



MULTISTATE TAX COMMISSION

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## **Sales & Use Tax Uniformity Subcommittee**

### **Model Sales & Use Tax Notice and Reporting Statute Policy Checklist June 11, 2010**

#### *Indicating Committee Answers*

*Where Committee has not yet Answered, Colorado Approach Summarized in Brackets*

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#### **1. Persons Required to Report**

**A.** Should reporting be required of all sellers that make sales in the state?

- Yes, with the exceptions below.

**B.** Exceptions?

**i)** Sellers who collect sales or use tax (whether required or voluntary)?

- Yes, whether required or voluntary.

**ii)** Sellers that would be exempt by statute from collection responsibility if they were located in the state, if any (e.g., non-profit organizations, religious organizations)?

- Yes.

Or sellers that would tend to be exempt from collection responsibilities if they were located in the state, e.g., those who sell primarily to businesses as opposed to those who sell primarily to the ultimate consumer?

- No.

**iii)** De minimis sellers? If so, what should the de minimis exception be based upon – e.g., number of in-state sales, dollar value of in-state sales (over some time period), dollar value of in-state sale (by transaction), gross receipts, etc.? Should a de minimis exception be different for different reports (see below)?

- Yes. De minimis based on total gross receipts (not just in-state gross receipts), indexed for inflation.

(a) Should in-state only gross receipts be considered? [CO: yes]

(b) Is this issue better addressed in regulation? [CO: no]

## 2. Type of Notice and Reports Required

### A. Notice(s) to Consumers on each transaction?

- i) Should the seller be required to notify the consumer of a potential sales or use tax obligation with each purchase transaction? [CO: yes]
- ii) What other information should the state require in the notice to the consumer? E.g., URL for sales or use tax remittance form, address of the department, or link to use tax guidance? [CO: not addressed]
- iii) When should notice be provided? Prior or/and post sale? When a price is stated?
  - Yes. Notice should be provided to the customer before completion of each applicable transaction, and on the receipt, that sales or use tax may be due and that the transaction may (or will) be reported to the department. Notice may also include a link to the Department use tax form. [CO: Notice may be provided before, during, or immediately after (i.e., on same screen) transaction consummated. Later notification by separate email is not sufficient.]
- iv) Should notice be required when the consumer's shipping address, billing address, either, or both are in-state? [CO: notice required when either billing or shipping address in-state.]
- v) Should the notice be required to state amount of tax? Should showing zero be prohibited? [CO: not required to state an amount of tax; but can't put zero.]

### B. Periodic Report to Consumers?

- i) Should the seller be required to send a periodic, summary report to each in-state consumer? If so, what should the period be? [CO: yes. annual for both individuals and business, even though business consumers are required to report more often.]
- ii) What information should be included in the report? E.g., list of individual items purchased, dates of purchases, purchase prices, link to sales or use tax remittance forms and guidance, etc? [ CO: date of purchase, purchase price and type of item purchased (e.g. "books," but not titles of the books). Purchasers must be notified that they may have a filing requirement; where they can get more information on how to make that determination and how to file if they need to. Purchasers must also be notified that seller is required to report customer name, contact info and amount of purchases (and nothing else) to the department.]
- iii) To what address is the seller obligated to send the report—the email address, shipping address, billing address, or some combination of addresses? What if billing and shipping address are different and only one is in-state? [CO: required to send to billing address, whether in or out of state, if shipping address in state.]
- iv) Should there be a requirement that the seller send the report by any particular means, e.g., U.S. Post, or is email sufficient where the transaction is by email?

- v) Should seller be exempted from reporting to the consumer when the purchaser's purchases are de minimis? What qualifies as de minimis? [CO: yes. Total purchases of \$500 or less annually = de minimis.]

### **C. Report to the Department?**

- i) Should the seller be required to report total dollar amount of sales to in-state purchasers over a specific period to the Department? [CO: yes; period should be same as that required for the periodic report to purchasers – so, in CO, it is an annual report.]
- ii) If so, what information should be reported? E.g., total dollar amount of purchases by consumer for a specific period, billing address (or shipping address)? [CO: total dollar amount of purchases for each billing address and each shipping address for each purchaser.]
- iii) Should seller be exempted from reporting to the Department when the purchaser's purchases are de minimis? What qualifies as de minimis? [CO: no, seller should not be exempt from reporting. ]

### **3. Penalties for Failure to Report**

- A. Should penalties be imposed for failure to report and/or notice? If so, how should penalties be calculated? [CO: yes. See last section at end of each requirement.]
- B. Should penalties be subject to a cap? Should seller have the opportunity to cure the violation? [CO: not addressed.]
- C. Does failure to report include filing reports that are conflicting or not filed in good faith? Should there be a good faith exception or waiver authority for the penalty? [CO: conflicting reports or reports not filed in good faith = failure to report not addressed; yes to good faith exception and waiver of penalty.]

### **4. Administration**

- A. Should the report be part of the sales or use tax act or stand alone? If part of an Act, presumably definitions and administrative processes (exhaustion, penalty waiver, etc.) of the act would apply. [CO appears to be part of sales tax act]
- B. If stand alone, the model presumably would require its own definitions and administrative processes (exhaustion, penalty waiver, etc.), or possibly a reference to the sales or use tax act definitions and processes. [not addressed in CO]