

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

32 | ~~(3)(9)~~ **“Related Party”** means [state should insert chosen state definition of related
33 | party]

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

38 | (1) **Notice to Purchaser at Time of Transaction.** Non-collecting sellers and
39 | marketplace facilitators shall ~~A notice shall be provided~~ the following notice to each
40 | purchaser at the time of each purchaser’s ~~such~~ sale or lease.

Comment [SHL1]: Keep or delete?

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Comment [h2]: Not wild about this language.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Add space between paragraphs of the same style, Line spacing: single

Formatted: Font: Times New Roman, 12 pt

Formatted: Bullets and Numbering

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

4 (B) The notice shall be prominently displayed on all invoices and order forms, including,
5 where applicable, electronic and catalogue invoices and order forms, and upon each
6 sale or lease receipt provided to the purchaser.

7 ~~(B) The non-collecting seller shall provide the transactional notice except that No~~
8 ~~indication shall be made that sales or use tax is not imposed upon the transaction,~~
9 ~~unless: (i) such indication is followed immediately with the notice required by this~~
10 ~~section (c)(1); or (ii) the transaction with respect to which the indication is given is~~
11 ~~exempt from [State] sales and use tax pursuant to [State] law.~~

12 (C) ~~Notwithstanding the provisions of this section, the marketplace facilitator shall~~
13 ~~provide the transaction notice in lieu of the marketplace seller, in all cases where the~~
14 ~~marketplace facilitator facilitated the sale.~~

15 (2) **Annual Non-collecting Seller Report to Purchaser.** ~~A report~~ On or before
16 January 31 of each year, a non-collecting sellers and marketplace facilitators shall
17 ~~provide~~ shall be provided provide the following a report to each purchaser before
18 January 31st of each year.

19 (A) The report shall include:

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

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

41 ~~(A)(C)~~ Notwithstanding Section (c)(2)(B) if the purchaser's billing or shipping address

Comment [SHL3]: Should this be revised and moved elsewhere?

Formatted: Right: 0.04", Outline numbered + Level: 3 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Tab after: 0.75" + Indent at: 0.75"

Formatted: Highlight

Formatted: Highlight

1 is known, the non-collecting seller may choose to provide the annual report to the
2 purchaser electronically, provided that:

- 3 1. No earlier than December 1st and no later than December 31st of the year to be
4 covered by the electronic report, (The purchaser agrees to receive the notice
5 electronically notice no later than December 1 of each year to be covered by the
6 electronic report, and
- 7 2. The non-collecting seller offers the purchaser the option to receive electronic
8 notice on an annual basis. The purchaser acknowledges that she or he understands
9 that the report to be received electronically will contain important tax information
10 which information will also be sent to the Department.

11 ~~(C)(D)~~ Notwithstanding the provisions of this section, the non-collecting seller shall
12 include in its annual non-collecting seller report to purchaser all of its sales to each
13 purchaser for which no marketplace facilitator facilitated the sale. The marketplace
14 facilitator shall include in its annual non-collecting seller report to purchaser all of
15 the sales to each purchaser for which it acted as a marketplace facilitator, the
16 marketplace facilitator shall provide the annual report in lieu of the marketplace
17 seller, in all cases where the marketplace facilitator facilitated the sale.

- 18 ~~(3)~~
19 ~~(4)~~
20 ~~(5)~~

21 ~~(6)(3)~~ Annual **Non-Collecting Seller** Report to [State Department of Revenue].
22 A report shall be ~~A n~~Non-collecting sellers and marketplace facilitators shall provide
23 the following a report to the Department ~~d~~ before January 31st of each year, to the
24 Department.

- 25 (A) The report shall include, with respect to each purchaser:
- 26 1. the name of the purchaser;
 - 27 2. the billing address and, if different, the last known mailing address;
 - 28 3. the shipping address for each item of tangible personal property product sold or
29 leased to such purchaser for delivery to a location in this state; and
 - 30 4. the total dollar amount of all such purchases by such purchaser which were
31 made during the prior calendar year for delivery to each such address.
- 32 (B) The report shall be filed electronically in the form and manner required by the
33 Director.

