Colorado Tobacco Products Tax

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

The tobacco products tax imposed in Colorado applies to every kind and form of tobacco that is prepared in such manner as to be suitable for chewing or for smoking, or both, except for cigarettes that are subject to Colorado cigarette tax. Tobacco products that are subject to the tax include, but are not limited to, the following:

- cigars
- cheroots
- stogies
- periques
- granulated
- plug cut
- crimp cut
- ready rubbed
- snuff
- snuff flour
- cavendish
- plug
- twist
- fine-cut
- shorts

The tax on tobacco products also applies to any refuse scraps, clippings, cuttings, and sweepings of tobacco. Additionally, wrapping materials made of tobacco, either in whole or in part, including blunt wraps, are tobacco products subject to the tax.

In general, anyone engaged in the business of distributing tobacco products in Colorado is liable for the tobacco 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 tobacco 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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Revised January 2021
Part 1: Licensing

Every tobacco products distributor and distributing subcontractor is required to obtain and maintain an active license with the Colorado Department of Revenue. A list of all currently licensed distributors is available online at Tax.Colorado.gov/licensed-distributors. This Part 1 provides information regarding distributors and distributing subcontractors who are required to be licensed, as well as licensing applications, renewals, and revocations.

Distributors and subcontractors

Anyone engaged in the business of distributing tobacco 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 tobacco products. Licensing requirements apply to distributors and distributing subcontractors, both defined below.

Distributors

A distributor license is required for anyone:

- who first receives tobacco products in Colorado;
- who sells tobacco products in Colorado and is primarily liable for the tobacco products tax on such products;
- who first sells or offers for sale in Colorado tobacco products imported into this state from any other state or country.
- who is located outside of Colorado and accepts orders for tobacco 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.

Distributing subcontractors

A distributing subcontractor license is required for any person, firm, limited liability company, partnership, or corporation who purchases tobacco products from a distributor for resale to a retailer in Colorado.

Applications for licensing

A distributor or distributing subcontractor must apply for licensure by submitting a completed Tobacco Products Distributor Application (DR 0222) along with 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.

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.

Additional requirements for distributors

As a condition for licensure, distributors must comply with requirements relating to the Master Settlement Agreement and Tobacco Escrow Funds, including, but not limited to, the filing of Department forms DR 1285 and/or 1286. Please see Department publication FYI Excise 18: Master Settlement Agreement for additional information regarding these requirements.

Distributor must also register with the Department in order to make payments via electronic funds transfer (EFT).
Electronic funds transfer (EFT) registration

Distributors must register with the Department in order to make payments via electronic funds transfer (EFT). Registration can be made either online at Colorado.gov/RevenueOnline or by completing and submitting form DR 5785, Electronic Funds Transfer (EFT) Account Setup For Tax Payments. A distributor must first sign up and create a login ID for Revenue Online in order to register for EFT online. See Department publication Colorado Department of Revenue Electronic Funds Transferred (EFT) Program For Tax Payments (DR 5782) for additional information regarding EFT payments and registration.

Business changes for a licensee

If a distributor or distributing subcontractor relocates or changes the name of the business, they must notify the Department by submitting a web message through their account at Colorado.gov/RevenueOnline, sending an email to DOR_ExciseTax@state.co.us, or by calling 303-205-6879. The Department will issue a license with the new business name or location at no charge.

If there is a change in ownership of the business, the new owner must submit a Tobacco Products Distributor Application (DR 0222) to request a new license. 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 companies 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 and distributing subcontractor. A current Colorado sales tax license and a license fee of $10 are required for renewal of a tobacco 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. Additionally, a distributor license cannot be renewed if the licensee has not filed all required reports related to the Master Settlement Agreement (see Department publication FYI Excise 18: Master Settlement Agreement for additional information.

License revocations

If a licensee violates any provision of law applicable to the tax on tobacco 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 and distribute any tobacco 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 tobacco 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

➢ § 39-28.5-104, C.R.S. Licensing required.
➢ § 39-28.5-104.5, C.R.S. Licensing of distributing subcontractors.

