

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01546-REB-CBS

The Direct Marketing Association,

Plaintiff,

v.

Roxy Huber, in her capacity as Executive Director, Colorado Department of Revenue,

Defendant.

DECLARATION OF DIETER G. GABLE

I, Dieter G. Gable, pursuant to 28 U.S.C. § 1746 depose and state as follows:

1. I am CEO of TB Consulting, LLC, an Arizona Limited Liability Company with principal offices at 4455 E. Camelback Road, Suite A-240, Phoenix, AZ 85018. I have been retained by the Office of the Colorado Attorney General to present my opinions regarding the efforts and costs necessary for affected retailers who do not collect Colorado State sales tax to comply with Colorado House Bill 10-1193 and related Department of Revenue Regulation 39-21-112.3.5.

2. In providing my opinion I have relied on my experience, education, and knowledge in the areas of information technology and business systems as detailed in my report and the exhibits thereto, which are attached as Exhibit 1. I also reviewed the documents described in section II of my report.

3. Based on my review and consideration of the data and information described in my report, and applying my experience and expertise in the fields of

information technology and business systems, I have formed opinions and conclusions regarding the extent of the efforts and costs of compliance associated with Colorado's reporting requirements. These opinions and conclusions are set forth in my report and exhibits thereto dated November 10, 2010, which have been provided to the Plaintiff and are attached as Exhibit 1.

4. My qualifications are contained in my curriculum vitae submitted with my report, which has been provided to Plaintiff and is attached as Exhibit 2. I have not testified as an expert during the last four years and the compensation I am receiving for my services in this matter is \$185.00 per hour.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of November 2010.



Dieter G. Gable

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Civil Action No. 10-CV-01546-REB-CBS

The Direct Marketing Association,

Plaintiff,

v.

Roxy Huber, in her capacity as Executive Director,
Colorado Department of Revenue

Defendant.

EXPERT REPORT OF DIETER G. GABLE

I am **Dieter G. Gable**, CEO of TB Consulting, LLC, an Arizona Limited Liability Company with principal offices at 4455 E. Camelback Road, Suite A-240, Phoenix, AZ 85018. I have been retained by the State of Colorado, Department of Law, Office of the Attorney General, counsel to the Colorado Department of Revenue, to offer my expert opinion regarding the compliance efforts and costs necessary for affected retailers who do not collect Colorado State sales tax to comply with Colorado Statue (House Bill 10-1193) and related Department of Revenue Regulation (39-21-112.3.5), hereinafter referred to collectively as "Requirements."

I. STATEMENT OF OPINIONS

After reviewing the materials outlined in Section II and utilizing the Methodology outlined in Section III, I offer the following opinions:

- A. Based on the minimum threshold of \$100,000 in gross annual Colorado sales, a relatively small number of retailers are subject to the Requirements.
- B. Requirements provide sufficient leeway for variances in approaches for compliance to allow affected retailers to comply with reasonable efforts.
- C. Retailers subject to the Requirements would possess automation supporting the efforts required to meet all of the Requirements.
- D. Commercially viable commerce platforms can support changes required to meet the minimum levels required for compliance with Requirements.
- E. Larger Retailers will be able to meet the Requirements with nominal incremental costs as part of on-going system enhancements and regular legal/tax compliance efforts.
- F. Smaller Retailers would be able to rely on the provider of their packaged or hosted eCommerce solution provider to support compliance with Requirements.
- G. Compliance with requirements should be considered an incremental effort to regular business activity by retailers rather than a discrete effort.
- H. The Requirements will require additional efforts by affected retailers resulting in onetime, non-recurring first year, costs that range from \$2,571 to \$6,000 (0.043% - 0.100% as a percent of sales) plus the cost of the Annual Notices to Consumers estimated at \$589 to \$1,000 (0.010% to 0.017% as a percent of sales). *[Note: the costs are estimated for the compliance efforts for the smallest of the affected retailers. The costs for compliance by larger affected retailers is ignored as the impact, when normalized on a percentage of sales basis, is expected to be lower or even inconsequential]*

- I. Some of the above referenced costs for the Retailer could be further reduced if incorporated as part of their on-going customer experience and annual tax preparation efforts.
- J. The incremental cost of mailing Annual Notices can be mitigated by including other information and materials for the consumer.
- K. Retailers can provide the requested data without any affect on PCI compliance or change to existing privacy policies.
- L. Requirements will not materially impact the call volume for customer inquiries regarding Transactional Notice.
- M. Requirements will not materially impact any existing rate of shopping cart abandonment.
- N. Annual Purchase Disclosure to Department of Revenue Requirement provides secure transmission options protecting customer data.

II. DATA AND INFORMATION CONSIDERED IN FORMING OPINION

The following data and information was considered by me in forming my opinion:

A. Documentation related to the Legal Requirements

- 1. Colorado House Bill 10-1193
- 2. Colorado Department of Revenue Regulation 39-21-112.3.5

B. Documentation related to the issues raised by the Plaintiff

- 1. Complaint for Civil Action No. 10-CV-01546-REB-CBS
- 2. Expert Report of F. Curtis Barry
- 3. Deposition of F. Curtis Barry (19 October 2010)

C. Documentation related to DOR implementation of regulation and retailer compliance ([www. Colorado.gov/CS/Satellite/Revenue/RE VX/1251581935261](http://www.Colorado.gov/CS/Satellite/Revenue/RE VX/1251581935261))

1. *Submission Guidelines for Colorado Use Tax Annual Filing*; Annual Disclosure to DOR
2. *File Format*; Sample Excel template data for Annual Disclosure to DOR
3. *Colorado Use Tax Template*; Excel template / layout for Annual Disclosure to DOR
4. *Use Tax Template Instructions*; Instructions for Template for Annual Disclosure to DOR
5. *Template for Transactional Notice*; sample of Transactional Notice wording
6. *Sample Annual Customer Notice*; sample of Annual Customer Notice wording
7. FYI Sales 79: Sales of Taxable Items Over the Internet

D. Industry Information and Research related to eCommerce platforms and capabilities as it relates to retailers' ability to meet Requirements

