

**DIRECT SELLING/MULTI-LEVEL ORGANIZATIONS
TAX COLLECTION AGREEMENT
(Agreement #1 All Tax Collection)**

I. Recitals

This agreement is made between _____, (“_____”), Account ID _____ of _____, and the State of Washington, Department of Revenue, (the “**Department**”) charged with the responsibility to collect Sales, Use, Litter, Regional Transit Authority (RTA) Tax and Business and Occupation (B&O) tax. These taxes are collectively referred to as the “**Taxes**”.

_____ is a wholesaler of consumer products (the “**products**”). _____ sells and distributes the products to independent business owners (the “**distributors**”). The products are sold to distributors on a sale for resale basis and shipped to distributors by common carrier.

For the limited purposes of this agreement only, distributors are considered independent businesses and not agents, employees or joint ventures of _____, but such designation shall not be binding upon any other agency of the State of Washington, nor necessarily determinative of the relationship between _____ and its distributors with respect to establishing qualification for benefits or obligations for any other purpose. Distributors sell the products to other distributors or end users (the “**customers**”) and are entitled to the difference between the price paid to _____ for the products (the “**wholesale price**”) and the price at which the products are sold to the customers (the “**retail price**”). The distributors independently establish their retail price.

Each distributor selling within the State of Washington is responsible for collecting and remitting to the Department the appropriate Taxes on all sales and gross income. The Department recognizes that the administration, supervision, and audits of distributors represent an expensive and time-consuming endeavor and actively seeks methods to ease its burdens. _____ is interested in easing the administrative burdens placed on distributors.

Now therefore, in order to simplify and make more efficient the administration and collection procedures for the Taxes imposed by the State of Washington and collected by the Department and to eliminate the individual licensing of distributors for taxing purpose, the parties agree as follows:

II. Collection of Taxes by _____ on behalf of Distributors Selling Products of _____

A. Sales, Use, Litter and RTA Taxes

1. **Collection Obligation.** _____ shall assume responsibility for the collection and remittance of the sales, use, litter, and RTA taxes as they apply on the sale of its products within the scope of this agreement. A sale is presumed to have occurred within the State of Washington if the product(s) are shipped by _____ to a destination (based on postal address) within the State of Washington.
2. **Calculation of Tax Due.** For efficient administration, _____ shall collect and remit the sales, use, litter and RTA taxes, as they apply, based on the suggested retail price of the products, including shipping charges (the “**suggested retail price**”), as established from time to time by _____ or actual retail price if known. Notwithstanding the foregoing, the amount due under this Agreement shall be adjusted as discussed below.
3. **Adjustments to Tax.** The parties recognize that distributors may resell the products at a price other than the suggested retail price or in a transaction that is not subject to sales, use, litter and/or RTA taxes. To ensure that the sales, use, litter and RTA taxes initially collected and remitted to the Department by _____ represent, as close as commercially practicable under the circumstances, the amount due on the sale of the products, the sales, use, litter and RTA taxes to be paid by _____ under this Agreement shall be adjusted as follows:
 - a) _____ shall document and increase the sales, use, litter and RTA taxes remitted to the Department under this Agreement if:
 - (1) _____ is notified by a distributor, or otherwise knows, or should have known that a distributor is selling or has sold product(s) at a price in excess of the suggested retail price; and/or
 - (2) A distributor remits the additional sales, use, litter and RTA taxes due.

The additional sales, use, litter and RTA taxes due under this subsection shall equal the difference between the suggested retail price of the products sold and the actual retail price of the same products multiplied by the applicable tax rate. For purposes of subsection (a), the suggested retail price shall be determined at the time the sales, use litter and RTA taxes for the sold product(s) were collected by _____.

If _____ is notified, knows, or should have known of the selling of product(s) at a price in excess of the suggested retail price by a distributor

that fails to remit the additional tax due, _____ shall, no later than the end of the reporting period following the month in which _____ shall have obtained such knowledge, notify the Department, in writing, of the identity of any distributor selling product(s) at a price in excess of the suggested retail price, and the material facts relating to such sale(s).