Forms and guidance

➢ Tax.Colorado.gov
➢ Tax.Colorado.gov/tobacco-products
➢ Tax.Colorado.gov/tobacco-products-distributors
➢ Tax.Colorado.gov/tobacco-products-distributing-subcontractor
➢ Tax.Colorado.gov/cigarette-tobacco-products/licensed-distributors
➢ FYI Excise 18: Master Settlement Agreement
➢ Tobacco Products Distributor Application (DR 0222)
➢ Licensed Distributor Reporting Form for Cigarette Sales of Non-Participating Manufacturer Brands (DR 1285)
➢ Tobacco Distributor’s Certificate for Exemption MSA/Non-Participating Manufacturer Brands (DR 1286)
➢ Colorado Department of Revenue Electronic Funds Transferred (EFT) Program for Tax Payments (DR 5782)
➢ Electronic Funds Transfer (EFT) Account Setup for Tax Payments (DR 5785)
Part 2: Prohibited Acts

Section 39-28.5-111, C.R.S., prohibits certain acts in relation to the importation, sale, labeling, and handling of tobacco products in Colorado. The following table lists these prohibited acts. Any violation of section 39-28.8-111, C.R.S., is a class 1 misdemeanor.

Acts Prohibited Under Section 39-28.5-111, C.R.S.

Importation in violation of federal requirements

No one shall import into Colorado any tobacco product that violates any federal requirement for the placement of labels, warnings, or other information, including health hazards, required to be placed on the container or individual package.

Sales that do not comply with federal law

No one shall sell or offer to sell any tobacco product unless the package or container of the tobacco product complies with all federal tax laws, federal trademark and copyright laws, and federal laws regarding the placement of labels, warnings, or any other information upon a package or container of tobacco products.

Sales of tobacco products manufactured for use outside the U.S.

No one shall sell or offer to sell any tobacco product if the package or container is marked as manufactured for use outside of the United States or if any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

No one shall affix a stamp, label, or decal on a package or container of tobacco products to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

No one shall sell or offer to sell any tobacco product on which a stamp, label, or decal was affixed to conceal the fact that the package or container of tobacco products was manufactured for use outside of the United States.

Additional resources

The following is a list of statutes prohibiting certain acts involving tobacco products in Colorado. 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

- § 39-28.5-111, C.R.S. Federal requirements.
Part 3: Tobacco Products Tax

In general, Colorado imposes its tobacco products tax on any tobacco 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 tobacco products in Colorado may be held liable for the tax. The tax is generally calculated as a percentage of the manufacturer’s list price for the tobacco product, but special rules apply to the calculation of the tax on modified risk tobacco products and moist snuff. This Part 3 provides information regarding the imposition and calculation of the tobacco products tax in Colorado.

Tobacco products tax

The tobacco products tax is levied upon the sale, use, consumption, handling, or distribution of all tobacco products in Colorado, except for cigarettes, which are taxed separately. 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 tobacco 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.

Delivery sales

The tobacco products tax applies not only to tobacco products sold over-the-counter in Colorado, but also to any tobacco 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 tobacco 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 tobacco products tax is imposed at the time the distributor:

- brings tobacco products into Colorado for sale;
- causes tobacco products to be brought into Colorado for sale;
- makes, manufactures, or fabricates tobacco products in Colorado for sale in Colorado;
- ships or transports tobacco products to retailers in Colorado to be sold by those retailers; or
- makes a sale of tobacco 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, tobacco products 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 4 of this publication.

However, if anyone who is not a distributor who possesses tobacco products in Colorado for which taxes have not otherwise been remitted is liable and responsible for the uncollected tax and must file a Tobacco Products Tax Return for Non-Licensed Distributors (DR 0225). 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 tobacco product. Anyone who fails to remit the required tax is subject to a penalty of up to 500% of the tax due.
Part 3: Tobacco Products Tax

Tax calculation

Tobacco products tax is generally calculated as a percentage of the manufacturer’s list price for the product. The tax rate increases incrementally from December 31, 2020 to July 1, 2027. Special rules apply to the calculation of tax for modified risk tobacco products and moist snuff.

