



Working Together Since 1967 to Preserve Federalism and Tax Fairness

**To: Wood Miller, Acting Chair
Members of MTC Income & Franchise Tax Uniformity Subcommittee**

**From: Shirley Sicilian, General Counsel
Roxanne Bland, Counsel**

Date: July 15, 2010

Subject: Model Sales & Use Tax Notice and Reporting Statute

At its March 3, 2010 in-person meeting, the Subcommittee voted to begin a project for a Sales & Use Tax Notice and Reporting Statute and a “Click-Through” Nexus Statute. The Subcommittee elected to begin its work with the Sales & Use Tax Notice and Reporting Statute.

A drafting group¹ was formed to develop a policy checklist (Attachment B), which served as the basis for teleconference discussions on April 22, 2010; May 13, 2010; and June 22, 2010. On June 22, 2010, the Subcommittee completed its preliminary answers to the policy checklist. These answers do not reflect the Subcommittee’s formal position at this point. Rather, the answers reflect its policy direction to the drafting committee, which has accordingly produced a first draft (Attachment A) for the Subcommittee’s consideration and discussion at its July 26, 2010 in-person meeting.

Attachments:

- A. Draft Model Statute
- B. Policy Checklist
- C. Oklahoma Statue
- D. Colorado Regulations
- E. NOTE: Colorado statute available here:
http://www.leg.state.co.us/clics/clics2010a/csl.nsf/fsbillcont3/B30F574193882B4B872576A80026BE0C?open&file=1193_enr.pdf

¹ The Drafting Group includes Richard Cram (KS), Phil Horwitz (CO), and Michael Fatale (MA) and staff – Roxanne Bland and Shirley Sicilian



MULTISTATE TAX COMMISSION

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Sales & Use Tax Uniformity Subcommittee

Draft Model Sales & Use Tax Notice and Reporting Act
July 15, 2010

Draft – For Discussion Purposes Only

Sales and Use Tax Notice and Reporting Act

- (a) **Administration.** This Act shall be administered and enforced by the [State Department of Revenue], which shall adopt, promulgate, and enforce rules and regulations as necessary to carry out the Act’s provisions. No Court shall have jurisdiction to consider the application, administration, or enforcement of this Act with respect to any person unless that person has exhausted administrative remedies with the [State Department of Revenue].
- (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) **“Purchaser”** means any person who purchases or leases a product for delivery to a location in this state.
- (b) **Notice and Reports to Purchasers, Required.** A person who sells or leases a product for delivery to a location in this state, upon which sale or lease a tax collection responsibility would be imposed pursuant to [State Use Tax Act] or [State Sales Tax Act] if such person were doing business in the state, but who does not collect or remit such tax, shall provide the following notices and reports.
- (1) **Notice at Time of Transaction.** Notice shall be provided, at the time of each such sale or lease that the purchaser must, unless exempt from consumer’s use tax pursuant to [state consumer’s use tax statute], remit a use tax to the [State Department of Revenue]. The notice shall appear prior to completion of transaction and upon receipt, and shall include a statement, as provided by the Director, indicating that such person does not collect sales or use tax and that the purchaser may be required to remit such tax directly to the Department.

- (A) A person required to provide notice by this section (b)(1) shall prominently display the notice on all order forms, including, where applicable, internet and catalogue order forms. Such person shall not advertise on its retail Internet website or retail catalog that there is no tax due on purchases made from such person for delivery in this state.
- (B) A person who fails to provide notice in the time and manner required by this section (b)(1) shall be assessed a penalty, in addition to any other penalties, of \$X for each such failure, not to exceed:
 - (i) a total of \$Y if such person had no actual knowledge of the requirement and remedied the failure by providing notices within 30 days of receiving actual knowledge, and
 - (ii) a total of \$Z if such person had actual knowledge or did not remedy the failure within 30 days of receiving actual knowledge.

The Director, in his or her sole discretion, may waive all or any portion of the penalty for good cause shown.

