

1 (a) **Administration.** The [State Department of Revenue] shall perform all functions necessary
2 and proper for the administration and enforcement of this Act, including promulgating
3 regulations and reviewing protests in accordance with the [State Administrative Procedures
4 Act].

5 (b) **Definitions.** For purposes of this Act:

6 (1) **“Department”** means the [State Department of Revenue].

7 (2) **“Director”** means the Director of the [State Department of Revenue].

8 (3) **“Marketplace”** means a place, digital or otherwise, on which or through which
9 multiple sellers may advertise and/or sell tangible personal property without the tangible
10 personal property or the seller necessarily being in the state.

11 (4) **“Marketplace facilitator”** means a person who, pursuant to an agreement with a seller,
12 and for consideration, facilitates sales by such seller through a marketplace operated by
13 the person, and engages directly or indirectly, through one or more related persons in
14 transmitting or otherwise communicating the offer and acceptance between a buyer and
15 seller;

16 (2)(5) **“Marketplace seller”** means a seller that sells or leases tangible personal
17 property through a marketplace.

18 (6) **“Non-Collecting Seller”** means a person who sells or leases tangible personal
19 property; the storage, use, sale, lease or consumption of which is subject to [State
20 Sales And/Or Use Tax Act] and who does not collect the tax.

21 (7) **“Purchaser”** means any person who purchases or leases a ~~product~~ tangible personal
22 property for delivery to a location in this state.

23 (8) **“Referrer”** means a person who:

24 (A) Contracts or otherwise agrees with a seller to list and/or advertise for sale tangible
25 personal property in any form, including, but not limited to, a catalog or Internet
26 website;

27 (B) Receives a fee, commission, and/or other consideration from a seller for the listing
28 for sale and/or advertisement of tangible personal property; and

29 (C) Transfers, via in-state software, Internet link, or otherwise, an in-state customer to
30 the seller or the seller’s employee, affiliate, or website; and

31 (A)(D) Is not a marketplace facilitator with respect to the transaction.

32 (c) **Notice and Reports, Required.** A ~~person non-collecting seller who sells or leases a~~
33 ~~product; the storage, use, or consumption of which is subject to [State Use Tax Act], or the~~
34 ~~sale or lease of which is subject to [State Sales Tax Act]; but who does not collect and remit~~
35 ~~either such tax~~, shall provide the following notice and reports.

36 (1) **Notice to Purchaser at Time of Transaction.** A notice shall be provided to each
37 purchaser at the time of each such sale or lease.

38 (A) The notice shall indicate that neither sales nor use tax is being collected or remitted
39 upon the transaction, and that the purchaser may be required to remit such tax
40 directly to the Department.

Comment [SHL1]: Keep or delete?

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1 | ~~(B)~~The notice shall be prominently displayed on all invoices and order forms, including,
2 | where applicable, electronic and catalogue invoices and order forms, and upon each
3 | sale or lease receipt provided to the purchaser. ~~No indication shall be made that~~
4 | ~~sales or use tax is not imposed upon the transaction, unless: (i) such indication is~~
5 | ~~followed immediately with the notice required by this section (c)(1); or (ii) the~~
6 | ~~transaction with respect to which the indication is given is exempt from [State] sales~~
7 | ~~and use tax pursuant to [State] law.~~

8 | ~~(B)~~ Notwithstanding the provisions of this section, the marketplace facilitator shall
9 | provide the transaction notice in lieu of the marketplace seller, in all cases where the
10 | marketplace facilitator facilitated the sale.

11 | (2) **Annual Non-collecting Seller Report to Purchaser.** ~~A report~~ On or before
12 | January 31 of each year, a non-collecting seller shall provide ~~shall be provided~~ provide
13 | a report to each purchaser before January 31st of each year.

14 | (A) The report shall include:

- 15 | 1. a statement indicating that the ~~person non-collecting seller~~ did not collect
16 | sales or use tax on the purchaser's transactions in the prior calendar year and that
17 | the purchaser may be required to remit such tax directly to the Department;
- 18 | 2. a list, by date, generally indicating the type of tangible personal property
19 | ~~product~~ purchased or leased during the prior calendar year by the purchaser from
20 | such ~~person non-collecting seller~~ for delivery to a location in this state and the
21 | price of each item of tangible personal property; ~~product~~
- 22 | 3. instruction for obtaining additional information regarding whether and how to
23 | remit the sales or use tax to the Department;
- 24 | 4. a statement that such ~~person non-collecting seller~~ is required to submit a
25 | report to the Department pursuant to section (c)(3) of this Act stating the total
26 | dollar amount of the purchaser's purchases; and
- 27 | 5. any information ~~as~~ the Director shall reasonably require.

28 | (B) The report shall be sent to the purchaser's billing address, or if unknown, the
29 | purchaser's shipping address, in an envelope marked prominently with words
30 | indicating important tax information is enclosed. If no billing or shipping address
31 | is known, the report shall be sent electronically to the purchaser's last-known e-mail
32 | address with a subject heading indicating important tax information is enclosed.