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 tobacco 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.

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 tobacco product are excluded from the invoice price upon which the tax is calculated. If services provided in connection with the purchase of both tobacco products and non-tobacco products are aggregated on an invoice, the portion of any aggregated service charges that are properly allocable to non-tobacco products may be excluded from the taxable invoice price. The portion of any aggregated service charges that are properly allocable to non-tobacco products is determined by multiplying the service charges by a fraction, the numerator of which is the sum total of all non-tobacco products on the invoice and the denominator of which is the sum total of all charges for tobacco and non-tobacco products on the invoice, excluding from both the numerator and denominator any discounts or other price reductions allowed by the manufacturer or supplier.

Tax rates

The tax rate for calculating tobacco products tax increases incrementally from December 31, 2020 to July 1, 2027, as reflected in the following table:

<table>
<thead>
<tr>
<th>Period</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2020 and prior</td>
<td>40%</td>
</tr>
<tr>
<td>January 1, 2021 through June 30, 2024</td>
<td>50%</td>
</tr>
<tr>
<td>July 1, 2024 through June 30, 2027</td>
<td>56%</td>
</tr>
<tr>
<td>July 1, 2027 and later</td>
<td>62%</td>
</tr>
</tbody>
</table>

Modified risk tobacco products

The tobacco products tax for modified risk tobacco products is imposed at a lower rate. A tobacco 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. Orders issued by HHS regarding modified risk tobacco products can be found online at fda.gov/tobacco-products/advertising-and-promotion/modified-risk-orders.

The tax rate for calculating tobacco products tax on modified risk tobacco products increases incrementally from January 1, 2021 to July 1, 2027, as reflected in the following table:

<table>
<thead>
<tr>
<th>Period</th>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2020 and prior</td>
<td>40%</td>
</tr>
<tr>
<td>January 1, 2021 through June 30, 2024</td>
<td>35%</td>
</tr>
<tr>
<td>July 1, 2024 through June 30, 2027</td>
<td>38%</td>
</tr>
<tr>
<td>July 1, 2027 and later</td>
<td>41%</td>
</tr>
</tbody>
</table>
Part 3: Tobacco Products Tax

Minimum tax for moist snuff

Colorado law established a minimum tax for moist snuff. Moist snuff that is subject to the minimum tax includes any finely cut, ground, or powdered tobacco that is not intended to be smoked or to be placed in the nasal cavity. The minimum tax amounts listed in the following table apply specifically to 1.2 ounce containers of moist snuff.

The minimum tax for moist stuff increases incrementally from December 31, 2020 to July 1, 2027, as reflected in the following table:

<table>
<thead>
<tr>
<th>Period</th>
<th>Minimum tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2020 and prior</td>
<td>No minimum</td>
</tr>
<tr>
<td>January 1, 2021 through June 30, 2024</td>
<td>$1.48</td>
</tr>
<tr>
<td>July 1, 2024 through June 30, 2027</td>
<td>$1.84</td>
</tr>
<tr>
<td>July 1, 2027 and later</td>
<td>$2.26</td>
</tr>
</tbody>
</table>

For any container of moist snuff that is larger than 1.2 ounces, the minimum tax amount listed in the preceding table is proportionately increased. For example, the minimum tax for a 1.8 ounce container of moist snuff sold in 2022 is $2.22. Because the 1.8 ounce container is 50% larger than the 1.2 ounce container for which the standard $1.48 minimum tax is prescribed, the minimum tax for the 1.8 ounce container is 50% greater.

Exempt sales

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

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to the imposition of the tobacco 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

- § 39-28.5-103, C.R.S. Exempt sales.

