WEST VIRGINIA CODE: §11-15B-17

§11-15B-17. Direct mail sourcing.

(a) Notwithstanding section fifteen of this article, 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) An 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 paragraph (A) or (B) of subdivision (1) of this subsection, 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 paragraphs (A), (B) or (C) of subdivision (1) of this subsection, the sale shall be sourced according to subdivision (5) of subsection (a) of section fifteen of this article.

(b) Notwithstanding section fifteen of this article, the following provisions apply to sales of "other direct mail."

(1) Except as otherwise provided in this subdivision, sales of "other direct mail" are sourced in accordance with subdivision (3) of subsection (a) of section fifteen of this article.

(2) A purchaser of "other direct mail" may provide the seller with either:

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(A) A direct pay permit; or

(B) An Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by this state).

(3) If the purchaser provides the permit, certificate or statement referred to in paragraph (A) or (B) of subdivision (2) of this subsection, 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 subdivision (1) subsection (b) of this section, 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 applicable tax due.

(c) For purposes of this section:

(1) "Advertising and promotional direct mail" means:

(A) Printed material that meets the definition of "direct mail," as defined in subdivision (15), subsection (b), section two of this article;

(B) The primary purpose of which is to attract public attention to a product, 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. 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 nonpromotional 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) 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 of printed material that meets the definition of "direct mail."

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(e) 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.

(1) If a transaction is a "bundled transaction" that includes "advertising and promotional direct mail," this section applies 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."

(2) 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,

(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.

(f) 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.

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