

States Should Adopt a Version of Colorado's Remote Sales Tax Notification and Reporting Law

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The problem

- Despite widespread press attention to Internet sales tax issue, 38% of Americans still don't know they are obligated to self-remit use tax when seller doesn't charge it (2015 ICSC poll)
- Among those who are aware, compliance very low; latest (2012) multistate data from states with lines on PIT returns:
 - Share of returns reporting any use tax ranged 0.2% - 10.2%
 - 1.2% of returns reported some use tax in median state

3 requirements in 2010 Colorado law

Remote sellers that don't charge sales/use tax must:

- Notify buyers at each purchase (text on online purchase confirmation screen or catalog order form) that they may owe use tax direct to state notwithstanding not being charged
- Send buyers annual report of total purchases with reminder that they may owe use tax directly; inform them that total \$ purchase amount (only) being shared with DoR
- Send DoR annual report identifying all CO buyers (name, address) and total \$ purchases

Changes made by final CO regulation (eff. 7/1/17)

- Exempts remote sellers with less than \$100,000 annual CO sales
- No annual report required to buyers making less than \$500 in annual purchases (but report on them still goes to DoR)
- Neither annual report required if all items are tax-exempt
- Use of marketplace doesn't relieve seller of obligations, but can contract with marketplace to satisfy them with regard to marketplace sales
- Buyers can opt-in to receive annual report electronically
- Caps on seller non-compliance penalties

Multistate Tax Commission project developing “model” version of CO law

- Combines provisions of CO law and regulation and likely will adopt some meaningful improvements:
- Unlikely to require annual report to buyer be sent by first class mail (i.e., cheaper bulk mail OK)
- Unlikely to waive annual report to buyers making less than \$500 annual purchases
- Likely to require marketplaces to meet all requirements for marketplace sales
- Likely to state explicitly that all tax information confidentiality laws apply to annual DoR reports



Some states have already adopted a version of the Colorado law; most are flawed

State	Law effective	Law codified beginning at	Each-purchase notification?	Annual notification?	Annual report to revenue department?	Non-compliance penalties?
Alabama	7/1/17	40-2-11(7)(b)	Likely yes*	Likely yes*	Likely yes*	Likely yes*
Kentucky	7/1/13	139.450	Yes	No	No	No
Louisiana	7/1/17	47.309.1	Yes	Yes	Yes	No
Oklahoma	11/1/16	68-1406.1	Yes	Yes	No	No
South Dakota	2011	10-63-1	Yes	No	No	No
Vermont	7/1/17	32.9712	Yes	Yes	No	Yes
Washington	1/1/18	82-08-052	Yes	Yes	Yes	Yes

*All drafting details were delegated to the Alabama Department of Revenue, which has yet to act.

All states should adopt current version of MTC model as soon as possible

Why?

- Remote sellers have long (effectively) mis-informed buyers about self-remittance obligations:
 - zero sales tax shown on online invoices in states in which they don't collect leads buyers to think no tax is due
 - ditto for statements on catalog order forms like “CA and NY residents, add applicable sales tax”
- Remote sellers should be required to correct this misinformation
- 3rd-party information reporting is standard feature of tax enforcement; this is no different than federal law requiring your bank to send you a 1099

All states should adopt current version of MTC model as soon as possible

Why?

- Ongoing reminders that tax is owed will generate some additional compliance
- Knowledge that information is being share with state DoR will generate some additional compliance
- State DoRs can use information to take affirmative steps to collect tax where it is cost-effective to do so (e.g., individual buyers of big-ticket items or substantial annual purchases; small businesses subject to audit)
- Will help effort to pass RTPA/MFA: more voters will understand this is not a new tax

All states should take steps to make it easier for consumers to self-remit use tax

- Require no more than annual filing
- Put remittance line on personal income tax form (most states already do)
- Provide option of using income-based tax look-up table for non-“big-ticket” online purchases
- Single Web page where all necessary info available (e.g., exemption status of things frequently purchased online, shipping and handling, and mixed taxable/exempt items)
- Provide online database that enables consumers to look up combined state/local use tax rate at their address

Responding to claim that annual report to DoR violates consumer privacy (1)

Claim is gross exaggeration

- Law explicitly provides that no information about nature of purchases is provided to DoR; only total \$ amount
- Only legitimate concern is that knowing name of seller can provide indication that certain privacy-sensitive items have been purchased
- For vast majority of online purchases, knowing name of seller provides no indication whatsoever of what's been purchased

Responding to claim that annual report to DoR violates consumer privacy (2)

- For vast majority of purchases about which people might have privacy concerns, they can find remote seller that collects tax or whose name reveals nothing about nature of purchase (e.g., person can buy gun from SportingGoods.com rather than Firearms.com)
- If states require marketplaces rather than ultimate retailers to prepare annual DoR report, marketplace's name will be on report rather than retailer's
- Retailers selling sensitive items likely to begin providing marketplace purchase option or collecting tax to shield identity of ultimate retailer from DoR for privacy-prioritizing customers

Responding to claim that annual report to DoR violates consumer privacy (3)

- Information about nature of purchases far more private under reporting law than it is when purchase actually made from retailer that collects tax; sales tax auditing of latter inherently requires DoR personnel to sample actual invoices of actual customers to determine that proper tax was charged
- DoRs already routinely have information about actual purchases of actual customers (e.g., from customs brokers, DoR-to-DoR sharing of interstate sales info from sales tax audits of in-state audits of jewelers, furriers, art dealers, etc.)
- Opponents of CO law have provided no evidence of inappropriate accessing or disclosure of any such of info
- Improper accessing/disclosure of state tax-related info subject to severe civil/criminal penalties

Responding to claim that annual report to DoR violates consumer privacy (4)

- State personnel already have access to numerous types of sensitive information:
 - Tax and other agencies know family income
 - Schools know names/ages of children, learning and behavior problems
 - Gun ownership from concealed carry permits and hunting licenses
 - Health records from Medicaid and CHIP participation
 - Political party membership
 - Value of houses, cars, boats
 - Who buys lottery tickets
- All indications are that confidentiality of this information is scrupulously maintained with exceedingly rare exceptions.

All sales tax states should adopt strong version of Colorado law ASAP

- Inclusion of annual DoR report essential; gives law some clout
- Remote seller non-compliance penalties essential
- MTC version will be best model for states; some substantive improvements over CO's law and no necessity for supporting regulation
- No guarantee of *Quill* reversal, but the courts have given states this additional tool – they should use it
- For more info see: Mazerov, “States Should Adopt a Version of Colorado’s Remote Sales Tax Law,” CBPP, 8/3/17;
<https://www.cbpp.org/sites/default/files/atoms/files/8-3-17sfp.pdf>