

## EMERGENCY REGULATION 39-21-112.3.5

1. Definition of “Retailer that does not collect Colorado sales tax” – A retailer that does not collect Colorado sales tax is a retailer that sells taxable property or services to customers who are not exempt from sales tax but does not collect Colorado sales or use tax. Such retailers are also referred to in this regulation as “non-collecting retailers”.
2. Definition of “Colorado purchaser”
  - a. 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.
  - b. With respect to sales of goods that are downloaded or otherwise delivered electronically
    - i. If the purchaser provides a “bill to” address, then a Colorado purchaser is a purchaser whose “bill to” address is in Colorado;
    - ii. If the purchaser does not provide a “bill to” address, then the non-collecting retailer shall make a determination of Colorado purchaser using any other reasonable method.
3. Obligation to give notice with each purchase – §39-21-112(3.5)(c) C.R.S.
  - a. A non-collecting retailer must give notice with respect to all Colorado destination sales that Colorado tax is due on all non-exempt purchases. This notice must appear on each invoice or, if no invoice is normally provided, must be given to the purchaser as part of the sale, either immediately before or immediately after the sale. If the non-collecting retailer does not provide an invoice and does not have a reasonable means of providing the notice either immediately before or immediately after the sale, the notice shall be considered sufficient if the non-collecting retailer sends a confirmation e-mail containing the notice.
  - b. The notice shall contain the following information:
    - i. The non-collecting retailer is not obligated, and does not, collect Colorado sales tax;
    - ii. The purchase is subject to Colorado sales tax unless it is specifically exempt from taxation;
    - iii. The purchase is not exempt merely because it is made over the Internet or by other remote means;
    - iv. The State of Colorado requires that the taxpayer file a sales/use tax return at the end of the year reporting all of the purchases that were not taxed and pay tax on those purchases;
    - v. Retailers that do not collect Colorado sales tax are obligated to provide purchasers an end-of-year summary of purchases in order to assist purchasers in filing their tax report;
    - vi. Details of how to file this return may be found at the Colorado Department of Revenue’s website, [www.taxcolorado.com](http://www.taxcolorado.com);

- vii. Retailers that do not collect Colorado sales tax are required by law to provide the Colorado Department of Revenue with a report of the total amount of all of a purchaser's purchases at the end of the year.
  - c. The above referenced notice must be clearly legible and reasonably prominent on the invoice. The notice in (a) must be accompanied by a notice in bold typeface in a font size used by the retailer for other text on the invoice appearing immediately adjacent to the dollar total of the transaction referencing the notice in (a) and reading as follows: "Please see important sales tax information".
  - d. If the taxpayer 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 year of less than \$100,000 and reasonably expects sales in the current year will be less than \$100,000 shall be exempt from the notice requirement in (3)(a).
  - f. Penalties
    - i. The non-collecting retailer shall pay a penalty of \$5 for each invoice documenting a sale to a Colorado purchaser on which the required notice does not appear.
    - ii. Waiver of penalties due to implementation time frame and notice – Because of the brief time period between enactment of the governing statute and required implementation, if a non-collecting retailer begins to provide the required notices or begins to collect Colorado sales tax prior to May 1, 2010, any penalties that would otherwise be due for invoices issued between March 1, 2010 and April 30, 2010 shall be waived. However, no such waiver shall automatically apply if the non-collecting retailer does not begin to issue the required notices or begin to collect Colorado sales tax prior to May 1, 2010.
4. Obligation to give Colorado purchasers notice of total purchases made - §39 21 112(3.5)(d)(I) C.R.S.
- Because non-collecting retailers will not be required to provide this notice until 2011, this paragraph is reserved for permanent rulemaking.
5. Obligation to give the Colorado Department of Revenue notice of purchases made by Colorado purchasers - §39 21 112(3.5)(d)(II) C.R.S.
- Because non-collecting retailers will not be required to provide this notice until 2011, this paragraph is reserved for permanent rulemaking.