33 | ~~(A)~~(C) Notwithstanding Section (c)(2)(B) if the purchaser's billing or shipping address
34 | is known, the non-collecting seller may choose to provide the annual report to the
35 | purchaser electronically, provided that:

- 36 | 1. No earlier than December 1st and no later than December 31st of the year to be
37 | covered by the electronic report, ~~t~~The purchaser agrees to receive the notice
38 | electronically notice no later than December 1 of each year to be covered by the
39 | electronic report, and
- 40 | 2. The non collecting seller offers the purchaser the option to receive electronic
41 | notice on an annual basis The purchaser acknowledges that she or he understands

Comment [SHL2]: Should this be revised and moved elsewhere?

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1 that the report to be received electronically will contain important tax information
2 which information will also be sent to the Department.

3 ~~(D)~~ Notwithstanding the provisions of this section, the marketplace facilitator shall
4 provide the annual report in lieu of the marketplace seller, in all cases where the
5 marketplace facilitator facilitated the sale.

6 ~~(1)~~

7 ~~(2)~~

8 ~~(D)~~

9 (3) Annual **Non-Collecting Seller** Report to [State Department of Revenue]. A
10 report shall be A non-collecting seller shall provide a report to the Department ~~and~~ before
11 January 31st of each year, to the Department.

12 (A) The report shall include, with respect to each purchaser:

- 13 1. the name of the purchaser;
- 14 2. the billing address and, if different, the last known mailing address;
- 15 3. the shipping address for each item of tangible personal property product sold or
16 leased to such purchaser for delivery to a location in this state; and
- 17 4. the total dollar amount of all such purchases by such purchaser which were
18 made during the prior calendar year for delivery to each such address.

19 (B) The report shall be filed electronically in the form and manner required by the
20 Director.

21 (C) The report shall be filed by the seller unless a marketplace facilitator facilitated the
22 sale, in which case the marketplace facilitator shall file the report.

23 (4) **Reports by Referrer.**

24 (A) At any time during a calendar year that a referrer receives at least \$20,000 in gross
25 receipts from fees, commissions, and/or other compensation paid to it by sellers with
26 whom it has a contract or agreement to list for sale and/or to advertise any tangible
27 personal property, for sale within this state [alternative: at least \$100,00 from all
28 national referrals] said referrer shall within thirty (30) days provide written notice to
29 all such sellers that the sellers' sales may be subject to this state's sales and use tax
30 and that each such seller may have an obligation to provide the notices required by
31 this Act.

32 (B) On or before January 31 of each year, the referrer shall report the identity of each
33 seller listed for the previous calendar year on the notice described in Section
34 (c)(3)(A) to the [State Department of Revenue]. The referrer shall notify each such
35 seller that it has done so on or before January 31 of each year, for the previous
36 calendar year.

37 ~~(3)~~

38 ~~(4)~~ (5) **Reporting Requirements As Applied to Related parties.** Any member of a
39 group of related parties as defined by [citation to applicable state law] may file the

Comment [SHL4]: Lila, see Phil's h5 comment.

Comment [h5]: I think this has to be "(d)" rather than being a numbered paragraph under (c), which refers to the reports by the non-collecting seller.

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Comment [SHL6]: Should this be here or elsewhere in the draft as a stand-alone reporting provision for facilitators.

Comment [SHL7]: Lila, see Phil's h5 comment.

Comment [h8]: I think this has to be "(d)" rather than being a numbered paragraph under (c), which refers to the reports by the non-collecting seller.

Comment [SHL9]: This provision is adapted from the RI statute.

Comment [SHL10]: New

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reports required herein with respect to any non-collecting seller among the related parties, provided that the annual report to the purchaser shall contain sufficient information to allow the purchaser to determine the identity of the actual non-collecting seller.

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(d) **Exceptions.**

Comment [h11]: Should this be "(6)" under (c)? I don't think it makes sense as a stand alone paragraph.

(1) **Small Seller.** A person who made less than \$A [original SST threshold for small seller was \$100,000] in total gross sales during the prior calendar year shall not be required to provide notice or file reports pursuant to section (c) of this Act.

(2) **De minimis In-State Sales.** A person non-collecting seller who made less than \$B [CO: \$100,000] in total gross sales for delivery to a location in this state during the prior calendar year, or who acted as a marketplace facilitator for such sales, shall not be required to provide notice or file reports pursuant to section (c) of this Act. *Alternative provision: \$5,000,000 in national gross sales and \$100,000 in total gross sales for delivery to a location in this state.*

Comment [SHL12]: Smaller threshold for facilitators? This draft has a \$10,00 threshold for referrers.

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(3) **Exceptions as Applied to Related parties.** Related parties as defined by [citation to applicable state law] shall calculate these exceptions for the entire group.

Comment [SHL13]: Related parties doesn't work in this context. Controlled group did. We either need to keep "controlled group" or make more clear what we mean by related parties.

(4) **Sales by Registered Vendors/Sellers.** A person who is registered to collect and remit sales and use tax, and who complies in good faith with the [State Sales and Use Tax Act/Sales And/Or Use Tax Acts], shall not be required to provide notice or file reports pursuant to section (c) of this Act.