1. Gartner® Research. "Magic Quadrant for E-Commerce" (18 May 2010)
2. Forrester Research. The Forrester Wave™: B2C eCommerce Platforms, Q1 2009 (27 Jan 2009)
3. Internet Retailer® Research. "Top 500 Guide" (2009 Sales Data for North America's 500 largest e-retailers based on annual web sales)
4. Forrester Research. Market Overview: Full-Service eCommerce Solutions (31 Oct 2008)
5. Forrester Research. The Impact of the Economic Crisis on eCommerce Technology Investment (7 Nov 2008)

E. Industry Information and Research related to eCommerce platforms and capabilities as it relates to retailers' ability to meet Requirements

1. ATG, Inc. Supercharge Your Shopping Cart / 11 Ways to Close More Online Sales (19 July 2010)
2. American Marketing Association. How to Attract, Engage and Convert Online Visitors (21 June 2010)
3. Payment Card Industry / Security Standards Council. Data Security Standard, Requirements and Security Assessment Procedures version 2.0 (October 2010)

F. Public information related to the estimation of labor costs

1. US Department of Labor, Bureau of Labor Statistics. Employer Costs for Employee Compensation – June 2010 (8 Sept. 2010)
2. Parker & Lynch. 2010 Salary Guide for Accounting and Finance Professionals

3. Robert Half® Technology. Salary Guide 2011 – Technology Resources.
4. Robert Half® Company / OfficeTeam®. Salary Guide 2011 – Administrative Resources.

III. METHODOLOGY USED IN FORMING OPINION

A. Based on the minimum threshold of \$100,000 in annual Colorado sales, a relatively small number of retailers are subject to the Requirements.

1. Most recent US Census Bureau data suggests that Colorado’s population is slightly more than one point six percent (1.6%) of the United States population. For purposes of approximation, this ratio would suggest that a national retailer with no presence within the State of Colorado would have to have sales in excess of six million dollars (\$6,000,000) to be subject to the requirements.
2. The most recent data on internet sales (II.D.3) indicates that a retailer has to have approximately ten million dollars (\$10,000,000) in sales to break into the top 500 retailers nationwide.

<u>Ranking</u>	<u>Company</u>	<u>Annual Sales</u>
1	Amazon.com	\$ 24,510,000,000
25	HSN Inc.	\$ 1,015,000,000
100	Art.com	\$ 158,401,212
200	Furniture.com	\$ 58,948,824
300	AC Lens	\$ 29,100,000
400	American Power Conversion	\$ 17,600,000
500	Costume Craze, LLC	\$ 10,028,204

3. While data on sales for retailers below the top 500 is not readily available, nothing suggests that the sales vs. rankings relationship would degrade abnormally below ten million dollars (\$10,000,000) in sales suggesting that the number of affected retailers

should be in the low thousands compared to hundreds of thousands of merchants in total.

- a. The total number of merchants selling product nationally or specifically into Colorado is not available.
- b. When sampling eCommerce vendors' utilization (merchants using certain software or service), the universe of merchants appears to be at least in the hundreds of thousands.
 - i. Retailer count for two leading eCommerce providers: Magento with over sixty thousand (60,000) and Volusion with over one hundred thousand (100,000).

B. Requirements provide sufficient leeway for variances in approaches for compliance to allow affected retailers to comply with reasonable efforts.

1. Transactional Notice

- a. The Requirements allow for a generalized tax statement in the event the retailer is subject to a number of taxing authorities or jurisdictions (II.A.2 – 2(e)).
- b. The notice placement is also flexible and must be reasonably prominent and in close proximity to the total price (II.A.2 – 2(d)).
- c. Alternatively, the notice may be placed on the invoice or as a package insert when no indication is given that “no sales tax is due” (II.A.2 – 2(a)(ii) and II.C.4).

2. Annual Notice to Consumer

- a. The Annual Notice to the Consumer allows for retailer customization of the notice and, while providing required content, does not require any specific form/format providing flexibility in how these notices can be produced (II.A.2 – 3(a)).

- b. The Annual Notice to Consumers may be generalized if a retailer is subject to similar notice requirements and must only contain substantially the information required by the Requirements (II.A.2 – 3(b)).
- c. If the retailer knows that the goods are not subject to Colorado use tax, the retailer is not required to send the Annual Notice (II.A.2 – 3(c)(ii)).

3. Annual Disclosure to DOR

- a. The Colorado Department of Revenue (DOR) has provided detailed instructions for the submission of the data and allows for the submission by either the DOR website or by DVD/CD (II.C.3)
- b. The format is a simple, well described, file that can be produced with information readily available within any viable eCommerce platform using widely used Microsoft product Excel or an equivalent application available for free (II.C.1, II.C.2).

C. Retailers subject to the Requirements would possess automation supporting the efforts required to meet all of the Requirements.

- 1. Given the estimated size and gross annual retail sales volume required for a retailer to be subject to the Requirements, the affected retailers are expected to be using automation.
 - a. These retailers are likely to be leveraging third party eCommerce solutions that support capabilities required to meet the Requirements (Industry research as far back as 2008 (Forester, published Jan 2009) shows that retailers cannot justify custom systems development or costs and will rely on packaged solutions that are functionally rich and highly affordable).

- b. The retailers that rely on in-house custom built commerce systems are generally market leaders with an IT staff for which the work required to meet the Requirements is incremental and hardly measurable.

D. Commercially viable commerce platforms can support changes required to meet the minimum levels required for compliance with Requirements.

1. Third party vendor solutions providing eCommerce capabilities support varying levels of customization and extraction of data (Exhibit B.1) to address retailer needs including customer/purchase analysis, mailing list sort/creation, etc.
2. Third party vendor solutions provide the support needed to comply with the Requirements.
 - a. Retailers who do not already have a generic multi-state compliant tax statement on their website will have to include such notice in compliance with the Requirements.
 - i. Handling of sales tax is a core component of any package as retailers are all required to comply with tax jurisdiction requirements based on their unique situation (store locations, affiliations, etc.).
 - ii. All of the eCommerce solutions include the ability to amend an existing tax related disclosure statement or to change the terms and conditions wording in compliance with the Requirements.
 - b. Retailers who do not already extract customer and sales data will have to extract required data on an annual basis to create the Annual Notices and Annual Disclosure to DOR in compliance with the Requirements (See section F.1.b).

