

A motion by Tennessee to adopt a rule relating to sourcing direct mail.

Article III – Requirements Each State Must Accept to Participate

Rule 313.1 Sourcing Direct Mail

A. Sourcing of “Advertising and Promotional Direct Mail”

1. Retail sales that include both the printing and delivery or mailing of “advertising and promotional direct mail” as defined in Section 313.C.1 are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing provision). This includes sales characterized under state law as the sale of a service when that sale results in printed material that meets the definition of “advertising and promotional direct mail.”
2. The purchaser may provide the seller with (a) a direct pay permit issued to the purchaser for the portion of the sale that is sourced to the state that issued the permit, (b) a fully completed Streamlined Sales and Use Tax Agreement Certificate of Exemption claiming “Direct Mail,” or other exemption certificate or written statement approved, authorized or accepted by the state where the sale is sourced notifying the seller that the purchaser will remit tax directly to a state, or (c) information showing the jurisdictions to which the “advertising and promotional direct mail” is delivered to recipients, hereinafter referred to as “jurisdictional information.”

a. Sourcing – Direct Pay Permits and Certificates

Purchasers providing a direct pay permit, certificate claiming “Direct Mail” or other approved, authorized or accepted statement for “advertising and promotional direct mail” delivered to recipients in a state must source the purchase of the “advertising and promotional direct mail” to the jurisdictions within the state to which the “advertising and promotional direct mail” is delivered to recipients or for states adopting Section 313.1 origin-based direct mail sourcing according to Section 310.A.5. Purchasers may use a reasonable summary or allocation of the distribution to the jurisdictions to which the “advertising and promotional direct mail” is delivered as described in subsection A.3.b of this rule for purposes of self-assessing and directly paying sales or use tax. In the absence of bad faith, the seller is relieved of an obligation to collect, pay, or remit any tax for that state on any transaction involving “advertising and promotional direct mail” to which the permit, certificate or statement applies.

b. Sourcing – Jurisdictional Information

When the purchaser provides “jurisdictional information,” for “advertising and promotional direct mail” delivered to a state, the seller is required to source the sale based on the “jurisdictional information,” and collect and remit tax provided the transaction is subject to sales or use tax in the state. The seller is relieved of any further obligation to collect tax for that state on the retail sale when the seller has sourced and collected tax pursuant to the “jurisdictional information” provided by the purchaser.

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, or has registered through the Streamlined Sales Tax registration system. The purchaser remains obligated to remit any applicable tax on the “advertising and promotional direct mail” delivered to recipients in jurisdictions where the seller is not required to collect, or for any other reason, does not collect the tax for the appropriate jurisdictions.

c. Sourcing – Default

If the purchaser does not provide the seller with any of the items listed in Section 313.A.1 of the SSUTA, the seller shall source the retail sale to the address from which the direct mail was shipped in accordance with Section 310.A.5 of the SSUTA. The state to which “advertising and promotional direct mail” is delivered has the option of allowing or not allowing credit to the purchaser for tax paid to the seller when the “advertising and promotional direct mail” has been sourced according to Section 310.A.5.

3. Sourcing with “Jurisdictional Information”.

In order for the seller to properly source “advertising and promotional direct mail” the purchaser must provide the seller with information showing the jurisdictions where the “advertising and promotional direct mail” is to be delivered to recipients at the time of the sale.

The “jurisdictional information” provided by the purchaser must include sufficient information for the seller to source the retail sale of the “advertising and promotional direct mail” to the state and local jurisdiction(s), if applicable, in which the materials are delivered or distributed to recipients. 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. The purchaser is not required to provide the seller with a list of the specific taxing jurisdictions which might exist with respect to any given address or group of addresses. The purchaser remains liable for the tax if incorrect or incomplete “jurisdictional information” is provided to the seller.

Example: A printer produces 5,000 advertising flyers and is responsible for delivering the flyers to addresses on a mailing list provided by the purchaser. 120 of the flyers are to be delivered to a specific zip code which is within a city and county imposing a local option sales tax. The purchaser may provide the seller with an allocation, by zip code, of where the 5,000 flyers are being delivered so that the seller can determine the appropriate jurisdictions for sourcing. The allocation would indicate that 120 flyers are to be delivered to a specific zip code. The seller will collect tax according to such allocation. The purchaser is not required to identify for the seller the name of the city, county, and state encompassing a specific zip code.