(e) **Penalties.**

(1) **Amount.** The Director shall assess a penalty upon any person obligated to file a notice or report who fails to provide notices and reports as required by this Act as follows:

Comment [SHL14]: The term "person" does seem to be the correct term to use in this penalty section.

(A) **Penalty for Failure to Provide Notice to Purchaser at Time of Transaction.** A person who fails to provide notice as required by section (c)(1) shall be assessed a penalty, in addition to any other applicable penalties, in the amount of \$X for each such failure, not to exceed:

1. a total of \$Y in one calendar year, if such person remedied each failure by providing such notices within X days of the date such notice was required to be provided, and
2. a total of \$Z in one calendar year where section (e)(1)(A)(i) of this Act does not apply

(B) **Penalty for Failure to Provide Annual Report to Purchaser.** A person who fails to provide a report as required by section (c)(2) shall be assessed a penalty, in addition to any other applicable penalty, of \$X for each such failure, not to exceed:

1. a total of \$Y in one calendar year if such person remedied each failure by providing such notices within X days of the date such report was required to be provided, and
2. a total of \$Z in one calendar year where section (e)(1)(B)(i) of this Act does not apply.

- 1 (C) **Penalty for Failure to Provide Annual Report to Department.** A person who
2 fails to provide a report as required by section (c)(3) shall be assessed a penalty, in
3 addition to any other applicable penalty, equal to \$X times the number of such
4 purchasers that should have been included on such report, not to exceed:
- 5 1. a total of \$Y in one calendar year if such person remedied the failure by
6 providing the report within X days of the date such report was required to be
7 provided, and
- 8 2. a total of \$Z in one calendar year where section (e)(1)(C)(i) of this Act does not
9 apply.
- 10 (2) **Estimates Authorized.** When assessing a penalty pursuant to section (e) of this Act,
11 the Director may use any reasonable sampling or estimation technique where necessary
12 or appropriate to determine the number of failures in any calendar year.
- 13 (3) **Protest.** A person may protest the assessment of any such penalty or interest by filing
14 a written objection with the Director within [number of days equal to the number of
15 days allowed for protest of a use tax assessment or refund denial] days of the date of
16 assessment. Disposition of a timely filed protest shall be in accordance with [State
17 Administrative Procedures Act]. If no such protest is filed within the time allowed, the
18 assessment shall become final and subject to [judgment, warrant, collection
19 procedures].
- 20 (4) **Interest.** Interest shall accrue on the amount of the total penalty that has been
21 assessed and become final for each calendar year pursuant to section (e) of this Act
22 at the rate established pursuant to [state code section setting interest rate for tax
23 underpayment].
- 24 (5) **Waiver.** Upon written request received within the time established for protest
25 pursuant to section (e)(4) above, the Director, in his or her sole discretion, may waive
26 any portion or all of the penalty or interest applicable under this section for good cause
27 shown.
- 28 (f) **Confidentiality of Purchaser Information.** Information received by the [State Department
29 of Revenue] pursuant to this Act shall be exempt from any disclosure required pursuant to
30 [State Open Records Act]. Such information shall be treated as confidential taxpayer
31 information pursuant to [cite to open records exception for confidential taxpayer
32 information, including exceptions statutes] and all exceptions, penalties, punishments, and
33 remedies applicable to disclosure of confidential taxpayer information pursuant to [cite to
34 statutes regarding confidential taxpayer information disclosure exceptions and penalties]
35 shall apply to disclosure of information received by the Department pursuant to this Act.
- 36 (g) Sourcing Sales of Digital Goods. For purposes of filing the reports required herein, the
37 seller or marketplace facilitator may use any commercially reasonable method of sourcing
38 the sales.
- 39 (h) Lookback period. The Department may require the seller or marketplace facilitator to file
40 reports for prior years, not to exceed the number of open tax years pursuant to [the
41 applicable general statute of limitations for purchaser use tax reporting]. In all cases where
42 the original seller or marketplace facilitator has been acquired by a successor in interest, the
43 lookback period shall not exceed the number of years for which a successor in interest is

- 1 | [liable for the obligations of its predecessor in interest pursuant to \[applicable state statute\].](#)
- 2 | (i) **Limitations.** Nothing in this Act shall relieve a person who is subject to [the state’s sales
- 3 | tax act or the ~~use tax act~~[Sales And/Or Use Tax Act](#)] from any responsibilities imposed
- 4 | thereunder. Nor shall anything in this Act prevent the Director from administering and
- 5 | enforcing [the state’s sales tax act or the ~~use tax act~~[Sales And/Or Use Tax Act](#)] with respect
- 6 | any person who is subject thereto.
- 7 | (j) **Severance.** The provisions of this Act are severable and if any section, sentence, clause or
- 8 | phrase of this Act shall for any reason be held to be invalid or unconstitutional, such
- 9 | holding shall not affect the validity of the remaining sections, sentences, clauses, and
- 10 | phrases of this Act, which shall remain in effect.