E. Larger Retailers will be able to meet the Requirements with nominal incremental costs as part of on-going efforts, system enhancements and regular legal/tax compliance efforts.

1. Large retailers employ sophisticated processes to work with their customer data for measuring customer behavior, buying patterns and generating direct marketing targets. These same processes could be leveraged to extract the data necessary to determine if a retailer needs to comply with the Requirements (meets threshold minimums) and, if subject to the Requirements, to extract the necessary data.
2. Large retailers continually enhance their shopping experience and make system changes. The level of changes required to meet the Transactional Notice part of the Requirements, if not already compliant given potential for generalized notice, is a core part of the shopping experience and would be expected to be an easy change to incorporate in a broader on-going system enhancement effort.
3. Large retailers generally review tax/compliance on at least an annual basis, as either a standalone process or as part of tax or audit preparation.

F. Smaller Retailers would be able to rely on the provider of their packaged or hosted eCommerce solution provider to support compliance with Requirements.

1. Smaller retailers are less likely to have in-house systems (either "home-grown" or purchased/licensed packages), instead relying on third party vendor 'Hosted Solutions' or 'Solutions as a Service' (SaaS) eCommerce capabilities. These vendor solutions address a very broad range of eCommerce needs resulting in functionally and technically rich solutions.
 - a. Sales Tax handling is a core component of every viable eCommerce solution providing the ability to provide a retailer customized tax related statement or a terms and conditions statement meeting the minimum Transaction Notice Requirements (Exhibit B.1).

- b. The ability to extract and manipulate the data is another core capability provided by every viable eCommerce solution (Exhibit B.1).
 - i. Some packages provide for reporting package interfaces like Crystal Reports that provide enhanced data reporting within the third party solution.
 - ii. If data manipulation capabilities are not imbedded in the third party software, all appear to support the extraction of data into Excel or similar format.
 - iii. Either ability will allow a retailer to obtain, manipulate and use the data required to meet the Annual Notice and Annual DOR Reporting Requirements.
- c. All viable eCommerce solutions provide support either in the form of user/technical guides and/or live call-in help to address potential retailer questions about the details related to implementing the Transaction Notification or extraction of data (Exhibit B.1).

G. Compliance with requirements should be considered an incremental effort to regular business activity by retailers rather than a discrete effort.

- 1. As outlined above and based on professional experience, efforts related to the compliance with the Requirements should be an incremental effort to a retailers on-going efforts that are annual or more frequent in nature.
 - a. Transactional Notice Requirements can be incorporated into efforts related to overall tax compliance and reporting (developing approach/wording) and the efforts related to refining the shopping experience (upgrading check-out processes/shopping cart handling).
 - b. Annual Notice Requirement can be incorporated into efforts related to customer communication and customer retention efforts (wording, form and content of

Annual Notice) and on-going data analysis, data extraction and customer analysis activities (data extraction identifying targets of Annual Notice).

- c. Annual Reporting to DOR is primarily a data extraction activity and can be incorporated into on-going data analysis, data extraction and customer analysis activities.

H. The Requirements will require additional efforts by affected retailers resulting in onetime, non-recurring first year, costs that range from \$2,571 to \$6,000 (0.043% - 0.100% as a percent of sales) plus annual recurring costs estimated at \$589 to \$1,000 (0.010% to 0.017% as a percentage of gross annual sales). *[Note: the costs are estimated for the compliance efforts for the smallest of the affected retailers. The costs for compliance by larger affected retailers is ignored as the impact, when normalized on a percentage of sales basis, is expected to be lower or even inconsequential]*

1. Transactional Notice

- a. Retailers may have to create/add new wording, or modify existing tax disclosure wording, to a form that will meet the Transactional Notice Requirement.
- b. The cost for compliance with the Transactional Notice Requirement, if any, would range from \$263 (low end for retailer modifying existing Transactional Notice to comply with Requirements) to \$1,038 (high end for retailer having to create a new Transactional Notice to comply with Requirements).
- c. The range in G.1.b excludes retailers who already have generic notices meeting the Transactional Notice Requirement and hence have no cost for implementing this part of the Requirements.

2. Customer Service Inquiries.
 - a. Retailers may have to amend or add to their Customer Service call or web-chat scripts to address inquiries from customers related to the compliance with the Requirements.
 - b. The estimated cost of this one time change will range from \$735 to \$1,470.
3. Annual Notice to Consumer
 - a. The Annual Notice preparation and distribution requires an effort with variability only in the size of the retailer and number of notices requiring to be sent. The following costs are assumed for production and distribution for what would be statistically one of the smallest retailers subject to the Requirements (approximately \$6,000,000 in gross annual sales) reflecting the worst case scenario on a percentage of sales standpoint.
 - b. *1st Year* - For these retailers, the total initial one time or first-year cost would be between \$1,601 and \$3,023 or 0.027% and 0.050% as a percentage of gross annual sales.
 - i. Retailers who already have a generic notice to consumers meeting the Annual Notice requirement would not incur a “1st Year” expense but would immediately fall into the “On-going” cost estimate reflected in G.3.c.
 - c. On-going - For these retailers, the on-going yearly cost would be between \$354 and \$530 or 0.006% and 0.009% as a percentage of gross annual sales.
 - d. The following retailers are excluded as they would have costs that nominally or absolutely lower than what is estimated above:
 - i. Retailers who are subject to the Requirements but have few or no customers meeting the Annual Notice threshold,

- ii. Retailers who can exclude some are all customers are being exempt from use tax by virtue of what they sell or who they sell to, and
- iii. Retailers who are more significant in size and may have better economies of scale

4. Annual Disclosure to DOR

- a. Every affected retailer will have to submit a file complying with the Colorado Department of Revenue (DOR) file layout.
- b. For these retailers, the cost for compliance with the Annual Disclosure to DOR Requirement would range from \$235 to \$ 470 or 0.004% and 0.008% as a percentage of gross annual sales.

I. Some of the above referenced costs for the Retailer could be further reduced if incorporated as part of their on-going customer experience and annual tax preparation efforts.

