MTC Model Use Tax Reporting Statute

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

(b) Definitions. For purposes of this Act:

1. “Department” means the [State Department of Revenue].
2. “Director” means the Director of the [State Department of Revenue].
3. “Marketplace” means a place, digital or otherwise, on which or through which multiple sellers may advertise and/or sell tangible personal property without the tangible personal property or the seller necessarily being physically in the state.
4. “Marketplace facilitator” means a person who, pursuant to an agreement with a seller, and for consideration, facilitates sales by such seller through a marketplace operated by the person, and engages directly or indirectly, including through one or more related persons, in transmitting or otherwise communicating the offer and acceptance between a buyer-purchaser and a seller.
5. “Marketplace seller” means a seller that sells or leases tangible personal property through a marketplace.
6. “Non-Collecting Seller” means a person who sells or leases tangible personal property, the storage, use, sale, lease or consumption of which is subject to [State Sales And/Or Use Tax Act] and who does not collect the tax.
7. “Purchaser” means any person who purchases or leases tangible personal property for delivery to a location in this state.
8. “Referrer” means a person who:
   A) Contracts or otherwise agrees with a seller to list and/or advertise for sale tangible personal property in any form, including, but not limited to, a catalog or Internet website;
   B) Receives a fee, commission, and/or other consideration from a seller for the listing for sale and/or advertisement of tangible personal property;
   C) Transfers, via in-state software, Internet link, or otherwise, an in-state customer to the seller or the seller’s employee, affiliate, or website; and
   D) Is not a marketplace facilitator with respect to the transaction.
9. “Related Party” means [state should insert chosen state definition of related party]

(c) Notice and Reports, Required.

1. Notice to Purchaser at Time of Transaction. Non-collecting sellers and marketplace facilitators shall provide the following notice to each purchaser at the
time of each purchaser’s sale or lease.

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

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

(C) The non-collecting seller shall provide the transactional notice except that the marketplace facilitator shall provide the transaction notice in all cases where the marketplace facilitator facilitated the sale.

(2) **Annual Non-collecting Seller Report to Purchaser.** On or before January 31 of each year, non-collecting sellers and marketplace facilitators shall provide the following report to each purchaser before January 31st of each year.

(A) The report shall include:

1. a statement indicating that the non-collecting seller or marketplace facilitator did not collect sales or use tax on the purchaser’s transactions in the prior calendar year and that the purchaser may be required to remit such tax directly to the Department;

2. a list of transactions, by date, generally indicating the type of tangible personal property purchased or leased during the prior calendar year by the purchaser from such non-collecting seller or marketplace facilitator for delivery to a location in this state and the price of each item of tangible personal property;

3. instruction for obtaining additional information regarding whether and how to remit the sales or use tax to the Department;

4. a statement that such non-collecting seller or marketplace facilitator is required to submit a report to the Department pursuant to subsection (c)(3) of this Act stating the total dollar amount of the purchaser’s purchases; and

5. any additional information the Director shall reasonably require.

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

(C) Notwithstanding subsection (c)(2)(B) if the purchaser’s billing or shipping address is known, the non-collecting seller may choose to provide the annual report to the purchaser electronically, provided that:

1. No earlier than December 1st and no later than December 31st of the year to be covered by the electronic report, the purchaser agrees to receive the notice electronically, and

2. The purchaser acknowledges that she or he understands that the report to be
received electronically will contain important tax information which information will also be sent to the Department.

(D) The non-collecting seller shall include in its annual non-collecting seller report to purchaser all of its sales to each purchaser for which no marketplace facilitator facilitated the sale. The marketplace facilitator shall include in its annual non-collecting seller report to purchaser all of the sales to each purchaser for which it acted as a marketplace facilitator.

(3) **Annual Non-Collecting Seller Report to [State Department of Revenue].**

Non-collecting sellers and marketplace facilitators shall provide the following report to the Department before January 31 of each year.

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

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

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

(C) The non-collecting seller shall include in its annual non-collecting seller report to [State Department of Revenue] all of its sales to each purchaser for which no marketplace facilitator facilitated the sale. The marketplace facilitator shall include in its annual non-collecting seller report to [State Department of Revenue] all of the sales to each purchaser for which it acted as a marketplace facilitator.

