

EXEMPTIONS AND DIRECT MAIL SALES TAX ISSUES

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TAX RULES ON DIRECT MAIL MARKETING MATERIALS

CALIFORNIA EXEMPTION FOR DIRECT MAIL

- California exempts the sale of, and the storage, use, or other consumption of catalogs, letters, circulars, brochures, and pamphlets consisting substantially of printed sales messages for goods and services printed to the special order of the purchaser and mailed or delivered by the seller, the seller's agent, or a mailing house, acting as the agent for the purchaser, through the United States Postal Service or by common carrier to any other person at no cost to that person who becomes the owner thereof.

NEW YORK RULE FOR DIRECT MAIL

- An exemption from sales and use taxation is provided for promotional materials that are mailed, shipped or otherwise distributed from a point within New York State, by or on behalf of vendors, to prospective customers located outside the state, for use outside the state.
- Moreover, services (such as mailing list services) that would otherwise be taxable as the producing, fabricating, processing, printing or imprinting of tangible personal property furnished by the purchaser, and not purchased for resale, are exempt if performed on or directly in conjunction with exempt promotional materials.

OHIO EXEMPTION FOR ADVERTISING MATERIALS

- Sales of newspaper inserts, catalogs, coupons, flyers, gift certificates, and other advertising material that prices and describes tangible personal property being offered for retail sale are specifically exempt.

PENNSYLVANIA EXEMPTION FOR DIRECT MAIL

- Pennsylvania exempts sales of mail order catalogs and direct mail advertising literature and materials, including electoral literature and materials. The exemption includes materials such as envelopes, address labels, and a one-time license to use lists of names and mailing addresses for each delivery of direct mail advertising literature and materials through the U.S. Postal Service. Charges incidental to sales of catalogs and direct mail advertising and postage charges for the delivery of mail order catalogs and direct mail advertising are also exempt.

PENNSYLVANIA EXEMPTION FOR DIRECT MAIL (CONT.)

- The Commonwealth Court has rejected the Department of Revenue's contention that the exemption could only apply to advertising materials sent directly from vendors to prospective purchasers, rather than from a publisher to prospective purchasers. The court concluded that the exemption applies to advertising literature and materials that are delivered directly to the intended recipient after placement in the United States mail, and that advertisements do not have to be mailed by the vendor. (*Merion Publications, Inc. v. Pennsylvania*, Pennsylvania Commonwealth Court, January 11, 2006)

WISCONSIN RULE FOR DIRECT MAIL

- Provides an exemption for catalogs (a printed and bound, stitched, sewed, or stapled book containing a list and description of property or services for sale, regardless of whether a price is specified) and the envelopes in which the catalogs are mailed, that are designed to advertise and promote the sale of merchandise or to advertise the services of individual business firms

WISCONSIN RULE FOR DIRECT MAIL

- Provides an exemption for advertising and promotional direct mail (direct mail that has the primary purpose of attracting 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).

TAXABILITY OF NEWSPAPER INSERTS

- Usually follow the taxability of the newspaper. If the state exempts the sale of newspapers, then the inserts generally are also treated as exempt.
- If the state taxes the sale of newspapers, then the resale exemption may apply to the purchase of newspaper inserts that are incorporated into the newspaper to be sold. In some instances, since the purchaser of the inserts is not the newspaper, the resale exemption may not apply

TAXABILITY OF NEWSPAPER INSERTS (CONT.)

- Newspaper inserts which are printed and not included as a component part of the newspaper, but rather delivered to the advertiser for distribution, do not generally qualify for the newspaper exemption and, therefore, are generally taxable.
 - Special exemptions may apply based on the content

ILLINOIS CUSTOM PRINTING RULE

- If a business sells custom printed tangible personal property, Service Occupation Tax (SOT) may apply
- Tax is calculated in one of four ways:
 - Separately stated selling price of tangible personal property transferred incident to service
 - 50% of the entire bill
 - SOT on seller's cost price if a registered de minimis serviceman
 - Use tax on seller's cost price if a de minimis serviceman not otherwise required to be registered under the Retailers' Occupation Tax Act.