- 1. A great number of the retailers subject to the Requirements are expected to have a reasonable level of sophistication given estimated \$6,000,000 in gross annual sales.
- 2. These retailers are likely to have on-going monitoring, process improvement and enhancements of their customer experiences with specific on-going focus and changes to the order process and shopping cart. The nominal changes required to meet the Transactional Notice Requirement could be easily incorporated into these types of changes.
- 3. As part of customer analysis or annual tax preparation efforts, these retailers will likely prepare data similar to, or with content substantially the same as, that required for the Annual Notice or Annual Disclosure to DOR Requirements. Any effort(s) related to this

work could be leveraged to meet, or assist, with the compliance of the Annual Notice or Annual Disclosure to DOR Requirements.

J. The incremental cost of mailing Annual Notices can be mitigated by including other information and materials for the consumer.

1. The Requirements do not preclude the inclusion of materials with the Annual Notices (II.A.1). More sophisticated retailers could mitigate the absolute incremental cost of the production and mailing of the Annual Notice by including marketing materials, promotions or other reasonably limited information.
 - a. Given the requirement to send the notice by First Class US Post, the cost of the postage would allow for inclusion of additional material without any increase in the postage.
 - b. Inserts are a regular aspect of customer communication and are regularly included with mailings.
 - c. The specific savings could result in a reduction of the costs of the Annual Notices to little more than the production of the actual Annual Notice.

K. Retailers can provide the requested data without any affect on PCI compliance or change to existing privacy policies.

1. PCI compliance deals primarily with the protection of payment related information including the protection of the process and the consumer's financial data (II.E.3). None of the data required to be extracted, used, interrogated or manipulated to meet the Requirements is subject to PCI compliance.
2. Privacy Policies are not regulated nor does a strict standard exist.

- a. The Federal Trade Commission generally seeks to enforce privacy issues but does not provide strict requirements as part of their Privacy Initiatives (www.FTC.gov/privacy).
- b. The need for a Privacy Policy is not mandated by the Requirements but rather by industry guidance or consumer demand so the cost for development of a Privacy Policy, if none exists, cannot be attributed to the Requirements. In the event of no privacy policy existing, the retailer effort to implement a privacy policy would not be measurably impacted by wording required to meet the Requirements.
- c. A review of existing Privacy Policies on retail websites we referenced in our research all appear to cover the disclosure of the minimal data required for a retailer to comply with the Requirements.

L. Requirements will not materially impact the call volume for customer inquiries regarding Transactional Notice.

1. As reported by the American Marketing Association (II.E.2), surveyed consumers reported engaging into a 'live chat' (electronic text based interaction with customer service function) regarding Check Out (9.0%) and Other (16.8%). Other major reasons cited included questions about Product Information (36.3%), Finding a Product (22.0%), Order Status (10.8%), Shipping Information (13.6%).
2. There is no industry research indicating that a 'live call' (traditional call center and live voice) would have a materially different set of reasons for customer interaction.
3. No data would indicate that a Transactional Notice meeting the minimum requirements would impact the shopping experience or therefore the known reasons for consumers to engage the retailer.

4. The capability of the 'live chat' functions continue to increase and a number of sophisticated retailers are now using automated response systems to handle questions cutting down overall customer service interaction costs. It would be expected that an inquiry related to the Requirements could be handled by an automated or canned response for most consumers.

M. Requirements will not materially impact any existing rate of shopping cart abandonment.

1. Shopping cart abandonment is a prevalent and well documented issue in eCommerce. Because of the rapidly shifting eCommerce marketplace, what is not as well understood are the exact causes. Research by Forrester Research in early 2010 shows the top five stated reasons by customers to be:
 - Cost of shipping (44%)
 - Unprepared to purchase (41%)
 - Price-checking (27%)
 - Price too high (25%)
 - Wanted to save products for later (24%)
2. Research and suggestions provided by leading eCommerce solution provider ATG (II.E.1) address various aspects of the sales process and opportunities to improve the web experience for the shopper. They merely note that the check-out process should be simple, which is a direct result of significant improvements by the industry on the whole since check-out was a major cause of shopping cart abandonment in the early 2000's.
3. Compliance with the Requirements does not need to impact the check-out process even in the slightest bit and hence should not result in any measurable change in the shopping cart abandonment.

N. Annual Purchase Disclosure to Department of Revenue Requirement provides secure transmission options protecting customer data.

1. The Colorado Department of Revenue (DOR) has outlined a process for providing a secure website protocol whereby a retailer would establish an “account” by which they can sign on to the DOR website.
2. Once signed up, the retailer would be part of the secure protocol using industry standard secure socket layer (SSL) technology. SSL is the same method by which retailers usually protect customer and purchase data when their clients interact with them on their website.
3. The transmission options, either on-line or if by hard-copy media, would not result in any cost with respect to securing such data.

IV. EXHIBITS

Exhibit A – Cost Calculations

- Note:*
1. *Detailed cost calculations are attached as Exhibit A.1 (“Exhibit A.1 – Cost Calculations.xlsx”)*
 2. *Percent of sales is normalized using the approximated \$6,000,000 gross annual sales estimate threshold for retailers subject to the Requirements.*
 3. *Assumptions regarding time (effort) required for tasks are conservative based on professional experience and review with colleagues.*
 4. *“Management” refers to personnel in charge of a process, department*
 - i. *Time is accounted for to review requirements, outline a plan and confirm details*
 - ii. *Time is accounted for developing or revising wording for the Transactional Notice*
 - iii. *Time is accounted for developing necessary changes to the customer services scripts*
 - iv. *Time is accounted for writing a customer friendly Annual Notice*
 - v. *Time is accounted for discussing and/or reviewing requirements, wording or approaches with a professional (“Accountant / Lawyer”)*
 - vi. *Cost for “management” was placed at \$105 per hour. This is based on a senior level employee with \$150,000 base salary plus employer costs (taxes, benefits, II.F.1) bringing the total to just under \$215,000 or just over \$103 per hour.*

