

## 39-21-112.3.5

### 1. Definitions

- a. “Retailer that does not collect Colorado sales tax” – A retailer that does not collect Colorado sales tax is a retailer that does not collect Colorado sales or use tax that sells taxable property or services to Colorado purchasers who are not exempt from sales tax. Such retailers are also referred to in this regulation as “non-collecting retailers”.
- b. “Colorado purchaser”
  - i. With respect to sales of goods that are shipped to the purchaser, a Colorado purchaser is a purchaser that requests the goods be shipped to Colorado.
  - ii. With respect to sales of goods that are downloaded or otherwise delivered electronically
    - 1. If the purchaser provides a “bill to” address, then a Colorado purchaser is a purchaser whose “bill to” address is in Colorado;
    - 2. If the purchaser does not provide a “bill to” address, then the non-collecting retailer shall make a determination as to whether a purchaser is in Colorado, and is therefore a Colorado purchaser, using any other reasonable method.
- c. “Colorado purchase”
  - i. With respect to sales of goods that are shipped to the purchaser, a Colorado purchase is one that is shipped to Colorado.
  - ii. With respect to sales of goods that are downloaded or otherwise delivered electronically
    - 1. If the purchaser provides a “bill to” address, then a Colorado purchase is one for which the “bill to” address is in Colorado;
    - 2. If the purchaser does not provide a “bill to” address, then the non-collecting retailer shall make a determination as to whether a purchase is a Colorado purchase using any other reasonable method.
- d. “Total gross sales” – As used in this regulation, the term total gross sales means the total worldwide sales of goods. The term shall not include sales of services. The term shall include all sales of goods made by all entities controlled by or under common control with the non-collecting retailer.

### 2. Obligation to give notice with each purchase

- a. A non-collecting retailer must give notice to all Colorado purchasers that Colorado sales or use tax is due on all purchases that are not exempt from sales tax. This notice must be provided with respect to each transaction. The notice shall be sufficient if it appears on each invoice or, if no invoice is provided, if it is otherwise given to the purchaser as part of the sale, either immediately before, as part of, or immediately after the sale, including by means of an e-mail confirmation of the sale sent to the Colorado purchaser.

- b. The notice shall contain the following information:
    - i. The non-collecting retailer does not collect Colorado sales or use tax;
    - ii. The purchase is not exempt from Colorado sales tax merely because it is made over the Internet or by other remote means;
    - iii. The State of Colorado requires that a Colorado purchaser file a sales/use tax return at the end of the year reporting all of the Colorado purchases that were not taxed and pay tax on those purchases;
    - iv. The retailer will provide an end-of-year summary of Colorado purchases to the customer in order to assist purchasers in filing their tax report;
    - v. Details of how and when to file this return may be found at the Colorado Department of Revenue's website, [www.taxcolorado.com](http://www.taxcolorado.com);
    - vi. The retailer is required by law to provide the Colorado Department of Revenue with an annual report of the total amount of all of a Colorado purchaser's Colorado purchases at the end of the year.
  - c. This notice must be clearly legible and reasonably prominent. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "Please see important sales tax information", if such linking notice directs the Colorado purchaser to the principal notice required by 39-21-112(3.5)(c) C.R.S. and this paragraph.
  - d. If the retailer is required to provide a similar notice for another state in addition to Colorado, and the retailer provides a single such notice to all purchasers with respect to items purchased for delivery into all states, the notice required in (a) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
  - e. De minimis non-collecting retailer – Any non-collecting retailer that made total gross sales in the prior calendar year of less than \$100,000 and reasonably expects sales in the current calendar year will be less than \$100,000 shall be exempt from the notice requirement in this paragraph (2).
  - f. Penalties –
    - i. The non-collecting retailer shall pay a penalty of \$5 for each sale to a Colorado purchaser with respect to which the notice required by this paragraph (2) does not appear.
    - ii. The penalty assessed pursuant to this section shall not exceed the following accounts:
      - 1. For a non-collecting retailer that had no actual knowledge of the requirement and began to provide the required notices within 60 days of demand by the Department of Revenue, \$5,000;
      - 2. For a non-collecting retailer that failed to provide the notices for the first calendar year for which the non-collecting retailer was obligated to provide the notices, \$50,000.
3. Obligation to give Colorado purchasers notice of total purchases made - §39 21 112(3.5)(d)(l) C.R.S.

