

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

5 (b) **Definitions.** For purposes of this Act:

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

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

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

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

16 (2)(5) **“Marketplace seller”** means a seller that sells or leases tangible personal
17 property through a marketplace.

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

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

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

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

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

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

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

32 (c) **Notice and Reports, Required.** A ~~person non-collecting seller who sells or leases a~~
33 ~~product; the storage, use, or consumption of which is subject to [State Use Tax Act], or the~~
34 ~~sale or lease of which is subject to [State Sales Tax Act]; but who does not collect and remit~~
35 ~~either such tax,~~ shall provide the following notice and reports.

36 (1) **Notice to Purchaser at Time of Transaction.** A notice shall be provided to each
37 purchaser at the time of each such sale or lease.

38 (A) The notice shall indicate that neither sales nor use tax is being collected or remitted
39 upon the transaction, and that the purchaser may be required to remit such tax
40 directly to the Department.

Comment [SHL1]: Keep or delete?

Formatted: Font: Not Bold

Formatted: Add space between paragraphs of the same style, Line spacing: single

Formatted: Font: Times New Roman, 12 pt

1 (B) The notice shall be prominently displayed on all invoices and order forms, including,
2 where applicable, electronic and catalogue invoices and order forms, and upon each
3 sale or lease receipt provided to the purchaser. No indication shall be made that
4 sales or use tax is not imposed upon the transaction, unless: (i) such indication is
5 followed immediately with the notice required by this section (c)(1); or (ii) the
6 transaction with respect to which the indication is given is exempt from [State] sales
7 and use tax pursuant to [State] law.

Comment [SHL2]: START HERE ON OCTOBER 11TH

8 (C) Notwithstanding the provisions of this section, the marketplace facilitator shall
9 provide the transaction notice in lieu of the marketplace seller, in all cases where the
10 marketplace facilitator facilitated the sale.

Comment [SHL3]: Should this be revised and moved elsewhere?

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

13 (A) The report shall include:

- 14 1. a statement indicating that the person-non-collecting seller did not collect
15 sales or use tax on the purchaser's transactions and that the purchaser may be
16 required to remit such tax directly to the Department;
- 17 2. a list, by date, generally indicating the type of tangible personal property
18 product purchased or leased during the prior calendar year by the purchaser from
19 such person-non-collecting seller for delivery to a location in this state and the
20 price of each item of tangible personal property; product
- 21 3. instruction for obtaining additional information regarding whether and how to
22 remit the sales or use tax to the Department;
- 23 4. a statement that such person-non-collecting seller is required to submit a
24 report to the Department pursuant to section (c)(3) of this Act stating the total
25 dollar amount of the purchaser's purchases; and
- 26 5. any information ~~as~~ the Director shall reasonably require.

27 (B) The report shall be sent to the purchaser's billing address, or if unknown, the
28 purchaser's shipping address, in an envelope marked prominently with words
29 indicating important tax information is enclosed. If no billing or shipping address
30 is known, the report shall be sent electronically to the purchaser's last-known e-mail
31 address with a subject heading indicating important tax information is enclosed.

32 ~~(A)~~(C) The non-collecting seller may choose to provide the annual report to the
33 purchaser electronically, provided that:

Formatted: Right: 0.04", Outline numbered + Level: 3 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Tab after: 0.75" + Indent at: 0.75", Tab stops: 1.07", Left

- 34 1. No earlier than December 1st and no later than December 31st of the year to be
35 covered by the electronic report. ~~t~~The purchaser agrees to receive the notice
36 electronically ~~notice no later than December 1 of each year to be covered by the~~
37 electronic report, and
- 38 2. The non-collecting seller offers the purchaser the option to receive electronic
39 notice on an annual basisThe purchaser acknowledges that she or he understands
40 that the report to be received electronically will contain important tax information
41 which information will also be sent to the Department.

Formatted: Superscript

Formatted: Superscript

~~(D)~~ Notwithstanding the provisions of this section, the marketplace facilitator shall provide the annual report in lieu of the marketplace seller, in all cases where the marketplace facilitator facilitated the sale.

