



## [DMA CALL TO ACTION!](#)

Dear DMA Member:

DMA is taking the lead in opposition of a new tax reporting law in Colorado ([House Bill 1193](#)). While this new law does not require you to collect taxes it imposes regulations involving reporting that will force you to incur significant costs to your business. [House Bill 1193](#) was effective as of March 1, 2010 and according to the State of Colorado your company must comply by May 1, 2010. This bill **targets direct marketers** and is meant to be so onerous that your businesses concedes to collect tax in Colorado.

### **Impact on You:**

If this bill stands in Colorado it will surely be picked up by other states in an effort to close their budget deficits on the backs of our businesses and by interfering with your customer relationships and the level of loyalty that you have worked years to develop.

### **DMA Course of Action:**

DMA and its members believe that a DMA suit in Federal Court is the next reasonable course of action. DMA will seek a preliminary injunction. It is important to begin this process quickly since Tennessee and California are considering similar legislation—others will soon follow as the Multistate Tax Commission is working on model legislation on this issue.

DMA is seeking \$5,000 or higher contributions from companies to fund this legal challenge. Any funds not used in the litigation will be returned pro rata. We will be using George Isaacson, DMA's tax attorney, in the court challenge. We ask that you help us stop these laws by emailing your intent to financially support this effort to [government@the-dma.org](mailto:government@the-dma.org)

### **The Colorado Law – Details Follow:**

On March 29, 2010 DMA hosted the first of a series of conference calls on this topic. What follows is a summary of those calls and the new proposed Colorado regulations which were issued March 31, 2010. **Information on the proposed regulations is in bold.**

The new reporting law was passed by the legislature and signed by the Governor as part of a budget balancing package. The law as first introduced mirrored the New York affiliate tax law, but it was amended to the reporting law a few days before days before passage in late February. DMA and others urged the Governor to veto the bill to no avail. The law became effective on March 1, 2010. The reporting law requires non sales tax collecting out-of-state marketers to notify Colorado purchasers with every purchase that:

1. They are not required to collect sales tax;
2. Sales or use taxes are owed by the purchaser unless the sale is exempt from sales tax even though purchased remotely, including over the Internet;
3. The purchaser is required to file annually a sales/use tax return with Colorado Department of Revenue and pay tax on those purchases on which the resident has not paid sales tax;
4. The marketer is required to provide the purchaser with a year end summary of the purchases he/she made on which sales taxes were not collected;
5. The marketer is required to provide the Colorado Department of Revenue an annual report on the total amount of all the purchaser's purchases on which sales tax was not collected; and,
6. More information can be found at [www.taxcolorado.com](http://www.taxcolorado.com).

The law, as explained in the required notices, also compels non tax collecting remote sellers to provide Colorado purchasers with an end of year summary of all purchases they made on which taxes were not collected. This summary must be provided by January 31 of the following year. In addition, the marketer must file with the Department of Revenue the dollar amount of all purchases made in the preceding year by Colorado residents on which taxes were not collected. This filing must be made by March 1 of the following year (e.g., 2011 for 2010 purchases).

The Colorado Department of Revenue issued proposed emergency regulations to implement the notice provisions of the new reporting law. The proposed regulations prescribed a specific 158-word notice implementing the requirements listed above. DMA filed comments objecting to the prescribed language. The Department's final emergency regulation eliminated the prescribed language, but required the above notifications in a reasonably prominent location on the invoice. These notices must be accompanied by a notice next to the dollar amount of the purchase that reads: "Please see important sales tax information". **This later requirement is not required in the proposed regulation, but, if it is a link to the notice, it is regarded as meeting the prominent requirement. HOWEVER, the emergency regulations, not the proposed regulations, will be in effect on May 1.** Regulations for the end of year summary and the filing with the Department of Revenue were not promulgated under emergency

procedures since those are not required until 2011, **but are now included in the proposed regulations.** DMA will comment on the proposed regulations.

Marketers collecting sales taxes from Colorado residents are not required to make the notification for each purchase or to send the purchaser summary or report to the Department at the end of year. In addition, any marketer with annual sales in the prior year and the expectation that sales in the current year are less than \$100,000 is exempt from the purchase notice. **The proposed regulations specifically define the \$100,000 sales *de minimus* exemption to be \$100,000 in gross sales world wide, including entities controlled by or under common control. (This \$100,000 *de minimus* exemption applies to the purchase notice only. See below for the exemption for the year end reporting.)** Since the law became effective a few days after passage, the Department has given marketers a two-month waiver so long as they begin to provide the notices by May 1, 2010.

