

Regulation 39-26-105.3 Hold Harmless (Certification of Address Databases and Designation of Third Party Verifiers)

1) Definitions

a) *Address database* ("Database") is a system by which a user of such system can determine whether an address is within the State of Colorado and one or more local tax jurisdictions. A "system" can be one or more software applications and/or other electronic processes by which the provider determines which state and local sales tax jurisdictions apply to a particular address.

b) *Local tax jurisdiction* is any governmental entity located within Colorado, other than the State of Colorado, that levies a sales and/or use tax. For purposes of this regulation, references to "municipality" include tax jurisdictions that are both cities and counties. References to "special districts" include the Regional Transportation District, Scientific and Cultural Facilities District, Metropolitan Football Stadium District, Republican River Water Conservation District, rural transportation authority districts, local marketing districts, mass transit districts, multi-jurisdictional housing authority districts, regional library districts, and local improvement districts.

c) *Designated third-party verifier* ("verifier") is one or more persons whom the department has designated and said designation has not been revoked or suspended at the time of testing of the provider's Database.

2) Procedure for Certification

a) Upon a request for certification, the verifier shall promptly provide written notice to the department of the request for certification, and include in such notice the information required in subparagraph (c) below. The department shall promptly list on its web site the notice and Database provider's contact information. The Database provider shall grant the State and local tax jurisdictions access to its System in order to allow the state and local jurisdictions to submit addresses for the purpose of verifying the accuracy of the Database.

b) A Database provider may request the department certify its Database by submitting an application for certification to Colorado Department of Revenue, Attn: Taxpayer Service Division, Re: Database Certification Request, 1375 Sherman Street, Denver, Colorado 80203.

c) The application shall contain the following information:

i) Name (including trade name) and address of the entity requesting certification.

ii) Contact Person: name, address, telephone number, and email address of the person to whom the department shall direct communications.

iii) *System Identification.* Sufficient information so as to specifically identify the System, including any version number or similar designation.

iv) A verifier's report, prepared in conformity with this regulation, stating that the Database satisfies the certification criteria.

d) The department shall review the application and, if the Database is in compliance with this regulation, issue a written certification to the provider stating that the Database is certified subject to the limitations and conditions set forth in statute and regulation.

e) *Effective Date / Expiration Date.* The certification shall be effective for two years, beginning with the date that the department issues notice of certification. The certification shall expire automatically upon the expiration of two years from the effective date.

f) *List of certified Databases.* The department shall list on its web site the name, address, telephone number, effective date and expiration date of the certification, a list of home rule cities and home rule cities and counties that have enacted "hold harmless" ordinances or resolutions that are based on the department's certification, together with such other information that the department may wish to provide, concerning each provider who is certified.

g) *Regulations subject to modification.* The department may amend these regulations and may require a Database provider to become re-certified under the amended regulations, even though the original certification period has not yet expired. Nothing in these regulations grants a Database provider or third-party any vested right, title, privilege, entitlement, or cause of action against the department to the continued certification of the Database or in continued use of such a Database as certified the under terms and conditions that the certification was originally granted.

3) Report of the Verifier

a) The report of the verifier concerning a Database shall be provided to the Department in both hard copy and in electronic format and shall contain the following information:

i) *Verifier Identification.* Name, address, and telephone number of the verifier and of a contact person employed by the verifier who conducted the verification.

ii) *Provider Identification.* Name, address, and telephone number of the Database provider and of the contact person employed by the provider who was responsible for overseeing the verification of the provider's Database.

iii) *Database Identification.* Information sufficient to allow the department to identify the system, including (1) identification by name and version date of the various

software, hardware and other processes that constitute the system, (2) the location of the provider's system, (3) the data (including information related to updates to such information) relied on by the system to perform its functions, and any other information that is necessary to enable the department to identify the system.

iv) *Date of testing.* The date or date range over which the testing was conducted by the verifier.

v) *List of test addresses.* A list of addresses that constitute the Test Sample, defined below, when the Database was determined to satisfy the certification criteria.

vi) *Test Results.*

(1) Written documentation of the Database's response to each address in the Test Sample, including any initial or draft response, exceptions, notes, exclusions, qualifications or other information provided by the provider to the verifier in connection with the verification. The report shall identify the addresses in connection with which the test revealed an error or omission in the Database and the nature of such error or omission.