5. *“Business Systems Analyst” was used as a generic, technically capable, resource who would work with the technology (website and data)*
 - i. *Time is accounted for to modify the website as needed for the Transactional Notice.*
 - ii. *Time is accounted for incorporating any updates/changes related to the customer service call center or chat procedures.*
 - iii. *Time is accounted for developing a data extract (identifying the data), testing the extract and performing a final extract of the required data.*
 - iv. *Time is accounted for reviewing the data extract and submitting it to DOR.*
 - v. *Cost for “business system analyst” was placed at \$65 per hour. This is based on the highest range of Business System Analyst compensation, \$93,750 (II.F.3), plus employer costs (taxes, benefits, II.F.1) bringing the total to just under \$134,000 or just over \$64 per hour.*
6. *“Administrative Person” was used as a generic, administratively capable, resource who would work with the office technology required to complete the Annual Disclosure*
 - i. *Time is accounted for creating the Annual Notice per management specifications.*
 - ii. *Time is accounted for to create a annually re-usable mail merge (merging data extracted by business systems analyst into the Annual Notice).*
 - iii. *Time is accounted for printing, stuffing and mailing Annual Notices using a ‘worst case’ scenario of minimum threshold sales of approximately \$100,000 and every customer buying just over \$500 worth of goods yielding approximately 200 notices.*
 - iv. *Cost for “administrative person” was placed at \$29 per hour. This is based on the highest range of Senior Administrative Assistant compensation, \$41,750 (II.F.4), plus employer costs (taxes, benefits, II.F.1) bringing the total to just under \$60,000 or just over \$28 per hour.*
7. *“Accountant / Lawyer” was used as a generic term for a trusted outside professional who would be able to provide third-party review regarding compliance with Requirements.*
 - i. *Time is accounted for reviewing any new or modified Transactional Notice*
 - ii. *Time is accounted for reviewing any modifications or additions to the customer service scripts*
 - iii. *Time is accounted for reviewing the proposed structure and content of the Annual Notice.*
 - iv. *Cost for “Accountant / Lawyer” was placed at \$250 per hour based on experience. While actual costs may be higher, they are unlikely to apply*

to the retailer size and sophistication used for purposes of analyzing the impact of the Requirements.

8. *While any of the estimates and costs can be extended to a much larger number based on “committees” working on things, contractors performing the work or extensive legal reviews, this would not be a reasonable approach*
 - i. *The changes required to comply with the Requirements are simplistic and would not legitimately warrant a large effort by any group.*
 - ii. *A large or wasteful sized initiative is not a realistic scenario for the retailer size and sophistication used for purposes of analyzing the impact of the Requirements.*
 - iii. *On an absolute basis many of the basic functions of the larger retailer are more expensive but are negated when looked at on a percentage of sales basis.*
9. *The concept of a contractor completing the ‘technical’ aspects identified in the model as work done by the ‘business systems analyst’ was dismissed*
 - i. *The size of effort would not be outsourced by a small retailer,*
 - ii. *If outsourced the effort would be completed at a faster rate negating any incremental contractor labor cost difference, or*
 - iii. *Larger retailers outsourcing the effort would incorporate required changes needed for compliance into larger on-going efforts.*

1. Transactional Notice

The compliance with the Transactional Notice is a one-time investment required by the retailer based on their current sales tax disclosure.

- a. Retailers may already have some form of generic sales tax notice that meets the Transactional Notice Requirement.
For these retailers, the cost for compliance with the Transactional Notice Requirement would be \$0.

or

- b. Retailers may have to modify the wording of what will meet the Transactional Notice Requirement.
For these retailers, the cost for compliance with the Transactional Notice Requirement would range from \$263 to \$525.

or

- c. Retailers may have to add new wording for compliance with the Transactional Notice Requirement.
For these retailers, the cost for compliance with the Transactional Notice Requirement would range from \$545 to \$1,038.

2. Customer Service Inquiries

Work related to generating the wording or approach for the Customer Service call or web-chat scripts will leverage work already done on the Transactional Notice (i.e. outside/expert help) Retailers will have to amend or add to their Customer Service call or web-chat scripts to address inquiries from customers related to the compliance with the Requirements.

The estimated cost of this one time change will range from \$735 to \$1,470.

3. Annual Notice

- a. Using the extreme case, with essentially just a minimum \$100,000 in Colorado and with every customer purchasing just over \$500 annually, the total number of notices required to be sent would be approximately 200.
 - i. *1st Year* - For these retailers, the total initial one time or first-year cost would be between \$1,601 and \$3,023 or 0.027% and 0.050% of gross annual sales.
 - ii. *On-going* - For these retailers, the on-going yearly cost would be between \$354 and \$530 or 0.006% and 0.009% of gross annual sales.

or

- b. Part of the retailer population will have low average order amounts, low repeat business or other factors resulting in few, if any, customers exceeding the threshold triggering the need to generate an Annual Notice.

For these retailers, there may be no cost related to the Annual Notice Requirement.

- c. By delineating the extreme, the costs can be shown to be a reasonably insignificant incremental cost for any retailer and in line with general operating expenses.
 - i. Larger retailers with greater infrastructure and greater economies of scale are ignored for purposes of estimating the anticipated cost for an 'average' retailer as those costs would be insignificant when measured as a percentage of annual gross sales.
 - ii. It can be assumed that given focus on retailers with low volume of notices, outsourcing to a mail-house could be impractical and would be chosen only if economically more sensible.
- d. Consumable costs were obtained as follows:
 - i. Paper - \$0.01 per page based on standard printer paper available at Staples
 - ii. Printing - \$0.022 per page based on Xerox study (average of all printers)
 - iii. Envelope - \$0.34 per envelope from Office Max (pre-printed with disclosure on outside); actual cost could be mitigated to regular cost of envelope (approx. \$0.06 each) by printing the disclosure prominently on the top of the mailing label.
 - iv. Mailing Label - \$16.50 for 200 oversized (3.25" x 3.75") mailing labels on Amazon.com.
 - v. Stamps – standard current US Postal Service stamp cost.

4. Annual Disclosure File submission – DOR

- a. The data extracted for the Annual Notice is substantively the same as the data required by the Annual Disclosure to the DOR.
 - i. For these retailers, the cost for compliance with the Transactional Notice Requirement would range from \$235 to \$470 or 0.004% and 0.008% as a percentage of gross annual sales.

- b. No substantive difference in price between cost of effort, or submission, of file electronically (web) or by CD/DVD sent by mail.

Exhibit B – eCommerce Platform Review

Research guided with methodology outlined by me. Calls and functional review done by research assistant. Results reviewed by me. Matrix with details attached (*“Exhibit B.1 – eCommerce Platform Review.xlsx”*).