34 (C) The non-collecting seller shall include in its annual non-collecting seller report to
35 [state department of revenue] all of its sales to each purchaser for which no
36 marketplace facilitator facilitated the sale. The marketplace facilitator shall include in
37 its annual non-collecting seller report to [state department of revenue] all of the sales
38 to each purchaser for which it acted as a marketplace facilitator. The report shall be
39 filed by the seller unless a marketplace facilitator facilitated the sale, in which case
40 the marketplace facilitator shall file the report.

Comment [SHL4]: New

Formatted: Superscript

Formatted: Superscript

Comment [SHL5]: Lila, see Phil's h5 comment.

Formatted: Bullets and Numbering

Formatted: Right: 0.04", Outline numbered + Level: 3 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Tab after: 0.75" + Indent at: 0.75"

1 (d) **Reports by Referrer.**

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

9 (2) On or before January 31 of each year, in the manner required by the director, the
10 referrer shall report the identity of each seller listed for the previous calendar year on
11 the notice described for which the referrer was required to provide the written notice
12 described in Section (d)(1)(A) to the [State Department of Revenue]. The referrer
13 shall notify each such seller that it has done so on or before January 31 of each year, for
14 the previous calendar year.

15 (±)

16 (d)(e) **Reporting Requirements As Applied to Related parties.** Any member of a
17 group of related parties as defined by state law may file the reports required herein with
18 respect to any non-collecting seller among the related parties, provided that the annual
19 report to the purchaser shall contain sufficient information to allow the purchaser to
20 determine the identity of the actual non-collecting seller making each sale reported in the
21 report.

22 (e)(f) **Exceptions.**

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

26 (2) **De minimis In-State Sales.** A person non-collecting seller who made less than
27 \$B [state should choose an approach similar to either \$5,000,000 in national gross sales
28 or \$100,000 in total gross sales for delivery to a location in this state CO: \$100,000] in
29 total gross sales for delivery to a location in this state during the prior calendar year, or
30 who acted as a marketplace facilitator for such sales for sales less than \$B [state should
31 insert the same rule as above], shall not be required to provide notice or file reports
32 pursuant to section (c) of this Act. [Alternative provision: \$5,000,000 in national gross
33 sales and \$100,000 in total gross sales for delivery to a location in this state].

34 (3) **Exceptions as Applied to Related parties.** Related parties as defined by state
35 law shall calculate these exceptions for the entire group.

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

40 (g) **Penalties.**

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

Comment [SHL6]: This provision is adapted from the RI statute.
Formatted: Bullets and Numbering

Comment [SHL7]: New

Formatted: Indent: Left: 0.75", Right: 0.04", No bullets or numbering

Formatted: Bullets and Numbering

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

Comment [h8]: Should this be "(6)" under (c)? I don't think it makes sense as a stand alone paragraph.

Formatted: Font: Italic

Formatted: Not Highlight

Formatted: Font: Italic, Not Highlight

Formatted: Not Highlight

Comment [SHL9]: Smaller threshold for facilitators? This draft has a \$10,00 threshold for referrers.

Comment [h10]: Marketplace facilitator gets its own de minimis standard.

Formatted: Highlight

Formatted: Highlight

Comment [SHL11]: The term "person" does seem to be the correct term to use in this penalty section.

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

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

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

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

18 (C) **Penalty for Failure to Provide Annual Report to Department.** A person who
19 fails to provide a report as required by section (c)(3) shall be assessed a penalty, in
20 addition to any other applicable penalty, equal to \$X times the number of such
21 purchasers that should have been included on such report, not to exceed:

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

27 (D) **Penalty for Failure to Provide Referrer Report.** A person who fails to provide a report
28 as required by section (d)(2) shall be assessed a penalty, in addition to any other
29 applicable penalty, equal to \$X times the number of such non-collecting sellers that
30 should have been included on such report, not to exceed:

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

36 [Drafters' comment: The use of "X", "Y", and "Z" as placeholder dollar amounts in
37 penalties under (A)-(D) of this subsection are independent in each lettered subsection.
38 For example, the amount used for "X" in one lettered subsection may well be a different
39 amount than the amount used for "X" in another or all other lettered subsections. The use
40 of the same letter is not meant to suggest that they should be the same. However,
41 common lettering is used to note that the amounts are imposed for similar purposes in

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.5"

1 | each lettered subparagraph.]

