



Excise 16

Cigarette Distributors – General Information

GENERAL INFORMATION

Cigarettes and tobacco products are defined and taxed differently from other products or tangible personal property purchased and sold in Colorado. Cigarette and tobacco products require separate licenses, and are subject to different tax rates and due dates, filing requirements and Master Settlement Agreement (MSA) reporting. See FYI Excise 18, Master Settlement Agreement for information regarding MSA.

The terms “wholesaler” and “distributor” are used interchangeably in this FYI and are synonymous.

WHAT IS A CIGARETTE DISTRIBUTOR?

There are two types of cigarette distributors/wholesalers in Colorado: a cigarette stamping distributor and a cigarette distributor importing cigarettes into Colorado but not stamping. A cigarette license will be granted to wholesalers who own or operate the places from which such sales are to be made. If sales are made from two or more separate locations by a wholesaler, a license for each location is required.

A cigarette wholesale subcontractor is defined as any person, firm, limited liability company, partnership, or corporation who purchases cigarettes from a licensed Colorado wholesaler for resale to a Colorado retailer.

NOTE: A Colorado retailer does not need a Colorado cigarette license if the retailer only purchases cigarettes with the Colorado stamps already affixed for sales to consumers. See FYI Excise 15, Cigarette and Tobacco Product Information for Retailers.

LICENSE REQUIREMENTS

Cigarette Distributor

A cigarette distributor license is required when a wholesaler:

- Imports cigarettes into Colorado.
- Purchases tax stamps from the department and places them on packs of cigarettes.

Cigarette Wholesale Subcontractor

A cigarette wholesale subcontractor license is required when a wholesaler:

- purchases stamped cigarettes from a licensed Colorado cigarette distributor for resale to a retailer in Colorado.

HOW TO APPLY FOR A LICENSE

Cigarette Distributor

The following application materials are required to apply for a Colorado cigarette distributor license:

- Complete and submit Cigarette Distributor Application (DR 0218) along with the license fee.
- A current retail or wholesale sales tax license is required before the cigarette distributor application can be processed. If you do not have a current sales tax license, submit a completed Sales Tax/Withholding Account Application (CR 0100) along with the appropriate fees.
- A completed Authorization for Electronic Funds Transfer (DR 5785) must be submitted with your application. Electronic Funds Transfer (EFT) is required for payment of cigarette excise tax.
- Documentation that the distributor will purchase from at least one manufacturer that is either part of the Master Settlement Agreement or who places funds into a qualified escrow account.
- A completed Cigarette Licensee Surety Bond (DR 0219). The bond amount must be equal to the wholesaler's anticipated total monthly purchase of stamps. A company authorized to do business in Colorado must issue the surety bond.
- Master Settlement Agreement (MSA) reporting on from DR 1286 and/or DR 1285.
- **A new cigarette distributor will not be issued a license if the wholesaler owes the state any delinquent taxes administered by the department or interest thereon."**

The license will be in effect until June 30 following the date of issue and must be renewed each year at an additional cost of \$10. The Colorado Department of Revenue will automatically mail a renewal form to you.

Forms DR 0218, CR 0100, DR 5785 and DR 0219 are available on the Taxation Web site www.TaxColorado.com.

Submit all completed applications to:
Colorado Department of Revenue
Excise Tax Accounting Section, Room 237
P.O. Box 17087
Denver, CO 80217-0087

Cigarette Wholesale Subcontractor

The following application materials are required to apply for a Colorado cigarette wholesale subcontractor license:

- Complete and submit Cigarette Distributor Application (DR 0218) along with the license fee.
- A current sales tax license is required. If you do not have a current sales tax license, submit a completed Sales Tax/Withholding Account Application (CR 0100) along with the appropriate fees.
- Documentation that the distributor will purchase from at least one manufacturer that is either part of the Master Settlement Agreement or who places funds into a qualified escrow account.
- Master Settlement Agreement (MSA) reporting on from DR 1286 and/or DR 1285.
- **A new cigarette subcontractor will not be issued a license if the wholesaler owes the state any delinquent taxes administered by the department or interest thereon.**

The CR 0100, DR 0218 and other forms are available on the Taxation Web site www.TaxColorado.com.

