



## **Excise 17**

### **Tobacco Products Distributors - General Information**

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#### **GENERAL INFORMATION**

Tobacco products and cigarettes 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 term 'wholesaler' will be used in this FYI to refer to both 'distributor' and 'subcontractor.'

#### **TOBACCO PRODUCT DEFINITION**

"Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking. It does not include cigarettes which are taxed separately pursuant to §39-28.5-101(5), C.R.S.

#### **WHAT IS A TOBACCO PRODUCTS DISTRIBUTOR?**

A tobacco products distributor is every person who first receives tobacco product in this state, every person who sells tobacco products in Colorado who is primarily liable for the tobacco products tax and every person who first sells or offers for sale tobacco products imported into Colorado.

A tobacco products distributing subcontractor is a person, firm, limited liability company, partnership or corporation who purchases excise tax paid tobacco products from a licensed Colorado tobacco products distributor for resale to a retailer in the state.

#### **LICENSE REQUIREMENTS**

##### **Tobacco Products Distributor**

A tobacco products distributor's license is required when a wholesaler:

- Operates the place from which wholesale tobacco products are purchased. If sales or shipments are made from two or more separate locations by a wholesaler, a license for each location is required.
- Brings or causes to be brought into Colorado tobacco products as defined in §39-28.5-101(5), C.R.S.
- Makes, manufactures, or fabricates tobacco products in Colorado for sale in Colorado; or
- Ships or transports tobacco products to retailers in Colorado to be sold by those retailers.

##### **Tobacco Products Distributing Subcontractor**

A tobacco products distributing subcontractor license is required if a wholesaler:

- Purchases tobacco products from a licensed Colorado tobacco products distributor for resale to a retailer in Colorado.

#### **HOW TO APPLY FOR A LICENSE**

##### **Tobacco Products Distributor**

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

- Complete and submit a Tobacco Products Distributor Application (DR 0222) along with the license fee.
- A current retail or wholesale sales tax license is required before a tobacco products distributor license can be processed. If you do not have a current sales tax license, submit a completed Sales Tax/Withholding Account Application (CR 0100).
- A completed Authorization for Electronic Funds Transfer (DR 5785) must be submitted with your application. Electronic Funds Transfer (EFT) is required for payment of tobacco products excise tax.

- Master Settlement Agreement (MSA) reporting on from DR 1286 and/or DR 1285.
- **A new tobacco products distributor will not be issued a license if the distributor owes the state any delinquent taxes administered by the department or interest thereon."**

Forms DR 0222, CR 0100, DR 5785 and other forms are available on the Taxation Web site [www.TaxColorado.com](http://www.TaxColorado.com).

**Submit all completed applications to the following address:**

Colorado Department of Revenue  
Excise Tax Accounting Section, Room 237  
P.O. Box 17087  
Denver, CO 80217-0087

**Tobacco Products Distributing Subcontractor**

The following application materials are required to apply for a Colorado tobacco products distributing subcontractor license:

- Complete and submit a Tobacco Products Distributor Application (form DR 0222) along with the license fee.
- A current retail or wholesale sales tax license is required before a tobacco products distributing subcontractor license can be processed. If you do not have a current sales tax license, submit a completed Sales Tax/Withholding Account Application (CR 0100)
- Master Settlement Agreement (MSA) reporting on from DR 1286 and/or DR 1285.
- **A new tobacco products subcontractor will not be issued a license if the subcontractor owes the state any delinquent taxes administered by the department or interest thereon.**

**Submit all completed applications to the following address:**

Colorado Department of Revenue  
Excise Tax Accounting Section, Room 237  
P.O. Box 17087  
Denver, CO 80217-0087

**LICENSE RENEWAL REQUIREMENTS**

A tobacco products license renewal application will automatically be mailed to each licensed distributor. The license renewal is based on the fiscal year (July 1 through June 30). To receive a license for each fiscal year, the licensee must submit a \$10 fee for each license.

**Other Requirements for Renewal of a Tobacco Products License**

- Master Settlement Agreement (MSA) reporting must be current.
- Current retail or wholesale sales tax license on the account.
- There are no tax delinquencies. Any tax billings administered by the department must be resolved.
- Valid Electronic Funds Transfer (EFT) account (*tobacco products distributors only*).
- All tobacco products tax filing must be current.

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

**TAX RATE**

The tobacco products tax is imposed **at the time** the distributor:

- Brings tobacco products or causes tobacco products to be brought into Colorado for sale; **or**
- Makes, manufactures, or fabricates tobacco products in Colorado for sale in Colorado; **or**
- Ships or transports tobacco products to retailers in Colorado to be sold by those retailers.

The tobacco products excise tax rate is forty percent (40%) of the manufacturer's list price, as invoiced before discounts are applied, of all tobacco products and must be collected upon the sale, use, consumption, handling, or distribution of these products in Colorado and remitted to the Department of Revenue. All retail sales of tobacco products are subject to the state sales tax as well as any applicable local and special district sales taxes. Visit Revenue Online at [www.Colorado.gov/RevenueOnline](http://www.Colorado.gov/RevenueOnline) to get sales tax rates.

