

1 MTC Model Use Tax Reporting Statute

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4 (a) **Administration.** [The [State Department of Revenue] shall perform all functions necessary
5 and proper for the administration and enforcement of this AetSection, including
6 promulgating regulations and reviewing protests in accordance with the [State
7 Administrative Procedures Act].]

8 (b) **Definitions.** For purposes of this AetSection:

9 (1) **“Department”** means the [State Department of Revenue].

10 (2) **“Director”** means the Director of the [State Department of Revenue].

11 (3) **“Marketplace”** means a place, digital or otherwise, on which or through which
12 multiple sellers may advertise and/or sell tangible personal property without the tangible
13 personal property or the seller ~~necessarily~~ being physically in the state.

14 (4) **“Marketplace facilitator”** means a person who, pursuant to an agreement with a seller,
15 and for consideration, facilitates sales by such seller through a marketplace operated by
16 the person, and engages directly or indirectly, including through one or more related
17 persons, in transmitting or otherwise communicating the offer and acceptance between a
18 ~~buyer-purchaser~~ and a seller;

19 (5) **“Marketplace seller”** means a seller that sells or leases tangible personal property
20 through a marketplace.

21 (6) **“Non-Collecting Seller”** means a person who sells or leases tangible personal property,
22 the storage, use, sale, lease or consumption of which is subject to [State Sales And/Or
23 Use Tax Act] and who does not collect the tax.

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24 (7) **“Purchaser”** means any person who purchases or leases tangible personal
25 ~~property~~property for delivery to a location in this state.

26 (8) **“Referrer”** means a person who:

27 (A) Contracts or otherwise agrees with a seller to list and/or advertise for sale tangible
28 personal property in any form, including, but not limited to, a catalog or Internet
29 website;

30 (B) Receives a fee, commission, and/or other consideration from a seller for the listing
31 for sale and/or advertisement of tangible personal property;

32 (C) Transfers, via in-state software, Internet link, or otherwise, an in-state customer to
33 the seller or the seller’s employee, affiliate, or website; and

34 (D) Is not a marketplace facilitator with respect to the transaction.

35 (9) **“Related Party”** means [state should insert chosen state definition of related party]

Comment [CP(1)]: I am not sure what we are saying....is it the website of the employee or affiliate or also the website of the seller?

36 (c) **Notice and Reports, Required.**

37 (1) **Notice to Purchaser at Time of Transaction.** Non-collecting sellers and
38 marketplace facilitators shall provide the following notice to each purchaser at the

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- 1 time of each purchaser's sale or lease.
- 2 (A) The notice shall indicate that neither sales nor use tax is being collected or remitted
3 upon the transaction, and that the purchaser may be required to remit such tax
4 directly to the Department.
- 5 (B) The notice shall be prominently displayed on all invoices and order forms, including,
6 where applicable, electronic and catalogue invoices and order forms, and upon each
7 sale or lease receipt provided to the purchaser.
- 8 (C) The non-collecting seller shall provide the transactional notice **except** that the
9 marketplace facilitator shall provide the transaction notice in all cases where the
10 marketplace facilitator facilitated the sale.
- 11 (2) **Annual Non-collecting Seller Report to Purchaser.** On or before
12 January 31 of each year, non-collecting sellers and marketplace facilitators shall
13 provide the following report to each purchaser before January 31st of each year.
- 14 (A) The report shall include:
- 15 1. a statement indicating that the non-collecting seller or marketplace
16 facilitator did not collect sales or use tax on the purchaser's transactions in
17 the prior calendar year and that the purchaser may be required to remit such tax
18 directly to the Department;
 - 19 2. a list of transactions, by date, generally indicating the type of tangible personal
20 property purchased or leased during the prior calendar year by the purchaser
21 from such non-collecting seller or marketplace facilitator for delivery to a
22 location in this state and the price of each item of tangible personal property;
 - 23 3. instruction for obtaining additional information regarding whether and how to
24 remit the sales or use tax to the Department;
 - 25 4. a statement that such non-collecting seller or marketplace facilitator is
26 required to submit a report to the Department pursuant to **subsection** (c)(3) of
27 this Act stating the total dollar amount of the purchaser's purchases; and
 - 28 5. any additional information the Director shall reasonably require.
- 29 (B) The report shall be sent to the purchaser's billing address, or if unknown, the
30 purchaser's shipping address, in an envelope marked prominently with words
31 indicating important tax information is enclosed. If no billing or shipping address
32 is known, the report shall be sent electronically to the purchaser's last-known e-mail
33 address with a subject heading indicating important tax information is **enclosed**.
- 34 (C) Notwithstanding **sub**Section (c)(2)(B) if the purchaser's billing or shipping address
35 is known, the non-collecting seller may choose to provide the annual report to the
36 purchaser electronically, provided that:
- 37 1. No earlier than December 1st and no later than December 31st of the year to be
38 covered by the electronic report, the purchaser agrees to receive the notice
39 electronically, and
 - 40 2. The purchaser acknowledges that she or he understands that the report to be

