



**Introduction to
MTC Model Sales and Use Tax Notice and Reporting Statute**

The proposed model statute below was approved by the Multistate Tax Commission Uniformity Committee for referral to the Commission’s Executive Committee on April 25, 2018 (with minor formatting, numbering, conforming, and cross-referencing edits). The Executive Committee approved the model for public hearing at its meeting on April 26, 2018 (with those same edits to be done by staff). This model contains the edits by staff.

The main parts of this model are: (a) Definitions; (b) Notice and Reports, Required; (c) Reports by Referrer; (d) Reporting Requirements as Applied to Related Parties; (e) Exceptions; (f) Penalties; (g) Confidentiality of Purchaser Information; (h) Lookback Period; (i) Construction with Other Laws; (j) Limitations on Liability; (k) Severability; and (l) Administration.

Note that for ease of review the following conventions are followed (which do not generally conform to the ULC Drafting Rules):

- Certain parts and subparts have titles.
- Defined words or terms are always capitalized (unless they are part of or modify another term otherwise used in the model).
- Names of required notices and reports are also capitalized.
- Cross-references are all to parts and subparts of this model.
- Cross-references are underlined and begin “Part” followed by the reference to the specific part or subpart number.
- Brackets contain information the state adopting the model must insert.

MTC Model Sales and Use Tax Notice and Reporting Statute

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3 (a) Definitions. For purposes of this [reference to the chapter or act containing this model]:

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(1) "Department" means the [state department of revenue].

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(2) "Director" means the [head of the state department of revenue].

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(3) "Marketplace" is any means, whether physical or electronic, through which one or more Sellers may advertise and sell or lease tangible personal property, such as a catalog, Internet website, or television or radio broadcast, regardless of whether the tangible personal property or the Seller are physically present in the state.

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(4) "Marketplace Facilitator" means a Person that operates or controls a Marketplace and facilitates Transactions by engaging, directly or indirectly, in communicating the offer and acceptance between a Purchaser and a Seller. A Marketplace Facilitator that also engages in Transactions as a Seller is treated as a Seller with respect to those Transactions.

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DRAFTER'S NOTE: States might want to consider adding "payment processing" to the definition.

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(5) "Marketplace Seller" means a Seller that sells or leases tangible personal property through a third-party marketplace.

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(6) "Marketplace Transaction" means a Transaction facilitated by a Marketplace Facilitator.

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(7) "Non-collecting Seller" means a Seller that sells or leases tangible personal property and does not collect tax due under [reference to state sales and use tax provisions] on a Transaction.

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(8) "Order Form" is the means by which a Purchaser conveys to a Seller, prior to the Transaction, the purchase of specifically identified tangible personal property.

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(9) "Person" includes any individual, firm, corporation, partnership, limited liability company, joint venture, estate, trust, or group or combination acting as a unit.

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DRAFTER'S NOTE: A state should adopt this definition only if there is no generally applicable definition of "Person" that includes a business. The model is intended to extend to business to business Transactions. Therefore, the definition must include businesses.

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(10) "Purchaser" means any Person that purchases or leases tangible personal property for delivery to a location in this state.

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1 (11) “Referrer” means a Person that:

2 (A) Contracts with a Seller or Seller’s representative to advertise or list tan-
3 gible personal property for sale or lease;

4 (B) Makes a referral by connecting a Person to the Seller or Seller’s repre-
5 sentative, but not acting as a Marketplace Facilitator; and

6 (C) Received in the prior year, in the aggregate, at least \$10,000 in consider-
7 ation from Sellers or Sellers’ representatives for referrals as defined in Part
8 (a)(11)(B).

9 (12) “Related Party” means [state definition].

10 (13) “Seller” means [state definition].

11 *DRAFTER’S NOTE: each state should include “offering for sale or lease” in its defini-*
12 *tion of Seller. This is to make clear that the reference to “Seller” in the definition of “Refer-*
13 *rer” includes Persons offering goods for sale or lease even if the Referrer does not know*
14 *whether the Transaction is ever consummated. In addition, this makes clear that sales and*
15 *leases of tangible personal property that a Seller offers for sale or lease on a marketplace*
16 *must be reported, even if the sale or lease is finalized by the Marketplace Facilitator and not*
17 *by the Seller.*

18 (14) “Transaction” means a sale, purchase, or lease of tangible personal property
19 for delivery to a location in this state.

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21 (b) Notice and Reports, Required.

22 (1) Transactional Notice to Purchaser at Time of Transaction. Subject to the ex-
23 ceptions provided in Part (e), Non-collecting Sellers and Marketplace Facilitators shall
24 provide a Transactional Notice as further provided in this Part (b)(1).