~~(3)~~ **Reports by Referrer.**

~~(2)~~ (A) At such time during any calendar year, or any portion thereof, that a referrer receives more than then thousand dollars (\$10,000) from fees, commissions, and/or other compensation paid to it by sellers with whom it has a contract or agreement to list for sale and/or to advertise any tangible personal property, said referrer shall within thirty (30) days provide written notice to all such sellers that the sellers' sales may be subject to this state's sales and use tax and that each such seller may have an obligation to provide the notices required by this Act.

~~(B)~~ The referrer shall report the identity of each seller listed on the notice described in Section (c)(3)(A) to the [State Department of Revenue]. The referrer shall notify each such seller that it has done so.

~~(3)~~ (4) 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 include, with respect to each purchaser:

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

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

~~(3)~~ (C) The report shall be filed by the seller unless a marketplace facilitator facilitated the sale, in which case the marketplace facilitator shall file the report.

~~(4)~~ (5) Reporting Requirements As Applied to Controlled Groups. Any member of a controlled group may file the reports required herein, provided that the annual report to the purchaser shall contain sufficient information to allow the consumer to determine the identity of the actual seller.

(d) **Exceptions.**

(1) **Small Seller.** A person-non-collecting seller who made less than \$A [original SST threshold for small seller was \$100,000] in total gross sales during the prior calendar year, or who acted as a marketplace facilitator for such sales, shall not be required to provide notice or file reports pursuant to section (c) of this Act.

(2) **De minimis In-State Sales.** A person-non-collecting seller who made less than \$B [CO: \$100,000] in total gross sales for delivery to a location in this state during the prior calendar year, or who acted as a marketplace facilitator for such sales, shall not be required to provide notice or file reports pursuant to section (c) of this Act.

Comment [SHL4]: Lila, see Phil's h5 comment.

Comment [h5]: I think this has to be "(d)" rather than being a numbered paragraph under (c), which refers to the reports by the non-collecting seller.

Comment [SHL6]: This provision is adapted from the RI statute.

Formatted: Right: 0.04", Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Tab after: 0.5" + Indent at: 0.5", Tab stops: 1.07", Left

Comment [SHL7]: To customers in this state? Is there a due process enforcement problem if the reporting obligation is not limited to in-state referrals? But if it is so limited, the referrals might not take place in the year in which the fees were paid.

Formatted: Right: 0.04", Outline numbered + Level: 3 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Tab after: 0.75" + Indent at: 0.75", Tab stops: 1.07", Left

Comment [SHL8]: Should this be here or elsewhere in the draft as a stand-alone reporting provision for facilitators.

Comment [h9]: Should this be "(6)" under (c)? I don't think it makes sense as a stand alone paragraph.

Comment [SHL10]: Smaller threshold for small sellers? This draft has a \$10,000 threshold for referrers.

Comment [SHL11]: Smaller threshold for facilitators? This draft has a \$10,00 threshold for referrers.

- 1 (3) Exceptions as Applied to Controlled Group. Controlled groups filing a single report
2 shall calculate these exceptions at the controlled group level.
- 3 (4) **Sales by Registered ~~Vendors~~Sellers.** A person who is registered to collect and remit
4 sales and use tax, and who complies in good faith with the [State Sales and ~~Use Tax~~
5 ~~Act~~Sales And/Or Use Tax Acts], shall not be required to provide notice or file
6 reports pursuant to section (c) of this Act.

7 (e) **Penalties.**

- 8 (1) **Amount.** The Director shall assess a penalty upon any **person** who fails to provide
9 notices and reports as required by this Act as follows:

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

- 14 1. a total of \$Y in one calendar year, if such person remedied each failure by
15 providing such notices within X days of the date such notice was required to
16 be provided, and
- 17 2. a total of \$Z in one calendar year where section (e)(1)(A)(i) of this Act does not
18 apply

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

- 22 1. a total of \$Y in one calendar year if such person remedied each failure by
23 providing such notices within X days of the date such report was required to
24 be provided, and
- 25 2. a total of \$Z in one calendar year where section (e)(1)(B)(i) of this Act does not
26 apply.

