

# Sales and Use Taxes: Colorado

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A Q&A guide to sales and use tax law in Colorado. This Q&A addresses key areas of sales and use tax law such as tax scope, multi-state transactions and collecting taxes, and filing returns. Answers to questions can be compared across a number of jurisdictions (see Sales and Use Taxes: State Q&A Tool).

## Tax Scope

### 1. Does the state levy sales and use taxes?

#### Statewide Sales and Use Taxes

Colorado imposes a 2.9% state sales tax (Colo. Rev. Stat. Ann. § 39-26-106(1)(a)(II)). The tax is imposed on:

- The purchase price paid or charged upon all retail sales and purchases of tangible personal property.
- Telephone and telegraph services.
- Gas and electric service.
- The amount paid for food or drink at places of business regularly selling prepared food or drink.
- The amount charged for a room or accommodation.

(Colo. Rev. Stat. Ann. § 39-26-104(1).)

Colorado also imposes a 2.9% state use tax on the storage, use, or consumption in Colorado of any articles of tangible personal property purchased at retail (Colo. Rev. Stat. Ann. § 39-26-202(1)(b)).

The executive director of the [Colorado Department of Revenue](#) (CDOR) administers sales and use taxes. Colorado is not a member of the [Streamlined Sales and Use Tax Agreement](#). Colorado is a compact member of the [Multistate Tax Commission](#).

#### Local Sales and Use Taxes

In Colorado, local jurisdictions are authorized to levy sales or use taxes. Counties are authorized to levy sales and use taxes, subject to voter approval by a majority of the county

(Colo. Rev. Stat. Ann. § 29-2-103(1)). County levies apply in the incorporated and unincorporated portions of the county, unless both of the following apply:

- The excluded area is comprised solely of a multi-county municipality.
- All counties in which the excluded area is located have agreed to provide fair compensation for any services extended.

(Colo. Rev. Stat. Ann. § 29-2-103(2).)

A city or incorporated town can adopt a sales or use tax by ordinance with an ordinance confirmed by referendum (Colo. Rev. Stat. Ann. § 29-2-102(1)).

A county can impose a sales tax, use tax, or both taxes (Colo. Rev. Stat. Ann. § 29-2-103(2)).

The requirements for local sales and use taxes are set out in Section 29-2-109 of the Colorado Revised Statutes.

The authority of a city to implement sales or use tax and how the tax is administered depends on whether the city is a "statutory city" or a "home rule city" (Colo. Rev. Stat. Ann. § 29-2-107).

A statutory city imposes a city sales tax based on rules established by the state of Colorado. The CDOR collects and administers the local sales tax for statutory cities. Subject to few exceptions, the tax base for the state sales tax is the tax base for the local sales tax.

A home rule city administers its own city sales tax. The laws regarding the tax may vary from those established by the state, and home rule cities usually self-collect the tax (that is, they administer, collect, and enforce the tax with their own revenue departments and auditors).



In addition to the taxes described above, localities can implement certain other sales taxes, including:

- Regional transportation district sales tax. The [Regional Transportation District](#) (RTD) (consisting mainly of Denver, Boulder, and Jefferson counties) can impose a sales tax to finance its operation. The current tax rate is 1%. (Colo. Rev. Stat. Ann. § 32-9-119(2).)
- Sales tax for mass transit. Counties outside the jurisdiction of the RTD can levy an additional sales tax or use tax of up to 1% to finance, construct, operate, and maintain a mass transit system. (Colo. Rev. Stat. Ann. § 29-2-103.5(1)(b).)
- Sales tax for water rights administration. Counties can levy an additional sales or use tax of up to 1% for to purchase, lease, use, bank, or sell water rights. (Colo. Rev. Stat. Ann. § 29-2-103.7(1).)
- County lodging tax. For advertising and marketing local tourism, counties can levy an additional sales tax not exceeding 2% of the purchase price paid or charged for rooms or accommodations. (Colo. Rev. Stat. Ann. § 30-11-107.5(1).)

Local sales and use taxes are generally imposed on retail sales that are also subject to the state sales and use tax. Certain transactions that are exempt on the state level are subject to local sales tax, unless they are specifically exempted by the municipality (Colo. Rev. Stat. Ann. § 29-2-105(1)). Exempt transactions include sales of machinery, electricity, fuel, food, farm equipment, and other sales (Colo. Rev. Stat. Ann. § 29-2-105(1)(d)).

### Colorado Retail Marijuana Sales Tax

Colorado imposes a 15% retail marijuana sales tax on the sale of retail marijuana and marijuana products (Colo. Rev. Stat. Ann. § 39-28.8-202(1)(a)(I)).

Home-rule cities may enact an additional tax specific to the sale of retail marijuana and retail marijuana products upon voter approval (Colo. Rev. Stat. Ann. § 29-2-115(1)(a)).

A county has the authority to levy, collect, and enforce a county special sales tax on the sale of retail marijuana and retail marijuana products:

- If the sales of retail marijuana and retail marijuana products are in the unincorporated areas of the county.
- In municipalities within the county that do not impose a local retail marijuana sales tax.

- If the county and municipality enter into an intergovernmental agreement pertaining to the levy, collection, and enforcement of the county special tax on all sales of retail marijuana and retail marijuana products in the corporate limits of the municipality.

(Colo. Rev. Stat. Ann. § 29-2-115(3)(a).)

## 2. What is the taxable base or measure of tax?

### Tax Base

In Colorado, the tax base for the sales tax is the “purchase price” for either:

- The property sold.
- The service provided.