25 (A) The Notice must state that no sales or use tax is being collected or remit-
26 ted upon the Transaction or Marketplace Transaction, or that the Seller is not re-
27 quired to collect sales or use tax and that the Purchaser may be required to remit
28 any tax owed directly to the Department.

29 (B) The Notice must be prominently displayed on each Order Form, invoice
30 and sales or lease receipt for the Transaction or Marketplace Transaction that is
31 provided to the Purchaser, whether provided in physical or electronic form.

32 (C) The Marketplace Facilitator shall provide the Transactional Notice for all
33 Marketplace Transactions. The Non-collecting Seller shall provide the Transac-

1 tional Notice for all other Transactions.

2 (2) Annual Transactions Report to Purchaser. Non-collecting Sellers and Mar-
3 ketplace Facilitators shall provide the annual Transaction Report to Purchasers as fur-
4 ther provided in this Part (b)(2). Subject to the exceptions provided in Part (e), an annual
5 transactions report shall be provided to each Purchaser that entered into, in the aggre-
6 gate during the previous calendar year, more than \$200 in Transactions that are subject
7 to the notice requirement of Part (b)(1).

8 (A) The annual Transactions report shall include:

9 (i) A statement that sales or use tax was not collected on the Transac-
10 tions in the prior calendar year and that the Purchaser may be required to
11 remit any tax owed directly to the Department;

12 (ii) A list of Transactions entered into during the prior calendar year
13 by the Purchaser, if subject to the notice requirement of Part (b)(2)(A)(i),
14 showing, with respect to each Transaction:

15 (I) the amount paid;

16 (II) the date of the Transaction;

17 (III) the type of tangible personal property purchased or leased;

18 and

19 (IV) the shipping address.

20 (iii) A statement that a report will be submitted to the Department,
21 pursuant to Part (b)(3), stating only the Purchaser's name, address, and total
22 dollar amount of the Purchaser's Transactions; and

23 (iv) Additional information the Director may reasonably require.

24 (B) The report required under this paragraph is due by January 31 of each
25 year following the year for which the report is due.

26 (C) Except as provided in Part (b)(2)(D), the report shall be sent to the Pur-
27 chaser's billing address, or if unknown, to the Purchaser's shipping address,
28 in an envelope marked prominently with words indicating important tax in-
29 formation is enclosed. If no billing or shipping address is known, the report
30 shall be sent electronically to the Purchaser's last-known e-mail address
31 with a subject heading indicating important tax information is attached.

32 (D) If the Purchaser's billing or shipping address is known, the report may
33 be provided to the Purchaser electronically, if:

1 (i) No earlier than December 1 of the year to be covered by the report
2 and no later than January 15 of the year following the year to be covered by
3 the report, the Purchaser agrees to receive the report electronically; and

4 (ii) The Purchaser acknowledges that she or he understands that the
5 report to be received electronically will contain important tax information
6 which information will also be sent to the Department.

7 (E) The annual Transactions Report for Marketplace Transactions shall be
8 provided to the Purchaser by the Marketplace Facilitator. The annual Trans-
9 actions Report for all other Transactions shall be provided to the Purchaser
10 by the Non-collecting Seller.

11 (3) Annual Report to the Department. Non-collecting Sellers and Marketplace Fa-
12 cilitators shall provide an annual report to the Department as further provided in this
13 Part (b)(3). Subject to the exceptions provided in Part (e), an annual report to the De-
14 partment shall be provided for each Purchaser that entered into Transactions that are
15 subject to the notice requirement of Part (b)(1).

16 (A) The report shall include:

17 (i) The name of the Purchaser;

18 (ii) The billing address and, if different, the last known mailing ad-
19 dress;

20 (iii) The shipping address of all tangible personal property sold or
21 leased to such Purchaser for delivery to a location in this state; and

22 (iv) The total dollar amount by shipping address of all Transactions
23 subject to the notice requirement of Part (b)(1) that were made by the Pur-
24 chaser during the prior calendar year.

25 *DRAFTER'S NOTE FOR (iii) and (iv). The shipping address provisions are*
26 *largely designed for states that authorize a separate local sales or use tax. If a*
27 *state does not need Transactions broken out by local jurisdiction, paragraph 3*
28 *may be eliminated. Paragraph 4 should be retained and require that the total*
29 *dollar amount of all Transactions be reported, without being broken down by*
30 *shipping address.*

31 (B) The report shall be filed electronically in the form and manner required
32 by the Director no later than January 31 following the year for which the report is
33 due.