Comment [CP(2)]: So is it in lieu of or in addition to ?

Comment [CP(3)]: Isn't this a form of a sourcing rule? Doesn't this adequately handle digital goods?

1 received electronically will contain important tax information which information
2 will also be sent to the Department.

3 (D) The non-collecting seller shall include in its annual non-collecting seller report to
4 purchaser all of its sales to each purchaser for which no marketplace facilitator
5 facilitated the sale. The marketplace facilitator shall include in its annual non-
6 collecting seller report to purchaser all of the sales to each purchaser for which it
7 acted as a marketplace facilitator.

Comment [CP(4)]: Is this supposed to square up with c(1)(C)? If so, use the same language.

8 (3) **Annual Non-Collecting Seller Report to [State Department of Revenue].**
9 Non-collecting sellers and marketplace facilitators ~~shall provide~~ shall provide the
10 following report to the Department before January 31st of each year.

11 (A) The report shall include, with respect to each purchaser:

- 12 1. the name of the purchaser;
- 13 2. the billing address and, if different, the last known mailing address;
- 14 3. the shipping address for each item of tangible personal ~~property sold~~ property
15 sold or leased to such purchaser for delivery to a location in this state; and
- 16 4. the total dollar amount of all such purchases by such purchaser which were
17 made during the prior calendar year for delivery to each such address.

18 (B) The report shall be filed electronically in the form and manner required by the
19 Director.

20 (C) The non-collecting seller shall include in its annual non-collecting seller report to
21 [state department of revenue] all of its sales to each purchaser for which no
22 marketplace facilitator facilitated the sale. The marketplace facilitator shall include in
23 its annual non-collecting seller report to [state department of revenue] all of the sales
24 to each purchaser for which it acted as a marketplace facilitator.

Comment [CP(5)]: Same comment as above for (2)(D)

25 (d) **Reports by Referrer.**

26 (1) At any time during a calendar year that a referrer receives at least \$20,000 in gross
27 receipts in the aggregate from fees, commissions, and/or other compensation paid to it
28 by sellers with whom it has a contract or agreement to list for sale and/or to advertise
29 any tangible personal property, for sale within this state [*alternative*: at least \$100,00
30 from all national referrals] said referrer shall within thirty (30) days provide written
31 notice to all such sellers that the sellers' sales may be subject to this state's sales and
32 use tax and that each such seller may have an obligation to provide the notices
33 required by this AetSection.

Comment [CP(6)]: Is this an aggregate number?

34 (2) On or before January 31 of each year, in the manner required by the director, the
35 referrer shall report the identity of each seller for which the referrer was required to
36 provide the written notice described in subsSection (d)(1). The referrer shall notify
37 each such seller that it has done so on or before January 31 of each year, for the
38 previous calendar year.

39
40 (e) **Reporting Requirements As Applied to Related Pparties.** Any member of a group of

1 related parties may file the reports required herein with respect to any non-collecting seller
2 among the related parties, provided that the annual report to the purchaser shall contain
3 sufficient information to allow the purchaser to determine the identity of the non-collecting
4 seller making each sale reported in the report.

