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.

(c) Notice and Reports to Purchasers, Required. A person who sells or leases a product for delivery to a location in this state, the storage, use, or consumption of which is subject to upon which sale or lease a tax collection responsibility would be imposed pursuant to [State Use Tax Act]; or the sale or lease of which is subject to [State Sales Tax Act]; if such person were doing business in the state, but who does not collect or remit either such tax, shall provide the following notices and reports.

(1) Notice to Purchaser at Time of Transaction. Notice A notice shall be provided, to each purchaser 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].

(A) 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 indicate that neither sales or 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.

(A) A person required to provide the notice by this section (b)(1) shall be prominently displayed the notice on all order forms, including, where applicable, internet, electronic 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, and upon each sales 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 transaction is given is exempt from [State] sales and use tax pursuant to [State] law.

(B) A person who fails to provide notice in the time and manner as 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 in any calendar year:

(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 this penalty for good cause shown.

[CO Penalty: 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.]

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

(A) The report shall provide include:
(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, 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)(3) of this Act; and

(v) any other information as the Director shall reasonably require by regulation.

(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 to the purchaser’s last-known e-mail address with a subject heading indicating important tax information is enclosed.

(C) A person who fails to provide a report in the time and manners required by section (bc)(2) shall be assessed a penalty, in addition to any other penalties, of $X for each such failure, not to exceed in any calendar year:

(i) a total of $Y if such person had no actual knowledge of the requirement and remedied the failure by providing notices within $X days of receiving actual knowledge, and

(ii) a total of $Z if such person had actual knowledge or did not remedy the failure within $X days of receiving actual knowledge.

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

[CO Penalty:
i) The non-collecting retailer shall pay a penalty of $10 for each notice required by this paragraph 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;]
(3)  **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 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 as 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 in any calendar year:

(i) a total of $Y if such person had no actual knowledge of the requirement and remedied the failure by providing the report within $X days of receiving actual knowledge, and
(ii) a total of $Z if such person had actual knowledge or did not remedy the failure within $X days of receiving actual knowledge.

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

[CO Penalty:
(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.]

(d) **Exceptions.**
(1) **Small Seller.** A person who made less than $A \text{[original SST threshold for small seller was $100,000]} \text{in total gross sales during the prior calendar year shall not be required to file notice or reports pursuant to section (bc) of this Act.}

(2) **De minimis In-State Sales.** A person who made less than $B \text{[CO: $100,000]} \text{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 (bc) of this Act.}

(e) **Confidentiality of Purchaser Information.** Information received by the \text{[State Department of Revenue]} pursuant to this Act shall be exempt from any disclosure required pursuant to \text{[State Open Records Act]}. Such information shall be treated as confidential taxpayer information pursuant to \text{[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 \text{[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.