- b) _____ shall document and reduce the sales, use, litter and RTA taxes remitted to the Department under this Agreement, if a distributor notifies _____ that:
- (1) The distributor has sold product(s) at retail at a price less than the suggested retail price;
 - (2) The distributor has sold and delivered product(s) to a customer outside the State of Washington;
 - (3) The distributor has used or consumed product(s) in the distributor's business activities or otherwise;
 - (4) The distributor has sold product(s) to a tax-exempt customer;
 - (5) The distributor or customer has returned the product(s), for whatever reason, to _____ for a refund; or
 - (6) _____ erroneously collected taxes from the distributor for the purchase of the product(s).

The tax reductions under subsections (2), (4) and (5) shall equal the sales, use, litter and RTA taxes previously collected and remitted by _____ on the sold products. The tax reduction under subsection (1) shall equal the difference between the suggested retail price of the products and the actual retail price for the same product(s) multiplied by the applicable tax rate. The tax reduction under subsection (3) shall equal the difference between the suggested retail price of the sold product(s) and the wholesale price for the same product(s) multiplied by the applicable tax rate. The tax reduction under subsection (6) shall equal the amount of sales, use, litter and RTA taxes erroneously collected by _____. For purposes of subsection b), the suggested retail price shall be determined at the time the sales, use, litter and RTA taxes for the sold product(s) were collected by _____.

B. Gross Receipts Tax: Business and Occupation Tax (B&O tax)

- 1. Collection Obligation.** _____ shall assume responsibility for the collection and remittance of the B&O taxes on behalf of its distributors on the sale of its product(s) within the scope of this agreement. A sale is presumed to have occurred within the State of Washington if the product(s) are shipped by _____ to a destination (based on postal address) in Washington or sold within the State of Washington by a distributor.
- 2. Calculation of Tax Due.** _____ will calculate the B&O taxes due by its distributors based on the gross proceeds of the retail sales and/or wholesale sales of the product by its distributors and any bonuses, commissions, prizes and other similar compensation that is earned by its distributors residing in the State of Washington.
- 3. Incidence of Tax.**
 - a) One of the following B&O tax classifications will be used to levy the tax on the sale of products by distributors:
 - (1) Wholesaling B&O tax —Liability for this tax will fall upon any distributor that receives a reseller permit and sells _____'s products in the State of Washington for the purpose of reselling the product as a wholesale sale, or;
 - (2) Retailing B&O tax – Liability for this tax will fall upon any distributor that makes the retail sale of the product(s) in the State of Washington.
 - b) Service & Other Activities B&O tax—The liability for this tax will fall proportionately on the amount of each individual distributor's bonuses, commissions, prizes, and other compensation that is earned by each individual distributor that resides in Washington.
- 4. Adjustments to Tax.** The parties recognize that distributors may use or consume product(s) in the distributor's business or otherwise, sell and deliver products outside the State of Washington, may receive products from another distributor outside the state for sale or use in the State of Washington, may pay bonuses, commissions, prizes and other similar compensation (received from _____ upon which the applicable B&O tax was paid) to a distributor outside the state or a distributor may receive bonuses, commissions, prizes and other similar compensation from a distributor outside the state (which the applicable B&O taxes have not been paid). To ensure that the B&O taxes initially collected and remitted to the Department by _____ represents, as close as commercially practicable under the circumstances, the amount due on the sale of products, bonuses, commissions, prizes and other similar compensation that is earned by its distributors

residing in the State of Washington, the B&O taxes paid by _____ under this Agreement shall be adjusted as follows:

- a) _____ shall document and increase the B&O taxes remitted to the Department under this agreement if:
- (1) _____ is notified by a distributor, or otherwise knows, or should have known that a distributor is selling or has sold product(s) at a price in excess of the suggested retail price;
 - (2) _____ is notified by a distributor, or otherwise knows, or should have known that a distributor residing outside the state is or has paid bonuses, commissions, prizes and other compensation to another distributor in the State of Washington; and/or
 - (3) A distributor remits additional B&O taxes to _____.