Comment [CP(7)]: Do we have to tighten this up and say that it will be clearly marked as being filed by a member of a related party or do we have enough wiggle room so the Director can add that requirement on the forms?

5 (f) **Exceptions.**

6 **(1) De minimis In-State Sales.** A non-collecting seller who made less than \$B [state
7 should choose an approach similar to *either* \$5,000,000 in national gross sales *or*
8 \$100,000 in total gross sales for delivery to a location in this state] during the prior
9 calendar year, or who acted as a marketplace facilitator for sales less than \$B [state
10 should insert the same rule as above], shall not be required to provide notice or file
11 reports pursuant to subsection (c) of this AetSection.

12 **(2) Exceptions as Applied to Related Parties.** Related parties shall calculate these
13 exceptions for the entire group.

14 **(3) Sales by Registered Sellers.** A person who is registered to collect and remit sales
15 and use tax, and who complies in good faith with the [State Sales and Sales And/OR
16 Use Tax Acts], is not be required to provide notice or file reports pursuant to
17 this AetSection.

18 (g) **Penalties.**

19 **(1) Amount.** The Director shall assess a penalty upon any person obligated to file a
20 notice or report who fails to provide notices and reports as required by this Aet
21 Section as follows:

22 **(A) Penalty for Failure to Provide Notice to Purchaser at Time of Transaction.** A
23 person who fails to provide notice as required by subsection (c)(1) shall be assessed
24 a penalty, in addition to any other applicable penalties, in the amount of \$X for each
25 such failure, not to exceed:

- 26 1. a total of \$Y in one calendar year, if such person remedied each failure by
27 providing such notices within X days of the date such notice was required to
28 be provided, and
- 29 2. a total of \$Z in one calendar year where subsection (e)(1)(A)(i) of this Aet
30 Section does not apply.

Comment [CP(8)]: I think this reference is off

31 **(B) Penalty for Failure to Provide Annual Report to Purchaser.** A person who fails
32 to provide a report as required by subsection (c)(2) shall be assessed a penalty, in
33 addition to any other applicable penalty, of \$X for each such failure, not to exceed:

- 34 1. a total of \$Y in one calendar year if such person remedied each failure by
35 providing such notices within X days of the date such report was required to
36 be provided, and
- 37 2. a total of \$Z in one calendar year where subsection (e)(1)(B)(i) of this Aet
38 Section does not apply.

Comment [CP(9)]: Same comment as above

39 **(C) Penalty for Failure to Provide Annual Report to Department.** A person who
40 fails to provide a report as required by section (c)(3) shall be assessed a penalty, in
41 addition to any other applicable penalty, equal to \$X times the number of such

- 1 purchasers that should have been included on such report, not to exceed:
- 2 1. a total of \$Y in one calendar year if such person remedied the failure by
- 3 providing the report within X days of the date such report was required to be
- 4 provided, and
- 5 2. a total of \$Z in one calendar year where section (e)(1)(C)(i) of this [Act-Section](#)
- 6 does not apply.

Comment [CP(10)]: Same comment as above

7 (D) **Penalty for Failure to Provide Referrer Report.** A person who fails to provide a

8 report as required by section (d)(2) shall be assessed a penalty, in addition to any

9 other applicable penalty, equal to \$X times the number of such non-collecting sellers

10 that should have been included on such report, not to exceed:

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- 11 1. a total of \$Y in one calendar year if such person remedied the failure by
- 12 providing the report within X days of the date such report was required to be
- 13 provided, and
- 14 2. a total of \$Z in one calendar year where section (e)(1)(C)(i) of this [Act-Section](#)
- 15 does not apply.

Comment [CP(11)]: Same comment as above.

16 [Drafters' comment: The use of "X", "Y", and "Z" as placeholder dollar amounts in

17 penalties under (A)-(D) of this subsection are independent in each lettered subsection.

