



MULTISTATE TAX COMMISSION

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

### **Model Sales & Use Tax Notice and Reporting Statute Policy Checklist May 3, 2010**

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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 minimus based on total gross receipts (not just in-state gross receipts), indexed for inflation.
- (a) Should in-state only gross receipts be considered?
- (b) Is this issue better addressed in regulation?
- iv)** Are there other sellers that should be excepted from the reporting requirement because they do not purposely avail themselves of a state's market even though they make sales in the state?

## **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? If so, what should the notice(s) say?
- 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?
- iii)** When should notice be provided? Prior or/and post sale? Whenever a price is stated?
- iv)** Should notice be required when the consumer's shipping address, billing address, either, or both are in-state?

### **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?
- 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?
- 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?
- 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?

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

- i)** Should the seller be required to report total dollar amount of sales to in-state consumers over a specific period to the Department?
- 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)?
- iii)** Should seller be exempted from reporting to the Department when the purchaser's purchases are de minimis? What qualifies as de minimis?

## **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?
- B. Should penalties be subject to a cap? Should seller have the opportunity to cure the violation?
- 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?

#### **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.
- 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.