The additional B&O taxes due under subsection (1) shall equal the difference between the suggested retail price of the products sold and the actual retail price of the same products multiplied by the applicable tax rate. For purposes of subsection a) the suggested retail price shall be determined at the time the tax of the sold products was collected by _____. The additional B&O taxes due under subsection (2) shall be on the amount of the bonuses, commissions, prizes, and other monetary compensation paid, or the value of prizes or non-monetary compensation received. The additional B&O taxes due under subsection (3) shall be the amount remitted.

If _____ is notified, knows, or should have known of the selling of product(s) at a price in excess of the suggested retail price by a distributor or the payment of bonuses, commissions, prizes and compensation, on which the appropriate B&O taxes have not been remitted by the distributor, _____ shall, no later than the end of the reporting period following the month in which _____ obtained such knowledge, notify the Department, in writing, of the identity of any such distributor and the material facts relating to such sales(s).

- b) _____ shall document and reduce the B&O taxes remitted to the Department under this agreement, if a distributor notifies _____ that:
- (1) The distributor has sold products at retail at a price less than the suggested retail price;
 - (2) The distributor has sold and delivered products to a customer outside the State of Washington;

- (3) The distributor has used or consumed products in the distributor's business activities or otherwise;
- (4) The distributor or customer has returned the products, for whatever reason, to _____ for a refund;
- (5) The distributor paid bonuses, commissions, prizes and other compensation to another distributor outside the State of Washington; and/or
- (6) _____ erroneously collected taxes from the distributor for the purchase of the products and/or on the payment of bonuses, commissions, prizes and other compensation.

The tax reductions under subsections (2), (3) and (4) shall equal B&O taxes previously collected and remitted by _____ on the sold products. The tax reduction under subsection (1) shall equal the difference between the suggested retail price of the products and the actual sales price for the same products multiplied by the applicable tax rate. The tax reduction under subsection (6) shall equal the amount of the B&O tax erroneously collected by _____. The tax reduction under subsection (5) shall be equal to the B&O tax collected on such bonuses, commissions, prizes and other compensation paid to an out of state distributor. For purposes of subsection b), the suggested retail price shall be determined at the time of the B&O tax for the sold products was collected by _____.

- 5. Small Business B&O Tax Credit.** Distributors are allowed a refund, processed through _____, of the Business and Occupation taxes paid by a distributor whose volume of business activities is below the credit level set by Revised Code of Washington 82.04.4451. _____ may make appropriate adjustments to their tax filing to reflect refunds documented and given to the distributors. Prior to adjusting the tax due, _____ shall require the distributors to submit signed documentation supporting the adjustments. For purposes of this Agreement only, _____ may rely upon such documentation, as conclusive proof, that the adjustment of the tax due is warranted. _____ is under no obligation to ascertain the validity of the documentation. This section is designed merely to clarify _____'s collection obligations and does not, in any manner, alter or affect a distributor's responsibility to pay or collect the taxes otherwise due.

For the purposes of this section, the revenues from business activities taxed under the Business and Occupation tax law include not only that distributor's _____ business but also any other business or profession that the distributor is engaged in that is subject to the Washington Business and Occupation tax.

III. Collection of Taxes Applicable to _____

Classification Category. In addition to the taxes collected and remitted by _____ on behalf of its distributors, _____ is also subject to any taxes applicable to it based on its business activities and sales that are governed by the laws of the State of Washington.