Forms and guidance

- Tax.Colorado.gov
- Tax.Colorado.gov/tobacco-products
- Tobacco Products Tax Return for Non-Licensed Distributors (DR 0225)
- fda.gov/tobacco-products/advertising-and-promotion/modified-risk-orders
Part 4: Filing, Remittance & Recordkeeping

All distributors are required to file returns and remit taxes every calendar quarter and maintain any records necessary for the determination for 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 4 provides information regarding filing, remittance, and recordkeeping requirements for the Colorado tobacco products tax.

Filing requirements

Every distributor must file quarterly returns reporting the total amount of tobacco 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 tobacco products tax returns electronically at Colorado.gov/RevenueOnline. Distributors must create an account through Revenue Online prior to filing. Form instructions are available online at Tax.Colorado.gov/cigarette-tobacco-products-forms.

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 303-205-6848.

Failure to file

If a distributor neglects or refuses to file a return for any period for which the distributor has an active tobacco 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 tobacco products tax returns, distributors must comply with other filing requirements relating to the Master Settlement Agreement and the PACT Act.

Master Settlement Agreement

Distributors are required to file either monthly or annual reports with the Department in relation to the Master Settlement Agreement (MSA) using form DR 1285 or DR 1286, respectively. Please see Department publication FYI Excise 18: Master Settlement Agreement for additional information regarding MSA reporting requirements.

Preventing All Cigarette Trafficking (PACT) Act

Additionally, distributor 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 cigarettes, roll-your-own tobacco, or smokeless tobacco and who ships to or advertises in Colorado must register with both the state and federal governments and submit monthly filings to the state. Specific forms, instructions, and requirements are available online at atf.gov/alcohol-tobacco/prevent-all-cigarette-trafficking-act-pact-2009 and atf.gov/file/102101/download. 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 on the following page. A distributor who remits the applicable tax on or before the due date is allowed to deduct and retain a service fee, as described on the following page.

Electronic funds transfer (EFT)

Distributors are required to remit tobacco products tax via electronic funds transfer (EFT). Payments made by EFT must be made on or before 4:00 P.M. Mountain Time on the due date of the tax payment in order to be treated as paid on that day. Payments made after 4:00 P.M. Mountain Time are considered to be made on the following day. Payments made on a weekend or legal holiday are treated as paid before 4:00 P.M. of the next business day.

Distributors must register with the Department to make payments via EFT. Registration can be made either online at Colorado.gov/RevenueOnline or by completing and submitting an Electronic Funds Transfer (EFT) Account Setup For Tax Payments (DR 5785). A distributor must first sign up and create a login ID for Revenue Online in order to register for EFT online. See Colorado Department of Revenue Electronic Funds Transferred (EFT) Program For Tax Payments (DR 5782) for additional information regarding EFT payments and registration.

Distributor’s service fee

Unless a distributor is delinquent in remitting the tax due, the distributor may retain a service fee that is generally equal to a certain percentage 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 is not allowed to retain any service fee.

In general, the service fee is calculated as a percentage of tax otherwise due. The percentage varies depending on the filing period and whether the tobacco products are modified risk tobacco products (“MRTP”), as reflected in the following table. However, the actual amount of the service fee may differ for moist snuff subject to the minimum tax. The allowable service fee is calculated automatically by the Department’s electronic filing system.

<table>
<thead>
<tr>
<th>Tax Period</th>
<th>Regular Percentage</th>
<th>Percentage for MRTP</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2020 and prior</td>
<td>1.6650%</td>
<td>1.6650%</td>
</tr>
<tr>
<td>January 1, 2021 through June 30, 2024</td>
<td>0.9600%</td>
<td>0.6857%</td>
</tr>
<tr>
<td>July 1, 2024 through June 30, 2027</td>
<td>1.0286%</td>
<td>0.7579%</td>
</tr>
<tr>
<td>July 1, 2027 and later</td>
<td>1.0839%</td>
<td>0.8195%</td>
</tr>
</tbody>
</table>

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.
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, not to exceed a total of 18%.