(d) **Reports by Referrer.**

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

(2) On or before January 31 of each year, in the manner required by the director, the referrer shall report the identity of each seller for which the referrer was required to provide the written notice described in subsection (d)(1). The referrer shall notify each such seller that it has done so on or before January 31 of each year, for the previous calendar year.

(e) **Reporting Requirements As Applied to Related Parties.** Any member of a group of
related parties may file the 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 non-collecting
seller making each sale reported in the report.

(f) Exceptions.

(1) *De minimis In-State Sales.* A non-collecting seller who made less than $B [state
should choose an approach similar to *either* $5,000,000 in national gross sales *or*
$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 sales less than $B [state
should insert the same rule as above], shall not be required to provide notice or file
reports pursuant to *subsection (c)* of this Act.

(2) *Exceptions as Applied to Related Parties.* Related parties shall calculate these
exceptions for the entire group.

(3) *Sales by Registered 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 Sales And/Or
Use Tax Acts], is not required to provide notice or file reports pursuant to
this Act.

(g) 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
Section as follows:

(A) *Penalty for Failure to Provide Notice to Purchaser at Time of Transaction.* A
person who fails to provide notice as required by *subsection (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 *subsection (e)(1)(A)[i]* of this Act

   Section does not apply.

(B) *Penalty for Failure to Provide Annual Report to Purchaser.* A person who fails
to provide a report as required by *subsection (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 *subsection (e)(1)(B)[ii]* of this Act

   Section does not apply.

(C) *Penalty for Failure to Provide Annual Report to Department.* A person who
fails to provide a report as required by section (c)(3) shall be assessed a penalty, in
addition to any other applicable penalty, equal to $X times the number of such

Comment [CP(7)]: Do we have to tighten this up
and say that it will be clearly marked as being filed
by a member of a related party or do we have
enough wiggle room so the Director can add that
requirement on the forms?

Comment [CP(8)]: I think this reference is off

Comment [CP(9)]: Same comment as above
purchasers that should have been included on such report, not to exceed:

1. a total of $Y$ in one calendar year if such person remedied the failure by
   providing the report 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)(C)(i) of this Act Section
   does not apply.

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

1. a total of $Y$ in one calendar year if such person remedied the failure by
   providing the report 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)(C)(i) of this Act Section
   does not apply.

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

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

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

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

(5) Waiver. Upon written request received within the time established for protest
pursuant to subsection (g)(3) above, the Director, in his or her sole discretion, may
waive any portion or all of the penalty or interest applicable under this section for
good cause shown.

(h) Confidentiality of Purchaser Information. Information received by the [State Department
of Revenue] pursuant to this Act—Section shall be exempt from any disclosure required pursuant to [State Open Records Act]. Such information shall be treated as confidential taxpayer information pursuant to [cite to open records exception for confidential taxpayer information, including exceptions statutes] and all exceptions, penalties, punishments, and remedies applicable to disclosure of confidential taxpayer information pursuant to [cite to statutes regarding confidential taxpayer information disclosure exceptions and penalties] shall apply to disclosure of information received by the Department pursuant to this Act—Section.

(i) **Sourcing Sales of Digital Goods and software.** For purposes of filing the reports required herein this section, the seller or marketplace facilitator may consistently use any commercially reasonable method of sourcing the sales. [Drafters’ comment: The choice not to suggest the use of the state’s specific sourcing method for these sales is conscious. Non-commercially reasonable method of sourcing the sales. A commercially reasonable method of sourcing the sales is conscious. Non-commercially reasonable method of sourcing the sales.]

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

(k) **Limitations.** Nothing in this Act—Section shall relieve a person who is subject to [the state’s sales tax act or the Sales And/Or Use Tax Act] from any responsibilities imposed thereunder. Nor shall anything in this Act—Section prevent the Director from administering and enforcing [the state’s sales tax act or the Sales And/Or Use Tax Act] with respect to any person who is subject thereto.

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