

## Notice and Reporting Requirements for Non-Collecting Retailers

### RULE ~~REGULATION~~ 39-21-112-(3.5)

#### Basis and Purpose

The basis for this rule is § 39-21-112(1) and § 39-21-112(3.5), C.R.S. The purpose of this rule is to clarify how a retailer that does not collect Colorado sales tax shall comply with notice and reporting requirements of § 39-21-112(3.5), C.R.S.

1. **General Rule.** Every Non-Collecting Retailer whose Total Gross Sales into Colorado are \$100,000 or more shall:
  - a. Provide a Transactional Notice to all Colorado Purchasers as described in paragraph (4) of this rule;
  - b. Provide an Annual Purchase Summary to all Colorado Purchasers by January 31 of each year as described in paragraph (5) of this rule; and
  - c. Provide an Annual Customer Information Report to the Department by March 1 of each year as described in paragraph (6) of this rule.
2. **Definitions**
  - a. *“Annual Customer Information Report”* means the annual report required to be sent by a Non-Collecting Retailer to the Department containing all information required pursuant to paragraph (6) of this rule.
  - b. *“Annual Purchase Summary”* means the notification required to be sent by a Non-Collecting Retailer to all Colorado Purchasers summarizing all information required pursuant to paragraph (5) of this rule.
  - c. *“Non-Collecting Retailer that does not collect Colorado sales tax”* means ~~A retailer that does not collect Colorado sales tax is~~ a retailer that sells tangible personal property goods to Colorado pPurchasers and that does not collect Colorado sales or use tax. A retailer that collects Colorado sales or use tax is not a Non-Collecting Retailer, regardless of whether the retailer is obligated to collect the tax or voluntarily collects the tax. ~~Such retailers are also referred to in this regulation as “non-collecting retailers.”~~
    - i. ~~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.~~
    - ii. ~~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.~~
  - d. *“Colorado pPurchaser”*: means a purchaser who makes a Colorado Reportable Purchase. ~~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~~ If a good is purchased by one party, who may be inside or outside of Colorado, and is shipped to another party in Colorado, the Colorado pPurchaser is the purchaser of the tangible personal property goods, not the recipient of the tangible personal property goods.

- i. ~~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.~~
  - e. “Colorado Reportable Purchase”:
    - i. With respect to sales of tangible personal property goods that are shipped, a Colorado Reportable Purchase is one that is shipped to an address in Colorado.
    - ii. With respect to sales of tangible personal property 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 a Colorado Reportable Purchase is a purchase that the Non-Collecting Retailer, shall make a determination as to whether a purchase is a Colorado purchase using any other commercially reasonable method, determines is to be downloaded or otherwise used by a person located in Colorado. A commercially reasonable method may be based on the business’s existing billing, customer-tracking, or other systems. The commercially reasonable method used by a Non-Collecting Retailer must be the same for each purchaser. The Non-Collecting Retailer must also use the same commercially reasonable method every year the Non-Collecting Retailer makes sales and must use such method for all states into which the Non-Collecting Retailer ships tangible personal property, unless good cause exists to use a different method.~~
  - iii. A Colorado Reportable Purchase does not include a purchase on which sales tax was collected at the time of the sale. This is true whether the sale was made by the Non-Collecting Retailer or a third-party and whether the collection was made voluntarily or was required.
  - iv. ~~†To the extent that disclosure of the purchaser’s purchase or rental of VHS tapes, DVDs, Blu-Ray disks, or other video materials of such items would violate 18 U.S.C. 2710A, the Colorado Reportable Purchase shall not include such purchases or rentals. 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.~~
- f. “Department” means ~~the term Department refers to~~ the Colorado Department of Revenue.
- g. “Total Gross Sales” ~~—As used in this regulation, the term total gross sales~~ means the total sales of Colorado Reportable Purchases made by a Non-Collecting Retailer sales of goods, including all Colorado Reportable Purchases made by all entities controlled by or under common control with the Non-Collecting Retailer. 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.~~
- h. “Transactional Notice” means the notice required to be provided by a Non-Collecting Retailer to a Colorado Purchaser at the time a Colorado Reportable Purchase is made

notifying the Colorado Purchaser of all information required pursuant to paragraph (4) of this rule.

