

FYI – For Your Information

Tobacco Products Distributors - General Information

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 Tobacco Settlement (MSA) reporting. See FYI Excise 18 “Master Tobacco Settlement,” for information regarding MSA.

The terms “wholesaler” and “distributor” are used interchangeably in this FYI and are synonymous. “Tobacco subcontractor” will be used interchangeably in this FYI as “wholesaler” or “distributor.”

TOBACCO PRODUCT DEFINITION

“Tobacco products” means cigars, che-roots, 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 any person(s) who purchases wholesale any tobacco products from an unlicensed tobacco wholesaler for sale to Colorado tobacco subcontractors and/or Colorado consumers/retailers. Untaxed tobacco product is subject to tobacco product excise tax.

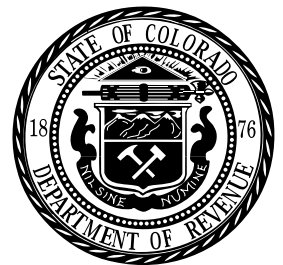
A tobacco products subcontractor is a person, firm, limited liability company, partnership or corporation who purchases tobacco products from a licensed Colorado tobacco distributor for resale to a retailer in the state.

APPLICATION PROCEDURES

Tobacco Products Distributor

To become a licensed tobacco products distributor in Colorado, complete and submit Form DR 0222 “Tobacco Products Distributor Application” along with the license fee for the tobacco products distributor license.

A current retail or wholesale sales tax license is required before a tobacco products distributor license can be issued. If you do not have a current sales tax license, submit a completed Form CR 0100 “Colorado Business Registration” along with the appropriate fees.



Colorado Department
of Revenue
Taxpayer Service Division
1375 Sherman St.
Denver, Colorado 80261

Forms and other services:
(303) 238-FAST (3278)
Assistance:
(303) 238-SERV (7378)

www.taxcolorado.com

A tobacco distributor is required to complete and submit form DR 5785 "Authorization for Electronic Funds Transfer to Tax Payments" to accompany the application. Tobacco excise taxes are required, by statute, to be paid by Electronic Funds Transfer.

The DR 0222, CR 0100, DR 5785 and other forms and FYIs may be obtained on the Web at www.taxcolorado.com

Submit all completed applications to the following address:

**Colorado Department of Revenue
Excise Tax Account Section
1375 Sherman St., Room 237
Denver, CO 80261
Attn: Tobacco Distributor Licensing**

Tobacco Products Subcontractor

To become a licensed tobacco products subcontractor in Colorado, complete and submit Form DR 0222 "Tobacco Products Distributor Application" along with the license fee for the tobacco products subcontractor license.

A current retail or wholesale sales tax license is required before a tobacco products distributor license can be issued. If you do not have a current sales tax license, submit a completed Form CR 0100 "Colorado Business Registration" along with the appropriate fees.

The DR 0222, CR 0100 and other forms and FYIs may be obtained on the Web at www.taxcolorado.com

Submit all completed applications to the following address:

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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 sold. If sales 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 Subcontractor

A tobacco products subcontractor license is required if a wholesaler:

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

A new tobacco products distributor or subcontractor will not be issued a license if the wholesaler owes the state any delinquent taxes administered by the department.

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 \$10.00 fee for each license.

Other Requirements for Issuance of a Tobacco Products License Renewal

- 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 Distributors only).

NOTE: Failure to comply with this requirement 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 licensed distributor:

- brings or causes to be brought into Colorado tobacco products 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, 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 2.9 percent state sales tax as well as any applicable local and special district sales taxes. See DRP 1002 "Colorado State Local Tax Rates" located on the Web at www.taxcolorado.com or visit the "Colorado Sales Tax Information System" at www.taxview.state.co.us for additional information.

FILING REQUIREMENTS

Distributors must file a "Tobacco Products Tax Return," Form 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 distributor does not receive their DR 0229 tax return they should notify the department. A DR 0229 not filed by the due date is considered late. Distributors should always write their account number and the words "Tobacco Products Tax" on all correspondence sent to the department.

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 Form DR 5785 "Authorization For Electronic Funds Transfer for Tax Payments" 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 pm MT on the date due. A copy of your DR 0229 Tobacco Products Tax Return 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 \$25.00 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 penalties are 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. Credit will be given by the department for tobacco taxes on unsalable merchandise when the tobacco products have been returned to the manufacturer. Tobacco products tax credits may be taken on the form DR 0229 tax return. Invoices must be attached to the return to substantiate the credits claimed. If credit exceeds tax due, a "Claim For Refund" Form DR 0137 must be submitted to request a refund. The Form DR 0137 "Claim For Refund" can be obtained on the Web at www.taxcolorado.com

Credit shall be given by the department to a wholesaler for all 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 a DR 0137. See FYI Excise 19 Credit for Taxes Paid on Cigarettes or Other Tobacco Products That Are Bad Debts for additional information.