- (2) **Annual Report.** A report shall be provided before January 31 of each year to each purchaser, in an envelope marked prominently with words indicating important tax information is enclosed.
 - (A) The report shall provide:
 - (i) a statement, supplied by the Director, indicating that the person does not collect sales or use tax and that the purchaser may be required to remit such tax directly to the Department;
 - (ii) a list, by date, of generally indicating the type of product purchased or leased during the prior calendar year by the purchaser from such person for delivery to a location in this state and the price of each product;
 - (iii) instruction, supplied by the Director, for obtaining additional information regarding whether and how to remit the use tax to the Department;
 - (iv) a statement, supplied by the Director, that such person is required to submit a report to the Department pursuant to section (c) of this Act; and
 - (v) any other information as the Director shall require by regulation.
 - (B) The report shall be sent to the purchaser's billing address, or if unknown, the purchaser's shipping address. If no billing or shipping address is known, the report shall be sent to the purchaser's last-known e-mail address.

- (C) A person who fails to provide a report in the time and manner required by section (b)(2) shall be assessed a penalty, in addition to any other penalties, of \$X for each such failure, not to exceed:
 - (i) a total of \$Y if such person had no actual knowledge of the requirement and remedied the failure by providing notices within 30 days of receiving actual knowledge, and
 - (ii) a total of \$Z if such person had actual knowledge or did not remedy the failure within 30 days of receiving actual knowledge.

The Director, in his or her sole discretion, may waive all or any portion of the penalty for good cause shown.

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

- (A) The report shall provide, for each purchaser:
 - (i) The name of the purchaser;
 - (ii) The billing address and, if different, the last known mailing address;
 - (iii) The shipping address for each product sold or leased to such purchaser for delivery to a location in this state;
 - (iv) The total dollar amount of all such purchases by such purchaser which were made during the prior calendar year.
- (B) A person who fails to provide a report in the time and manner required by section (b)(3) shall be assessed a penalty, in addition to any other penalties, equal to \$X times the number of such purchasers that should have been included on such report, not to exceed:
 - (i) a total of \$Y if such person had no actual knowledge of the requirement and remedied the failure by providing the report within 30 days of receiving actual knowledge, and
 - (ii) a total of \$Z if such person had actual knowledge or did not remedy the failure within 30 days of receiving actual knowledge.

The Director, in his or her sole discretion, may waive all or any portion of the penalty for good cause shown.

(c) Exceptions.

- (1) Small Seller.** A person who made less than \$A in total gross sales during the prior calendar year shall not be required to file notice or reports pursuant to section (b) of this Act.
- (2) De minimis In-State Sales.** A person who made less than \$B in total gross sales for delivery to a location in this state during the prior calendar

year shall not be required to file notice or reports pursuant to section (b) of this Act.

- (d) **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 [open records exception for confidential taxpayer information] and all penalties, punishments, and remedies applicable to disclosure of confidential taxpayer information pursuant to [confidential information disclosure penalties] shall apply to disclosure of information received by the Department pursuant to this Act.



MULTISTATE TAX COMMISSION

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Sales & Use Tax Uniformity Subcommittee

**Model Sales & Use Tax Notice and Reporting Statute
Policy Checklist
July 15, 2010**

Indicating Committee Answers

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 Customer on each transaction?

- i)** Should the seller be required to notify the customer of a potential sales or use tax obligation with each purchase transaction?
 - Yes.

- ii)** What other information should the state require in the notice to the customer? E.g., URL for sales or use tax remittance form, address of the department, or link to use tax guidance?
 - Yes.

- iii)** When should notice be provided? Prior or/and post sale? When a price is stated?
 - Yes. Notice should be provided to the customer upon each applicable transaction 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.

- iv)** Should notice be required when the customer's shipping address, billing address, either, or both are in-state?
 - Yes. 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?
 - Notice should not be required as to the amount of tax. But, may not imply tax is \$0.

