

**A motion by Tennessee to amend Governing Board Rule 327.4 relating to direct mail:**

**Rule 327.4, Delivery Charges, Subsection A, Direct Mail:**

- 4. 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 in 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.”

The exclusion for delivery charges for direct mail applies to all sales involving the delivery or mailing of “direct mail.” In addition, the exclusion for delivery charges includes separately stated “delivery charges” for:

- 1) retail sales that include both the printing and delivery of “direct mail,”
- 2) retail sales of services for only mailing or delivering of “direct mail,” and
- 3) retail sales of services that result in the production and delivery of printed material that would otherwise be direct mail except that a state considers the transaction to be the sale of a service.

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.

Illustration 2: 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 3: A purchaser contracts with a service provider to 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 4: 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 States 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 5: 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 6: 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).