

5/09/2008

Amend Rule 327.4, Delivery Charges, Subsection A, Direct Mail, as follows:

A. Direct Mail

1. **Direct mail definition.** The definition of “direct mail” is found within the definition of “delivery charges” in the Library of Definitions, Part I, of the Agreement. Transactions that result in the sale of printed materials and sales of services which result in the delivery of printed materials are both defined as “direct mail” when:

- A. such printed materials are delivered to a mass audience or addresses on a mailing list at the direction of the purchaser, and
- B. the cost of the direct mail materials are not billed to the recipients.

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 are included in the definition “direct mail.” 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.

The definition of direct mail 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.”

Illustration 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 the U. S. Postal Service or other delivery service for delivery 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 drug sample, and other advertising material. This product constitutes “direct mail” and is not considered to be multiple items delivered to a single address.

Illustration 2. A purchaser contracts with Company A to perform data processing services, print billing invoices, prepare the invoices for mailing, and deliver them to the U. S. Postal Service or other delivery service for delivery to the address on each invoice.

Each envelope is mailed to a residential address and contains an invoice and an advertising insert. This product constitutes “direct mail” and is not considered to be multiple items delivered to a single address.

Illustration 3. A purchaser contracts with a mail service provider to sort, address, and mail printed advertising materials to a mass audience. The purchaser gives the mail service provider 10,000 flyers which have been purchased from a third-party printer. The charge by the mail service provider to sort, address, and mail the flyers constitutes “direct mail” as the flyers are distributed to a mass audience even though the service provider did not print the flyers.

2. What is not included in “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). 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.”

Illustration 1. A printer produces 10,000 copies of an advertising brochure. Under the contract, the printer is required to shrink-wrap the pallet containing the brochures and deliver the pallet to the custody of a third party selected by the purchaser. The purchaser has contracted separately with the third party to fold, insert the brochures into envelopes, and mail them. The sale of the brochures are 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.

Illustration 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 100 stores located in various states that are owned by the purchaser. The flyers will be made available to customers as they enter the store. The sale of the flyers is 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 (store owner).

Illustration 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 sale of flyers does not constitute “direct mail” when shipped from the printer to the purchaser because they are multiple items of the same printed material delivered to a single address and are delivered to and billed to the recipient (purchaser).

3. Direct Mail Definition Uses. The “direct mail” definition applies for purposes of:
 - A. determining whether delivery charges are excluded from the sales price of transactions that meet the definition of “direct mail” (see item 5 below); and

B. determining proper sourcing of “direct mail” (see Rule 310 and 313).

4. Delivery Charge Exclusion for Direct Mail. A state that does not choose to exclude “delivery charges” in their entirety from the definitions of “sales price” and “purchase price” may opt to exclude from “delivery charges” all “delivery charges” for “direct mail,” ~~as that term is defined herein Part I of the Library of Definitions~~, if such charges are separately stated on an invoice or similar billing document given to the purchaser. If elected, this option would establish the treatment of “delivery charges,” excluding those properly separately stated “delivery charges” for “direct mail.”

A state that, prior to adoption of the definitions of “sales price” and “purchase price” in Part I of the Library of Definitions, excluded elements of delivery charges (including postage) from the sales/purchase price of printed material, such as advertising material, while including delivery charges in the sales/purchase price of other products, may continue to exclude delivery charges for direct mail by adopting the definitions for “delivery charges” and “direct mail” and excluding from “delivery charges” the “delivery charges” for “direct mail.”

Illustration 1: State A’s definition of “delivery charges” excludes the “delivery charges” for “direct mail” from the definition of “delivery charges.” All components of “delivery charges” are included in sales/purchase price, except that all “delivery charges” for “direct mail” are excluded from sales/purchase price.

The exclusion for delivery charges for direct mail applies to all sales involving the delivery or mailing of “direct mail.” Separately stated delivery charges for retail sales that include both the printing and delivery of direct mail, retail sales of services such as data processing that result in the production and delivery of direct mail, as well as retail sales of services for only mailing or delivering of direct mail are included in the exclusion. However, this exclusion does not apply to delivery charges for sales of printed materials when the conditions of the sale do not meet the definition of direct mail.

Illustration 1. A printer enters into a contract to print and mail solicitation material to a mass audience. The solicitation material is printed, sorted, inserted into an envelope, addressed, and mailed via the United States Postal Service to a mass audience at the direction of the purchaser. The sale qualifies for the delivery charge exclusion, provided the delivery charges are separately stated on the customer’s bill or invoice.

Illustration 2. A purchaser contracts with Company A to perform data processing services, print billing invoices, prepare the invoices for mailing, and deliver them to the U. S. Postal Service or other delivery service for delivery to the address on each invoice. Each envelope is mailed to a residential address and contains an invoice and an advertising insert. The sale qualifies for the delivery charge exclusion, provided the delivery charges are separately stated on the customer’s bill or invoice.

Illustration 3. A mail service provider enters into a contract with a customer to perform mailing services for advertising flyers which have been printed by a third party. The

flyers are to be distributed to a mass audience at the direction of the customer. The mail service provider folds and sorts the flyers according to the jurisdictions to which they will be delivered, applies the appropriate postage to each flyer and delivers the flyers to the United State Postal Service. This sale qualifies for the delivery charge exclusion provided the delivery charges are separately stated on the customer's bill or invoice.

Illustration 4. A printer produces 10,000 copies of an advertising brochure. Under the contract, the printer is required to shrink-wrap the pallet containing the brochures and deliver the pallet to the custody of a third party selected by the purchaser. The sale of the brochures is not "direct mail" and does not qualify for the delivery charge exclusion, 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.

Illustration 5. 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 100 stores located in various states that are owned by the purchaser. The flyers will be made available to customers as they enter the store. The sale of the flyers is not "direct mail," and does not qualify for the delivery charge exclusion, 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 (store owner).