B. Periodic Report to Customer's?

- i)** Should the seller be required to send a periodic, summary report to each in-state customer? If so, what should the period be?
 - Yes. Annual. Should apply 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?
 - Yes. 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?
 - Yes. 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?
 - No. But should indicate important tax information enclosed.
- v) Should seller be exempted from reporting to the consumer when the purchaser's purchases are de minimis? What qualifies as de minimis?
 - No, because more burdensome for seller to distinguish.

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?
 - Yes; period should be 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)?
 - 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?
 - No, because more burdensome for seller to distinguish.

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?
 - Yes. See last section at end of each Colorado requirement.
- B. Should penalties be subject to a cap? Should seller have the opportunity to cure the violation?
 - Yes.
- C. Should there be a good faith exception or waiver authority for the penalty?
 - Yes.

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.
 - Stand alone.
- 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.
 - Address in Act.

Attachment C

New Oklahoma Statute for Use Tax Reporting Enrolled House Bill 2359 2010 Legislative Session

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1406.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each retailer or vendor making sales of tangible personal property from a place of business outside this state for use in this state that is not required to collect use tax, shall provide notification on its retail Internet website or retail catalog and invoices provided to its customers that use tax is imposed and must be paid by the purchaser, unless otherwise exempt, on the storage, use, or other consumption of the tangible personal property in this state. The notification shall be readily visible. It is further provided that no retailer shall advertise on its retail Internet website or retail catalog that there is no tax due on purchases made from the retailer for use in this state. The provisions of this section, except for notification on invoices, shall apply to online auction websites. The Oklahoma Tax Commission is hereby authorized and directed to define the term "online auction websites" through the promulgation of a rule. The rule shall include an exception for websites with sales below a threshold to be set by the Tax Commission.

B. The provisions of this section shall not be effective as law until an administrative rule, whether an emergency rule or permanent rule or both, has become effective as law pursuant to the Oklahoma Administrative Procedures Act.

REGULATION 39-21-112.3.5

1) Definitions

- a) “Retailer that does not collect Colorado sales tax”
 - i) A retailer that does not collect Colorado sales tax is a retailer that sells goods to Colorado purchasers and that does not collect Colorado sales or use tax. Such retailers are also referred to in this regulation as “non-collecting retailers”.
 - ii) A “retailer that does not collect Colorado sales tax” does not include a retailer that makes sales in Colorado solely by means of download of digital goods or software. A “retailer that does not collect Colorado sales tax” does include a retailer that makes sales in Colorado both by means of download of digital goods or software and by means of shipping or otherwise physically delivering goods to a Colorado purchaser.
 - iii) A “retailer that does not collect Colorado sales tax” does not include a retailer whose sales in Colorado are de minimis. For purposes of this regulation, the Department will presume that a retailer that makes less than \$100,000 in total gross sales in Colorado in the prior calendar year and reasonably expects total gross sales in Colorado in the current calendar year will be less than \$100,000 is a retailer whose sales in Colorado are de minimis.
- b) “Colorado purchaser”
 - i) With respect to sales of goods that are shipped, a Colorado purchaser is a purchaser that requests the goods be shipped to Colorado. In the case of a purchase that is purchased by one party, who may be inside or outside of Colorado, and shipped to a party in Colorado, the Colorado purchaser is the purchaser of the goods, not the recipient of the goods.
 - ii) With respect to sales of goods that are downloaded or otherwise delivered electronically
 - (1) If the purchaser provides a “bill to” address, then a Colorado purchaser is a purchaser whose “bill to” address is in Colorado;
 - (2) If the purchaser does not provide a “bill to” address, then the non-collecting retailer shall make a determination as to whether a purchaser is in Colorado, and is therefore a Colorado purchaser, using any other commercially reasonable method based on the business’s existing billing, customer-tracking, or other systems.
- c) “Colorado purchase”
 - i) With respect to sales of goods that are shipped, a Colorado purchase is one that is shipped to Colorado.
 - ii) With respect to sales of goods that are downloaded or otherwise delivered electronically
 - (1) If the purchaser provides a “bill to” address, then a Colorado purchase is one for which the “bill to” address is in Colorado;