**The proposed year end notice to the Colorado purchaser regulations require:**

1. Notice sent by January 31 only *via* First-Class Mail with “Important tax document enclosed” appearing prominently on the envelope;
2. A summary of dates of purchase, description of product purchased and dollar sale amount for each purchase;
3. A statement that Colorado requires that the purchaser file a sales/use tax return at the end of the year and pay tax on all Colorado purchases on which no sales tax had been collected;
4. Inform the purchaser that the form and further information is available at [www.taxcolorado.com](http://www.taxcolorado.com);
5. Notify that the marketer is required by Colorado law to provide the Colorado Department of Revenue with the total dollar amount of purchases the purchaser made; and,
6. Not required, but may inform the purchaser whether an item purchased is exempt from Colorado sales tax.

**The *de minimus* exceptions for the year end notice to the Colorado purchaser are:**

1. Gross world wide sales in the past year and expected in the current calendar year of less than \$1,000,000; or
2. The total sales to the Colorado purchaser from the retailer was less than \$250 for the calendar year.

**The notice to the Colorado Department of Revenue must include:**

1. Name of the Colorado purchaser

2. Billing address of the purchaser if provided to the retailer;
3. Shipping address of each purchaser if provided to the retailer;
4. If the retailer has multiple billing and/or shipping addresses of the Colorado purchaser (Colorado purchaser is a consumer who has product shipped to him/herself in Colorado), provide all such addresses; and,
5. Total amount of Colorado purchases made by the purchaser from the retailer.

If the retailer has Colorado sales under \$100,000 in the year, the retailer may send the above information to the Department in a paper report with each purchaser on a separate sheet of paper. All other retailers must send the reports electronically in a manner to be published by November 1 on the Department's website.

The *de minimus* exemption for the notice to the Department is gross world wide sales in the past year and expected in the current calendar year of less than \$1,000,000. Retailers may, but are not required, include in the filing with the Department information on purchasers whose annual purchases are less than \$250.

Penalties for violations are \$5 for each purchase transaction for which the retailer fails to provide the required notice, \$10 per customer for failure to provide the end of year summary and \$10 per customer for failure to file with the Department of Revenue. **The proposed regulations cap the penalties.**

**For the purchase notice:**

- If the retailer had no actual knowledge of the notice requirement and provides notice within 60 days of demand from the Department of Revenue, \$5,000;
- Otherwise, \$50,000 for the first calendar year the retailer was obligated to provide notices; and,
- Subsequent years, no limit specified.

**For the end of year summary to purchasers:**

- If summary is less than or equal to 30 days late, \$1,000;
- If summary is sent within 60 days after demand by the Department of Revenue and the retailer had no actual knowledge of the requirement, \$10,000; and,
- Otherwise, \$100,000 for the first calendar year the retailer was obligated to provide notices; and,
- Subsequent years, no limit specified.

The regulations further define a Colorado purchaser as a purchaser who has product delivered to him/her/itself in Colorado. If the product is digital, a Colorado purchaser is either a purchaser with a Colorado “bill to” address or if no “bill to” address is provided, then as determined by the seller using any other reasonable method.

Since the March 29 conference call, many members have asked for a sample invoice notice. Below is a suggestion for the emergency regulations, but each marketer has the freedom to craft its own notice and should seek advice from legal counsel.

#### Important Sales Tax Information for Colorado Purchasers

We are not required to collect Colorado sales tax on your purchase. However, unless this sale is exempt from sales taxes, you are required to pay the tax by filing a sales/use tax form with Colorado at the end of year for all non-taxed remote purchases, including Internet purchases. We will provide you with a year-end summary of all your non-taxed purchases with us, and we are required by Colorado law to report the total purchase amount of your total non-taxed sales to the Colorado Department of Revenue. For more information go to [www.taxcolorado.com](http://www.taxcolorado.com).

#### **DMA Needs Your Support:**

Join DMA and its members as we file suit against the state of Colorado. DMA will act as the plaintiff so that no one business has to feel the brunt of any recourse from the Colorado Revenue Department of Revenue. DMA is seeking \$5,000 or higher contributions from companies to fund this legal challenge. Any funds not used in the litigation will be returned pro rata. A contribution from you today will set us on our path to a victory over this unnecessary legislation. Otherwise we will certainly face further regulatory intrusion that is sure to hamper commerce at a time when businesses are facing an economic downturn not seen since the Great Depression.

Take an active role in supporting your own business by contributing to the **DMA versus Colorado fund** by emailing your intent to financially support this effort to [government@the-dma.org](mailto:government@the-dma.org) or by contacting Jerry Cerasale at [jcerasale@the-dma.org](mailto:jcerasale@the-dma.org) or Neil O’Keefe at [nokeefe@the-dma.org](mailto:nokeefe@the-dma.org)