

REGULATION 39-21-112.3.5

- 1) Definitions
 - a) “Retailer that does not collect Colorado sales tax”
 - i) A retailer that does not collect Colorado sales tax is a retailer that sells goods to Colorado purchasers and that does not collect Colorado sales or use tax. Such retailers are also referred to in this regulation as “non-collecting retailers”.
 - ii) A “retailer that does not collect Colorado sales tax” does not include a retailer that makes sales in Colorado solely by means of download of digital goods or software. A “retailer that does not collect Colorado sales tax” does include a retailer that makes sales in Colorado both by means of download of digital goods or software and by means of shipping or otherwise physically delivering goods to a Colorado purchaser.
 - iii) A “retailer that does not collect Colorado sales tax” does not include a retailer whose sales in Colorado are de minimis. For purposes of this regulation, the Department will presume that a retailer that makes less than \$100,000 in total gross sales in Colorado in the prior calendar year and reasonably expects total gross sales in Colorado in the current calendar year will be less than \$100,000 is a retailer whose sales in Colorado are de minimis.
 - b) “Colorado purchaser”
 - i) With respect to sales of goods that are shipped, a Colorado purchaser is a purchaser that requests the goods be shipped to Colorado. In the case of a purchase that is purchased by one party, who may be inside or outside of Colorado, and shipped to a party in Colorado, the Colorado purchaser is the purchaser of the goods, not the recipient of the goods.
 - 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 commercially reasonable method based on the business’s existing billing, customer-tracking, or other systems.
 - c) “Colorado purchase”
 - i) With respect to sales of goods that are shipped, 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 commercially reasonable method based on the business’s existing billing, customer-tracking, or other systems.
 - iii) A Colorado purchase shall not include any purchases or rentals of VHS tapes, DVDs, Blu-Ray disks, or other video materials to the extent that disclosure of the purchasers of such items would violate 18 U.S.C. 2710.
 - d) “Department” – the term Department refers to the Colorado Department of Revenue.
 - e) “Total gross sales” – As used in this regulation, the term total gross sales means the total 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.
 - i) A non-collecting retailer may not display or imply that no tax is due on any Colorado purchase, unless such a display is accompanied by the notice required by this paragraph 2) each time the display appears.
 - (1) Example: A summary of the transaction including a line designated “Sales tax” and showing the amount of sales tax as “zero” or “0.00” would constitute a “display” implying that no tax is due on the purchase. Such a display must be accompanied by the notice required by this paragraph 2) every time it appears.
 - (2) Notwithstanding the limitation in this paragraph i), if a non-collecting retailer knows that a purchase is exempt from Colorado tax pursuant to Colorado law, the non-collecting retailer may display or indicate that no sales tax is due even if such display is not accompanied by the notice required by this paragraph 2).
 - ii) In calculating the total price due to the retailer, a non-collecting retailer may display a designation that no tax is being collected by the retailer or may entirely omit any reference to sales tax. In this case, the notice required by this paragraph 2) 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.
 - (1) Example: A non-collecting retailer may display a summary of the transaction with a line designated “Sales tax collected by [name of retailer]” and showing the amount collected as “zero” or “0.00” or any other designation indicating that no sales tax is being collected. In this case, the non-collecting retailer may provide the required notice only on the invoice or immediately before, as part of, or immediately after the sale.
 - b) The notice required by this paragraph 2) 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 or use tax merely because it is made over the Internet or by other remote means;
 - iii) The State of Colorado requires that a Colorado purchaser (A) file a sales or use tax return at the end of the year reporting all of the taxable Colorado purchases that were not taxed and (B) pay tax on those purchases;
- c) The notice required by this paragraph 2) may contain the following additional information:
- i) 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;
 - ii) Details of how and when to file this return may be found at the Colorado Department of Revenue's website, www.taxcolorado.com. The notice may substitute a more specific url when such more specific url is published by the Department;
 - iii) The retailer is required by law to provide the Colorado Department of Revenue with an annual report of the total dollar amount of all of a Colorado purchaser's Colorado purchases at the end of the year. The retailer will not provide any other details of the transaction to the Department other than the amount of the purchase.
- d) This notice must be clearly legible, reasonably prominent, and located in close proximity to the total price. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important sales tax information regarding the tax you may owe directly to your state", if such linking notice directs the Colorado purchaser to the principal notice required by this paragraph 2).
- e) 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 in all states, the notice required by this paragraph 2) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
- 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 against a single non-collecting retailer in a single year pursuant to this section shall not exceed the following amounts:
 - (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, \$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) For a non-collecting retailer that sells only goods that are not taxable in Colorado or sells goods only to purchasers that are not subject to sales or use tax, no penalty shall be collected.

iii) The Executive Director of the Department may waive all or any portion of the penalty for other reasonable cause shown.