- (2) If the purchaser does not provide a “bill to” address, then the non-collecting retailer shall make a determination as to whether a purchase is a Colorado purchase using any other commercially reasonable method based on the business’s existing billing, customer-tracking, or other systems.
 - iii) A Colorado purchase shall not include any purchases or rentals of VHS tapes, DVDs, Blu-Ray disks, or other video materials to the extent that disclosure of the purchasers of such items would violate 18 U.S.C. 2710.
 - d) “Department” – the term Department refers to the Colorado Department of Revenue.
 - e) “Total gross sales” – As used in this regulation, the term total gross sales means the total sales of goods. The term shall not include sales of services. The term shall include all sales of goods made by all entities controlled by or under common control with the non-collecting retailer.
 - 2) Obligation to give notice with each purchase
 - a) A non-collecting retailer must give notice to all Colorado purchasers that Colorado sales or use tax is due on all purchases that are not exempt from sales tax. This notice must be provided with respect to each transaction.
 - i) A non-collecting retailer may not display or imply that no tax is due on any Colorado purchase, unless such a display is accompanied by the notice required by this paragraph 2) each time the display appears.
 - (1) Example: A summary of the transaction including a line designated “Sales tax” and showing the amount of sales tax as “zero” or “0.00” would constitute a “display” implying that no tax is due on the purchase. Such a display must be accompanied by the notice required by this paragraph 2) every time it appears.
 - (2) Notwithstanding the limitation in this paragraph i), if a non-collecting retailer knows that a purchase is exempt from Colorado tax pursuant to Colorado law, the non-collecting retailer may display or indicate that no sales tax is due even if such display is not accompanied by the notice required by this paragraph 2).
 - ii) In calculating the total price due to the retailer, a non-collecting retailer may display a designation that no tax is being collected by the retailer or may entirely omit any reference to sales tax. In this case, the notice required by this paragraph 2) shall be sufficient if it appears on each invoice or, if no invoice is provided, if it is otherwise given to the purchaser as part of the sale, either immediately before, as part of, or immediately after the sale.
 - (1) Example: A non-collecting retailer may display a summary of the transaction with a line designated “Sales tax collected by [name of retailer]” and showing the amount collected as “zero” or “0.00” or any other designation indicating that no sales tax is being collected. In this case, the non-collecting retailer may provide the required notice only on the invoice or immediately before, as part of, or immediately after the sale.
 - b) The notice required by this paragraph 2) shall contain the following information:

- i) The non-collecting retailer does not collect Colorado sales or use tax;
 - ii) The purchase is not exempt from Colorado sales or use tax merely because it is made over the Internet or by other remote means;
 - iii) The State of Colorado requires that a Colorado purchaser (A) file a sales or use tax return at the end of the year reporting all of the taxable Colorado purchases that were not taxed and (B) pay tax on those purchases;
- c) The notice required by this paragraph 2) may contain the following additional information:
- i) The retailer will provide an end-of-year summary of Colorado purchases to the customer in order to assist purchasers in filing their tax report;
 - ii) Details of how and when to file this return may be found at the Colorado Department of Revenue's website, www.taxcolorado.com. The notice may substitute a more specific url when such more specific url is published by the Department;
 - iii) The retailer is required by law to provide the Colorado Department of Revenue with an annual report of the total dollar amount of all of a Colorado purchaser's Colorado purchases at the end of the year. The retailer will not provide any other details of the transaction to the Department other than the amount of the purchase.
- d) This notice must be clearly legible, reasonably prominent, and located in close proximity to the total price. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important sales tax information regarding the tax you may owe directly to your state", if such linking notice directs the Colorado purchaser to the principal notice required by this paragraph 2).
- e) If the retailer is required to provide a similar notice for another state in addition to Colorado, and the retailer provides a single such notice to all purchasers with respect to items purchased for delivery in all states, the notice required by this paragraph 2) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
- f) Penalties –
- i) The non-collecting retailer shall pay a penalty of \$5 for each sale to a Colorado purchaser with respect to which the notice required by this paragraph 2) does not appear.
 - ii) The penalty assessed against a single non-collecting retailer in a single year pursuant to this section shall not exceed the following amounts:
 - (1) For a non-collecting retailer that had no actual knowledge of the requirement and began to provide the required notices within 60 days of demand by the Department, \$5,000;
 - (2) For a non-collecting retailer that failed to provide the notices for the first calendar year for which the non-collecting retailer was obligated to provide the notices, \$50,000;