1. Random Sample of entry to mid-level eCommerce Solutions
 - a. Google Search “Top Entry Level eCommerce Solutions”
 - b. Random sample from “ZippyCart.com”, “SmallBizTrends.com”
 - c. Added entries from Google Search “Licensed eCommerce Solutions for small businesses”
 - d. Random sample of companies found in search
2. Developed Standard Comparison Matrix
 - a. Target Audience (Entry Level, Mid Range, High End)
 - b. Type of Solution (Licensed, Hosted (SaaS), Freeware, Packaged)
 - c. Costs and Options
 - d. Training and Support
 - e. Clients using solution (references)
 - f. Requirements based on Bill
 - i. Transactional Notice (modifying shopping cart)
 - ii. Annual Notice and File Submission to DOR (extracting data/formats, mail-merge capabilities)
3. Reviewed Websites and/or called selected companies
4. Documented Answers to Standardized Matrix

V. QUALIFICATIONS

Attached hereto is a copy of my current CV.

1. I have been a consultant in the Information Technology area for over 20 years with experience ranging from extensive coding in the late 80’s/early 90’s to running \$100 million dollar plus, multi-national, systems development programs for Fortune 100 companies.

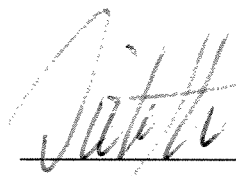
2. I have extensive experience in and have provided expert opinions in the subject areas of Credit Card Systems and State and Provincial Lottery systems, vendors and services.
3. I consulted with, invested with and helped turn around an eCommerce platform (Succeed Corporation) providing full feature web-store capabilities (store, catalog, product, shopping cart, etc.) to small to medium sized retailers.
4. I have owned and/or have had financial interests in multiple retail companies providing me hands-on insight to the challenges faced by small retail operations as it relates to compliance, IT limitations and constrained resources.
5. I have not published any articles for public consumption.

VI. RECENT TESTIMONY

I have not testified as an expert at trial or deposition during the past five years.

VII. STATEMENT OF COMPENSATION

My compensation is \$185 per hour. Services are invoiced on an hourly basis without any regard to the outcome.



Dieter G. Gable

COST CALCULATIONS

REQUIREMENT →	Initial, onetime and non-recurring						Annual, recurring							
	Transactional Notice (Modify)		OR	Transactional Notice (NEW)		Customer Service Inquiry Script Dev.		Annual Notice (1st year)		OR	Annual Notice (on-going)		File Submission to DOR	
	Low	High		Low	High	Low	High	Low	High		Low	High	Low	High
COMPLIANCE EFFORT														
Effort (hours)														
Management	1.00	2.00		2.50	4.50	4.00	8.00	4.00	8.00		0.50	1.00	1.00	2.00
Business System Analyst	0.50	1.00		0.50	1.00	1.00	2.00	8.00	16.00		1.00	2.00	2.00	4.00
Administrative Person								8.00	16.00		2.00	4.00		
Accountant / Lawyer	0.50	1.00		1.00	2.00	1.00	2.00	1.00	2.00					
Cost (per hour)														
Management	\$ 105	\$ 105		\$ 105	\$ 105	\$ 105	\$ 105	\$ 105	\$ 105		\$ 105	\$ 105	\$ 105	\$ 105
Business System Analyst	\$ 65	\$ 65		\$ 65	\$ 65	\$ 65	\$ 65	\$ 65	\$ 65		\$ 65	\$ 65	\$ 65	\$ 65
Administrative Person	\$ 29	\$ 29		\$ 29	\$ 29	\$ 29	\$ 29	\$ 29	\$ 29		\$ 29	\$ 29	\$ 29	\$ 29
Accountant / Lawyer	\$ 250	\$ 250		\$ 250	\$ 250	\$ 250	\$ 250	\$ 250	\$ 250		\$ 250	\$ 250	\$ 250	\$ 250
Total (total by level)														
Management	\$ 105	\$ 210		\$ 263	\$ 473	\$ 420	\$ 840	\$ 420	\$ 840		\$ 53	\$ 105	\$ 105	\$ 210
Business System Analyst	\$ 33	\$ 65		\$ 33	\$ 65	\$ 65	\$ 130	\$ 520	\$ 1,040		\$ 65	\$ 130	\$ 130	\$ 260
Administrative Person	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ 232	\$ 464		\$ 58	\$ 116	\$ -	\$ -
Accountant / Lawyer	\$ 125	\$ 250		\$ 250	\$ 500	\$ 250	\$ 500	\$ 250	\$ 500		\$ -	\$ -	\$ -	\$ -
Sub-total	\$ 263	\$ 525		\$ 545	\$ 1,038	\$ 735	\$ 1,470	\$ 1,422	\$ 2,844		\$ 176	\$ 351	\$ 235	\$ 470
Consumables (200 Annual Notices)														
Paper								\$ 2	\$ 2		\$ 2	\$ 2		
Printing in black & white								\$ 4	\$ 4		\$ 4	\$ 4		
Envelope								\$ 68	\$ 68		\$ 68	\$ 68		
Mailing label								\$ 17	\$ 17		\$ 17	\$ 17		
Stamp (\$0.44)								\$ 88	\$ 88		\$ 88	\$ 88		
TOTAL PERSONNEL	\$ 263	\$ 525		\$ 545	\$ 1,038	\$ 735	\$ 1,470	\$ 1,601	\$ 3,023		\$ 354	\$ 530	\$ 235	\$ 470
% of sales (\$6,000,000 in annual sales)	0.004%	0.009%		0.009%	0.017%	0.012%	0.025%	0.027%	0.050%		0.006%	0.009%	0.004%	0.008%
"Best Case"														
1st year	\$ 2,571					\$ 735		\$ 1,601					\$ 235	
on-going	\$ 589									\$ 354			\$ 235	
"Worst Case"														
1st year	\$ 6,000			\$ 1,038		\$ 1,470		\$ 3,023					\$ 470	
on-going	\$ 1,000									\$ 530			\$ 470	