MAILING LIST RULES

- Taxability can vary based on how they are delivered
 - Cheshire labels vs. Electronic list resulting in Ink-jet labels
- Often considered an information service or data processing

MAILING LIST RULES

- New York taxes directory and mailing list services (examples include the sale of customer lists, lists of postal mailing addresses, lists of e-mail addresses, lists of bad checks, telephone directories, business directories, collections of fact, price lists and almanacs, collections or compilations of proprietary drug trials, and compilations of legal case results)
- Information that is personal or individual in nature and that is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed the information is exempt.

STREAMLINED SALES TAX RULE ON DIRECT MAIL ALLOCATION

- If the purchaser provides the seller with a fully completed exemption certificate claiming direct mail or direct pay permit as the reason for exemption from tax, or other documentation of direct pay authority, the seller is relieved of the obligation to collect or remit any applicable tax on the retail sale of a product that meets the definition of “direct mail.”
- If such an exemption certificate or documentation of direct pay authority is provided to the seller, the purchaser is responsible for self-assessing and paying any applicable tax to the jurisdictions where the direct mail is delivered or distributed to recipients.

EXEMPTION CERTIFICATES

EXEMPTION CERTIFICATES AND DOCUMENTATION

- SST Direct Pay Certificate
- Illinois
 - No exemption documentation for SOT rules
- California
 - A seller who claims the exemption for direct mail advertising must obtain and retain supporting evidence of the delivery of the property and retain a timely exemption certificate (see CA reg. 1541.5 for model exemption certificates distinguished by method of delivery)

EXEMPTION CERTIFICATES AND DOCUMENTATION (CONT.)

- New York
 - Form ST-121.2 - Exemption Certificate for Purchases of Promotional Materials

**AUTOMATION AND
EXEMPTION CERTIFICATE
SOLUTIONS**

TRANSACTION TAX AUTOMATION

- Reasons to evaluate and implement software
 - Over 77,000 U.S. and Canada jurisdictions
 - Tax rules can vary
 - Multiple tax liabilities create need for technology solutions
 - Changing tax rates
 - Automation is critical

TRANSACTION TAX AUTOMATION (CONT'D)

- Types of Systems
 - Host Systems
 - Bolt On Products
 - Custom Designed
 - Application Service Provider (ASP)/Cloud Hosted
 - Non Interactive

TRANSACTION TAX AUTOMATION (CONT'D)

- Rate Automation Tools
 - Maintain various tax rates
 - Tools should include:
 - Different tax types
 - Rates and sourcing differentiation for intrastate vs interstate transactions
 - Maximum tax rules for jurisdictional limits
 - Geographic links to rates
 - Tools should be updated monthly at a minimum
 - Some vendors only offer rate automation products

TRANSACTION TAX AUTOMATION (CONT'D)

- Sales Tax Calculation Automation Tools
 - Work in conjunction with billing/ordering systems
 - Vendors offer different versions
 - Interfaces are required
 - Third-party tax packages
 - Tax calculation tool may have more functionality

TRANSACTION TAX AUTOMATION (CONT'D)

- Exemption Certificate Packages
 - Forms Packages
 - Certificate Validation Packages
 - Specific fields scanned and validated
 - Significant reporting functionality
 - Import exemption data
 - Calculation System Interactive Packages
 - Less functionality than validation packages

TRANSACTION TAX AUTOMATION (CONT'D)

- Vendors and Functionality
 - Many software solutions with different options
 - Vendors listed are not endorsed but offered as options to evaluate
 - Vendor Chart

SALES TAX AUTOMATION VENDOR CHART

Vendor	Products	Jurisdictions	Web Address
AccurateTax	Calculation packages, rates.	US jurisdictions	http://www.accuratetax.com/
Avalara	Calculation packages, sales & use tax filing services, exemption certificate management and software as a service	All US Taxing jurisdictions and some international	http://www.avalara.com/
BillSoft	Calculation package, rates, returns package, hosted solutions	All US Taxing Jurisdictions plus selected VAT for telecommunications	http://www.billsoft.com/
BNA	Forms, rate lookup tables, automated tax liability calculation, automatic rate update	All US taxing jurisdictions	http://www.bnasoftware.com/
CCH	Forms, research tools and publications, Calculation package, rates, returns package and software as a service	All US taxing jurisdictions	http://onlinestore.cch.com
Corptax/CorpSales	Return preparation software with historical and current sales/use tax information, rate and form calculation, automatic rate update	All US taxing jurisdictions	www.corptax.com