(2) The report of the verifier shall also be provided in an Excel or Access format that contains at least the following data fields for each address tested: state, county, municipality and special district (if more than one district applies, then a separate data field for each such district).

(3) The report shall state whether the Database satisfied the 95% accuracy criterion of subparagraph 4(a), below, together with any qualifications, limitations and explanations necessary to fully explain the test results.

(4) The report shall describe the procedures used by the verifier in performing the verification, including, but not limited to, providing worksheets used in calculating the result(s) and a narrative of the process employed.

(5) In addition to a report on the percent accuracy of the Database as a whole, the report shall disclose the percent accuracy of the Database as to each category of taxing jurisdiction (e.g. county, municipality).

(6) *Disputes regarding Test Sample.* Database providers may challenge the accuracy of an address(es) within the Test Sample. In the event of a challenge, the verifier shall contact the relevant local tax jurisdiction(s) to verify the correctness of the address(es). Disputes between or among local tax jurisdictions regarding the location of an address shall be resolved by said jurisdictions.

4) Certification Criteria. The Database must satisfy the certification criterion set forth below in order for the department to certify the Database.

a) *Accuracy.* The Database must be at least 95% accurate for the population of addresses in Colorado. The achievement of this accuracy standard shall be demonstrated by using a statistical sample of addresses (referred to as the "Test Sample"). The Test Sample shall be composed of not less than 2000 randomly selected addresses from the population of addresses in Colorado. Each address will have four categories of tax jurisdictions to which the Database must provide a response (see subparagraph 4(b), below), for a total of 8000 responses. If at least 7600 of the responses are accurate, then the inference will be made that the Database has achieved the accuracy standard for the population of addresses in Colorado. A Database will not be certified if it achieves 95% accuracy only on some categories of tax, but does not achieve the degree of accuracy on the combined score for all tax categories.

b) *All categories of tax jurisdictions must be identifiable.* There are generally four categories of local taxing jurisdictions: state, county, municipality, and special district. A Database will not be certified if it is not capable of identifying all local tax jurisdictions within each category of tax jurisdiction. For example, a Database that does not have the capability to identify all special districts that levy sales or use tax will not be certified. The Database does not have to identify the type of tax or tax rate applicable within each local tax jurisdiction. For example, the Database must identify the county in which the address is located, but does not have to identify whether a county has a sales tax, lodging tax, or short term rental tax.

c) *Responses.*

i) A response to an address must include a response to each of the following four categories: state, county, municipality, and special district. Failure to provide a response to any category shall be deemed an error with respect to that category.

ii) A response in a tax category (e.g., municipality or special district) is deemed incorrect if the response identifies incorrectly or fails to identify a local tax jurisdiction in which a given address is located. If a given address is not located within a municipality or is not located within any special taxing district, the response for that address shall so state.

d) *Access to Database by taxing jurisdictions for verification of address locations.* Taxing jurisdictions must have a way to conveniently and quickly determine whether a Database correctly places a given address within or outside their jurisdiction. Consequently, a condition of Database certification is that the Database provider provide a convenient means by which representatives of the state and local taxing jurisdictions may determine whether the Database places a given address within or outside the state or local taxing jurisdiction. Such access shall be available to the State and local tax jurisdictions by the date on which the verifier provides notice to the department of a request for verification, pursuant to subparagraph 2(a), above. The Database provider shall work cooperatively with the department and local tax jurisdictions to facilitate checking of individual addresses or groups of addresses against the database.

e) *Prompt updating of information.* Should the state or local taxing jurisdiction determine that a given address is incorrectly identified in the Database as within or outside their jurisdiction, there must be a convenient means for such taxing jurisdiction to quickly inform the Database provider of this fact. Furthermore, a Database provider shall have in place a process for promptly and regularly updating and correcting its Database, including in circumstances when information concerning errors and omissions in such Database is received from state or local taxing jurisdictions. Consequently, a condition of Database certification is that:

i) the department and local tax jurisdictions are provided a means to conveniently notify the provider that the provider's Database is in error with respect to the one or more addresses, and

ii) the provider agrees to, and does, promptly update its Database with information provided by the department and local taxing authorities concerning a correct address(es). Correction notices to the provider shall reflect the agreement of any local tax jurisdictions that may be affected by the re-assignment of the address or addresses in question. Updates must be at least quarterly and the provider must make reasonable efforts to include in its Database information provided by tax jurisdictions during the ninety days preceding the update; however, the information must be included in the Database no later than 120 days following the date on which the information was provided.

