

COLORADO
Department of Revenue
Taxation Division

Colorado Nicotine Products Tax Guide

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Colorado imposes a tax on the sale, use, consumption, handling, or distribution of all nicotine products in Colorado. This publication provides information regarding Colorado's nicotine products tax but does not apply to either cigarettes or tobacco products sold in Colorado, which are taxed separately. Please see the *Colorado Cigarette Tax Guide* and the *Colorado Tobacco Products Tax Guide* for additional information regarding the taxes imposed on cigarettes and tobacco products.

The nicotine products tax imposed in Colorado applies to any product that contains nicotine derived from tobacco or created synthetically that is intended for human consumption, except for the following products:

- cigarettes, which are subject to Colorado's cigarette tax;
- tobacco products subject to Colorado's tobacco products tax;
- anything defined in the Federal Food, Drug, and Cosmetic Act as a drug, device, or combination product authorized for sale by the U.S. Department of Health and Human Services.

The tax applies to nicotine products regardless of whether such products are consumed by vaporizing, chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, aerosolizing, or by any other means.

In general, anyone engaged in the business of distributing nicotine products in Colorado is liable for the nicotine products tax, including any distributor who makes sales from outside of Colorado for delivery to consumers at locations inside of Colorado.

Any distributor who is liable for the tax must obtain and maintain a Colorado nicotine products tax license. They must also file returns and remit the applicable tax on a quarterly basis. Distributors must maintain all records necessary to determine the correct amount of tax and provide these records to the Department upon request.

This publication is designed to provide distributors with general guidance regarding licensing, tax calculation, filing, remittance, and recordkeeping requirements prescribed by law. Additional information, guidance, forms, and instructions can be found online at *Tax.Colorado.gov*. Nothing in this publication modifies or is intended to modify the requirements of Colorado's statutes and regulations. Distributors are encouraged to consult their tax advisors for guidance regarding specific situations.

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Part 1: Licensing

Every nicotine products distributor is required to obtain and maintain an active license with the Colorado Department of Revenue. This Part 1 provides information regarding distributors who are required to be licensed, as well as licensing applications, renewals, and revocations.

Distributors

Anyone engaged in the business of distributing nicotine products at any place of business must first obtain a license granted and issued by the Department. Licenses are granted only to persons who own or operate the place where they engage in the business of distributing nicotine products. Licensing requirements apply to distributors, as defined below.

A distributor license is required for anyone:

- who first receives nicotine products in Colorado;
- who sells nicotine products in Colorado and is primarily liable for the nicotine products tax on such products;
- who first sells or offers for sale in Colorado nicotine products imported into this state from any other state or country; or
- who is located outside of Colorado and accepts orders for nicotine products from consumers in Colorado, over the phone, internet, or by any other means, for delivery into Colorado by common carrier, private delivery service, mail, or any other means.

Application for licensing

A distributor must apply for licensure through *Revenue Online* and pay the applicable fee. The standard license fee is $10 per year. For an initial license application, the fee will be prorated based on the number of calendar quarters remaining before the expiration of the license on June 30th.

If such business is operated in two or more separate places, a separate license is required for each place of business. Please visit *Nicotine Products* on the Department's website for additional information about licensing applications.

An applicant must have a current Colorado sales tax license and must not owe any delinquent Colorado taxes, unless the applicant has entered into an agreement with the Department to pay such tax. Please see Part 5 of the *Colorado Sales Tax Guide* for information about sales tax licenses.

Business changes for a licensee

If a distributor relocates or changes the name of the business, they must notify the Department by submitting a web message through their *Revenue Online* account, sending an email to *DOR_ExciseTax@state.co.us* , or by calling 303-205-8287. The Department will issue a license with the new business name or location at no charge.

If there is a change in ownership for the business, the new owner must apply for a new license, as described earlier in this publication. A change in ownership may occur if an existing business is sold to a new owner or if the ownership structure of an existing business changes so as to create a new legal entity. However, any changes in stockholders of a corporation, partners in a partnership, or members in a limited liability company is not a change of ownership and does not require a new license.

License renewals

Licenses, if not renewed, will expire on June 30th. A license renewal application will be mailed to each licensed distributor. Licenses can be renewed electronically through *Revenue Online*. A current Colorado sales tax license and a license fee of $10 are required for renewal of a nicotine products license. A license cannot be renewed if the licensee owes any delinquent Colorado taxes, unless the licensee has entered into an agreement with the Department to pay such tax.