SALES TAX AUTOMATION VENDOR CHART

DMA	Sales Tax Exemption Certification Product, various tax calculation tools to supplement calculation engines	All jurisdictions supported by coordinating product	www.dmainc.com/Tax-Solutions/Tax-Technology.aspx
E-Doc Solutions	Sales Tax Exemption Certificate Product	All US Taxing jurisdictions	http://edocsolutions.com
Exactor	Calculation packages, rates, exemption certificate management, returns.	All US Taxing jurisdictions and 80 VAT countries	http://www.exactor.com/
FedTax (TaxCloud)	Calculation packages, rates, exemption certificate management, returns.	All US taxing jurisdictions for tax calculation; returns only for SST states	www.taxcloud.net
Imaging Science & Services	Exemption Certificate Management Product	All US Taxing jurisdictions	http://www.issimage.com

SALES TAX AUTOMATION VENDOR CHART

KPMG	Web based tax compliance application to provide sales, use, and excise tax compliance services including hosted tax calculation	All US taxing jurisdictions and Canada	http://alternatax.kpmg.com/
The Sales Tax Clearinghouse	Forms, rate lookup tables, desk top sales tax calculations; TaxCalc software, Sales Tax Calculator	All US taxing jurisdictions	www.thestc.com
Second Decimal	Integrated suite of workflow, tax calculation, and certificate management software products	All US and Canada including US Territories and Puerto Rico	http://www.seconddecimal.com
Superform Service	Calculating forms (income, sales/use, withholding, and others)	37 states	www.stfservices.com

SALES TAX AUTOMATION VENDOR CHART

Tax Data Systems (recently acquired by Thomson Reuters)	Rate Databases	All US Taxing jurisdictions and Canada	http://www.taxdatasystems.com
Tax Technology Services (recently acquired by Avalara)	CertCapture, certificate tracking software and service	Handles all exemption certificates	https://www.ttsllc.com/ http://www.certcapture.com/
Taxware	Calculation package, rates, returns package, hosted solutions – software as a service	All US jurisdictions, territories Canada, some international	www.taxware.com
Thomson Reuters/OneSource (including Sabrix)	Tax calculation package, rates, rules, audit database, research tools, forms, rate lookup tables, automatic rate update.	Global for parts, all US and Canada for parts	http://onesource.thomsonreuters.com/solutions/indirect-tax/
Vertex, Inc.	Calculation package, rates, returns package, outsourced compliance, reference/research books, exemption cert. manager	All US jurisdictions, territories, Canada and some international rates	www.vertexinc.com

UPDATE ON RECENT CHANGES IN SALES TAX

FEDERAL LEGISLATION

- Marketplace Fairness Act of 2013 (H.R. 684 and S. 336; S.743)
 - Would authorize states that meet certain requirements to require remote sellers that do not meet a "small seller exception" to collect their state and local sales and use taxes
 - \$1 million remote sales threshold
 - SST States authorized automatically
 - Other states must meet simplification requirements
 - Passed by Senate May 6, 2013
 - Pending in House

FEDERAL LEGISLATION (CONT.)

- On September 18, 2013, the House Judiciary Committee released seven principles outlining priorities for the bill. The seven principles are:
 - Tax Relief
 - Tech neutrality
 - No regulation without representation
 - Simplicity
 - Tax competition
 - States' Rights
 - Privacy Rights
- March 12, 2014 Hearing

OHIO BECOMES SST FULL MEMBER STATE

- The Streamlined Sales Tax (SST) Governing Board approved Ohio as a full member state. Ohio became a full member, effective January 1, 2014.
- Amnesty offered under Streamlined Sales Tax will close for Ohio on December 31, 2014.

QUESTIONS/COMMENTS

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