VENDORS →	1 Go Daddy Quick Shopping Cart (480)505-8877	2 Core Commerce (800)747-4270	3 Shopify (866)704-0252	4 OS Commerce	5 Everest eStorefront	6 Magento
↓ FUNCTIONAL REVIEW						
Source of data	Company website	Company website	Company website, Live Chat with Customer Service, calling sales and speaking with Jeremy	Company website (no sales or customer service support)	Company website and Anita Vettickal, sales staff	Company website and Adi Adam, sales (by email)
Entry Level Solutions (<\$200/Month cost), Mid range	Entry Level	Entry Level	Entry Level	Mid Range	Mid Range	Mid - High End
Type of solution	Hosted (Based on website)	Hosted or Licensed (Based on website)	Hosted (Based on website)	Freeware, Custom (Based on website)	Packaged or Hosted (Based on website)	Licensed, can be hosted (Based on website)
Free trial available?	No (Based on website)	Yes - 15 days (Based on website)	Yes - 30 days (Based on website)	Yes - always free (Based on website)	No (Based on website)	No (Based on website)
COST - all packages	Economy - \$9.99/Mo Delux - \$29.99/Mo Premium \$49.99/Mo Discounts if you pay multiple months up front. All plans include free hosting, no setup fee, no per transaction fees. (Based on pricing page of website)	They offer custom design. No transaction fees. Beginner - \$19.99/mo, Starter - \$24.99/mo, Basic - \$49.99/mo, Standard - \$99.99/mo, Pro - \$129.99/mo (Based on pricing page of website)	Basic - \$24/Mo thru Premier - \$699/Mo. 5 Levels. Most popular is Business - \$99/Mo. All have transaction fees except Premier. Custom plans available. (Based on pricing page of website)	Free, but you must customize and integrate on your own. Free add ons as well. (Based on pricing page of website)	Depends on many factors, must call to get quote. RANGE. (Based on email from sales)	Community - \$0 (not an option due to high effort) Professional - starts at \$2,995 USD/Yr Enterprise - \$12,990/Yr (Based on pricing page of website)
Training and Support	All plans include free 24/7 phone support. Online community forums. (Based on Support page of website)	Free live phone support during business hours and 24/7 emergency line. Training videos, forums, blogs, knowledge base, and user guide online	Yes, call, email, live chat, submit ticket. Online documentation, app store, forums, knowledge base. (Based on website)	Community support in forums. Newsletter	Support plans and training for extra cost. RANGE. Online forums.	Community and Professional edition has only user guide and forums. Support is available for the Enterprise edition (Gold and Platinum plans - 24/7/365 phone and internet support)
1 Tax compliance capabilities (TRANSACTIONAL CONSUMER NOTICE)						
How to specify what states to collect taxes	Yes, built in tax calculators in all packages (Based on Features page). Easily configure tax options. Establish state-by-state, a flat tax and VAT. (Based on Product Tour page)	Yes, can be triggered by billing or shipping address and tracked by state and county (Based on website)	Yes (Based on website)	Yes (Based on website)	Unknown - awaiting response from company	Yes based on discussion with company
Ability to provide consumer tax notice (we collect in AZ, CA & OH... not in ...)	2 spaces to add custom disclaimers during checkout process in all packages (Based on phone call with support)	Yes, if you have any terms and conditions that you need to inform the customer about, enter them in the Terms & Conditions field.	Yes, you can add custom verbage. If more is required, it is an easy customization. (Based on discussion with Jeremy in sales)	Unknown, may require custom development	Unknown - awaiting response from company	Unknown - awaiting response from company
Interface for changes if retailer can change... user friendly or technical	User can change and it appears to be user friendly (Based on online demo)	Interface is user friendly	Retailer can change if it is minor. Vendor can change if more complicated. (Based on discussion with Jeremy in sales)	Unknown	Unknown - awaiting response from company	Unknown - awaiting response from company
Who can do it and how difficult is it (estimate time); if vendor only, detail \$\$ estimate	Minimal effort	Anyone - minimal effort	Minutes for the retailer	Unknown	Unknown - awaiting response from company	Unknown - awaiting response from company

VENDORS →	1	2	3	4	5	6
	Go Daddy Quick Shopping Cart (480)505-8877	Core Commerce (800)747-4270	Shopify (866)704-0252	OS Commerce	Everest eStorefront	Magento
↓ FUNCTIONAL REVIEW						
2 Data extraction capabilities (ANNUAL PURCHASE & SUMMARY TO DOR)						
Ability to extract database info (customer name, addresses (ship to / bill to), purchase amounts)	Yes, all database fields can be extracted in all packages. (Based on phone call with support). Search and filter your customers' orders by order status, payment status and customer. (Based on Product Tour page)	Yes, You can select any or all orders to export. Can also export customer information.	Yes - all packages. Can create a customer group and query customers who spent more than \$500 last year. (Based on discussion with Jeremy in sales)	Yes, all data goes into your database	Yes, reporting designed around Crystal Reports	Yes, all data goes into your database
formats for extraction (.csv, ...?)	Export order information to a Microsoft* (Based on Product Tour page)	Excel, CSV, UPS WorldShip	CSV or XML (Based on website and discussion with Jeremy in sales)	Depends on the capabilities of your database	HTML, PDF, Excel	CSV and Excel
Interface for extract if retailer can extract... user friendly or technical	User can extract through interface and it appears to be user friendly. (Based on Product Tour page)	Retailer can extract, user friendly	Retailer can extract, user friendly. (Based on website and discussion with Jeremy in sales)	Depends on the capabilities of your database	User Friendly	User Friendly
Who can do it and how difficult is it (estimate time); if vendor only, detail \$\$ estimate	Retailer can do it with minimal effort	Retailer can do it with minimal effort	Retailer can do it with minimal effort	Yourself, or hire a vendor	Unknown - awaiting response from company	Very easy, but will require data manipulation in Excel or Access
3 Data extraction capabilities (ANNUAL CONSUMER DISCLOSURE)						
Any mail-merge capabilities? If so, able to merge specific data fields?	No, would need to be done using Office type software.	No, would need to be done using Office type software.	No, would need to be done using Office type software.	No, would need to be done using Office type software.	Unknown - awaiting response from company	No, would need to be done using Office type software.
5 Average size of clients (in annual Sales)						
find out how their sales distribute. i.e. how many retailers are under \$500k, how many are over \$5,000,000. maybe they have some natural distribution they could share with us on an aggregated basis?	Since there are low end limits on disk space (2GB) and bandwidth (100GB), this is for smaller businesses	Unknown - awaiting response from company	Can accommodate larger retailers (>\$10M/annual sales). Current range of customers in all sizes. (Based on discussion with Jeremy in sales)	Can accommodate any size retailer as it is customizable	Unknown - awaiting response from company	Unknown - awaiting response from company
6 Client references	K9 Bistro, Urbanhom, Green Apple Kitchen, Stella Bella (Based on website)	Over 13,000 stores. Olan Mills, Pet Sate, GE, Michigan State, Clear Channel Radio, Thomas Nelson Publishers, Guitar Syndicate, Abba Java, Minnesota Workwear (approx \$1m/yr in gross revenue according to interview), Golf Is Life, The Basket Lady, Begalabel.com. (Based on website)	Amnesty International, Tesla Motors, Foo Fighters, The Indianapolis Star, Pixar, Evisu, ThemePark, Social Suicide (Based on website)	Over 230,000 storefronts (according to the Small Business Trends website article about the best ecommerce systems for small businesses)	Tulip World, Equestrian Collections, Planet Shoes, Green Feet, Atlantic Tactical, Holland Bulb Farms, Chefshop.com (Based on website)	3M, Samsung, The North Face, Lenovo, Homedics, Jack Wolfski, Vizio, Espresso, Stussy, Myla (Based on website)