Submit all completed applications to:
Colorado Department of Revenue
Excise Tax Accounting Section, Room 237
P.O. Box 17087
Denver, CO 80217-0087

LICENSE RENEWAL REQUIREMENTS

A cigarette license renewal form will automatically be mailed to each licensed distributor. The license renewal is based on the fiscal year (July 1 through June 30) not calendar year. To receive a license for each fiscal year, the licensee must submit a \$10 fee for each license.

Other Requirements for Renewal of a Cigarette License

- Master Settlement Agreement (MSA) reporting must be current.
- Current retail or wholesale sales tax license on account.
- The account must not have any current tax delinquencies. Any tax billings administered by the Department must be resolved.
- Valid Electronic Funds Transfer (EFT) account (Cigarette Distributors only).
- Proof from cigarette manufacturer/distributor that licensee is purchasing certified product.
- Cigarette Licensee Surety Bond is in effect, if required.
- All cigarette tax filing must be current.

NOTE: Failure to comply with these requirements may result in the revocation of the cigarette distributor's license for a period of two years.

Tax Rate

Wholesalers are required to collect and remit to the Colorado Department of Revenue 42 mills or 4.2 cents on each cigarette sold in Colorado. The tax is levied upon the sale of the cigarettes by the wholesaler. Payment of the cigarette tax is evidenced by the affixing of stamps to cigarette packs. See 'filing requirements' for more information.

Retailers must charge the state sales tax on all retail sales of cigarettes. All sales of cigarettes are exempt from Colorado local and special district sales taxes.

EXCISE TAX EXEMPTIONS

The sale of cigarettes to the United States government or any of its agencies, or sales by a licensed distributor in interstate commerce are exempt from Colorado's cigarette tax.

PROHIBITED PRODUCTS

Cigarette products prohibited for distribution in Colorado are:

- Cigarettes marked "for distribution outside the USA".
- Single cigarettes (sticks).
- Cigarettes in packs containing less than 20 sticks.
- Cigarette brands not listed on the Certified Brands Directory (CBD). Certified Brands Directory is located on the Taxation Web site www.TaxColorado.com under Cigarette and Tobacco.

Cigarette Stamps

Cigarette stamps are available to licensed wholesalers from the Department of Revenue in 20 cigarettes per stamp rolls, wide 20 count rolls, 20 count sheets and 25 cigarette per stamp rolls. Cigarette stamps may be obtained from the Department of Revenue at 1375 Sherman St. Denver, CO 80203. To order cigarette stamps contact the Department's "CDO-Research Section" at 303-866-2570.

Shipping of cigarette tax stamps must be paid by the distributor. The distributor's carrier of choice and the distributor's account number for the carrier are required.

The department will include a 'Cigarette Tax Shipment Advice' along with each order of cigarette tax stamps. It should be retained because the information on it will be used in completing the cigarette tax return. Payment of the cigarette tax is due on the 10th of the month following the month in which the stamps were ordered. For example, any stamps ordered between July 1 and July 31 is due on August 10.

The cost of the stamps is equivalent to the tax rate of 4.2 cents per cigarette. Payment by EFT is required. If payment for the stamps is made on or before the 10th day of the month following the month in which the stamp purchase is made, the .9524 percent discount of the stamps' face value is allowed. The vendor fee discount is provided to cover the licensed wholesaler's expense in the collection and remittance of the cigarette tax. The vendor fee discount will be denied on late, partial or missing payments.

Licensed wholesalers are required to affix the cigarette stamps to each individual pack of cigarettes sold or distributed. The stamps may be affixed by the wholesaler at any time before the cigarettes are transferred out of the wholesaler's possession to retailers. Stamped and unstamped **cigarettes** may be transferred between in-state wholesalers. Cigarette **stamps** may not be transferred or sold between wholesalers.

FILING REQUIREMENTS

Distributors must file a Colorado Cigarette Tax Return (DR 0221) monthly. The Department of Revenue will mail pre-printed returns each month.

The return and the EFT payment of tax must be filed on or before the 10th day of the month following the reporting month. Distributors must file a return even if no tax is due for that month.