IV. Terms and Conditions Applicable to the Collection of all Taxes on behalf of Distributors selling products of _____

- A. Remittance.** _____ shall report to the Department all sales subject to the Taxes covered by this agreement, the amount of such Taxes actually collected (including adjustments) and shall remit such Taxes to the Department. The Department shall not require any distributors to register or collect the Taxes to the extent the Taxes are actually collected and remitted as covered by this Agreement.
- B. Bad Debts/Uncollected Tax.** Except as provided in this paragraph, _____ shall not be liable or responsible for the payment of the Taxes on sales where any distributor has, for any reason, failed to remit the Tax due, provided however, (a) that the Tax due was clearly indicated on the _____'s invoice, and (b) that _____ has complied with its duty of notice to the Department, as contained in section II. (A)(3) and (B)(4) of this agreement. The release or nonrelease of _____'s collection and remittance obligations under this agreement shall not affect any distributor's liability to pay or collect the Taxes otherwise due on any non-exempt sales of the products.
- C. Limitation on Liability.** _____ is not a guarantor of any distributor's collection or the customer's payment of their tax obligations. _____ shall be liable only to the extent it has actually collected the Taxes from the distributor and not remitted such Tax to the Department. _____ shall not be liable for any tax collection, reporting or remittance obligations on behalf of its distributors to the Department beyond those specifically set forth in the Agreement.
- D. Release of Distributors and the Customers.** Any distributor who pays the full amount of the Taxes to _____ on the purchase of the products, as required under this Agreement including all adjustments, shall be relieved of any further tax liabilities or collection obligation in connection with the sale of the same products. The release shall extend to any customer purchasing the same products at retail from the distributor. Notwithstanding the foregoing, this Agreement shall not be interpreted to limit the Department's ability to prosecute any distributor under any provisions of tax statute or to collect the Taxes from any distributor and customer to the extent not remitted to _____. Distributors will be notified, by _____, of their liability for any taxes not remitted to the State of Washington.

V. Terms and Conditions Applicable to the Entire Agreement

- A. Term.** This Agreement, nine (9) pages in length, shall be effective upon signing and shall remain in full effect and binding on both parties until terminated by either party. Either party may terminate this Agreement on at least sixty (60) days advance written notice.
- B. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Department and _____ and their respective successors and assigns.
- C. Disclosure of Reporting Agreement.** _____ authorizes the Department to disclose to persons identifying themselves as current or potential _____ distributors (or their lawyers, accountants, etc.), that _____ has entered into this Tax Collection Agreement with the Department. The Department, at its discretion, may provide such persons with copies of sections II & IV of this agreement, and/or the general ramifications of this agreement, and/or direct such persons to contact designated persons at _____'s offices.
- D. Changes in Law.** The Department shall notify, by its normal means of taxpayer notification methods, _____ of any substantive, administrative or procedural changes affecting _____'s responsibility for collecting and remitting the Taxes pursuant to this Agreement, including but not limited to rates, collection fees, product exemptions, and filing dates.
- E. Notices.** Any notice to a party required under this Agreement shall be in writing and shall be personally delivered or sent by mail to the party at the respective address noted below.
- F. Agreement.** This Agreement covers Sales (including Regional Transit Authority Tax), Use, Litter taxes as well as Business and Occupation (B&O) tax on gross receipts.
- G. Full Authority.** By executing this Agreement, both _____ and the Department represent and warrant that they have full power and authority to enter into this Agreement.
- H. Modifications.** This Agreement contains the entire understanding of the parties and may not be modified except by a written addendum or new agreement in writing signed by both parties.
- I. Plurals, Pronouns.** Whenever in this Agreement words, including pronouns, are used in the masculine, they shall be read in the feminine or neuter whenever they would so apply and vice versa, and words in the Agreement that are singular shall be read as plural whenever the latter would so apply and vice versa.

J. Breach of Agreement. If _____ materially breaches any provision of this Agreement or if the facts as stated are materially different from the facts subsequently established by the Department, this Agreement is null and void and the Department may take any steps necessary to ensure compliance with the Revised Codes of Washington.

No suit, action or proceedings of any kind, type, or nature whatsoever arising out of or in any way relating to this Agreement will be commenced by _____ other than in the Superior Court of Thurston County, Washington.

This Agreement is being entered into and will be construed and interpreted in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this nine (9) page Agreement

Date: _____

Department of Revenue

By: _____

Print Name: _____

Title: Assistant Director

Date: _____

By: _____

Print Name: _____

Title: _____

Contact address for Department of Revenue:

State of Washington
Department of Revenue
Taxpayer Account Administration
PO Box 47476
Olympia, WA 98504-7476

Individual Contact Information for Excise Tax Returns and correspondence:

Name: _____

Title: _____ Phone: _____

Address: _____ City, State, Zip: _____