

MTC Remote Seller Sales and Use Tax Model Statute—Version 2

(1) A person who sells tangible personal property to a purchaser in this state is presumed to be engaged in the business of making sales at retail in this state if either:

(a)(i) the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, has a physical location in this state, engages in or performs an one or more of the following activities in this state:

(A) Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name.

(B) Uses its employees, agents, representatives, or independent contractors in this state or facilities in this state to promote or facilitate sales by the seller to purchasers in this state.

(C) Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery of tangible personal property sold by the seller to the seller's purchasers in this state.

(D) Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the seller.

(E) Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in this state.

(F) Facilitates the sale of tangible personal property to purchasers in this state by allowing the seller's purchasers in this state to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that affiliated person in this state.

(G) Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person engages in intercompany transactions with the seller.

(H) Conducts any other activities in this state that are significantly associated with the seller's ability to establish and maintain a market in this state for the seller's sales of tangible personal property to purchasers in this state.

(ii) The presumption in this subsection may be rebutted by demonstrating that a person's activities in this state are not significantly associated with the seller's ability to establish or maintain a market in the state for the seller's sales of tangible personal property to purchasers in this state.

(b)(i) if the seller enters into an agreement, directly or indirectly, with the resident under which the resident, for a commission or other consideration based on completed sales, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, and if during the preceding 12 months the cumulative gross receipts from sales by the seller to customers in the state who are referred to the seller by all residents

with which seller has this type of an agreement is in excess of \$_____. [optional: and the cumulative gross receipts from sales by the seller to all customers in the state is in excess of \$_____.]

(ii)(A) This presumption may be rebutted by proof that the resident with whom the seller has an agreement did not engage in any solicitation in the state on behalf of the seller that would satisfy the nexus requirement of the United States constitution during the same preceding 12 months.

(B) Evidence to rebut the presumption may consist of written statements from all residents with whom the seller has an agreement stating that they did not engage in any such solicitation or other activities in this state on behalf of the seller during the preceding 12 months if the statements are provided and obtained in good faith.

(C) An agreement under which a seller purchases advertisements from a resident of this state is not an agreement described in this section unless the advertisement revenue paid to the resident consists of commissions or other consideration that is based upon sales of tangible personal property or services. For purposes of this section, “cumulative gross receipts” includes receipts from sales made during the 12-month period before the effective date of this section.

(2) An out-of-state vendor has substantial nexus with this State for the collection of use tax if both of the following apply:

(i)(A) the out-of-state vendor and an in-state business maintaining one or more location within this State are related entities; and

(B) the out-of-state vendor and the in-state business use an identical or substantially similar name, tradename, trademark or goodwill to develop, promote, or maintain sales, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

(ii) Two entities are related parties under this section if they meet any one of the following tests:

(A) both entities are component members of the same controlled group of corporations under section 1563 of the Internal Revenue Code;

(B) one entity is a related taxpayer to the other entity under the provisions of section 267 of the Internal Revenue Code;

(C) one entity is a corporation and the other entity and any party, for which section 318 of the Internal Revenue Code requires an attribution of ownership of stock from that

party to the entity, own directly, indirectly, beneficially, or constructively at least 50 percent of the value of the outstanding stock of the corporation; or

(D) one or both entities is a limited liability company, partnership, estate, or trust, none of which is treated as a corporation for federal income tax purposes, and such limited liability company, partnership, estate, or trust and its members, partners or beneficiaries own in the aggregate directly, indirectly, beneficially, or constructively at least 50 percent of the profits, capital, stock, or value of the other entity or both entities.