a. Access to Databases or Mailing Lists

Access to a database which contains address information 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 “advertising and promotional direct mail” was delivered to recipients does not constitute receiving “information showing the jurisdictions to which the “advertising and promotional direct mail” is delivered.” In such transactions, the seller will source the sale under Section 310.A.5. Sellers are deemed to have

sufficient information to source the retail sale to the proper jurisdictions when the seller utilizes an address database or mailing list owned by the seller.

b. Distribution Summaries and Allocation Methods

A summary of the distribution or a reasonable allocation of the distribution generated at the time of the sale is acceptable “jurisdictional information” documenting the “advertising and promotional direct mail” sourcing for the purpose of sales or use tax reporting. Any reasonable, but consistent and uniform, method of allocation that fairly represents the state and local jurisdictions where delivery or distribution was made to recipients is acceptable. Acceptable allocation methods include:

- i. allocation based on population in a jurisdiction as a percentage of the total population of jurisdictions within the distribution area.
- ii. allocation based on the sales volume of the direct mail purchaser’s sales locations in a jurisdiction as a percentage of the total sales volume of sales locations within the distribution area.
- iii. allocation based on a percentage of the direct mail purchaser’s accounts in a jurisdiction to the total number of customer accounts within the distribution area.
- iv. allocation among jurisdictions using a system-generated summary distribution report or a purchase order for a mailing list that includes a zip code summary.
- v. allocation based on the sales volume of the direct mail purchaser in a jurisdiction as a percentage of the total sales volume within the distribution area.

The use of any of the above-listed methods of allocation will be presumed reasonable. The burden of proving that such an allocation method does not fairly represent the actual distribution of the printed material in any particular case is upon the state. A purchaser may not use more than one method to allocate a transaction between jurisdictions. However, a purchaser may use one method to allocate a transaction between states and may use a different method to further allocate a portion of the transaction to jurisdictions within a state.

Example: A transaction involves the distribution of 50,000 pieces of “advertising and promotional direct mail” to recipients in states A and B. The purchaser uses an allocation based on the relative populations of states A and B to provide jurisdictional information to the seller indicating that 30,000 pieces will be delivered to recipients in state A and 20,000 pieces to recipients in state B. State B has local taxing jurisdictions and purchaser uses the relative sales volumes of its stores in state B to provide jurisdictional information to the seller indicating how many of the 20,000 pieces to be delivered to recipients in that state are to be delivered to each local jurisdiction. Using state population as a method of allocating the transaction between states A and B and store sales volume to allocate the transaction to the jurisdictions in state B is reasonable.

Other allocation methods may be used but the burden of showing to a state that the allocation fairly represents the actual distribution of the printed material in that case will be on the purchaser.

B. Sourcing of “Other Direct Mail”

1. “Other direct mail” which is defined in Section 313.C.2 of the SSUTA is sourced under Section 310.A.3 (or 313.1 in states adopting the origin-based direct mail sourcing). This includes sales characterized under state law as the sale of a service when the service is an integral part of the production and distribution of printed material that meets the definition of “other direct mail.” Because transactions that include the development of billing information or the provision of data processing services that are more than incidental are not “other direct mail,” they are sourced under 310.A.
2. Notwithstanding the provisions in B.1 above, the purchaser of “other direct mail” has the option to provide the seller with either (a) a direct pay permit issued to the purchaser for the portion of the sale that is sourced to the state that issued the permit , or (b) a fully completed Streamlined Sales and Use Tax Certificate of Exemption claiming “Direct Mail,” or other exemption certificate or written statement approved, authorized or accepted by the state where the sale is sourced notifying the seller that the purchaser will remit tax directly to the state. In the absence of bad faith, the seller is relieved of an obligation to collect, pay, or remit any tax in that state on any transaction involving “other direct mail” to which the permit, certificate or statement applies.

a. Sourcing – Direct Pay Permits and Certificates

Purchasers providing a direct pay permit, certificate claiming “Direct Mail,” or other approved, authorized or accepted statement described in B.2 above must source the transaction to the jurisdictions within the state to which the “other direct mail” is delivered to recipients or for states adopting Section 313.1 origin-based direct mail sourcing according to Section 310.A.5. Purchasers may use a reasonable summary or allocation of the distribution to the jurisdictions to which the “other direct mail” is delivered as described in subsection A.3.b of this rule for purposes of self-assessing and directly paying sales or use tax. In the absence of bad faith, the seller is relieved of an obligation to collect, pay, or remit any tax in that state on any transaction involving “other direct mail” to which the permit, certificate or statement applies.

