

“Engaged in Business” Model Statute – Sales Tax Option

Retailer engaged in business in this state.

(a) Every retailer engaged in business in this state and making sales of

[tangible personal property and/or taxable services*] in this state, and not otherwise exempt under this Act, shall register with the Department and remit the tax required by this Act.

(b) "Retailer engaged in business in this state" as used in this section means any retailer that has a sufficient connection under the Constitution of the United States with this state to be subject to sales tax collection responsibilities. "Retailer engaged in business in this state" specifically includes, but is not limited to, any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a related party, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state.

(2) Any retailer having any representative, agent, salesperson, independent contractor, or any other person operating on the retailer's behalf, including a person operating in this state under the authority of the retailer or a related party for the purpose of selling, delivering, installing, assembling, performing maintenance or repair services for the retailer's purchasers in this state, or the taking of orders for [tangible personal property and/or taxable services*] sold by the retailer, or otherwise establishing or maintaining a market for the retailer's products for sale in this state.

(3) Any retailer owning or leasing any real or tangible personal property situated in this state.

(4) Any retailer for whom a related party pursuant to an agreement with or in cooperation with the retailer: (A) owns or leases any real or tangible personal property or performs services in the state in connection with the sale of in this state, including, but not limited to, services to design and develop tangible personal property sold by the

the agreement with the retailer also directly or indirectly solicits potential customers in this state for the retailer through use of flyers, newsletters, telephone calls, electronic mail, blogs, microblogs, social networking sites, or other means of direct or indirect solicitation specifically targeted at potential customers in this state. For purposes of this subsection, an agreement for services based upon commissions or other consideration conditioned upon completed sales in this state is not an agreement for advertising services.

(4) This Subsection shall apply without regard to the date the retailer and the resident entered into the agreement described herein.

(5) The twelve months before the effective date of this Act are included as part of the preceding twelve (12) months for purposes of this Subsection (c).

(d) For purposes of this Section, a retailer and another person are considered related parties if they meet any one of the following tests:

(1) the retailer and one or more persons are component members of the same controlled group of corporations under section 1563 of the Internal Revenue Code; or

(2) the retailer is a related taxpayer to the other person under the provisions of section 267 of the Internal Revenue Code; or

(3) the retailer and the other person is a corporation, limited liability company, partnership, estate, or trust, and such corporation, limited liability company, partnership, estate, or trust and its shareholders, 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.

(e) The definitions in this Section are only applicable to the taxes levied under this Act.

(f) All retailers, whether or not engaged in business or authorized to do business in this state, shall be subject to the sales tax in this state if federal law permits this state to impose such tax on the retailer.

(g) The provisions of this Section are severable. If any provision of this Section or its

application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(h) This statute applies to sales made on or after [effective date].

*States can insert language within the brackets to correspond to their particular taxing schema.