(3) For a non-collecting retailer that sells only goods that are not taxable in Colorado or sells goods only to purchasers that are not subject to sales or use tax, no penalty shall be collected.

iii) The Executive Director of the Department may waive all or any portion of the penalty for other reasonable cause shown.

3) Obligation to give Colorado purchasers notice of Colorado purchases

a) A non-collecting retailer must give an annual notice to all Colorado purchasers summarizing the Colorado purchaser's Colorado purchases for the preceding calendar year. The notice shall meet the following requirements:

i) The notice must be sent by first class mail to the last known address of the purchaser as described in paragraph vii) of this paragraph a). The envelope containing the notice must be prominently marked with the words "Important tax document enclosed";

ii) The notice must summarize the date(s) of purchase(s), a description of the type of item(s) purchased (e.g., books, food, consumer electronics, household appliances), and the dollar amount(s) of the purchase(s);

iii) The notice must also state that the State of Colorado requires that the consumer file a sales or use tax return at the end of every year and pay tax on all taxable Colorado purchases for which no tax has been collected by the retailer. The notice may state that details of these requirements, including how to file, may be found at the Colorado Department of Revenue's website, www.taxcolorado.com. The notice may substitute a more specific url when such more specific url is published by the Department;

iv) The notice must also indicate that the non-collecting retailer is required by law to provide the Colorado Department of Revenue with the total dollar amount of purchases made by the Colorado purchaser, however no information about the purchase other than the dollar amount of the purchase will be provided to the Department;

v) If known to the non-collecting retailer, the notice may also indicate whether an item is exempt from Colorado sales tax; however no non-collecting retailer is required to include such information;

vi) The notice must be sent by January 31st of each year summarizing purchases made for the prior calendar year.

vii) Last known address of the purchaser:

(1) The non-collecting retailer may maintain a notice address for the purchaser, in which case, the non-collecting retailer may send the notice required by this paragraph 3) to such notice address if the following conditions are met:

(a) The non-collecting retailer informs the purchaser that the non-collecting retailer will be providing an end of year notice to the taxpayer as described in this paragraph 3);

- (b) The non-collecting retailer informs the purchaser that the purchaser may choose to have the notice required by this paragraph 3) sent to a different address than the billing address (a “notice address”);
 - (c) The purchaser acknowledges that he or she understands the tax obligation described in the notice and wishes to have the notice sent to a different address than the billing address and provides such a notice address.
 - (2) If the above conditions have not been met and no billing address for the customer has been provided, then the non-collecting retailer shall send the notice required by this paragraph 3) to the purchaser’s shipping address.
 - (3) If no billing address and no shipping address for the customer has been provided and no other physical address for the purchaser is known using any other commercially reasonable method based on the business’s existing billing, customer-tracking or other systems, then the non-collecting retailer shall send the notice required by this paragraph 3) to the most recent e-mail address the non-collecting retailer has for the purchaser.
 - b) If the retailer is required by another state to provide a similar notice, and the retailer provides a single such notice to all purchasers with respect to items purchased for delivery in all states, the notice required in subparagraph a) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
 - c) De minimis Colorado purchaser –
 - i) Any non-collecting retailer that is required to send the notice required by this paragraph 3) to Colorado purchasers and that has complied with paragraph iii) of this paragraph c), is not required to send the notice required by this paragraph 3) to any Colorado purchaser whose total Colorado purchases for the prior calendar year are less than \$500;
 - ii) If the goods purchased are not subject to Colorado use tax, a non-collecting retailer may choose to exclude such purchases from the calculation in paragraph i) of this paragraph c), however, no non-collecting retailer is obligated to do so;
 - iii) Any non-collecting retailer wishing to take advantage of the limitation in paragraph i) of this paragraph c) must make commercially reasonable business efforts, based on the business’s existing billing, customer-tracking, or other systems, to identify multiple purchases made by a single Colorado purchaser.
 - d) Penalties
 - i) The non-collecting retailer shall pay a penalty of \$10 for each notice required by this paragraph 3) that is not sent by the non-collecting retailer to the Colorado purchaser.
 - ii) The penalty assessed against a single non-collecting retailer pursuant to this section shall not exceed the following amounts:

