

12-36-2120(49)

**In SUPPORT of the Exemption for
Postage related to the Sale of Advertising and Mailing Services
and the Exclusion for Delivery Charges**

1. Adequacy

The exemption as written is adequate for the purpose for which it was enacted and no changes are recommended.

By administrative policy (and regulation), delivery charges on the sale of tangible personal property are not subject to tax and are not part of the taxable sales price when the title to the property transfers at the seller's loading dock. While such delivery charges are an exclusion, and not an exemption per se, we would like to speak in support of the exclusion of delivery charges.

2. Equitable

The exemption is necessary to achieve equity among competing businesses. The exemption is necessary to allow equity between advertisers which have their own postal permit and advertisers which do not have their own postal permit.

- a. Postage purchased by a printer is already exempt according to the guidance found in Reg. 117-309.3 for printers.
- b. This exemption allows mailing houses and advertising agencies providing similar direct mail advertising services to be treated similar to printers providing direct mail advertising services.
- c. The postal rates are set by the U. S. Postal Service and the printer or mailer merely acts as a mailing agent in placing material into the mail stream. If postage procured by an agent on behalf of the advertiser is taxed, it results in taxation of a service provided by the U. S. Government. In order to avoid tax, advertisers would have to handle their own mailings, which does not make sense operationally, or would have to acquire a postal permit account, which increases the cost of doing business

(directly for the cost of the permit and indirectly by adding to administrative overhead).

3. Efficiency

- a. The exemption is beneficial to the U. S. Postal Service since it reduces the number of postage permits in use. If the exemption were not in place, every business and politician using direct mail advertising would need to acquire its own postal permit in order to avoid taxation on postage.
- b. Taxing postage on mail is very controversial and perceived by many to be unconstitutional. The purported revenue to be raised by removing this exemption could easily be spent on litigation costs to defend and/or collect the tax.
- c. The U. S. Postal Service does not regard the postage procured by a mailing agent to be a sale of postage. Please see the attached letter on this issue.
- d. The cost of postage to delivery an incidental piece of direct mail is higher than the print and paper cost of the mail piece itself. The delivery of mail by the Postal Service is a Government function and is not a service provided by the printer, mailing house or advertising agency and should therefore not be taxed.
- e. If administrative policy changed to regard delivery on an FOB sale to be taxed, or if the legislature specifically taxed delivery services, the result would have negative economic consequences for the print industry in particular.
- f. Advertising budgets are set at a gross figure and are all inclusive of expenses. If delivery of printed materials or promotional materials becomes taxable, it will result in a reduction in the size of the print job. Real production quantity will be decreased (and labor to produce the printed material will be reduced) because the tax on the delivery service will reduce the amount of the budget remaining for production costs. Does the state want to tax a delivery service when the tax revenue raised is taken dollar-for-dollar from the print production budget?
- g. Printing is a custom manufacturing industry and each order is manufactured upon placement. This may be contrasted to consumer goods which are purchased out of inventory. Taxing the delivery of a sweater to a consumer may dampen consumer

spending but is unlikely to be the determining factor as to whether or not the sweater is sold. On the other hand, taxing delivery of the print contract is a business cost which may reduce the size of the underlying order when such cost is incurred in connection with a direct mail advertising campaign for a budgeted amount.

4. Additional Information

Melanie Hill, Outsource SALT, LLC, melanie.hill@outsourcesalt.com or 864/908-9659.

UNIFORMITY AMONG NEIGHBORING STATES					
	South Carolina	Alabama	Georgia	North Carolina	Tennessee
Postage	Exempt	Exempt	Exempt	Exempt	Exempt
Conditions for exemption	No conditions	Must be separately stated	Sale FOB Origin (typical for direct mail)	Direct mail postage exempt if separately stated	Direct mail postage exempt if separately stated
Common Carrier Delivery Charges	Exempt	Exempt	Exempt	Taxable*	Taxable*
Conditions for exemption	Sale FOB Origin (typical for print contracts)	Must be separately stated	Sale FOB Origin (typical for print contracts)	Not applicable	Not applicable
Reference	Reg. 117-309.3 for printers, Sec. 12-36-2120(49) for mailers & ad agencies	CCH's 2009 Multistate Corporate Tax Guide, page II-116	Reg. 560-12-2-.45	CCH's 2009 Multistate Corporate Tax Guide, page II-118, Sec. 105-164.13(49a)	Sec. 67-6-102

* Changed after enacting Streamlined Sales Tax legislation.



VIA CERTIFIED MAIL, Return Receipt Requested

October 19, 2006

Mr. Scott Peterson
Executive Director
SST Governing Board
4205 Hillsboro Pike
Hobbs Building Suite 305
Nashville, TN 37215-3339

Re: Direct Mail Interpretative Ruling Request

Dear Mr. Peterson:

We have reviewed the Interpretive Ruling Request on Proposed Rule 327.4 submitted on October 13, 2006 by Ms. Melanie Hill of DowLohnesPrice Tax Consulting Group LLC on behalf of a number of parties interested in mailing issues. The Ruling Request regards direct mail and we are hereby filing a Public Comment as allowed under Section 902 of the Streamlined Sales and Use Tax Agreement (SSTA). We note that the Ruling Request references United States Postal Service (USPS) Forms 3602 and includes the following statement:

"Delivery charges" does not include the actual cost of postage purchased by a Mailing Agent on behalf of a mail sender, mail originator or direct mail user. The agency relationship must be disclosed to the United States Postal Service (USPS) prior to or at the time of the postage purchase. Disclosure of the Mailing Agent on USPS forms or attachments thereto is satisfactory evidence of the principal-agency relationship. For example, the Mailing Agent would disclose its agency relationship on USPS Postage Statement Form 3602 or attachments thereto when entering bulk mail into the mail stream.

USPS Publication 32, *Glossary of Postal Terms*, available on usps.com, includes the following:

Mailing agent – A private third party that engages in a principal-agent relationship to mail bulk mail.

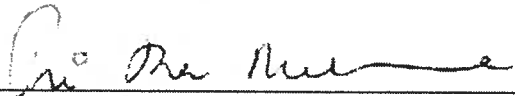
The USPS files this letter in support of the Interpretative Ruling Request. USPS accepts certifications from parties that they are acting as Mailing Agents, such as on the USPS Postage Statement Form 3602, and as part of electronic processing of postage payments. In the example of USPS Form 3602, the mail originator, or principal, is disclosed in the top right corner and the Mailing Agent may be disclosed in either the top left or center boxes of the form.

Direct sales of postage by the USPS to a mail sender, mail originator or direct mail user are not subject to sales taxation and direct sales of postage by the USPS to the Mailing Agent on behalf of a principal are not subject to sales, gross receipts, excise or any type of transaction tax. Provided that the Mailing Agent designation indicated and self-certified on the postage statement is valid, we presume that any subsequent payment from the mail originator to the mailing agent in the amount of the postage paid on the postage statement would be a reimbursement, not a sale, of postage incurred by the mailing agent on behalf of the mail originator, or principal.

We appreciate your thoughtful consideration of our Public Comment.

Sincerely,

United States Postal Service

By: 
Pritha Mehra
Manager
Marketing Technology and Channel Management

cc: Ms. Melanie Hill
Dow Lohnes Price Tax Consulting Group, LLC