Distributors must provide their gross purchases on the cigarette return and will be allowed a .9524 percent discount of the total gross purchases if the return and the EFT payment are received by the due date.

Failure to receive the tax return does not relieve distributors from their legal responsibility to file by the due date. If a return is not received, the distributor should notify the department at DOR_ExciseTax@state.co.us or 303-205-8211 ext. 6848. Form DR 0221 is available on the Taxation Web site www.TaxColorado.com.

ELECTRONIC PAYMENT (EFT) REQUIREMENTS

Cigarette tax payments must be made through Electronic Funds Transfer (EFT). A payment not remitted electronically is considered late. To file payments through EFT or to add cigarette tax to your existing EFT account, begin the process by submitting a completed Authorization for Electronic Funds Transfer (EFT) for Tax Payments (DR 5785) which is available on the Taxation Web site www.TaxColorado.com. For more information regarding the EFT program for tax payments, see form DR 5782.

You must transmit your tax payment by the due date. To ensure timely receipt, payments must be made by 4 p.m. Mountain Time on the date due. A copy of your Cigarette Tax Return (DR 0221) must be mailed to the Colorado Department of Revenue by the due date so your payment can be properly credited to your account. If a cigarette distributor neglects or refuses to make a return as required, a billing of \$100 in penalty will be issued.

RECORDKEEPING REQUIREMENTS

Colorado law requires that distributors keep true and complete records of their distributor activities for at least three years after filing of the returns. For Master Settlement Agreement (MSA) reporting, records must be kept for at least five years.

PENALTIES AND INTEREST

Distributors who neglect or refuse to file a cigarette tax return will incur a penalty of \$100. Distributors who fail to pay the cigarette tax by the due date will not be allowed to retain the .009524 vendor fee discount. Additionally, a penalty equal to 10 percent of the tax due and penalty-interest equal to one-half of one percent per month from the date when the tax is due, not to exceed 18 percent of the tax amount, will be assessed. (§39-28-108(2), C.R.S.)

Interest is due on missing and late payments of cigarette tax in addition to the penalties and penalty-interest indicated above. Interest is charged based on the prime rate as of the preceding July 1 plus three percent. Cigarette tax payment made within 30 days after the due date will not carry the additional three percent unless the department determines that there has been a willful neglect or failure to pay the tax.

Willful evasion or defeat of tax is punishable as provided by Section §39-21-118, C.R.S. Monetary penalties are \$100,000 for an individual or \$500,000 for a corporation.

CREDITS/REFUNDS

Credit will be given by the department for cigarette taxes on unsalable merchandise when the cigarettes have been returned to the manufacturer. Cigarette tax credits may be taken on the cigarette tax return, form DR 0221. A manufacturer's credit invoice must be attached to the return to substantiate the credits claimed. If credits exceed the amount of cigarette tax due, or a zero return is filed, a Claim for Refund (DR 0137) must be submitted to request a refund. A refund of any unused or damaged stamps return by the wholesaler will only be allowed if the stamps are returned within one year after the date of issue by the department. The unused or damaged stamps for which a refund is being claimed must be submitted with a separate DR 0137.

Credit shall be given by the department to a wholesaler for taxes paid on cigarettes that are bad debts. The credit is prohibited unless the bad debt has been charged off as uncollectible on the books of the wholesaler. The wholesaler will be required to repay the credit if payment is received for the bad debt subsequent to receiving the credit. The credit will be processed as a refund on form DR 0137. For additional information, see FYI Excise 19, Bad Debt Refund for Cigarette and Tobacco Products Wholesalers and Distributors.

MASTER SETTLEMENT AGREEMENT REPORTING (MSA)

Each licensed cigarette distributor is required to file monthly a Licensed Distributor Reporting Form for Cigarette Sales of Non-Participating Manufacturer Brands (DR 1285) if cigarette brands manufactured by non-participating manufacturers are stamped and distributed for sale in Colorado.

If a cigarette distributor exports or transfers cigarettes manufactured by non-participating manufacturers, the monthly Licensed Distributor Reporting Form for Tracking Transfers of Non-Participating Manufacturer Cigarette Brands for Escrow Purposes (DR 1284) must be submitted to the Office of the Attorney General.