License revocations

If a licensee violates any provision of law applicable to the tax on nicotine products, the Department will, on reasonable notice and after a hearing, suspend or revoke the license. The distributor will not be eligible for a new license for a period of two years thereafter.

Penalty for operating without a license

It is unlawful for any distributor to sell or distribute any nicotine products in Colorado without a license. Any distributor or agent thereof who willfully violates licensing requirements is subject to criminal penalties.

Additional resources

The following is a list of statutes, forms, and guidance pertaining to licensing for nicotine products tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-28.6-102, C.R.S. Definitions.
- § 39-28.6-105, C.R.S. Licensing required.
- § 39-28.6-111, C.R.S. Prohibited acts – penalties.

Forms and guidance

- *Tax.Colorado.gov*
- *Nicotine Products*
- *Revenue Online*

Part 2: Nicotine Products Tax

In general, Colorado imposes its nicotine products tax on any nicotine products manufactured in or transported into Colorado for sale in Colorado. The distributor is liable for the tax but, if the distributor has not paid the tax, anyone who possesses untaxed nicotine products in Colorado may be held liable for the tax. The tax is calculated as a percentage of the manufacturer's list price for the nicotine product, with a lower tax rate applicable to nicotine products that are modified risk tobacco products. This Part 2 provides information regarding the imposition and calculation of the nicotine products tax in Colorado.

Nicotine products tax

The nicotine products tax is levied upon the sale, use, consumption, handling, or distribution of all nicotine products in Colorado. Taxable sales include any transfer, exchange, or barter, in any manner or by any means whatsoever, for consideration, including delivery sales described below. Additionally, any gift by a person engaged in the business of selling nicotine products is treated as a taxable sale, whether such gift was made for the purpose of advertising, in an effort to evade the tax, or for any other purposes whatsoever.

Nicotine products tax does not apply to cigarettes or tobacco products, each of which are taxed separately by the State of Colorado.

Delivery sales

The nicotine products tax applies not only to nicotine products sold over-the-counter in Colorado, but also to any nicotine products delivered to any consumer in Colorado. The tax applies whenever a consumer in Colorado submits an order to a seller located outside of the state by any means including, but not limited to, telephone or other voice transmission, the mail or other delivery service, or the internet or other online service and the nicotine products are delivered to the consumer in Colorado by use of a common carrier, private delivery service, mail, or any other means.

Imposition of the tax

The nicotine products tax is imposed at the time the distributor does any of the following:

- brings nicotine products into Colorado for sale;
- causes nicotine products to be brought into Colorado for sale;
- makes, manufactures, or fabricates nicotine products in Colorado for sale in Colorado;
- ships or transports nicotine products to retailers in Colorado to be sold by those retailers; or
- makes a sale of nicotine products delivered to a consumer in Colorado by use of a common carrier, private delivery service, mail, or any other means.

Liability for the tax

In general, nicotine tax is imposed upon the distributor who is liable and responsible for the tax. Distributors are required to file returns and remit taxes as described in Part 3 of this publication.

However, if anyone who is not a distributor possesses nicotine products in Colorado for which taxes have not otherwise been remitted, they are liable and responsible for the uncollected tax and must file a *Nicotine Products Tax Return for Unlicensed Activity* (DR 0226). The person or entity must file the return and make the payment of the tax due to the Department within 30 days of first taking possession of the nicotine product. Anyone who fails to remit the required tax is subject to a penalty of up to 500% of the tax due. *Forms & Instructions for Nicotine Products Tax* are available on the Department's website.

Tax calculation

Nicotine products tax is calculated as a percentage of the manufacturer's list price for the product. The tax rate increases incrementally from January 1, 2021, to July 1, 2027. The tax for nicotine products that are modified risk tobacco products is calculated at a lower rate.

Manufacturer's list price

The manufacturer's list price used for calculating the tax is the invoice price for which a manufacturer or supplier sells a nicotine product to a distributor. The manufacturer's list price is determined without regard to any discounts or other price reductions allowed by the manufacturer or supplier. Special rules, discussed later in the publication, apply in determining the manufacturer's list price for delivery sales and for manufacturers who make retails sales directly to consumers.

The taxable invoice price includes all consideration the manufacturer or supplier receives from the distributor in whatever form and regardless of the time of receipt. It also includes any and all charges reflected on an invoice from the manufacturer or supplier to the distributor, whether separately stated or not, including, but not limited to, any federal excise tax and any charge for shipping, transportation, and storage.