3. **De Minimis Non-Collecting Retailers.** For purposes of this rule, 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*. If a Non-Collecting Retailer's sales are *de minimis*, such Non-Collecting Retailer is not subject to the notice and reporting requirements of section 39-21-112(3.5), C.R.S. and this rule.
4. **Obligation to Transactional give Notices with Each Purchase.** A Non-Collecting Retailer shall ~~must~~ provide a ~~give~~ Transactional Notice with every Colorado Reportable Purchase ~~to all Colorado purchasers not exempt from Colorado sales and use tax. that Colorado sales or use tax is due on all Colorado purchases that are not exempt from sales tax. This notice must be provided with respect to each transaction.~~
  - a. **Online Purchases.** For all purchases made online, a Transactional Notice shall be prominently located in close proximity to the "Tax" or "Sales Tax" line at checkout, or if no "Tax" line is available, in close proximity to the "Total Price" line shown at checkout.
    - i. If the Non-Collecting Retailer is unable to display the Transactional Notice at checkout, the Non-Collecting Retailer shall provide a prominent hyperlink at checkout in close proximity to the "Tax" or "Sales Tax" line or the "Total Price" line shown at checkout that reads as follows: "Click here for information on the tax you may owe to Colorado." so long as such hyperlink directs the Colorado Purchaser to the principal Transactional Notice.
    - ii. The use of online marketplaces to make sales does not relieve a Non-Collecting Retailer from the obligation to provide a Transactional Notice with each Colorado Reportable Purchase. However, a marketplace may provide the Transactional Notice to Colorado Purchasers as agent for the Non-Collecting Retailer.
  - b. **All Other Purchases Not Made Online.** For all other purchases not made online, a Transactional Notice must be prominently located on any order form in close proximity to the "Total Price" line, or read to the Colorado Purchaser over the phone.
  - c. The Transactional 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 purchasers~~ to (A) file a sales or use tax return ~~at the end of the year~~ reporting all ~~of the taxable Colorado purchases that are taxable in Colorado and for which no tax was collected by the retailer that were not taxed~~ and (B) pay tax on those purchases.
  - d. The Transactional Notice ~~required by this paragraph (2)~~ may contain the following additional information:
    - i. The retailer will provide ~~to the purchaser~~ an annual purchase summary ~~end-of-year summary~~ of all Colorado purchases made by the purchaser during the previous calendar year ~~to the customer~~ in order to assist the purchasers in filing his or her ~~their~~ tax return report;
    - ii. Details of how and when to file this return may be found at the Colorado Department of Revenue's website, [www.colorado.gov/tax](http://www.colorado.gov/tax) or successor URL [www.taxcolorado.com](http://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 ~~indicating~~ of the total dollar amount of all ~~the of a Colorado purchaser's Colorado purchases made throughout the calendar year 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(s).
- e. ~~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.~~
  - i. ~~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. Notwithstanding the limitation in this paragraph, 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).~~
- f. ~~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.~~
  - i. ~~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.~~
- g. ~~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).~~
- h. If the ~~Non-Collecting R~~retailer is required to provide a similar ~~transactional type~~ notice for another state, in addition to Colorado, and the ~~Non-Collecting R~~retailer provides a single ~~such transactional type~~ notice to all purchasers ~~with respect to items purchased for delivery in all states, the a~~ notice ~~required by this paragraph 2) shall will~~ be sufficient if it contains substantially the ~~same~~ information ~~as~~ required ~~in paragraph (4)(c) of this rule but is provided~~ in a form that is generalized to any state.
- i. *Penalties.*
  - i. The ~~nNon-e~~Collecting ~~r~~Retailer shall pay a penalty of \$5 for each sale to a Colorado ~~p~~Purchaser ~~that does not provide with respect to which the Transactional N~~notice ~~required by this paragraph (2) does not appear.~~
  - ii. ~~The~~ If the Non-Collecting Retailer meets the criteria below, the penalty assessed against ~~the a single nNon-e~~Collecting ~~r~~Retailer in a single year, pursuant to this section, shall not exceed the ~~specified following~~ amounts:
    - 1. For a ~~nNon-e~~Collecting ~~r~~Retailer that ~~reasonably~~ had no ~~actual~~ knowledge of the requirement ~~to provide Transactional Notices~~ and

began to provide the required Transactional Notices within 60 days of demand by the Department, \$25,000;

~~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 tangible personal property goods that is are-not taxable in Colorado or sells tangible personal property goods only to Colorado 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 a the penalty for other good reasonable cause shown.