f) *Version designation – record retention.* Retailers that rely on the providers Database will be entitled to be "held-harmless" in an audit, if they fail to remit or remitted tax to the wrong jurisdiction due solely to an error in the Database. Thus, it is of critical importance that the state, local taxing jurisdictions and retailers alike be able to establish what was included in the most recent version of the providers Database available at the time of the taxable transaction in question. Consequently, a condition of Database certification is that the provider provide a convenient means by which a tax jurisdiction or user can determine the most current version of the address Database information on any given date while the Database was certified under these rules. The provider must maintain such records for no less than four years from the conclusion of the certification.

g) *Creation of Test Sample.* A principle responsibility of the verifier is creation of the Test Sample. In addition to the other requirements of this regulation concerning creation of the Test Sample, the verifier shall:

i) create and review the Test Sample to determine whether the state, county, municipality, and special district associated with each such address is correct.

ii) provide the Test Sample to each municipality, county, and special district that may reasonably claim that one or more addresses are within their respective jurisdiction. The local taxing authorities to which the addresses are given shall have 30 days from the date of mailing of such lists to verify whether the addresses are correctly listed as within or outside their respective taxing jurisdiction. If the local taxing authority does not accept

or reject the accuracy of an address within the 30-day period, the addresses shall be deemed correct for purposes of verifying the accuracy of Databases.

iii) not use the same sample more than once when testing any given Database.

5) Denial or revocation of certification. The department may deny a request for certification or revoke the certification of a provider's Database for just cause. The department may reassess at any time whether the Database should continue to be certified. "Just cause" for denial or revocation of certification shall include, without limitation, that:

a) The Database is not in compliance with requirements established by statute and these regulations.

b) The provider's application contains a material misstatement(s).

c) The verification performed by the verifier was materially flawed.

d) *Procedure.*

i) The department shall give written notice to the provider that the department believes that certification of the provider's Database should be denied or revoked.

ii) The provider shall have 30 days from the date of mailing of said notice in which to provide the department a written response to the notice explaining in detail why its application should be granted or its certification should not be revoked.

iii) The department shall, if there are disputed issues of fact, provide the provider a hearing on said notice pursuant to §24-4-105, C.R.S.

iv) The department shall remove the name of the provider from its web site of certified providers if it determines that the certification of such provider should be revoked. The department's web site shall contain the effective date of its determination and the date on which notice of such determination was posted on the department's web site.

e) *Effective Date of Revocation.* The effective date of revocation, for purposes of a retailer being held harmless for incorrectly sourced taxes, shall be ten working days after the date the department posts on its web site, pursuant to subparagraph 5(b)(iv), above, notice of revocation of certification. Unless the taxpayer is also the Database provider, a revocation of certification shall not affect the right of the taxpayer to be held harmless, pursuant to §39-26-105.3 and 204, C.R.S., for sales and use tax liabilities for transactions that were incurred prior to the effective date of the revocation. However, a taxpayer who is also the Database provider shall not be held harmless for sales or use taxes incurred prior to the effective date of the revocation if the department determines that the provider has knowingly or recklessly disregarded the requirements of this regulation.

f) *Effect of Revocation or Expiration of Certification.* A taxpayer shall not be held harmless if the taxpayer uses such Database after the effective date of revocation or expiration date of certification.

g) *Notice to Database Users of Provider Revocation.* The provider shall give effective notice to users of its Database that it has been decertified within five working days after the effective date of the department's determination that its certification has been revoked. Failure of a provider to provide such notice may be grounds upon which the department can, within its sole and exclusive discretion, deny future requests by the provider to be certified or to revoke certifications subsequently granted.

6) Verifiers

a) *Designation.* The department has the authority to designate one or more persons to be verifiers. The designations shall be based on the sole and exclusive judgment of the department regarding the person's expertise, experience, and performance of duties set forth herein. The department has the authority to withdraw its designation of a verifier at any time if, in the department's sole and exclusive judgment, the verifier should not be designated. The designation shall not create any right, title, privilege, or entitlement by the State of Colorado in the verifier for which a cause of action, whether in law or in equity, can be enforced against the State of Colorado.

b) *Fee of Verifier.* The verifier may charge a provider a reasonable fee, in light of its costs and reasonable profit, for work performed in connection with this regulation. In no event is the department responsible to the verifier or provider for payment of such fee.