1 (C) The annual report to the Department for Marketplace Transactions shall
2 be provided to the Department by the Marketplace Facilitator. The annual report
3 to the Department for all other Transactions shall be provided to the Department
4 by the Non-collecting Seller.

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6 (4) Reports by Referrer. The Department may require a Referrer to report the
7 identity of each Seller to which it makes referrals as provided in Part (a)(11).

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9 (d) Reporting Requirements As Applied to Related Parties. Any member of a group of
10 related parties may file the reports required herein with respect to any Non-collecting Sell-
11 er or Marketplace Facilitator among the related parties. The annual Transactions Report to
12 the Purchaser, as required by Part (b)(2), shall contain sufficient information to allow the
13 Purchaser to determine the identity of the Non-collecting Seller or Marketplace Facilitator
14 making each Transaction reported. The annual report to the Department shall indicate all
15 Non-collecting Sellers or Marketplace Facilitators whose Transactions are included.

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17 (e) Exceptions.

18 (1) De Minimis Transactions.

19 (A) A Non-collecting Seller that made less than \$B [state should choose an
20 approach similar to either \$5,000,000 in national gross sales or leases or \$100,000
21 in total Transactions during the prior calendar year] shall not be required to pro-
22 vide notice or file reports pursuant to Part (b).

23 *DRAFTER'S NOTE: The term "Transactions" above includes only Transactions*
24 *made into the state. Thus, the distinction here is made between national sales or leas-*
25 *es and in-state sales or leases.*

26 (B) A Marketplace Facilitator that facilitated Transactions of less than \$B
27 [state should insert the same rule as above], shall not be required to provide notice
28 or file reports pursuant to Part (b)

29 (C) *De minimis* exception as Applied to Related Parties. Related parties shall
30 calculate the *de minimis* exceptions described by this Part (e)(1) for the entire
31 group.

32 (2) Sales and Leases by Registered Sellers. A Seller that is registered to collect and
33 remit sales and use tax, and that complies in good faith with the [reference to state

1 sales and use tax provisions], is not required to provide notice or file reports pursu-
2 ant to Part (b).

3 (3) Sales and Leases with Respect to Which Sales or Use Tax is Collected. A Trans-
4 action with respect to which sales or use tax was actually collected and remitted by
5 a Person authorized to collect the tax is not subject to the notice or reporting re-
6 quirements of Part (b).

7 (4) Sales with Respect to Which Sales or Use Tax is Not Actually Due. A Transac-
8 tion with respect to which sales or use tax is not actually due pursuant to [reference
9 to state sales and use tax provisions] is not subject to the notice or reporting re-
10 quirements of Part (b).

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12 (f) Penalties.

13 (1) Amount. The Director shall assess a penalty upon any Person obligated to file a
14 notice or report that fails to provide notices and reports as required by this [chapter or
15 act] as follows:

16 (A) Penalty for Failure to Provide Notice to Purchaser at Time of Transac-
17 tion. A Person that fails to provide notice as required by Part (b)(1) shall be as-
18 sessed a penalty, in addition to any other applicable penalties, in the amount of \$X
19 for each such failure, not to exceed:

20 (i) A total of \$Y in one calendar year, if such Person remedied each
21 failure by providing the notice required by Part (b)(2) prior to the date or
22 within 45 days of the date for providing the report required by Part (b)(2);
23 and

24 (ii) A total of \$Z in one calendar year where Part (f)(1)(A)(i) does not
25 apply.

26 (B) Penalty for Failure to Provide Annual Report to Purchaser. A Person
27 that fails to provide a report as required by Part (b)(2) shall be assessed a penalty,
28 in addition to any other applicable penalty, of \$X for each such failure, not to ex-
29 ceed:

30 (i) A total of \$Y in one calendar year if such Person remedied each
31 failure by providing such notices within 45 days of the date such report was
32 required to be provided, and

33 (ii) A total of \$Z in one calendar year where Part (f)(1)(B)(i) does not

1 apply.

2 (C) Penalty for Failure to Provide Annual Report to Department. A Person
3 that fails to provide a report as required by Part (b)(3) shall be assessed a penalty,
4 in addition to any other applicable penalty, equal to \$X times the number of such
5 Purchasers that should have been included on such report, not to exceed:

6 (i) A total of \$Y in one calendar year if such Person remedied the fail-
7 ure by providing the report within 45 days of the date such report was re-
8 quired to be provided, and

9 (ii) A total of \$Z in one calendar year where Part (f)(1)(C)(i) does not
10 apply.