However, any charges separately stated on the invoice for any tangible personal property that is not a nicotine product are excluded from the invoice price upon which the tax is calculated. If services provided in connection with the purchase of both nicotine products and non-nicotine products are aggregated on an invoice, the portion of any aggregated service charges that are properly allocable to non-nicotine products may be excluded from the taxable invoice price. The portion of any aggregated service charges that are properly allocable to non-nicotine products is determined by multiplying the service charges by a fraction, the numerator of which is the sum total of all non-nicotine products on the invoice and the denominator of which is the sum total of all charges for nicotine and non-nicotine products on the invoice, excluding from both the numerator and denominator any discounts or other price reductions allowed by the manufacturer or supplier.

Delivery sales

If determining the invoice price as described earlier in this publication is impracticable for a delivery seller, then the tax may be calculated using an alternate method. The tax is instead calculated as a percentage of the average of the actual price paid during the preceding calendar year for the stock keeping unit ("SKU") assigned by the distributor to the tobacco product in order to track inventory. The average of the actual price paid is determined exclusive of any rebates or discounts applied.

The Department may, by written notice to the delivery seller, prospectively require a delivery seller to calculate the tax on the invoice price if the Department finds that the delivery or remote retail seller's use of the average price paid was for the purpose of avoiding tax.

Retail sales by manufacturers

If a manufacturer sells tobacco products exclusively to consumers and not to suppliers or distributors, the tax is calculated as a percentage of the manufacturer's cost to manufacture the tobacco product, including the manufacturing overhead and the cost of all direct materials and direct labor used.

Tax rates

The tax rate for calculating nicotine products tax increases incrementally up to July 1, 2027, as reflected in the following table:

Tax Rates for Nicotine Products

Period	*Tax Rate*
January 1, 2023, through June 30, 2024	50%
July 1, 2024, through June 30, 2027	56%
July 1, 2027, and later	62%

Modified risk tobacco products

The tax for nicotine products that are modified risk tobacco products is imposed at a lower rate. A nicotine product qualifies for the lower tax rate only if the Secretary of the U.S. Department of Health and Human Services ("HHS") has issued an order authorizing the product to be commercially marketed as a modified risk tobacco product in accordance with 21 U.S.C. sec. 387k, or any successor section. *Modified Risk Granted Orders* can be found on the website of the U.S. Food and Drug Administration.

The tax rate for calculating nicotine products tax on modified risk tobacco products increases incrementally up to July 1, 2027, as reflected in the following table:

Tax Rates for Modified Risk Tobacco Products

Period	*Tax Rate*
January 1, 2023, through June 30, 2024	25%
July 1, 2024, through June 30, 2027	28%
July 1, 2027, and later	31%

Exempt sales

If the sale, use, consumption, handling, or distribution of any nicotine product is exempt from state taxation under the U.S. Constitution or federal law, the distributor must nonetheless report the exempt nicotine product to the Department on the distributor's quarterly nicotine products tax return.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to the imposition of the nicotine products tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-28.6-102, C.R.S. Definitions.
- § 39-28.6-103, C.R.S. Tax levied.
- § 39-28.6-104, C.R.S. Exempt sales.
- § 39-28.6-107, C.R.S. Returns and remittance of tax.
- Rule 39-28.6-102. Manufacturer's List Price.

Forms and guidance

- *Tax.Colorado.gov*
- *Forms & Instructions for Nicotine Products Tax*
- *Nicotine Products Tax Return for Non-Licensed Distributors* (DR 0226)
- *Modified Risk Granted Orders*



All distributors are required to file returns and remit taxes every calendar quarter and maintain any records necessary for the determination of the amount of tax due. Both the filing of returns and the remittance of tax must be made electronically. A distributor who remits the tax due on or before the applicable due date is allowed to retain a specified portion of the tax otherwise due. If a distributor fails to file and pay the tax due by the applicable due date, the Department may impose penalties and interest. This Part 3 provides information regarding filing, remittance, and recordkeeping requirements for Colorado nicotine products tax.

Filing requirements

Every distributor must file quarterly returns reporting the total amount of nicotine products purchased by the distributor during the quarter. A return must be filed for each calendar quarter, even if no tax is due. Quarterly returns are due on the 20th day of the month immediately following the close of the quarter. For example, a return for the 3rd quarter (July through September) is due October 20th. If the 20th falls on a Saturday, Sunday, or legal holiday, the distributor's return and tax remittance is due the next business day.

Electronic filing

Distributors must file their nicotine products tax returns electronically through *Revenue Online*. Distributors must create an account through Revenue Online prior to filing. *Forms & Instructions for Nicotine Products Tax* are available on the Department's website.