3) Obligation to give Colorado purchasers notice of Colorado purchases

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 described in paragraph vii) of this paragraph a). 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 type of item(s) purchased (e.g., books, food, consumer electronics, household appliances), 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. The notice may state that details of these requirements, including how to file, may be found at the Colorado Department of Revenue's website, www.taxcolorado.com. The notice may substitute a more specific url when such more specific url is published by the Department;

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 dollar amount of purchases made by the Colorado purchaser, however no information about the purchase other than the dollar amount of the purchase will be provided to the Department;

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.

vii) Last known address of the purchaser:

(1) The non-collecting retailer may maintain a notice address for the purchaser, in which case, the non-collecting retailer may send the notice required by this paragraph 3) to such notice address if the following conditions are met:

(a) The non-collecting retailer informs the purchaser that the non-collecting retailer will be providing an end of year notice to the taxpayer as described in this paragraph 3);

- (b) The non-collecting retailer informs the purchaser that the purchaser may choose to have the notice required by this paragraph 3) sent to a different address than the billing address (a “notice address”);
 - (c) The purchaser acknowledges that he or she understands the tax obligation described in the notice and wishes to have the notice sent to a different address than the billing address and provides such a notice address.
 - (2) If the above conditions have not been met and no billing address for the customer has been provided, then the non-collecting retailer shall send the notice required by this paragraph 3) to the purchaser’s shipping address.
 - (3) If no billing address and no shipping address for the customer has been provided and no other physical address for the purchaser is known using any other commercially reasonable method based on the business’s existing billing, customer-tracking or other systems, then the non-collecting retailer shall send the notice required by this paragraph 3) to the most recent e-mail address the non-collecting retailer has for the purchaser.
- 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 in all states, the notice required in subparagraph a) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
- c) De minimis Colorado purchaser –
 - i) Any non-collecting retailer that is required to send the notice required by this paragraph 3) to Colorado purchasers and that has complied with paragraph iii) of this paragraph c), 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 \$500;
 - ii) If the goods purchased are not subject to Colorado use tax, a non-collecting retailer may choose to exclude such purchases from the calculation in paragraph i) of this paragraph c), however, no non-collecting retailer is obligated to do so;
 - iii) Any non-collecting retailer wishing to take advantage of the limitation in paragraph i) of this paragraph c) must make commercially reasonable business efforts, based on the business’s existing billing, customer-tracking, or other systems, to identify multiple purchases made by a single Colorado purchaser.
- d) 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 against a single non-collecting retailer pursuant to this section shall not exceed the following amounts:

- (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) For a non-collecting retailer that sells only goods that are not taxable in Colorado or sells goods only to purchasers that are not subject to sales or use tax, no penalty shall be collected.
 - iii) The Executive Director of the Department may waive all or any portion of the penalty for other reasonable cause shown.
- 4) Obligation to give the Department 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 Department 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 dollar amount of Colorado purchases made by each Colorado purchaser during the prior calendar year. No other information about the purchase shall be provided.
 - b) If the non-collecting retailer has more than one Colorado billing address or more than one Colorado shipping address for a Colorado purchaser, then the non-collecting retailer shall provide all such addresses of the Colorado purchaser.
 - c) If the non-collecting retailer made more than \$100,000 worth of total gross sales in Colorado during the prior calendar year, the non-collecting retailer shall electronically send the data required by this paragraph 4). If the non-collecting retailer made less than \$100,000 worth of sales in Colorado during the prior calendar year, the non-collecting retailer may 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.
 - d) 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).
 - e) If a non-collecting retailer is required to provide any notices pursuant to paragraph 3) of this rule, then such non-collecting retailer must include all the purchases made by all

Colorado purchasers in its report, including any purchases made by de minimis Colorado purchasers.

f) 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 against a single non-collecting retailer in a single year pursuant to this section shall not exceed the following amounts:
 - (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 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;
 - (4) For a non-collecting retailer that sells only goods that are not taxable in Colorado or sells goods only to purchasers that are not subject to sales or use tax, no penalty shall be collected.
- iii) The Executive Director of the Department may waive all or any portion of the penalty for other reasonable cause shown.