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:

<table>
<thead>
<tr>
<th>Calendar year</th>
<th>Discounted rate</th>
<th>Regular rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>4%</td>
<td>7%</td>
</tr>
<tr>
<td>2019</td>
<td>5%</td>
<td>8%</td>
</tr>
<tr>
<td>2020</td>
<td>6%</td>
<td>9%</td>
</tr>
<tr>
<td>2021</td>
<td>3%</td>
<td>6%</td>
</tr>
</tbody>
</table>
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 tobacco 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 tobacco products on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco 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 tobacco products.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to filing, remittance, and recordkeeping requirements for tobacco 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

- § 39-28.5-105, C.R.S. Books and records to be preserved.
- § 39-21-109, C.R.S. Interest on underpayment.
- § 39-21-110.5, C.R.S. Rate of interest to be fixed.
- § 39-21-119, C.R.S. Filing with executive director.
- Special Rule 1. Electronic Funds Transfer.

Forms and guidance

- Tax.Colorado.gov
- Tax.Colorado.gov/tobacco-products
- Tax.Colorado.gov/cigarette-tobacco-products/file-pay
- Tax.Colorado.gov/cigarette-tobacco-products-forms
- Colorado.gov/RevenueOnline
- FYI Excise 18: Master Settlement Agreement
- Licensed Distributor Reporting Form for Cigarette Sales of Non-Participating Manufacturer Brands (DR 1285)
- Tobacco Distributor’s Certificate for Exemption MSA/Non-Participating Manufacturer Brands (DR 1286)
Part 5: 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 tobacco products that are returned to the manufacturer, destroyed by the distributor, or shipped outside of Colorado. Additionally, distributors may be able to claim a refund for taxes attributable to bad debts, but only if certain conditions are met. This Part 5 provides information regarding credits and refunds allowed for tobacco products taxes.

Credits for tax paid

A distributor may claim credit on their tobacco products tax return for tax the distributor paid on tobacco 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 on or after January 1, 2021 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 Claim for Refund (DR 0137) to request a refund. The distributor must submit with the appropriate documentation in support of the refund claimed.

Refunds for bad debts

Distributors may claim a refund of previously paid tax attributable to any portion of a debt related to a sale of tobacco products if the debt has become worthless or uncollectible in the time after the tax has been paid. Refunds are allowed only if:

- the tax is not otherwise deductible or excludable;
- the debt has been charged off as uncollectible on the books of the distributor; and
- the distributor is allowed an income tax deduction for the debt pursuant to section 166 of the Internal Revenue Code.

The allowable refund is limited to the amount of tax previously paid on tobacco products that the distributor no longer possesses. No refunds are allowed for:

- any interest on the wholesale price of tobacco products;
- uncollectible amounts on property that remain in the possession of the distributor;
- expenses incurred in attempting to collect any account receivable or any portion of the debt recovered;
- an account receivable that has been sold to a third party for collection; or
- repossessed property.
Claims for refunds

Distributors may claim a refund for bad debts by filing Form DR 0137, *Claim for Refund*. The distributor must submit the following documentation with the claim:

- a copy of the original invoice issued by the distributor;
- evidence that the tobacco products described in the invoice were delivered to the person who ordered them;
- evidence that the person who ordered and received the tobacco products did not pay the distributor for them; and
- evidence that the distributor used reasonable collection practices in attempting to collect the debt.

Repayment of refund for bad debts recovered

Subsequent to receiving a refund, if the distributor receives a payment for the bad debt, the distributor will be liable to the Department for payment of the tax attributable to the amount received. The distributor must remit the tax with the return filed for the quarter in which payment for the bad debt was received.

Additional resources

The following is a list of statutes, regulations, forms, and guidance pertaining to credits and refunds allowed for the tobacco 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

- § 39-28.5-107, C.R.S. When credit may be obtained for tax paid.

Forms and guidance

- *Claim for Refund* (DR 0137)
Part 6: 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 6 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.

See Part 4 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

- § 39-21-107, C.R.S. Limitations.

Forms and guidance

- Tax.Colorado.gov
- Tax.Colorado.gov/conferee