(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 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, through one or more related persons in
transmitting or otherwise communicating the offer and acceptance between a buyer and
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 a product 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; and

(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

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

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

(1) Notice to Purchaser at Time of Transaction. A notice shall be provided to each
purchaser at the time of each such 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. No indication shall be made that sales or use tax is not imposed upon the transaction, unless: (i) such indication is followed immediately with the notice required by this section (c)(1); or (ii) the transaction with respect to which the indication is given is exempt from [State] sales and use tax pursuant to [State] law.

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

(2) **Annual Report to Purchaser.** A report shall be provided to each purchaser before January 31st of each year.

(A) The report shall include:

1. a statement indicating that the **person non-collecting seller** did not collect sales or use tax on the purchaser’s transactions and that the purchaser may be required to remit such tax directly to the Department;
2. a list, by date, generally indicating the type of **tangible personal property** product purchased or leased during the prior calendar year by the purchaser from such **person non-collecting seller** for delivery to a location in this state and the price of each **item of tangible personal property product**;
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 **person non-collecting seller** is required to submit a report to the Department pursuant to section (c)(3) of this Act stating the total dollar amount of the purchaser’s purchases; and
5. any information as 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.

(A)(C) 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 prior to December 1 of each year to be covered by the electronic report, and**
2. **The non-collecting seller offers the purchaser the option to receive electronic notice on an annual basis. The purchaser acknowledges that she or he understands that the report to be received electronically will contain important tax information which will also be sent to the Department.**
(C)(D) Notwithstanding the provisions of this section, the marketplace facilitator shall provide the annual report in lieu of the marketplace seller, in all cases where the marketplace facilitator facilitated the sale.

(3) Reports by Referrer.

(2)(A) At such time during any calendar year, or any portion thereof, that a referrer receives more than ten thousand dollars ($10,000) 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, 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 Act.

(2)(B) The referrer shall report the identity of each seller listed on the notice described in Section (c)(3)(A) to the [State Department of Revenue]. The referrer shall notify each such seller that it has done so.

(4) Annual Report to [State Department of Revenue]. A report shall be provided before January 31st of each year to the Department.

(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 product 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 made 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 report shall be filed by the seller unless a marketplace facilitator facilitated the sale, in which case the marketplace facilitator shall file the report.

(5) Reporting Requirements As Applied to Controlled Groups. Any member of a controlled group may file the reports required herein, provided that the annual report to the purchaser shall contain sufficient information to allow the consumer to determine the identity of the actual seller.

(d) Exceptions.

(1) Small Seller. A person non-collecting seller who made less than $A [original SST threshold for small seller was $100,000] in total gross sales 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.

(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.
(3) **Exceptions as Applied to Controlled Group.** Controlled groups filing a single report shall calculate these exceptions at the controlled group level.

(4) **Sales by Registered Vendors.** 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 who fails to provide notices and reports as required by this Act 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 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.

(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 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 does not apply.

(2) **Estimates Authorized.** When assessing a penalty pursuant to section (e) of this Act, 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 section (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 section (e)(4) 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.

(f) Confidentiality of Purchaser Information. Information received by the [State Department
of Revenue] pursuant to this Act 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.

(g) Sourcing Sales of Digital Goods. For purposes of filing the reports required hereunder, the
seller or marketplace facilitator may use any commercially reasonable method of sourcing
the sales.

(h) 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 consumer 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].

(i) Limitations. Nothing in this Act shall relieve a person who is subject to [the state’s sales
tax act or the use tax act] from any responsibilities imposed thereunder. Nor shall anything in this Act prevent the Director from administering and
enforcing [the state’s sales tax act or the use tax act] with respect to any person who is subject thereto.

(j) Severance. The provisions of this Act are severable and if any section, sentence, clause or
phrase of this Act 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, which shall remain in effect.