MASTER TOBACCO SETTLEMENT REPORTING (MSA)

Each licensed tobacco distributor is required to file monthly a Form DR 1285 "Licensed Distributor Reporting Form for Cigarette Sales of Non-Participating Manufacturer Brands" for roll-your-own tobacco. The DR 1285 reflects non-participating manufacturer brand(s) and quantity of roll-your-own and cigarettes sold in Colorado. The monthly report is required from those tobacco distributors who sell:

- Roll-your-own tobacco for cigarettes manufactured by non-participating manufacturers in Colorado on which the tobacco excise tax is being paid.

If a tobacco distributor exports or transfers roll-your-own tobacco manufactured by non-participating manufacturers, the monthly Form DR 1284 "Licensed Distributor Reporting Form for Tracking Non-Tax Paid Transfers of Non-Participating Manufacturer Cigarette Brands for Escrow Purposes" must be submitted to the Office of the Attorney General. The Form DR 1284 is available on the Department's Web site at www.taxcolorado.com

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

- only participating brands of roll-your-own tobacco for 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, hookah or pipe tobacco.

The DR 1286 exemption is valid for a period of 12 calendar months and must be renewed annually. The DR 1286 is effective the month the exemption certificate is signed and received by the Department. 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 roll-your-own tobacco for cigarettes manufactured by a non-participating manufacturer (NPM) under the MSA. The 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 for monthly reporting, a new exemption period will begin when the distributor files another certification. The 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 BRAND DIRECTORY

The department is required to post on their 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 Department of the Attorney General to be listed on the Colorado Certified Brand Directory. To sell a brand of cigarettes or roll-your-own tobacco in Colorado, a completed DR 0231 ‘Tobacco Product Manufacturer Certification’ must be submitted to the department and the Office of the Colorado 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 the 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 *mastersettlement@spike.dor.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. Notification of current injunctions is posted by the Office of the Attorney General. 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 distributor must send written notification to the Department of Revenue of the change(s) or write the change on front of the Form DR 0229 “Tobacco Products Tax Return.” 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.

Other Cigarette and Tobacco FYIs

FYI Excise 15 "Cigarette and Tobacco Product Information for Retailers"

FYI Excise 16 "Cigarette Distributors-General Information"

FYI Excise 18 "Master Tobacco Settlement Agreement – General Information"

FYI Excise 19 "Credit for Taxes Paid on Cigarettes or Other Tobacco Products That Are Bad Debts"

E-SERVICES FOR BUSINESS

The following services are accessible at www.taxcolorado.com under "Online Services."

Electronic Payment (EFT). Businesses can make payments on the Internet or by telephone. Register to make Electronic Payment via our no-cost ACH debit service. See Form DR 5785 "Electronic Payment Authorization" to sign up.

Sales Tax ZeroFile - Safely and easily file a Colorado Sales Tax Return (Form DR 0100) for state and state-collected local sales tax when you have zero net sales (line 3 of form DR 0100) and no sales tax due. Any filing period type (monthly, quarterly, annually, and seasonal) is eligible. Retailers with only one location and with net sales of zero and no payment due may use this system. There is no need to send a paper form. Also available by calling (303) 205-TAX0 (8290).

Sales Tax Account History - Allows businesses to review their tax account payments back to December 2002. Users will need their account number to obtain a PIN for security purposes.

Local Sales Tax Rates - A fast way to find sales tax rates for ANY local jurisdiction.

Sales Tax License Verification - Confirm whether a Colorado sales tax license or exemption certificate is valid. If you have a sales tax license or exemption certificate number, you can find this information quickly.

Retailers' Sales Tax Rates - Check on the sales tax rates at your specific business location(s).

FURTHER INFORMATION

FYIs and commonly used forms are available on the Web at www.taxcolorado.com

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although 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.

Cigarette/Tobacco Web Pages

Cigarette/Tobacco Web Page (Includes Forms/Information) under the "Businesses" link at www.taxcolorado.com

Tobacco Enforcement Web site is located at www.revenue.state.co.us under the link "Tobacco Enforcement Program".