Any distributor who is not able to file electronically should contact the Excise Tax Unit by email at *DOR_ExciseTax@state.co.us* or by phone at 303-205-8287.

Failure to file

If a distributor neglects or refuses to file a return for any period for which the distributor has an active nicotine products tax license, the Department will estimate the tax due based upon the best available information and issue a notice of deficiency for the estimated tax, plus any applicable penalties and interest. If no tax is due, the distributor will be subject to a penalty of $25.

Other filing obligations

In addition to filing nicotine products tax returns, distributors must comply with other filing requirements relating to the PACT Act.

Preventing All Cigarette Trafficking (PACT) Act

Additionally, distributors may be subject to registration and reporting requirements under the Preventing All Cigarette Trafficking (PACT) Act. Anyone who, in interstate commerce, offers, advertises, sells, transfers, or ships for profit electronic nicotine delivery systems ("ENDS"), including, but not limited to, e-cigarettes and "vapes" and who ships to or advertises in Colorado must register with both the state and federal governments and submit monthly filings to the state. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives provides specific forms, instructions, and information for *Vapes and E-Cigarettes* on its website. The required registration form and monthly filings must be submitted to the Department either via web message through Revenue Online or by email to *DOR_ExciseTax@state.co.us*.

Remittance requirements

Distributors must remit payment of all tax due on or before the applicable due date for the filing of the distributor's return. Tax payments not made by the applicable due date are subject to penalty and interest, as described later in this publication. A distributor who remits the applicable tax on or before the due date is allowed to deduct and retain a service fee, as described later in this publication.

Electronic funds transfer (EFT)

Distributors are required to remit nicotine products tax via electronic funds transfer (EFT). *Excise & Fuel Tax Payment* information is available on the Department's website.

In general, payments made by EFT must be made by the end of the day on the due date. Please see Department Rule 39-21-119.5 in *1 CCR 201-1* for additional information regarding the timeliness of payments made via EFT.

Distributor's service fee

For tax periods beginning before January 1, 2027, unless a distributor is delinquent in remitting the tax due, the distributor may retain a service fee equal to 1.1% of the tax otherwise due to cover their expenses for remitting the tax. If any distributor is delinquent in remitting the tax due, the distributor may not retain any service fee. The amount the distributor may retain is calculated automatically by the Department's electronic filing system.

If a distributor has appropriately retained a service fee as described above and, subsequent to the applicable due date, owes additional tax for the filing period as the result of an amended return or an adjustment made by the Department, the distributor is not allowed to retain any service fee from the additional tax, but the distributor is allowed to retain the service fee from the original return, so long as the distributor filed the original return in good faith.

No service fee is allowed for tax periods beginning on or after January 1, 2027.

Penalties and interest

Penalties and interest are imposed under Colorado law whenever a distributor fails to file a required return or to pay any tax due by the applicable due date.

Penalties

A distributor who neglects or refuses to file any required return is subject to a penalty of $25 if no tax is due for the filing period.

If a distributor fails to pay any tax due by the applicable due date, the distributor will owe a penalty equal to 10% of the unpaid tax, plus an additional 0.5% for each month the tax remains unpaid.

Additionally, distributors are subject to criminal penalties if they willfully make a false or fraudulent return or false statement on any return or if they willfully evade the payment of any tax.

Interest

Interest accrues on any late payment of tax from the original due date for the tax to the date the tax is paid. The rate of interest accrual depends on the calendar year(s) over which the deficiency continues. Additionally, a discounted rate is allowed if the distributor:

- pays the tax in full prior to the issuance of a notice of deficiency;
- pays the tax in full within 30 days of the issuance of a notice of deficiency; or
- within 30 days of the issuance of a notice of deficiency, enters into an agreement with the Department to pay the tax.

The discounted and non-discounted, regular interest rates for recent years are listed in the following table:

Annual Interest Rates

Calendar year	*Discounted rate*	*Regular rate*
2023	5%	8%
2024	8%	11%
2025	9%	12%
2026	8%	11%
2027	7%	10%

Recordkeeping requirements

Every distributor must keep at each licensed place of business complete and accurate records for that place of business for a period of at least three years. These records must include itemized invoices for all nicotine products that are or were:

- held, purchased, manufactured, or sold;
- brought into Colorado or caused to be brought into Colorado from outside the state;
- shipped or transported to retailers in Colorado; or
- transferred to other retail outlets owned or controlled by that licensed distributor.

The distributor's records must show the names and addresses of purchasers, the inventory of all nicotine products on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of nicotine products.