Example: A printer prints and places “other direct mail” on a common or contract carrier for delivery to the USPS, which in turn delivers the printed material to residents of various states. The purchaser of the printed material provides the printer with a direct pay permit or a fully completed Streamlined Sales and Use Tax Certificate of Exemption claiming “Direct Mail” as the reason for exemption from tax, or other written statement approved, authorized or accepted by the state. By doing so, the purchaser obligates itself to accrue and remit tax as required under the law of the state to which the printed material is delivered. The seller is relieved of the obligation to collect or remit any applicable tax on the retail sale of the product.

C. Definitions

Definitions of “advertising and promotional direct mail” and “other direct mail” are found in Section 313.C of the SSUTA.

1. When both “advertising and promotional direct mail” and “other direct mail” are combined in a single mailing, the sale is sourced as “other direct mail” under Section 313.B (or 313.1 in states that have adopted the origin-based direct mail sourcing).

Example: A purchaser contracts with Company A to perform incidental 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 several advertising inserts. The transaction with Company A is sourced as “other direct mail” under 313.B, even though the mailings include “advertising and promotional direct mail.”

2. For purposes of Section 313.C.2, “other direct mail” does not include printed materials that result from data processing services in which data is generated, acquired, compiled, developed, or summarized where the data processing services are more than incidental. “Other direct mail” and “advertising and promotional direct mail” that include incidental data processing are direct mail.

D. Special Provisions

1. **a.** Sales of products characterized by state law as a service where the result of the service meets the definition of direct mail as provided in Rule 327. __.A.1 are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing).

For example, variable printing/imaging of information such as names, addresses, images and text may be characterized by a state as a service. However, because the performance of such variable printing/imaging is an integral part of the production or distribution of printed materials and when such printed materials meet the definition of direct mail, the sale is sourced under Section 313 or (313.1 for states adopting the origin-based direct mail sourcing).

b. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, “other direct mail” and “advertising and promotional direct mail” that include incidental data processing are direct mail.

For example, Variable printing/imaging is integral to performing or conducting printing of printed materials and such sales of printed materials that meet the definition of direct mail are sourced under Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). To the extent variable printing/imaging constitutes data processing, because it is not for purposes of generating, acquiring, compiling, developing or summarizing data, the data processing is incidental.

Example A: A printer in state A has been contracted to produce airline frequent flyer promotional pieces which will be distributed to recipients via mail. These printed pieces

incorporate the individual recipient's balance of frequent flyer miles, as well as customized promotional material and graphics based on data collected by the airline (e.g. the targeted individuals have earned enough points to travel to Europe). The electronic data supplied to the printer includes custom images and text promoting European vacations along with the recipient's name and balance of frequent flyer miles. The variable printing/imaging performed by the printer is a component of, and is an integral part of the production and distribution of printed material that meets the definition of "advertising and promotional direct mail." The data processing performed by the printer is incidental to performing or conducting printing of the printed material. The sale is sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

Example B: A real estate agent in State A engages a printer to produce a direct mail campaign. The agent provides images of available homes as well as a database containing various demographic/economic data and mailing information. Using variable imaging technology the printer will produce printed pieces which contain images of homes which would be considered affordable by the recipient of the printed piece. Since the service performed by the printer is an integral part of the production and distribution of printed material that meets the definition of "advertising and promotional direct mail" and any data processing performed by the printer is only incidental, the sale would be sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

c. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, data processing that is incidental to the provision of mailing services provided by the printer is an integral part of the production and distribution of the printed material. Such sales of printed materials that meet the definition of direct mail are sourced using Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). Because the data processing is not for purposes of generating, acquiring, compiling, developing or summarizing the data, the data processing is incidental.

For example, data processing that is for purposes of meeting United States Postal Service (USPS) standards is incidental.