27 (C) **Penalty for Failure to Provide Annual Report to Department.** A person who
28 fails to provide a report as required by section (c)(3) shall be assessed a penalty, in
29 addition to any other applicable penalty, equal to \$X times the number of such
30 purchasers that should have been included on such report, not to exceed:

- 31 1. a total of \$Y in one calendar year if such person remedied the failure by
32 providing the report within X days of the date such report was required to be
33 provided, and
- 34 2. a total of \$Z in one calendar year where section (e)(1)(C)(i) of this Act does not
35 apply.

- 36 (2) **Estimates Authorized.** When assessing a penalty pursuant to section (e) of this Act,
37 the Director may use any reasonable sampling or estimation technique where necessary
38 or appropriate to determine the number of failures in any calendar year.

- 39 (3) **Protest.** A person may protest the assessment of any such penalty or interest by filing a
40 written objection with the Director within [number of days equal to the number of days

Comment [SHL12]: The term "person" does seem to be the correct term to use in this penalty section.

- 1 allowed for protest of a use tax assessment or refund denial] days of the date of
2 assessment. Disposition of a timely filed protest shall be in accordance with [State
3 Administrative Procedures Act]. If no such protest is filed within the time allowed, the
4 assessment shall become final and subject to [judgment, warrant, collection procedures].
- 5 (4) **Interest.** Interest shall accrue on the amount of the total penalty that has been
6 assessed and become final for each calendar year pursuant to section (e) of this Act at
7 the rate established pursuant to [state code section setting interest rate for tax
8 underpayment].
- 9 (5) **Waiver.** Upon written request received within the time established for protest
10 pursuant to section (e)(4) above, the Director, in his or her sole discretion, may waive
11 any portion or all of the penalty or interest applicable under this section for good cause
12 shown.
- 13 (f) **Confidentiality of Purchaser Information.** Information received by the [State Department
14 of Revenue] pursuant to this Act shall be exempt from any disclosure required pursuant to
15 [State Open Records Act]. Such information shall be treated as confidential taxpayer
16 information pursuant to [cite to open records exception for confidential taxpayer
17 information, including exceptions statutes] and all exceptions, penalties, punishments, and
18 remedies applicable to disclosure of confidential taxpayer information pursuant to [cite to
19 statutes regarding confidential taxpayer information disclosure exceptions and penalties]
20 shall apply to disclosure of information received by the Department pursuant to this Act.
- 21 (g) Sourcing Sales of Digital Goods. For purposes of filing the reports required herein, the
22 seller or marketplace facilitator may use any commercially reasonable method of sourcing
23 the sales.
- 24 (h) Lookback period. The Department may require the seller or marketplace facilitator to file
25 reports for prior years, not to exceed the number of open tax years pursuant to [the
26 applicable general statute of limitations for consumer use tax reporting]. In all cases where
27 the original seller or marketplace facilitator has been acquired by a successor in interest, the
28 lookback period shall not exceed the number of years for which a successor in interest is
29 liable for the obligations of its predecessor in interest pursuant to [applicable state statute].
- 30 (i) **Limitations.** Nothing in this Act shall relieve a person who is subject to [the state's sales
31 tax act or the ~~use tax act~~Sales And/Or Use Tax Act] from any responsibilities imposed
32 thereunder. Nor shall anything in this Act prevent the Director from administering and
33 enforcing [the state's sales tax act or the ~~use tax act~~Sales And/Or Use Tax Act] with respect
34 any person who is subject thereto.
- 35 (j) **Severance.** The provisions of this Act are severable and if any section, sentence, clause or
36 phrase of this Act shall for any reason be held to be invalid or unconstitutional, such
37 holding shall not affect the validity of the remaining sections, sentences, clauses, and
38 phrases of this Act, which shall remain in effect.