**FILING REQUIREMENTS**

Distributors must file a Tobacco Products Tax Return (DR 0229) each quarter. The department will mail pre-printed returns each quarter. The return and the EFT tax payment must be filed by the 20th day of the month following the

reporting quarter. Distributors must file a return even if no tax is due for that quarter. The amount paid to the department may be reduced by 1.665 percent of the tax due to cover the distributor's expense in the collection and remittance of the tax, if the EFT payment and return are filed by the due date. Failure to receive a tax return does not relieve distributors of 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. 6863.

### **ELECTRONIC PAYMENT (EFT) REQUIREMENT**

Payments of the tobacco products excise tax must be made through Electronic Funds Transfer (EFT). A payment not remitted electronically is considered late. To set up an EFT account, submit an Authorization for Electronic Funds Transfer for Tax Payments (DR 5785) to be able to initiate EFT payments.

Your payment must be initiated by the due date. For ACH Debit accounts, the taxpayer must initiate the payment. To ensure timely receipt, payments must be made by 4 p.m. Mountain Time on the date due. A copy of your DR 0229 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 tobacco products distributor neglects or refuses to make a return as required and no amount of tax is due, a billing of \$25 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 returns. For Master Settlement Agreement (MSA) reporting, records must be kept for five years.

### **PENALTY AND INTEREST**

Distributors who neglect or refuse to file a tobacco products tax return will incur a \$25 penalty. Distributors who fail to pay the tobacco products tax by the due date will not be allowed to retain the 1.665 percent of the tax for their collection expense. 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. [§39-28.5-110, C.R.S.].

Interest is due on missing and late payments of tobacco products tax in addition to the penalties and penalty-interest charge indicated above. Interest is charged based on the prime rate as of July 1 of the preceding year, plus 3 percent. Tobacco products tax paid within 30 days after the due date will not carry the additional 3 percent charge unless the department determines that there has been willful neglect or failure to pay the tax.

Willful evasion or defeat of tax is punishable as provided by §39-21-118, C.R.S. Monetary fines can be assessed up to \$100,000 for an individual or \$500,000 for a corporation.

### **CREDITS/REFUNDS**

Credit will be given by the Department of Revenue for tobacco products taxes on unsalable merchandise when the tobacco products have been returned to the manufacturer or have been destroyed by the wholesaler.

Credit is also allowed on tobacco products exported from Colorado if tax has been paid on them and the tobacco products are shipped to retailers to be sold by those retailers. Credit will be given by the department for tobacco products taxes on unsalable merchandise when the tobacco products have been returned to the manufacturer. Tobacco products tax credits may be taken on the tobacco products tax return, form DR 0229. Invoices must be attached to the return to substantiate the credits claimed. If credit exceeds tax due, a Claim for Refund (DR 0137) must be submitted to request a refund.

The department shall give credit to a wholesaler for taxes paid on tobacco products 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. See FYI Excise 19, Bad Debt Refund for Cigarette and Tobacco Products Wholesalers and Distributors.

### **MASTER TOBACCO SETTLEMENT REPORTING (MSA)**

Each licensed tobacco products distributor is required to file monthly a Licensed Distributor Reporting Form for Cigarette Sales of Non-Participating Manufacturer (NPM) Brands (DR 1285) for roll-your-own tobacco. Form DR 1285 reflects non-participating manufacturer brand(s) and quantity of roll-your-own and cigarettes sold in Colorado.

The monthly report is required for tobacco products distributors who sell NPM roll-your-own tobacco and are responsible for the Colorado excise tax.

If a tobacco products distributor exports or transfers roll-your-own tobacco manufactured by non-participating manufacturers, the monthly Licensed Distributor Reporting Form for Tracking Non-Tax Paid 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 the Tobacco Distributor's Certificate for Exemption MSA/Non-Participating Manufacturer Brands (DR 1286). This form can be used if:

- only participating brands of roll-your-own tobacco or cigarettes are distributed, or
- non-participating brands of roll-your-own tobacco purchased from a Colorado licensed distributor, or
- only products not covered by the MSA are distributed. For example, cigars or hookah.

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 the distributor should retain a copy. The exemption becomes void when a distributor distributes roll-your-own tobacco for cigarettes manufactured by a non-participating manufacturer (NPM) under the MSA. Form DR 1285 is required to be filed with the department beginning the first month the NPM brands are stamped for Colorado or tobacco products tax paid. If the distributor again becomes eligible for an exemption from monthly reporting, a new exemption period will begin when the distributor files another certification. 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 your 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 of Revenue and the 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 form 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 or roll-your-own tobacco for cigarettes in Colorado. If a non-participating manufacturer does not comply, a lawsuit initiated by the Office of the Attorney General may result in the issuance of an injunction prohibiting the distribution of certain brands of cigarettes or roll-your-own tobacco. The Office of the Attorney General posts notification of current injunctions. The Office of the Attorney General may also seek injunctions against a stamping agent for unlawful stamping of cigarettes or non-compliance of required Master Settlement Agreement information reporting.

#### **BUSINESS CHANGES**

If a distributor moves the business and/or changes the name of the business with no change in ownership, the 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 at no charge. However, if there is a change in ownership or type of ownership such as sole-proprietorship, limited liability company, partnership or corporation, distributors must close the existing account and open a new account by applying for a new license with appropriate application fees.

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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.