11 (D) Penalty for Failure to Provide Referrer Report. A Person that fails to
12 provide a report as required by Part (c)(2) shall be assessed a penalty, in addition
13 to any other applicable penalty, equal to \$X times the number of such Non-
14 collecting Sellers that should have been included on such report, not to exceed:

15 (i) A total of \$Y in one calendar year if such Person remedied the fail-
16 ure by providing the report within 45 days of the date such report was re-
17 quired to be provided, and

18 (ii) A total of \$Z in one calendar year where Part (f)(1)(D)(i) does not
19 apply.

20 *DRAFTER'S NOTE: The use of "X", "Y", and "Z" as placeholder dollar*
21 *amounts in penalties under (A)- (D) of this part are independent in each let-*
22 *tered subpart. For example, the amount used for "X" in one lettered subsection*
23 *may well be a different amount than the amount used for "X" in another or all*
24 *other lettered subparts. The use of the same letter is not meant to suggest that*
25 *they should be the same. However, common lettering is used to note that the*
26 *amounts are imposed for similar purposes in each lettered subpart.*

27 (2) Estimates Authorized. When assessing a penalty pursuant this Part (f), the Di-
28 rector may use any reasonable sampling or estimation technique where necessary or
29 appropriate to determine the number of failures in any calendar year.

30 (3) Protest. A Person may protest the assessment of any such penalty or interest
31 by filing a written objection with the Director within [number of days equal to the num-
32 ber of days allowed for protest of a use tax assessment or refund denial] days of the date
33 of assessment. Disposition of a timely filed protest shall be in accordance with [state tax

1 protest procedures]. If no such protest is filed within the time allowed, the assessment
2 shall become final and subject to [judgment, warrant, collection procedures].

3 (4) Interest. Interest shall accrue on the amount of the total penalty that has been
4 assessed and become final for each calendar year pursuant to this Part (f) at the rate es-
5 tablished pursuant to [state code section setting interest rate for tax underpayment].

6 (5) Waiver. Upon written request received within the time established for protest
7 pursuant to Part (f)(3), the Director, in his or her sole discretion, may waive any portion
8 or all of the penalty or interest applicable under this [chapter or act] for good cause
9 shown.

10 (6) Exceptions. No penalty shall be assessed with respect to any Transaction sub-
11 ject to the exceptions described in Part (e).

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13 (g) Confidentiality of Purchaser Information. Information received by the Department
14 pursuant to this [chapter or act] shall be exempt from disclosure required pursuant to
15 [State Open Records Act]. Such information shall be treated as confidential taxpayer infor-
16 mation pursuant to [cite to open records exception for confidential taxpayer information,
17 including exceptions statutes] and all exceptions, penalties, punishments, and remedies
18 applicable to disclosure of confidential taxpayer information pursuant to [cite to statutes
19 regarding confidential taxpayer information disclosure exceptions and penalties] shall ap-
20 ply to disclosure of information received by the Department pursuant to this [chapter or
21 act].

22
23 (h) Lookback period. With respect to periods after the adoption of this [chapter or act], the
24 Department may require the Seller or Marketplace Facilitator to file reports for prior years,
25 not to exceed the number of open tax years pursuant to [the applicable general statute of
26 limitations for use tax reporting by a purchaser]. In all cases where the original Seller or
27 Marketplace Facilitator has been acquired by a successor in interest, the lookback period
28 shall not exceed the number of years for which a successor in interest is liable for the obli-
29 gations of its predecessor in interest pursuant to [applicable state statute].

30 *DRAFTER'S NOTE: The intent of this provision is to limit this requirement as well as*
31 *liability for penalties to periods subsequent to the adoption of this act. If the state uses*
32 *standard language to indicate prospective application, that language may be substituted*
33 *herein.*

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(i) Construction with Other Laws. Nothing in this [chapter or act] shall relieve a Person that is subject to [reference to state sales and use tax provisions] from any responsibilities imposed thereunder. Nor shall anything in this [chapter or act] prevent the Director from administering and enforcing [reference to state sales and use tax provisions] with respect to any Person that is subject to them.

(j) Limitations on Liability. Except for the penalties provided in Part (f), no Seller, Marketplace Facilitator, or Referrer shall be liable to any Person for the provision or failure to provide the notices or reports required by this [chapter or act].

(k) Severability. The provisions of this [chapter or act] are severable and if any section, sentence, clause or phrase of this [chapter or act] shall for any reason be held to be invalid or unconstitutional, such holding shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this [chapter or act], which shall remain in effect.

(l) Administration. The Department [shall/may - state should adopt appropriate term depending on drafting standards] perform all functions necessary and proper for the administration and enforcement of this [chapter or act], including promulgating regulations and reviewing protests in accordance with the [state administrative procedures act].