Retailer engaged in business in this state.

(a) Every retailer engaged in business in this state and making sales of tangible personal property and/or taxable services* in this state, and not otherwise exempt under this Act, shall register with the Department and remit the tax required by this Act.

(b) "Retailer engaged in business in this state" as used in this section means any retailer, whether or not authorized to do business in this state, that has a sufficient connection under the Constitution of the United States with this state to be subject to sales tax collection duties. "Retailer engaged in business in this state" specifically includes, but is not limited to, any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a related party, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state.

(2) Any retailer having, permanently or temporarily, any employee, representative, agent, salesperson, independent contractor, or any other person operating on the retailer’s behalf. This includes a person operating in this state under the authority of the retailer or a related party for the purpose of selling, delivering, installing, assembling, performing maintenance or repair services for the retailer’s purchasers in this state, or the taking of orders for tangible personal property and/or taxable services* sold by the retailer, or otherwise establishing or maintaining a market for the retailer’s products for sale in this state.

(3) Any retailer owning or leasing any real or tangible personal property situated in this state.

(4) Any retailer for whom a related party pursuant to an agreement with or in
cooperation with the retailer: (A) owns or leases any real or tangible personal
property or performs services in this state in connection with the sale of [tangible
personal property and/or taxable services*] in this state, including, but not limited to, services
to design and develop tangible personal property sold by the retailer, or the
solicitation of sales of tangible personal property on behalf of the retailer; or (B)
uses trademarks, service marks, or trade names in this state that are the same or
substantially similar to those used by the retailer.

(c)

(1) In addition to Subsection (b) above, a retailer is presumed to be engaged in
the business of making sales at retail of [tangible personal property and/or taxable services*] in
this state if the retailer enters into an agreement, directly or indirectly, with
one or more residents of this state under which the resident, for a commission
or other consideration based on completed sales, directly or indirectly, refers
potential purchasers to the retailer, whether by a link on an internet website,
written or oral presentation, or otherwise, and if the cumulative gross
receipts from sales by the retailer to purchasers in this state who are referred
to the retailer by all residents of this state with such an agreement with the
retailer is greater than $10,000.00 during the immediately preceding 12
months. The presumption created by this Subsection shall not apply if the
retailer’s total cumulative gross receipts from sales to purchasers in this state
do not exceed $________ during the twelve months immediately preceding
the sale. [optional: small seller exception]

(2) The presumption created by the operation of Subsection (c)(1) above
may be rebutted by proof that the resident with whom the retailer has an
agreement did not engage in any solicitation in the state on behalf of the
retailer that would be sufficiently connected with this state under the United
States Constitution during the same preceding 12 months. Evidence to rebut
the presumption may consist of verified written statements from all
residents with whom the retailer has an agreement stating that they did not
engage in any such solicitation or other activities in this state on behalf of the
retailer during the preceding 12 months if the statements are provided and
obtained in good faith.

(3) An agreement for advertising services with a person or persons in
this state, to be delivered on television, radio, in print, on the Internet, or by
any similar medium, is not an agreement described in Subsection (c)(1) above,
unless the person entering the agreement with the retailer also directly or
indirectly solicits potential customers in this state for the retailer through use of
flyers, newsletters, telephone calls, electronic mail, blogs, microblogs, social
networking sites, or other means of direct or indirect solicitation specifically
targeted at potential customers in this state. For purposes of this subsection, an
agreement for services based upon commissions or other consideration
conditioned upon completed sales in this state is not an agreement for
advertising services.

(4) This Subsection shall apply without regard to the date the retailer and the
resident entered into the agreement described herein.

(5) The twelve months before the effective date of this Act are included as
part of the preceding twelve (12) months for purposes of this Subsection (c).

(d) For purposes of this Section, a retailer and another person are considered related
parties if they meet any one of the following tests:

(1) the retailer and one or more persons are component members of the same
controlled group of corporations under section 1563 of the Internal Revenue
Code; or

(2) the retailer is a related taxpayer to the other person under the provisions of
section 267 of the Internal Revenue Code; or

(3) the retailer and the other person is a corporation, limited liability
company, partnership, estate, or trust, and such corporation, limited liability
company, partnership, estate, or trust and its shareholders, members, partners, or beneficiaries own in the aggregate directly, indirectly, beneficially, or constructively at least 50 percent of the profits, capital, stock, or value of the other entity or both entities.

(e) A retailer, whether or not engaged in business in this state or authorized to do business in this state, shall be subject to sales tax collection duties in this state if federal law permits this state to impose such duties on the retailer.

(f) The definitions in this Section are only applicable to the taxes [levied under this Act*].

(g) The provisions of this Section are severable. If any provision of this Section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) This statute applies to sales made on or after [effective date].

*States can insert language within the brackets to correspond to their particular taxing schema.