2 | (2) **Estimates Authorized.** When assessing a penalty pursuant to section (e) of this Act,
3 | the Director may use any reasonable sampling or estimation technique where necessary
4 | or appropriate to determine the number of failures in any calendar year.

5 | (3) **Protest.** A person may protest the assessment of any such penalty or interest by filing
6 | a written objection with the Director within [number of days equal to the number of
7 | days allowed for protest of a use tax assessment or refund denial] days of the date of
8 | assessment. Disposition of a timely filed protest shall be in accordance with [State
9 | Administrative Procedures Act]. If no such protest is filed within the time allowed, the
10 | assessment shall become final and subject to [judgment, warrant, collection
11 | procedures].

12 | (4) **Interest.** Interest shall accrue on the amount of the total penalty that has been
13 | assessed and become final for each calendar year pursuant to section (e) of this Act
14 | at the rate established pursuant to [state code section setting interest rate for tax
15 | underpayment].

16 | (5) **Waiver.** Upon written request received within the time established for protest
17 | pursuant to section (e)(4) above, the Director, in his or her sole discretion, may waive
18 | any portion or all of the penalty or interest applicable under this section for good cause
19 | shown.

20 | ~~(g)~~(h) **Confidentiality of Purchaser Information.** Information received by the [State
21 | Department of Revenue] pursuant to this Act shall be exempt from any disclosure required
22 | pursuant to [State Open Records Act]. Such information shall be treated as confidential
23 | taxpayer information pursuant to [cite to open records exception for confidential taxpayer
24 | information, including exceptions statutes] and all exceptions, penalties, punishments, and
25 | remedies applicable to disclosure of confidential taxpayer information pursuant to [cite to
26 | statutes regarding confidential taxpayer information disclosure exceptions and penalties]
27 | shall apply to disclosure of information received by the Department pursuant to this Act.

28 | ~~(h)~~(i) **Sourcing Sales of Digital Goods and software.** For purposes of filing the
29 | reports required herein, the seller or marketplace facilitator may consistently use any
30 | commercially reasonable method of sourcing the sales. [Drafters' comment: The choice not
31 | to suggest the use of the state's specific sourcing method for these sales is conscious. Non-
32 | collecting sellers would not generally be subject to the state's tax collection jurisdiction.
33 | This rule is intended to be flexible and allow a single business to apply a single sourcing rule
34 | across all states.]

35 | ~~(i)~~(j) **Lookback period.** The Department may require the seller or marketplace
36 | facilitator to file reports for prior years, not to exceed the number of open tax years pursuant
37 | to [the applicable general statute of limitations for purchaser use tax reporting]. In all cases
38 | where the original seller or marketplace facilitator has been acquired by a successor in
39 | interest, the lookback period shall not exceed the number of years for which a successor in
40 | interest is liable for the obligations of its predecessor in interest pursuant to [applicable state
41 | statute].

42 | ~~(j)~~(k) **Limitations.** Nothing in this Act shall relieve a person who is subject to [the
43 | state's sales tax act or the ~~use tax act~~Sales And/Or Use Tax Act] from any responsibilities

Comment [h12]: Consider whether a sourcing rule should be addressed.

1 imposed thereunder. Nor shall anything in this Act prevent the Director from
2 administering and enforcing [the state's sales tax act or the ~~use tax act~~[Sales And/Or Use](#)
3 [Tax Act](#)] with respect any person who is subject thereto.

4 ~~(1)~~ **Severance.** The provisions of this Act are severable and if any section,
5 sentence, clause or phrase of this Act shall for any reason be held to be invalid or
6 unconstitutional, such holding shall not affect the validity of the remaining sections,
7 sentences, clauses, and phrases of this Act, which shall remain in effect.