in various states. The purchaser will make these flyers available to their customers as they enter the store. The flyers shipped to the purchaser’s stores are not “direct mail,” because multiple items of the same printed material are delivered or shipped to a single address and because the printed materials are delivered to and billed to the recipient (purchaser).
3. A printer produces 100,000 copies of an advertising brochure for a purchaser. The printer ships the brochures to the purchaser’s headquarters. The purchaser then repackages the brochures into 1,000 packages containing 100 brochures each and 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 purchaser or when shipped from the purchaser to its sales force, because they are multiple items of the same printed material delivered to a single address.

Rule 313.3 Sourcing of Direct Mail

- 1. Sourcing of Direct Mail.** Section 313 of the Agreement requires the retail sale of a product that meets the definition of “direct mail” to be sourced to the jurisdiction to which delivery or distribution is made to the recipients of the printed material.

If the purchaser does not provide an exemption certificate or jurisdictional information as required in 2 below, the seller shall source the retail sale to the address from which the “direct mail” was shipped in accordance with Section 310, subsection (A)(5) of the Agreement.

- 2. Purchaser requirements.** Section 313 of the Agreement requires the purchaser to provide the seller with either (a) information to show the jurisdictions to which the “direct mail” is delivered to recipients, or (b) an exemption certificate claiming direct mail or direct pay permit as the reason for exemption.

A. Jurisdictional information. If the purchaser provides the seller with information as to the jurisdictions where the printed material that qualifies as “direct mail” is delivered to recipients, the seller is responsible for collecting and remitting any applicable sales or use tax to the jurisdictions according to the delivery information provided by the purchaser. The jurisdictional information provided by the purchaser must include sufficient information for the seller to source the retail sale of the product that meets the definition of “direct mail” to the state and local jurisdiction(s), if applicable, in which “direct mail” is delivered or distributed to recipients. The purchaser remains liable for the tax if incorrect or incomplete jurisdictional information is provided to the seller.

The jurisdictional information must be in a form in which such information can be retained and retrieved by the seller for the purpose of sales or use tax reporting. Limited access to an account database or a

mailing list provided by the purchaser or a third party that does not allow the seller to retain and retrieve the jurisdictional information identifying jurisdictions where the direct mail was delivered to recipients does not constitute receiving “information to show the jurisdictions to which the direct mail is delivered.” When the seller is responsible for maintaining and using the address database or mailing list containing the information for the jurisdictions to which the printed material was delivered to recipients, the seller does have sufficient information to source the retail sale to the proper jurisdiction in accordance with Section 313 of the Agreement.

A summary of the distribution or a reasonable allocation of the distribution may be generated at the time of the mailing and retained by the seller for the purpose of sales or use tax reporting as documentation of the direct mail sourcing. Any reasonable, but consistent and uniform, method of allocation that represents the jurisdictions where delivery or distribution was made to recipients may be retained by the seller for the purpose of sales or use tax reporting. For example, a method based on the percentage of accounts in a jurisdiction may be reasonable if consistently applied. Allocation among jurisdictions using a system-generated summary distribution report, or a purchase order for a mailing list that includes a zip code summary may be reasonable allocation methods provided the allocation represents the jurisdictions where delivery or distribution was made to recipients of the printed materials.

B. Exemption Certificate or Direct Pay Permit. If the purchaser provides the seller with a fully completed exemption certificate claiming direct mail or direct pay permit as the reason for exemption from tax, or other documentation of direct pay authority, the seller is relieved of the obligation to collect or remit any applicable tax on the retail sale of a product that meets the definition of “direct mail.” If such an exemption certificate or documentation of direct pay authority is provided to the seller, the purchaser is responsible for self-assessing and paying any applicable tax to the jurisdictions where the direct mail is delivered or distributed to recipients.

Printers shall not issue an exemption certificate claiming direct mail as the reason for exemption to purchase component materials such as ink or paper that is used to fabricate or produce printed materials. The exemption certificate claiming direct mail as the reason for exemption may not be used to purchase printed materials from third parties that are to be included in the mailing or distribution because the printed materials are shipped to a single address.

- 3. Seller requirements.** When the purchaser provides jurisdictional information as described in 2.A. above, the seller is required to collect and remit tax based on the jurisdictional information provided if the printed materials are subject to sales or use tax in the state of delivery. Nothing in this rule requires the seller to collect or remit any applicable tax for states in which the seller is not registered to collect or remit tax, unless the seller is otherwise required to be registered in that state based on either state or federal law. The purchaser remains obligated to remit any applicable tax on the printed materials delivered to recipients in jurisdictions where the seller is not required to collect, or for any other reason, does not collect and remit the tax to the appropriate jurisdictions. The seller is relieved of any further obligation to collect tax on the retail sale where the seller has collected tax pursuant to the jurisdiction information provided by the purchaser.
- 4. Credit for other state taxes not required.** In the case where the seller is required to source the retail sale of a product that meets the definition of “direct mail” to the location from which the direct mail is shipped according to Section 310 Subsection (A)(5) as provided in 1 above, the purchaser remains liable for any applicable tax in the jurisdiction(s) where the property is delivered or distributed to recipients of the printed material. When the retail sale is sourced to the location from which the “direct mail” was shipped under Section 310, Subsection (A)(5) of the Agreement, the state to which the printed material was delivered to recipients may, but is not required to, give the purchaser credit for the tax paid to the seller.