18 For example, the amount used for "X" in one lettered subsection may well be a different

19 amount than the amount used for "X" in another or all other lettered subsections. The use

20 of the same letter is not meant to suggest that they should be the same. However,

21 common lettering is used to note that the amounts are imposed for similar purposes in

22 each lettered subparagraph.]

23 (2) **Estimates Authorized.** When assessing a penalty pursuant to [sub](#)section (e) of this

24 [ActSection](#), the Director may use any reasonable sampling or estimation technique

25 where necessary or appropriate to determine the number of failures in any calendar

26 year.

27 (3) **Protest.** A person may protest the assessment of any such penalty or interest by

28 filing a written objection with the Director within [number of days equal to the

29 number of days allowed for protest of a use tax assessment or refund denial] days of

30 the date of assessment. Disposition of a timely filed protest shall be in accordance

31 with [State Administrative Procedures Act]. If no such protest is filed within the time

32 allowed, the assessment shall become final and subject to [judgment, warrant,

33 collection procedures].

34 (4) **Interest.** Interest shall accrue on the amount of the total penalty that has been

35 assessed and become final for each calendar year pursuant to [sub](#)section (e) of

36 [this Act](#) at the rate established pursuant to [state code section setting interest rate for

37 tax underpayment].

38 (5) **Waiver.** Upon written request received within the time established for protest

39 pursuant to [sub](#)section (e) ~~(34)~~ above, the Director, in his or her sole discretion, may

40 waive any portion or all of the penalty or interest applicable under this section for

41 good cause shown.

42 (h) **Confidentiality of Purchaser Information.** Information received by the [State Department

1 | of Revenue] pursuant to this ~~Aet~~Section shall be exempt from any disclosure required
2 | pursuant to [State Open Records Act]. Such information shall be treated as confidential
3 | taxpayer information pursuant to [cite to open records exception for confidential taxpayer
4 | information, including exceptions statutes] and all exceptions, penalties, punishments, and
5 | remedies applicable to disclosure of confidential taxpayer information pursuant to [cite to
6 | statutes regarding confidential taxpayer information disclosure exceptions and penalties]
7 | shall apply to disclosure of information received by the Department pursuant to this
8 | ~~Aet~~Section.

9 | (i) **Sourcing Sales of Digital Goods and software.** For purposes of filing the reports required
10 | ~~herein~~in this section, the seller or marketplace facilitator may consistently use any
11 | commercially reasonable method of sourcing the sales. [Drafters' comment: The choice not
12 | to suggest the use of the state's specific sourcing method for these sales is conscious. Non-
13 | collecting sellers would not generally be subject to the state's tax collection jurisdiction.
14 | This rule is intended to be flexible and allow a single business to apply a single sourcing rule
15 | across all states.]

16 | (j) **Lookback period.** The Department may require the seller or marketplace facilitator to file
17 | reports for prior years, not to exceed the number of open tax years pursuant to [the
18 | applicable general statute of limitations for purchaser use tax reporting]. In all cases where
19 | the original seller or marketplace facilitator has been acquired by a successor in interest, the
20 | lookback period shall not exceed the number of years for which a successor in interest is
21 | liable for the obligations of its predecessor in interest pursuant to [applicable state statute].

22 | (k) **Limitations.** Nothing in this ~~Aet~~Section shall relieve a person who is subject to [the state's
23 | sales tax act or the Sales And/Or Use Tax Act] from any responsibilities imposed thereunder.
24 | Nor shall anything in this ~~Aet~~Section prevent the Director from administering and
25 | enforcing [the state's sales tax act or the Sales And/Or Use Tax Act] with respect to any
26 | person who is subject ~~thereto~~to them.

27 | (l) **Severance.** The provisions of this ~~Aet~~Section are severable and if any section, sentence,
28 | clause or phrase of this ~~Aet~~Section shall for any reason be held to be invalid or
29 | unconstitutional, such holding shall not affect the validity of the remaining sections,
30 | sentences, clauses, and phrases of this ~~Aet~~Section, which shall remain in effect.