A distributor may qualify for an exemption from monthly reporting using Tobacco Distributor's Certificate for Exemption MSA/Non-Participating Manufacturer Brands (DR 1286). This form can be used if:

- Cigarette distributor stamps and distributes only cigarette brands manufactured by participating manufacturers in Colorado.
- Cigarette distributor purchases stamped cigarettes from another Colorado cigarette distributor to sell to Colorado retailers.

The DR 1286 exemption is valid for a period of 12 calendar months and must be renewed annually. A DR 1286 exempts the distributor from monthly reporting beginning the month after form DR 1286 is received by the department. For example, DR 1286 forms received during the month of October 2013, exempts the distributor from monthly reporting for the months of November 2013 to October 2014. The signed original must be submitted to the department and a copy should be retained by the distributor. The exemption becomes void when a distributor stamps and distributes cigarettes manufactured by a non-participating manufacturer (NPM) under the MSA. Form DR 1285 is required beginning with the first month the NPM brands are stamped for Colorado. If the distributor again becomes eligible from an exemption from monthly reporting, a new exemption period will begin when the distributor files another certification. The signed original must be submitted to the department and a copy should be retained by the distributor. Form DR 1286 is an exemption from monthly MSA reporting, not for remittance of tax.

See FYI Excise 18, Master Settlement Agreement (MSA) for additional information.

NOTE: Failure to comply with these reporting requirements may result in the revocation of a distributor's license for a period of two years.

COLORADO CERTIFIED BRANDS DIRECTORY

The department is required to post on the Taxation Web site a list of cigarette and roll-your-own tobacco brands that can be sold in Colorado. Manufacturers are required to certify their compliance with the department and the Colorado Office of the Attorney General to be listed on the Colorado Certified Brands Directory. To sell a brand of cigarettes or roll-your-own tobacco in Colorado, a completed Tobacco Product Manufacturer Certification (DR 0231) must be submitted to the department and the Colorado Office of the Attorney General. Upon approval by the Office of the Attorney General, the brand will be listed on the Colorado Certified Brands Directory. The department maintains the list of brand names and their manufacturer and will provide distributors a 3-business day notice before a brand is removed or "delisted." It is unlawful to sell, offer, or possess for sale any cigarette or roll-your-own tobacco brands not listed on the Certified Brands Directory. If a product is NOT listed or is removed from the list, it cannot be sold in Colorado and will be considered contraband and subject to confiscation.

In order to provide the notice to each distributor of any addition or removal from the Colorado Certified Brands Directory, a contact name and email address must be submitted to the department on forms DR 1285 or DR 1286. Any subsequent change of the email address shall be submitted to the department by email or in writing within five (5) business days after the change of the email address. Regulation 39-28-303(2)(c). The address for email notification is *dor_master_settlement@state.co.us*

INJUNCTIONS

Non-participating manufacturers are required to establish an escrow account and make an annual deposit based on the distribution of their cigarettes in Colorado. If a non-participating manufacturer does not comply, a lawsuit initiated by the attorney general can result in the issuance of an injunction prohibiting the distribution of certain brands of cigarettes. Notifications of current injunctions are posted on the Taxation Web site.

BUSINESS CHANGES

If a distributor moves and/or changes the name of the business with no change in ownership, the Department of Revenue must be notified of such change. Distributors must send written notification by email to *DOR_ExciseTax@state.co.us* or contact the Excise Tax Accounting Section at 303-205-8211 ext. 6879. A new license will be issued without charge upon request. However, if there is a change in ownership or in the type of ownership such as: sole proprietorship, limited liability company, partnership or corporation, the distributor must close the existing account and open a new account by applying for a new license with applicable license fees.

Other Cigarette and Tobacco FYIs

- FYI Excise 15, Cigarette and Tobacco Product Information for Retailers
- FYI Excise 17, Tobacco Products Distributors - General Information
- FYI Excise 18, Master Settlement Agreement – General Information
- FYI Excise 19, Bad Debt Refund for Cigarette and Tobacco Products Wholesalers and Distributors

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed, and/or approved these FYIs.