DIETER GABLE

4455 E Camelback Road, A-240
Phoenix, Arizona 85018

Cell: 602-300-9270
Work: 480-343-9478

SUMMARY

Highly involved and action oriented senior executive experienced in working with “C-Level” executives to understand business challenges and define well founded strategic initiatives and business solutions with focus on measurable outcomes. Proven ability to build and inspire teams to solve problems and reach strategic business goals. Over 20 years experience both domestically and internationally, with deep experience in state & local government and financial services. Specific strengths include:

- Corporate & Board Governance
- Organizational Restructuring
- Complex Program Management
- Business & IT Transformation
- Structured Systems Development Methods
- Large Client Development
- Financial / P&L Management
- Capital and Debt Structuring
- Complex Negotiations
- International Work / Multi-lingual

EXPERIENCE

TB Consulting, LLC, Scottsdale, AZ
CEO, Director

2007 – Present

Technical Services and Software Development firm focused on SMB marketplace including State & Local Government. Select client experiences:

- Multi-year, multi-million dollar contract for client with \$500m revenue
- Multi-year contract with Court Trustee for applications management and infrastructure support
- Customer focused solutions to upgrade technology yielding immediate measurable benefits
- Identified opportunities for streamlining and reducing work flow/efforts up to 80%

AZ Merchant Partners, LLC, Scottsdale, AZ
Founder, Director

2003 – Present

Consultancy founded to address the needs of mid-sized, mainly Arizona based, businesses leveraging four key components (Strong Corporate Governance, Strategy Development, Experienced Management and Capital Formation) to deliver meaningful and quantifiable results. Select client experiences:

IPSA (Financial investigations & risk advisory firm), Phoenix, AZ

Structured acquisition of company and formation of Fortune 100 level board

- Structured acquisition with no cash up-front and no outside equity or debt
- Restructuring of operations for increase in value of company by ~\$10 million within first year

Succeed (eCommerce solution provider), Tempe, AZ

Restructured overall operations, cost structure and focus of struggling company

- Year 1 cost savings of nearly 25%/\$1 million; provided for capital to invest in product development
- Increased sales and positioned company as #1 fastest growing software company in AZ (2007)

Champion College Solutions (School loan default prevention), Mesa, AZ

Restructured operations, aligned staff and reengineered processes with updated technology under budget

- Implemented new management and sales team to deliver major accounts (20% annual growth)
- Decreased headcount by over 50% with improved throughput and customer satisfaction

NeoSurg (Laparoscopic device manufacturer), Houston, TX

Led capital campaign with unique investment structure providing company needed funds and flexibility

- Jointly developed the go-to-market strategy aimed at positioning company for acquisition
- Positioned for acquisition by rival (Cooper Surgical) within 24 months at substantial multiple

F1 Race Factory (Indoor karting & entertainment), Phoenix, AZ

Co-founded company with focus on providing corporate meeting & team building capabilities

- Developed into leading US track hosting US indoor karting finals since inception in 2003
- Restructured cost structure during economic downturn yielding highest single year profitability

ACCENTURE, LLP, Phoenix, AZ**1989 – 2003**

Partner, Financial Services (State & Local Government until 1996)

A \$23B Management Information, Technology Consulting and Outsourcing Company, providing service to FORTUNE 100/500 and large Corporations internationally in a variety of industries and governments. Specialized in large programs with focus on ‘metrics & measurements.’ Select client experiences:

Chase Bank (WaMu)**Optis Program Development Director**

Directed \$300 million plus dollar program to streamline home loan originations

- Integrated numerous internal and 3rd party systems enabling significant increase in market share
- Implemented technology to improve speed of decision by ~80% and speed of close by ~35%

American Express (US & UK)**Triumph Program Development Director**

Directed software development effort for \$500 million dollar plus program over 3 years (200+ team)

- Enabled leading credit card products – Blue Card US/Europe, Black Card and Affinity cards
- Eliminated tens of thousands of hours of unwarranted software development backlog and costs

JusticeLink™ Justice Product**Practice Lead**

Assumed leadership of stalled project and delivered working solution within 9 months

- Implemented first of kind electronic filing capability at no cost to Prince George’s County (MD)
- Project and benefits featured on national news; product spun off to venture group & Lexis Nexis.

ACCLAIMS™ Lottery Product**Practice Lead**

Directed group in providing systems and services to US state and foreign lotteries

- Increased market share of back office systems to over 25% of US States’ market
- Improved market place positioning with international presence in Canada and Europe

EDUCATION/PROFESSIONAL CERTIFICATIONS

Bachelor of Science, Finance

University of Arizona, Tucson, Arizona

Bachelor of Science, Real Estate

University of Arizona, Tucson, Arizona

AFFILIATIONS AND RECOGNITION

- Project Management Institute, Member
- Ryan House Children’s Health Charity, Chairman of Board, Board of Directors
- Luke Air Force Base, Honorary Commander, Fighter Country Partnership
- University of Arizona, MIS National Board of Advisors
- University of Arizona, Presidents Club