Example C: A printer in State B has been contracted to prepare a "self-mailer" for mailing. The printer will fold and tab the printed piece for mailing, as well as address the printed piece with ink-jet imaging technology. The purchaser will provide mailing data. In order to meet USPS standards, the mailing data must be processed by the printer. This would include de-duping (eliminates duplicates), NCOA (national change of address) updates, as well as pre-sorting preparation and bar-coding to meet USPS rules for automated processing. The data processing performed by the printer to prepare the mailing list for USPS requirements is an integral part of the distribution of the "self-mailer" and therefore, the data processing is incidental. Such sales of printed materials that meet the definition of direct mail are sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

Example D: A printer has been contracted to produce an advertising flyer for a client. The advertising flyer will be printed, folded, bound, tabbed, and addressed by the printer. The printer will be provided a mailing list by the end-user. This list will be prepared to meet USPS rules for advertising flyer circulation. This would include de-duping (eliminates

duplicates), NCOA (national change of address) updates, as well as pre-sorting preparation and bar-coding to meet USPS guidelines for automated processing. The data processing performed to prepare the mailing list for USPS requirements is an integral part of the distribution of the advertising flyer and therefore, the data processing is incidental. Such sales of printed materials that meet the definition of “advertising and promotional direct mail” are sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

d. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, data processing that is for purposes of formatting information is an integral part of the production and distribution to complete the printing of the material. Such sales of printed materials that meet the definition of direct mail are sourced using Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). Because the data processing is not for purposes of generating, acquiring, compiling, developing or summarizing the data, the data processing is incidental.

Example E: An investment company has contracted with a printer to produce their client’s monthly investment statements. The printer is provided with account information that has been compiled and summarized, as well as mailing information in electronic format. The printer using print production software will format the data to print individualized statements as well as imprinting mailing information meeting USPS automated process guidelines. Since data processing performed to format the information for printing and to prepare the mailing list for USPS requirements is an integral part of the production and distribution of the investment statement and is incidental, such sales of printed materials that meet the definition of “other direct mail” are sourced using Section 313 (or 313.1 for states adopting origin-based direct mail sourcing).

e. As provided in Section 313.D.1 of the SSUTA and Section C.2 of this rule, data processing that is for purposes of development of billing information is not integral to the production or distribution of printed material that meets the definition of direct mail. The data processing is for purposes of generating, acquiring, compiling, developing or summarizing data and is more than incidental. Such sales are sourced using Section 310.A of the SSUTA.

Example F: A purchaser has contracted with a company to produce their client's monthly billing statements. The company is provided files of data containing the information necessary to determine opening balances, payment history, current charges and finance charges. The company must process this information to determine the monthly balance due and calculate any finance charges on the individual client accounts. After processing, the company uses print production software to format the data to print individualized statements as well as imprinting mailing information meeting USPS automated process guidelines. Since the company is processing purchaser's data to generate final billing information to be presented on individual client billing statements, the company is performing a data processing service that is more than incidental and the printed material is not considered "other direct mail." The sale is sourced using Section 310.A.

2. Nothing in this rule limits a purchaser's obligation for sales or use tax to any state to which the "direct mail" is delivered, nor limits a person's ability under law to claim a credit or refund for sales or use taxes legally due and paid to other jurisdictions.
3. The sourcing rules do not override or take precedence over exemptions provided by a state. 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.

Example: A purchaser does not provide any of the documentation according to Section A.2 of this rule, makes no claim of exemption and does not provide jurisdictional information for the purchase of advertising flyers that qualify as "advertising and promotional direct mail." The sale is sourced in accordance with Section 310.A.5 as provided in Section 313.A.4. The state to which the sale is sourced exempts advertising distributed out-of-state. While in this case the seller does not have the jurisdictional information to source the sale under Section 313, the seller does receive enough information to determine the portion of the advertising materials that are shipped out-of-state. The seller collects tax on the portion of the sale that is delivered within the state. Since the sale is sourced under Section 310.A.5, the seller is not required to collect tax on advertising flyers delivered to other states. However, the purchaser may be obligated to remit tax on the use of the advertising in the other states.

4. As provided in Rule 317.1.A.8, the "Direct Mail" reason code on the Streamlined Sales and Use Tax Certificate of Exemption may be used by purchasers of printed materials that meet the definition of direct mail to claim exemption at the time of purchase and self assess and directly pay tax to the state in accordance with Section 313 (or 313.1 for states adopting the origin-based direct mail sourcing). A printer purchasing component materials such as ink or paper that is used to fabricate or produce printed materials shall not issue a Streamlined Sales and Use Tax Agreement Certificate of Exemption or other form of exemption certificate claiming "Direct Mail" as the reason for exemption from sales or use tax. An exemption certificate claiming "Direct Mail" may not be used by a purchaser to purchase printed materials from third parties that are to be included in a later mailing or distribution when the printed materials are shipped or delivered to a single address. Other reason codes such as "manufacturing" or "sales for resale" may be appropriate. Nothing in this provision changes provisions in Section 317 of the SSUTA for sellers obtaining exemption certificates or other documentation from purchasers.