5. ~~Obligation to give Colorado purchasers Annual Purchase Summary. notice of Colorado purchases~~

a. A Non-Collecting Retailer must send give-an Annual Purchase Summary notice to all Colorado Purchasers by January 31 of each year summarizing the Colorado Purchaser's Colorado Reportable Purchases for the prior-preceding calendar year. The notice shall meet the following requirements:

i. Except as otherwise provided, tThe Annual Purchase Summary notice shall must be sent by first class mail to the last known address of the Colorado Purchaser. ~~as described in paragraph (vii) of this paragraph a)~~ The envelope containing the Annual Purchase Summary notice shall must be prominently marked with the words "Important Tax Document Enclosed".

1. The last known address shall be defined in the following order of preference:

- a. An address ("notice address") expressly provided by the Colorado Purchaser to the Non-Collecting Retailer for the purpose of receiving the Annual Purchase Summary, or, if not applicable,
- b. The Colorado Purchaser's billing address, or, if not known,
- c. The Colorado Purchaser's shipping address, or, if not known,
- d. Any other physical address for the Colorado Purchaser that can be ascertained by the Non-Collecting Retailer using any commercially reasonable method based on the Non-Collecting Retailer's existing billing, customer-tracking, or other systems.
- e. If no physical address may be reasonably ascertained using any of the above methods, the Non-Collecting Retailer shall send the Annual Purchase Summary to the most recent email address the Non-Collecting Retailer has for the Colorado Purchaser.

ii. *Electronic Opt-In.* A Non-Collecting Retailer may, but is not obligated to, provide the option to Colorado Purchasers to receive the Annual Purchase Summary by electronic means, so long as the Colorado Purchaser agrees to receive tax notifications by electronic means. The electronic communication containing the Annual Purchase Summary must be prominently marked with the words "Important Tax Document Enclosed".

1. In order to send the Annual Purchase Summary by electronic means, a Non-Collecting Retailer must send an annual opt-in notification to Colorado Purchasers on or after December 15 of each year allowing the Colorado Purchaser the option to receive the Annual Purchase Summary by electronic means. The opt-in notification must make clear that the

electronic communication is a tax document that may require action on the part of the Colorado Purchaser.

