

BAC Direct Mail Committee

Comments Regarding Proposed Agreement Amendment to the Definition of Delivery Charges and Rule 327.4

March 30, 2009

The BAC Direct Mail Committee appreciates the opportunity it has had to work with SLAC in addressing direct mail issues. As a result of efforts to date, the BAC Direct Mail Committee has reviewed the drafts of the proposed amendment to the Agreement pertaining to the definition of "Delivery Charges" and Rule 327.4 as submitted for public comment. We respectfully submit the following comments:

Agreement Amendment to the Definition of "Delivery Charges"

1. After discussion during our last conference call with SLAC, the BAC Direct Mail Committee was asked to submit language that would clarify the intent of paragraph C. The BAC Direct Mail Committee requests that current paragraph C be replaced with the following:

"Unless a seller separately states the delivery charges or components of delivery charges on the invoice or similar billing document given to the purchaser, those non separately-stated charges will not qualify for the exemption from sales price. No member state may require a seller to separately state any delivery charge or component thereof."

Rule 327.4 Delivery Charges.

1. The structure of the rule text should be formatted similar to other rules that support the Agreement. For instance, the initial "Delivery Charge" section contains two "A." sections, and is immediately followed by "Section A. Direct Mail."
2. The current rule draft does not define, or refer to definitions of "other direct mail" or "advertising and promotional direct mail". Additional language should be added to the rule making in clear what is meant by each of these terms. This could be accomplished by adding the language to Rule 327.4, referring to the definitions to be provided in Section 313, or adding the definitions to a new rule that would contain direct mail definitions that are used consistently in all rules pertaining to direct mail. The latter approach is preferred as it maintains all definitions pertaining to direct mail in one place. If this latter approach were utilized, there would be three sets of rules: one set for definitions, a second set for sourcing and a third for delivery charges.

3. The BAC Direct Mail Committee would like to see the following illustrations, or similar illustrations, added to current Section A. Direct mail.

“Illustration ___: State X excludes only the postage component of direct mail delivery charges from sale price. A purchaser contracts with a service provider to perform data processing services, print paychecks and pay stubs, prepare the checks and stubs for mailing, and deliver them to the U. S. Postal Service or other delivery service for delivery to the address on each. Each envelope containing a check and pay stub is mailed to each of the purchaser’s employees’ home addresses. This sale of “other direct mail” will qualify for the exclusion of the postage component of the direct mail delivery charge depending on whether the U.S. Post Office delivers the direct mail or whether some other delivery service is used. If the “other direct mail” is sent through the U.S. Postal Service, then the exclusion for postage will apply if the postage is separately stated on the invoice given to the purchaser. If some other delivery service is used to deliver the “other direct mail,” then the exclusion for postage will not apply.

Illustration ___: Same facts as in Illustration [above] except that State X, in addition to postage, also excludes the transportation, shipping and similar charges components of direct mail delivery charges from sales price. With this broader exclusion, whether the sale of “other direct mail” will qualify for the exclusion of direct mail delivery charges will not depend on whether the U.S. Post Office delivers the direct mail or whether some other delivery service is used; the delivery charge exclusion will apply regardless of which mode of delivery is used, as long as the charges are separately stated on the invoice.”

We believe that these illustrations provide clarification regarding potential delivery charge exclusion for non-U.S. Postal Service delivery providers not addressed in existing illustrations.

4. Section A. Direct Mail, first sentence. We believe that the words “or services” should be inserted as follows: “A state may treat the ‘delivery charges’ for sales of products *or services* that meet the definition.....”.
5. Section A. Direct Mail Illustration 1. We believe that the first word of the last sentence should be “Charges”.
6. Section A. Direct Mail Illustration 2. We believe that the term “other direct mail” in the fourth sentence should be in italics.

We appreciate the opportunity to submit these comments. If additional explanation is required, please contact BAC Direct Mail Committee Chair Kristi Magill at 319-350-2845 or kristi.magill@rsmi.com. We look forward to bringing these provisions before the Governing Board with you in May.