- a. A non-collecting retailer must give an annual notice to all Colorado purchasers summarizing the Colorado purchaser's Colorado purchases for the preceding calendar year. The notice shall meet the following requirements:
  - i. The notice must be sent by first class mail to the last known address of the purchaser as shown on the non-collecting retailer's records. The envelope containing the notice must be prominently marked with the words "Important tax document enclosed".
  - ii. The notice must summarize the date(s) of purchase(s), a description of the item(s) purchased, and the dollar amount(s) of the purchase(s).
  - iii. The notice must also state that the State of Colorado requires that the consumer file a sales or use tax return at the end of every year and pay tax on all taxable Colorado purchases for which no tax has been collected by the retailer, and that details of these requirements, including how to file, may be found at the Colorado Department of Revenue's website, [www.taxcolorado.com](http://www.taxcolorado.com).
  - iv. The notice must also indicate that the non-collecting retailer is required by law to provide the Colorado Department of Revenue with the total amount of purchases made by the Colorado purchaser.
  - v. If known to the non-collecting retailer, the notice may also indicate whether an item is exempt from Colorado sales tax; however no non-collecting retailer is required to include such information.
  - vi. The notice must be sent by January 31st of each year summarizing purchases made for the prior calendar year.
- b. If the retailer is required by another state to provide a similar notice, and the retailer provides a single such notice to all purchasers with respect to items purchased for delivery into all states, the notice required in (a) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
- c. De minimis non-collecting retailer - Any non-collecting retailer that made total gross sales in the prior calendar year of less than \$1,000,000 and reasonably expects sales in the current calendar year will be less than \$1,000,000 shall be exempt from the notice requirement in this paragraph (3).
- d. De minimis Colorado purchaser – Any non-collecting retailer that is required to send the notice required by this paragraph (3) to Colorado purchasers, is not required to send the notice required by this paragraph (3) to any Colorado purchaser whose total Colorado purchases for the prior calendar year are less than \$250.
- e. Penalties
  - i. The non-collecting retailer shall pay a penalty of \$10 for each notice required by this paragraph (3) that is not sent by the non-collecting retailer to the Colorado purchaser.
  - ii. The penalty assessed pursuant to this section shall not exceed the following accounts:

1. For a non-collecting retailer that sent the notices within 30 days after the due date, \$1,000;
  2. For a non-collecting retailer that had no actual knowledge of the requirement and sent the notices within 60 days after demand by the Department of Revenue to issue such notices, \$10,000;
  3. For a non-collecting retailer that failed to send the notices for the first calendar year for which the non-collecting retailer was obligated to send the notices, \$100,000.
4. Obligation to give the Colorado Department of Revenue notice of purchases made by Colorado purchasers
  - a. Any non-collecting retailer who is required to provide a notice described in paragraph (3) must file a report with the Colorado Department of Revenue containing the following information:
    - i. The name of each Colorado purchaser;
    - ii. The billing address of each Colorado purchaser, if the information was provided to the non-collecting retailer;
    - iii. The shipping address of each Colorado purchaser, if the information was provided to the non-collecting retailer;
    - iv. The total amount of Colorado purchases made by each Colorado purchaser during the prior calendar year.
  - b. If the non-collecting retailer has more than one billing address or shipping address for a Colorado purchaser, then the non-collecting retailer shall provide all such addresses of the Colorado purchaser and shall indicate the total amounts of purchases made associated with each address.
  - c. If the non-collecting retailer made less than \$100,000 worth of sales in Colorado during the prior calendar year, then the non-collecting retailer may, at its election, send a separate paper report for each Colorado purchaser or may send such data electronically pursuant to paragraph (d) of this paragraph (4).
  - d. If the non-collecting retailer made more than \$100,000 worth of sales in Colorado during the prior calendar year, or if the non-collecting retailer elects to send data to the department pursuant to this paragraph, the non-collecting retailer shall electronically send the data required by this paragraph (4). The Department of Revenue shall publish on its website by November 1st of each year the required format and data elements of the report and shall publish details of how the report file is to be transmitted to the department.
  - e. Any non-collecting retailer that is not required to send any notices pursuant to paragraph (3) of this rule is also exempt from the requirements to send the report described in this paragraph (4).
  - f. If a non-collecting retailer is required to provide any notices pursuant to paragraph (3) of this rule, then such non-collecting retailer may include all the purchases made by all Colorado purchasers in its report. It need not exclude any de minimis Colorado purchasers, though it may elect to do so.

g. Penalties

- i. If a non-collecting retailer fails to file the report required by this paragraph (4), the non-collecting retailer shall pay a penalty equal to \$10 times the number of Colorado purchasers that should have been included in the report.
- ii. The penalty assessed pursuant to this section shall not exceed the following accounts:
  1. For a non-collecting retailer that filed the report within 30 days of the due date, \$1,000;
  2. For a non-collecting retailer that had no actual knowledge of the requirement and filed the report within 60 days of demand by the Department of Revenue that the report be filed, \$10,000;
  3. For a non-collecting retailer that failed to file the report for the first calendar year for which the non-collecting retailer was obligated to file the report, \$100,000.