- iii. The Annual Purchase Summary ~~notice must~~ shall include the following information:
  1. The total amount paid by the Colorado Purchaser, including shipping charges or other fees charged to the customer, during the prior calendar year,
  2. ~~The notice must also state that~~ The State of Colorado requires ~~that the purchaser consumer~~ to 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 ~~was has been~~ collected by the retailer.
  3. ~~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 ~~during the prior calendar year, but however~~ no information about the purchase other than the dollar amount of the purchase(s) will be provided to the Department.
  4. If available, ~~summarize~~ the date(s) of each Colorado Reportable ~~P~~purchase(s),
  5. If available, the ~~dollar~~ amount(s) of each ~~the~~ Colorado Reportable ~~P~~purchase(s), including shipping charges or other fees charged to the customer,
  6. If available, a description of the type of item(s) purchased (e.g., books, food, consumer electronics, household appliances), and
  7. If known by the retailer, whether the purchase is subject to or exempt from Colorado sales and use tax.
- iv. The Annual Purchase Summary ~~notice~~ may state that details of these requirements, including how to file, may be found at the Colorado Department of Revenue's website, [www.colorado.gov/tax](http://www.colorado.gov/tax) or successor URL ~~www.taxcolorado.com~~. The notice may substitute a more specific URL when such ~~more specific~~ url is published by the Department.
- v. If the net value of a Colorado Purchaser's return(s) and purchase(s) in a year are equal or result in a credit, then the Non-Collecting Retailer need not send an Annual Purchase Summary to the Colorado Purchaser.
- vi. ~~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;~~
- vii. ~~The notice must be sent by January 31st of each year summarizing purchases made for the prior calendar year.~~
- viii. ~~Last Known Address of the Purchaser.~~
  - a. ~~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:~~
    - i. ~~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);~~
    - ii. ~~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”);~~
- iii. ~~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 pPurchaser.*
- i. Any ~~nNon-eCollecting rRetailer~~ that is required to send the ~~Annual Purchase Summary notice required by this paragraph (3)~~ to Colorado ~~pPurchasers~~ and that has complied with paragraph (5)(c)(iii) of this rule ~~of this paragraph c)~~, is not required to send the ~~Annual Purchase Summary notice required by this paragraph (3)~~ to any Colorado ~~pPurchaser~~ whose total Colorado ~~Reportable pPurchases~~ for the prior calendar year are less than \$500.;
  - ii. If the ~~tangible personal property goods~~ purchased ~~is are~~ not subject to Colorado ~~use~~ tax, a ~~nNon-eCollecting rRetailer~~ may choose to exclude such purchases from the calculation of the Colorado ~~Purchaser’s total purchases for the prior calendar year; in paragraph i) of this paragraph c)~~, however, ~~the no nNon-eCollecting rRetailer~~ is not obligated to do so.;
  - iii. Any ~~nNon-eCollecting rRetailer~~ that chooses not to send an Annual Purchase Summary to *de minimis* Colorado ~~Purchasers wishing to take advantage of the limitation in paragraph i) of this paragraph c)~~ shall ~~must~~ make commercially reasonable business efforts, based on the business’s existing billing, customer-tracking, or other systems, to identify multiple Colorado ~~Reportable pPurchases~~ made by a single Colorado ~~pPurchaser~~ from the Non-Collecting Retailer and all entities controlled by or under common control with the Non-Collecting Retailer.
- d. *Penalties.*
- i. The ~~nNon-eCollecting rRetailer~~ shall pay a penalty of \$10 for each ~~required Annual Purchase Summary notice required by this paragraph (3)~~ that is not sent ~~by the non-collecting retailer to a the~~ Colorado ~~pPurchaser~~.
  - ii. ~~The~~ If the Non-Collecting Retailer meets the criteria below, the penalty assessed against ~~the a single nNon-eCollecting rRetailer~~, pursuant to this section, shall not exceed the ~~specified following~~ amounts:



1. For a ~~nNon-eCollecting~~ ~~rRetailer~~ that sent the **Annual Purchase Summaries to all Colorado Purchasers** ~~notice~~ within 30 days after the due date, \$1,000;
  2. For a ~~nNon-eCollecting~~ ~~rRetailer~~ that **reasonably** had no **actual** knowledge of the requirement and sent the **Annual Purchase Summaries to all Colorado Purchasers** ~~notice~~ within 60 days after demand by the Department **of Revenue** to issue such **Annual Purchase Summaries notices**, \$510,000;
  - ~~3. For a non-collecting retailer that failed to send the notice for the first calendar year for which the non-collecting retailer was obligated to send the notice, \$100,000;~~
  4. For a ~~nNon-eCollecting~~ ~~rRetailer~~ that sells only **tangible personal property goods** that **is are** not taxable in Colorado or sells **tangible personal property goods** only to **Colorado P**urchasers 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 **good reasonable** cause shown.
6. **Obligation to give the Department Annual Customer Information Report. notice of purchases made by Colorado purchasers.**
- a. Any ~~nNon-eCollecting~~ ~~rRetailer~~ who is required to provide at **least one Annual Purchase Summary to a Colorado Purchaser** ~~notice described in paragraph (3)~~ must file an **Annual Customer Information R**eport with the Department containing the following information:
    - i. The name of each Colorado **p**Purchaser;
    - ii. The billing address, **notice address, shipping address, and email address** of each Colorado **p**Purchaser, if the information **is known by** ~~was provided to~~ the ~~nNon-eCollecting~~ ~~rRetailer~~;
    - 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 **Reportable p**Purchases, **including shipping charges or other fees charged to the customer**, made by the **Non-Collecting Retailer to** each Colorado **p**Purchaser during the prior calendar year. No other information about the purchase shall be provided.
  - b. If the ~~non-collecting retailer~~ **Colorado Purchaser provided** more than one Colorado billing address, **notice address, or more than one Colorado** shipping address, **or email address for a Colorado purchaser, then** the ~~nNon-eCollecting~~ ~~rRetailer~~ shall provide all such addresses ~~of the Colorado purchaser to the Department.~~
  - c. If the ~~nNon-eCollecting~~ ~~rRetailer~~ made more than \$100,000 worth of **T**otal **G**ross **S**ales in Colorado during the prior calendar year, the ~~nNon-eCollecting~~ ~~rRetailer~~ shall electronically send **to the Department** the **Annual Customer Information Report. 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 **Annual Customer Information R**eport and shall publish details **on** ~~h~~ how the **Annual Customer Information R**eport file ~~shall is to~~ be transmitted to the Department.
  - d. If all of the Colorado Purchasers to whom a Non-Collecting Retailer makes sales are below the *de minimis* threshold in paragraph (5)(c) of this rule, the Non-Collecting Retailer does not need to provide the Annual Customer Information Report to the Department. ~~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,~~ If a Non-Collecting Retailer is required to provide one or more Colorado Purchaser(s) with an Annual Purchase Summary, then the ~~such a~~ Non-Collecting ~~R~~Retailer must include all the Colorado Reportable ~~P~~Purchases made by all Colorado ~~p~~Purchasers in its Annual Customer Information ~~R~~Rreport, including any Colorado Reportable ~~P~~Purchases made by *de minimis* Colorado ~~p~~Purchasers.
- f. If the Non-Collecting Retailer is part of an affiliated group of corporations under IRC §1504 and the affiliated group of corporations wishes to file the Annual Customer Information Report for all Non-Collecting Retailers within the group, any entity within such affiliated group of corporations can prepare and file the Annual Customer Information Report so long as such Annual Customer Information Report includes all Colorado Purchasers and all Colorado Reportable Purchases made from Non-Collecting Retailers within the group during the prior calendar year. However, an affiliated group of corporations may choose for each individual Non-Collecting Retailer to file the Annual Customer Information Report separately.
- g. *Penalties.*
  - i. If a ~~a~~ Non-Collecting ~~R~~Retailer fails to file the Annual Customer Information ~~R~~Rreport ~~required by this paragraph (4)~~ or files an incomplete Annual Customer Information Report, the ~~a~~ Non-Collecting ~~R~~Retailer shall pay a penalty equal to \$10 for each ~~times the number of~~ Colorado ~~p~~Purchasers that should have been included in the Annual Customer Information ~~R~~Rreport.
  - ii. ~~The~~ If the Non-Collecting Retailer meets the criteria below, the penalty assessed against ~~the a single a~~ Non-Collecting ~~R~~Retailer, pursuant to this section, shall not exceed the ~~specified following~~ amounts:
    - 1. For a ~~a~~ Non-Collecting ~~R~~Retailer that filed ~~the a complete Annual Customer Information R~~report within 30 days of the due date, \$1,000;
    - 2. For a ~~a~~ Non-Collecting ~~R~~Retailer that ~~reasonably~~ had no ~~actual~~ knowledge of the requirement and filed ~~the a complete Annual Customer Information R~~report within 60 days of demand by the Department ~~that the report be filed~~, \$540,000;
    - ~~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 ~~a~~ Non-Collecting ~~R~~Retailer that sells only ~~tangible personal property goods~~ that ~~is are~~ not taxable in Colorado or sells ~~tangible personal property goods~~ only to Colorado ~~P~~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 ~~good reasonable~~ cause shown.

#### Cross References

- 1. For additional information about the ability for a Non-Collecting Retailer to allow customers to opt-in to receive Annual Purchase Summary by electronic means, see the Uniform Electronic Transaction Act in article 71.3 of title 24 in the Colorado Revised Statutes.