

# SALT WATCH

## Colorado Remote Seller Reporting Requirements

### Summary

On July 1, 2017, reporting and notification requirements for sales by remote sellers into Colorado became effective. Colorado Regulation 39-21-112.3.5, which was adopted June 30, 2017, provides guidance to retailers that do not collect sales or use tax and are now subject to the reporting requirements.

### What Retailers Have Reporting Requirements?

As of July 1, 2017, retailers who do not collect sales tax and on an annual basis have at least \$100,000 of sales to Colorado customers, have reporting requirements to their customers and to the Colorado Department of Revenue (“CDOR”). The reporting requirements do not apply to vendors who are registered with the CDOR for sales/use tax and collect and remit sales/use tax to the CDOR.

### Information Retailers Need from Colorado Customers to Provide to the Colorado Department of Revenue<sup>1</sup>

Retailers subject to the reporting requirements need to collect the following information and properly report the information to the CDOR to comply with the reporting requirements:

1. Purchaser’s name
2. Billing address
3. Shipping address
4. Total annual dollar amount of each Colorado customer’s purchases

For retailers with greater than \$100,000 in sales, reports must be filed electronically with the CDOR. For retailers with less than \$100,000 in sales, reports may be filed electronically. By November 1st of each year, the CDOR will publish (on its website) the required format and data elements of the report as well as details of how the report file is to be transmitted to the CDOR. The reports are due to the CDOR on or before March 1 each year.<sup>2</sup>

<sup>1</sup> Swart Enterprises, Inc. v. California Franchise Tax Board, No. F070922 (Cal. Ct. App., 5th Dist., 1/12/17).

<sup>2</sup> Target Brands Inc. v. Colorado Dept. of Rev., No. 2015CV33831 (Colo Dist. Ct., City and Cnty. of Denver, 1/27/17).



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## Colorado Remote Seller Reporting Requirements (continued)

### Information Retailers Need to Provide to Customers

Retailers are obligated to provide notice to Colorado customers with each purchase made by the customer.<sup>3</sup> The retailer must also provide an annual notice to all Colorado customers.<sup>4</sup>

The notice required with each purchase by a Colorado customer must state that sales or use tax is due on all purchases not otherwise exempt from sales or use tax. The notice required must include the following information:

1. The retailer does not collect Colorado sales or use tax;
2. The purchase is not exempt from Colorado sales or use tax merely because it is made over the Internet or by other remote means;
3. The State of Colorado requires that a Colorado purchaser:
  - a. File a sales or use tax return at the end of the year reporting all of the taxable Colorado purchases that were not taxed; and
  - b. Pay tax on those purchases.

The annual notice required to be provided to Colorado customers **must** meet the following criteria:

1. Sent by first class mail to the last known address of the purchaser and the envelope containing the notice must be prominently marked with the words "Important tax document enclosed"
2. Summarizes the date(s) of purchase(s), a description of the type of item(s) purchased and the dollar amount(s) of the purchase(s);
3. State that the State of Colorado requires that the consumer file a sales or use tax return at the end of every year and pay tax on all taxable Colorado purchases for which no tax has been collected by the retailer;
4. Indicates that the non-collecting retailer is required by law to provide the Colorado Department of Revenue with the total dollar amount of purchases made by the Colorado purchaser (however no information about the purchase other than the dollar amount of the purchase will be provided to the Department);
5. The notice must be sent by January 31st of each year summarizing purchases made for the prior calendar year to the last known address of the purchaser.

The CDOR has not yet issued formal guidance regarding the appearance and format of the annual notice. A sample form has been released by the CDOR and can be found at the following link:

<https://www.colorado.gov/pacific/sites/default/files/SampleAnnualPurchaseSummarytoCustomers.UseTax.pdf>.

The annual notice is not required for customers whose annual purchase are less than \$500.

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<sup>3</sup> Colo. Code Regs. §39-21-112.3.5(2)

<sup>4</sup> Colo. Code Regs. §39-21-112.3.5(3)

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## Colorado Remote Seller Reporting Requirements (continued)

### Penalties for Non-Compliance

1. Customer Notices with Purchase:<sup>5</sup>
  - a. \$5 for each sale to a Colorado purchaser when a notice is not provided
  - b. The penalty assessed against a retailer in a single year will not exceed the following amounts:
    - i. A retailer that had no actual knowledge of the requirement and began to provide the required notices within 60 days of demand by the CDOR, \$5,000;
    - ii. A 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;
2. Annual Customer Notices:<sup>6</sup>
  - a. \$10 for each notice required that is not sent by the retailer to the Colorado purchaser.
  - b. The penalty assessed against a single retailer pursuant to this section shall not exceed the following amounts:
    - i. A retailer that sent the notices within 30 days after the due date, \$1,000;
    - ii. A retailer that had no actual knowledge of the requirement and sent the notices within 60 days after demand by the Department of Revenue to issue such notices, \$10,000;
    - iii. A retailer that failed to send the notices for the first calendar year for which the retailer was obligated to send the notices, \$100,000;
3. Annual Reports to the CDOR :
  - a. \$10 for each of the Colorado purchasers that should have been included in the annual report.
  - b. The penalty assessed against a retailer in a single year pursuant to this section shall not exceed the following amounts:
    - i. A retailer that filed the report within 30 days of the due date, \$1,000;
    - ii. A retailer that had no actual knowledge of the requirement and filed the report within 60 days of demand by the Department that the report be filed, \$10,000;
    - iii. A 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;

GBQ SALT professionals are available to assist taxpayers with understanding the applicability of the Colorado remote seller reporting requirements and how the reporting requirements may significantly impact their business. Contact your GBQ SALT professional for more information.

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<sup>5</sup> Colo. Code Regs. §39-21-112.3.5(2)(f)

<sup>6</sup> Colo. Code Regs. §39-21-112.3.5(3)(d)

<sup>7</sup> Colo. Code Regs. §39-21-112.3.5(4)(f)

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