Distributors are not required to retain invoices for any sales they make at their licensed business location in Colorado to the ultimate consumer of the nicotine products.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to filing, remittance, and recordkeeping requirements for nicotine products tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-28.6-106, C.R.S. Books and records to be preserved.
- § 39-28.6-107, C.R.S. Returns and remittance of tax.
- § 39-28.6-111, C.R.S. Prohibited acts – penalties.
- § 39-21-109, C.R.S. Interest on underpayment.
- § 39-21-110.5, C.R.S. Rate of interest to be fixed.
- § 39-21-113, C.R.S. Reports and returns.
- § 39-21-119, C.R.S. Filing with executive director.
- § 39-21-119.5, C.R.S. Mandatory electronic filing.
- Rule 39-21-119.5. Requirements for Electronic Filing and Electronic Payment.
- Rule 39-28.6-107. Distributor's Service Fee.

Forms and guidance

- *Tax.Colorado.gov*
- *Nicotine Products*
- *Forms & Instructions for Nicotine Products Tax*
- *Excise & Fuel Tax Payment*
- *Revenue Online*
- *Vapes and E-Cigarettes (ATF)*

Part 4: Credits and Refunds

State law prescribes specific conditions under which a distributor can claim a refund or credit for taxes previously paid. In general, distributors can claim a credit for taxes previously paid on nicotine products that are returned to the manufacturer, destroyed by the distributor, or shipped outside of Colorado. This Part 4 provides information regarding credits allowed for nicotine products taxes.

Credits for tax paid

A distributor may claim credit on their nicotine products tax return for tax paid on nicotine products that are:

- returned to the manufacturer by the distributor or destroyed by the distributor;
- shipped or transported by the distributor to retailers outside of Colorado to be sold by those retailers; or
- shipped or transported by the distributor to a consumer outside of Colorado.

If the credit claimed exceeds the amount of tax otherwise due on the distributor's return, the distributor may submit a completed *Excise, Fee and Fuel Claim for Refund* (DR 0137E), to request a refund. The distributor must submit with the refund claim appropriate documentation in support of the refund claimed.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to credits and refunds allowed for the nicotine products tax. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-28.6-108, C.R.S. When credit may be obtained for tax paid.

Forms and guidance

- *Tax.Colorado.gov*
- *Cigarette Tax*
- *Forms & Instructions for Nicotine Products Tax*
- *Excise, Fee and Fuel Claim for Refund* (0137E)

Part 5: Assessments

If a distributor has not paid any applicable tax, the Department may issue a notice of deficiency and subsequently assess the tax due, regardless of whether the distributor has filed a return. A distributor may file a protest and request a hearing with respect to a notice of deficiency. This Part 5 provides information regarding assessments, protests, and appeals.

Assessments

If, upon examination of a filed return, the Department determines the correct amount of tax has not been paid, the Department will issue a notice of deficiency to the distributor. In general, the Department may issue such notice no later than three years after the return was filed or three years after the return was due, whichever is later. In the case of a false or fraudulent return with intent to evade tax, there is no limit on the time for the Department to issue a notice of deficiency.

If a distributor neglects or refuses to file a return, the Department may estimate the tax due, based upon the information that may be available. The Department will issue a written notice to the distributor of the estimated taxes due, along with any applicable penalty and interest. If a distributor does not file a required return, there is no limit on the time for the Department to estimate the tax due and issue a notice of deficiency to the distributor.

Please see Part 3 of this publication for information about penalties and interest.

Protests and appeals

A distributor who receives a notice of deficiency or notice of refund rejection may submit a written protest and request a hearing to dispute the notice. Any protest or request for hearing must be submitted within 30 days of the date of the notice. The protest or request for hearing must be signed by the distributor and contain at least the following information:

- the distributor's name, address, and account number;
- the tax period(s) involved; and
- the type and amount of tax in dispute.

The distributor must also provide, in writing, a summary statement of the findings with which they do not agree and the grounds upon which they rely for the purpose of showing that the tax is not due.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to assessments. This list is not, and is not intended to be, an exhaustive list of authorities that govern the tax treatment of every situation. Individuals and businesses with specific questions should consult their tax advisors.

Statutes and regulations

- § 39-21-103, C.R.S. Hearings.
- § 39-21-104, C.R.S. Rejection of claims.
- § 39-21-107, C.R.S. Limitations.
- § 39-28.6-111, C.R.S. Prohibited acts – penalties.
- Rule 39-21-103-1. Request for Hearing.

Forms and guidance

- *Tax.Colorado.gov*
- *Taxation Disputes*