

A motion by Oklahoma and Tennessee to delete the language in Section 313 in its entirety and replace with the following substitute language for Section 313 and to amend the language in Section 313.1 to correspond to the Section 313 substitute language.

Section 313: DIRECT MAIL SOURCING

A. “Advertising and Promotional Direct Mail.”—Notwithstanding Section 310 and 310.1, the following provisions apply to sales of “advertising and promotional direct mail”:

1. A purchaser of “advertising and promotional” direct mail may provide the seller with either:
 - a. A direct pay permit;
 - b. A Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail” (or other written statement approved, authorized or accepted by the state); or
 - c. Information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients.
2. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 1 of subsection A of this Section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving “advertising and promotional direct mail” to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to the recipients and shall report and pay any applicable tax due.
3. If the purchaser provides the seller information showing the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of “advertising and promotional direct mail” where the seller has sourced the sale according to the delivery information provided by the purchaser.
4. If the purchaser does not provide the seller with any of the items listed in subparagraphs a, b or c of paragraph 1 of subsection A of this Section, the sale shall be sourced according to Section 310.A.5. The ~~destination~~ state to which the “advertising and promotional direct mail” is delivered may disallow credit for tax paid on sales sourced under this paragraph.

B. “Other Direct Mail.”—Notwithstanding Section 310 and 310.1, the following provisions apply to sales of “other direct mail”:

1. Except as otherwise provided in this paragraph, sales of “other direct mail” are sourced in accordance with Section 310.A.3.
2. A purchaser of “other direct mail” may provide the seller with either:
 - a. A direct pay permit; or
 - b. A Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail” (or other written statement approved, authorized or accepted by the state).
3. If the purchaser provides the permit, certificate or statement referred to in subparagraph a or b of paragraph 2 of subsection B of this Section, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving “other direct mail” to which the permit, certificate or statement apply. Notwithstanding paragraph 1, subsection B, the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

C. Definitions.—For purposes of this Section:

1. “Advertising and promotional direct mail” means
 - a. printed material that meets the definition of “direct mail,” in Appendix C, Part I,
 - b. the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word “product” means tangible personal property, a product transferred electronically or a service.
2. “Other direct mail” means any direct mail that is not “advertising and promotional direct mail” regardless of whether “advertising and promotional direct mail” is included in the same mailing, ~~even if the transaction includes the development of billing information or the provision of other data processing services.~~ The term includes, but is not limited to:
 - a. Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;
 - b. Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and
 - c. Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

D. Special Provisions.—

1. ~~a.~~ This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution transaction includes the sale of printed material that otherwise meets the definition of “direct mail.”

~~b.~~ This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether “advertising and promotional direct mail” is included in the same mailing.

2. If a transaction is a "bundled transaction" that includes advertising and promotional direct mail, this Section shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of "advertising and promotional direct mail."

~~If a purchaser has purchased for one non-itemized price direct mail together with other products or services that are not direct mail:~~

~~a.~~ If the primary purpose of the transaction is not the sale of personal property or services that meet the definition of “direct mail”, the sale shall be sourced according to Section 310.A, or 310.1 if a state has elected such option,

~~b.~~ If the primary purpose of the transaction is the sale of personal property or services that is advertising and promotional direct mail as defined paragraph C.1. of this Section, the sale shall be sourced according to Section 313.A. or 313.1 if a state has elected such option.

~~c.~~ If the primary purpose of the transaction is the sale of personal property or services that is “other direct mail” as defined in paragraph C.2. of this Section, the sale shall be sourced according to Section 313.B. or 313.1 if a state has elected such option.

3. Nothing in this Section shall limit any purchaser’s:

a. Obligation for sales or use tax to any state to which the direct mail is delivered, ~~or~~

b. Right under local, state, federal, or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions, or

c. Right to a refund of sales or use taxes overpaid to any jurisdiction.

~~4. If a purchaser provides a seller with a Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail” and fails to report and remit the applicable tax to a state in which the direct mail was delivered to recipients, the state may prohibit further use of such certificate by such purchaser. Following verified written notification from a state to the purchaser and the seller, a seller so notified is no longer relieved of the obligation to collect and remit tax on sales to such purchaser based on a Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail.” A seller shall continue to be relieved of all obligations to collect, pay or remit any tax for sales to such purchaser:~~

~~a. for which the purchaser provided the certificate, and~~

~~b. which occurred prior to notification by the state of the prohibition provided for in this paragraph.~~

~~45.~~ This section applies for purposes of uniformly sourcing direct mail transactions and does not impose requirements on states regarding the taxation of products that meet the definition of direct mail or to the application of sales for resale or other exemptions.

Section 313.1: ELECTION FOR ORIGIN-BASED DIRECT MAIL SOURCING

- A. Notwithstanding Sections 310, 310.1 and 313, a member state may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state pursuant to the provisions of this section.
- B. If the purchaser provides the seller with a direct pay permit or ~~an exemption certificate claiming direct mail~~ a Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail” (or other written statement approved, authorized or accepted by the state), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax ~~and~~ on any transaction involving “direct mail”. ~~The purchaser is obligated to pay or remit the~~ must report and pay any applicable tax ~~on a direct pay basis due~~. ~~An exemption certificate claiming direct mail~~ SST Certificate of Exemption claiming “direct mail” shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.
- C. Except as provided in subsection (B) and (D) and the second sentence of this subsection, the seller shall collect the tax according to Section 310, ~~subsection (A)(5)~~ A.5. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to locations in another state, the seller shall collect the tax on that portion according to Section 313.
- D. Notwithstanding subsection (C) of this section, a seller may elect to use the provisions of Section 313 to source all sales of “advertising and promotional direct mail.”
- E. Nothing in this section limits a purchaser’s obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced under the first sentence of subsection (C) of this section shall owe no additional sales or use tax to that state based on where the purchaser uses or delivers the direct mail in the state.

~~F. If a purchaser provides a seller with an SST Certificate of Exemption claiming “direct mail” and fails to report and remit the applicable tax to a state in which the direct mail was delivered to recipients, the state may prohibit further use of such certificate by such purchaser. Following written verified notification from a state to the purchaser and the seller, a seller so notified is no longer relieved of the obligation to collect and remit tax on sales to such purchaser based on an SST Certificate of Exemption claiming “Direct Mail.” A seller~~

~~shall continue to be relieved of all obligations to collect, pay or remit any tax for sales to such purchaser;~~

~~1. For which the purchaser provided the certificate, and~~

~~2. Which occurred prior to notification by the state of the prohibition provided for in this paragraph.~~

G.F. A member state that elects to source the sale of direct mail pursuant to the provisions of this section shall inform the governing board in writing at least sixty days prior to the beginning of the calendar quarter such election begins.