- (1) For a non-collecting retailer that sent the notices within 30 days after the due date, \$1,000;
 - (2) For a non-collecting retailer that had no actual knowledge of the requirement and sent the notices within 60 days after demand by the Department of Revenue to issue such notices, \$10,000;
 - (3) For a non-collecting retailer that failed to send the notices for the first calendar year for which the non-collecting retailer was obligated to send the notices, \$100,000;
 - (4) For a non-collecting retailer that sells only goods that are not taxable in Colorado or sells goods only to purchasers that are not subject to sales or use tax, no penalty shall be collected.
 - iii) The Executive Director of the Department may waive all or any portion of the penalty for other reasonable cause shown.
- 4) Obligation to give the Department notice of purchases made by Colorado purchasers
- a) Any non-collecting retailer who is required to provide a notice described in paragraph 3) must file a report with the Department containing the following information:
 - i) The name of each Colorado purchaser;
 - ii) The billing address of each Colorado purchaser, if the information was provided to the non-collecting retailer;
 - iii) The shipping address of each Colorado purchaser, if the information was provided to the non-collecting retailer;
 - iv) The total dollar amount of Colorado purchases made by each Colorado purchaser during the prior calendar year. No other information about the purchase shall be provided.
 - b) If the non-collecting retailer has more than one Colorado billing address or more than one Colorado shipping address for a Colorado purchaser, then the non-collecting retailer shall provide all such addresses of the Colorado purchaser.
 - c) If the non-collecting retailer made more than \$100,000 worth of total gross sales in Colorado during the prior calendar year, the non-collecting retailer shall electronically send the data required by this paragraph 4). If the non-collecting retailer made less than \$100,000 worth of sales in Colorado during the prior calendar year, the non-collecting retailer may electronically send the data required by this paragraph 4). The Department of Revenue shall publish on its website by November 1st of each year the required format and data elements of the report and shall publish details of how the report file is to be transmitted to the Department.
 - d) Any non-collecting retailer that is not required to send any notices pursuant to paragraph 3) of this rule is also exempt from the requirements to send the report described in this paragraph 4).
 - e) If a non-collecting retailer is required to provide any notices pursuant to paragraph 3) of this rule, then such non-collecting retailer must include all the purchases made by all

Colorado purchasers in its report, including any purchases made by de minimis Colorado purchasers.

f) Penalties

- i) If a non-collecting retailer fails to file the report required by this paragraph (4), the non-collecting retailer shall pay a penalty equal to \$10 times the number of Colorado purchasers that should have been included in the report.
- ii) The penalty assessed against a single non-collecting retailer in a single year pursuant to this section shall not exceed the following amounts:
 - (1) For a non-collecting retailer that filed the report within 30 days of the due date, \$1,000;
 - (2) For a non-collecting retailer that had no actual knowledge of the requirement and filed the report within 60 days of demand by the Department that the report be filed, \$10,000;
 - (3) For a non-collecting retailer that failed to file the report for the first calendar year for which the non-collecting retailer was obligated to file the report, \$100,000;
 - (4) For a non-collecting retailer that sells only goods that are not taxable in Colorado or sells goods only to purchasers that are not subject to sales or use tax, no penalty shall be collected.
- iii) The Executive Director of the Department may waive all or any portion of the penalty for other reasonable cause shown.