(Colo. Rev. Stat. Ann. § 39-26-104(1).)

The tax base for the use tax is the storage or acquisition charges or costs for the privilege of storing, using, or consuming property in Colorado purchased at retail (Colo. Rev. Stat. Ann. § 39-26-202(1)).

The purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or the Colorado sales and use tax (Colo. Rev. Stat. Ann. § 39-26-102(7)). For retail sales involving the exchange of property, the purchase price includes the fair market value of the property exchanged, unless the exchanged property is either:

- To be later sold in the retailer’s usual course business.
- A vehicle exchanged for another vehicle.

(Colo. Rev. Stat. Ann. § 39-26-102(7)(a).)

The purchase price also includes:

- The amount of money received or due in cash and credits.
- The fair market value of property taken in exchange, but not for resale, in the ordinary course of business.
- Any consideration valued in money, such as trading stamps or coupons where the retailer is reimbursed for part of the purchase price.
- The total price charged on credit sales including finance charges not separately stated.
- Installation and delivery charges not separately stated.

- Indirect federal manufacturers' excise taxes.
- The gross purchase price of articles sold after manufacturing.

(1 Colo. Code Regs. § 201-4:39-26-102.7(a).)

For purposes of the use tax, acquisition charges include the purchase price determined for sales tax purposes (Colo. Rev. Stat. Ann. § 39-26-201(1)).

For furnishing of rooms or accommodations, the amount charged to the person for the use of the room is subject to sales tax (Colo. Rev. Stat. Ann. § 39-26-104(1)(f)). Sales tax does not apply to either:

- Rentals for a term of thirty or more consecutive days.
- Deposits paid in advance for rooms or accommodations. However, when the rooms are furnished, any previously paid deposits become taxable.

(1 Colo. Code Regs. § 201-4:39-26-104.1(f).)

### Gross Taxable Sales

Retailers are liable for the payment of 2.9% of their gross taxable sales of property and specified services (Colo. Rev. Stat. Ann. § 39-26-105(1)). Gross taxable sales, which encompasses the tax base, means the gross sales of a retailer during the reporting period, excluding:

- The sales price of any property returned during the period, but only after the customer received a refund of the full sales price including the tax.
- Any sales exempt from the sales tax (see Question 4).
- The fair market value of property taken in exchange by a retailer for resale in the ordinary course of business.
- Any worthless accounts actually charged off for income tax purposes.

(Colo. Rev. Stat. Ann. § 39-26-102(5); 1 Colo. Code Regs. § 201-4:39-26-102.5.)

Generally, deductions are not permitted from the gross receipts received from a retail sale for the work, labor, skill, thought, time spent, or other expense of producing the property (1 Colo. Code Regs. § 201-5:SR-40). However, in some cases, a separately stated charge for services can be excluded from the measure of tax. An example is a separately stated installation charge. (1 Colo. Code Regs. § 201-4:39-26-102.7(a)(5).)

### Source of Sales

Colorado follows destination-based sourcing of general retail sales.

In accordance with the Mobile Telecommunications Sourcing Act, telecommunications services are subject to the Colorado sales tax only if both:

- The service is provided to a customer whose place of primary use is within Colorado.
- The service originates and terminates within Colorado.

(Colo. Rev. Stat. Ann. § 39-26-104(1)(c)(I).)

### 3. What kinds of transactions are taxable?

A sales tax is imposed on taxable retail sales and taxable purchases of commodities and services, whether between a licensed retailer and a buyer or between private parties (see Questions 1 and 2).

Colorado imposes use tax on the storage, use, or consumption in Colorado of tangible personal property purchased at retail (Colo. Rev. Stat. Ann. § 39-26-202(1)(a)).

Retail sales are all "sales" made within the state. Sales include:

- The transfer of property for money.
- Installment and credit sales.
- The exchange of property.
- Every transaction, conditional or otherwise, for consideration.

(Colo. Rev. Stat. Ann. § 39-26-102(10).)

However, a retailer is not making a retail sale when the retailer makes a "wholesale sale." A "wholesale sale" includes the sale of:

- Tangible personal property or specified services by wholesalers to retail merchants, dealers, and others selling the property at retail (Colo. Rev. Stat. Ann. § 39-26-102(19)(a)).
- Pre-press preparation printing materials used by a printer for a specific printing contract (Colo. Rev. Stat. Ann. § 39-26-102(19)(b)).
- Agricultural compounds and pesticides used in the production of agricultural and livestock products (Colo. Rev. Stat. Ann. § 39-26-102(19)(c)).
- Tangible personal property to a manufacturer or compounder that becomes an ingredient or component part of a product manufactured for resale (Colo. Rev. Stat. Ann. § 39-26-102(20)(a)).
- Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel for use in processing, manufacturing, mining,

refining, irrigation, construction, telecommunications, certain transportation services, and other industrial uses (Colo. Rev. Stat. Ann. § 39-26-102(21)(a)).

Tangible personal property is defined as all “corporeal personal property” including all:

- Goods.
- Wares.
- Merchandise.
- Products and commodities.
- Tangible or corporeal things and substances which are dealt in, capable of being processed, and exchanged.
- Direct mail advertising.
- Prepackaged computer software.

(Colo. Rev. Stat. Ann. § 39-26-102(15); 1 Colo. Code Regs. § 201-4:39-26-102.15.)

In addition to sales and purchases of tangible personal property at retail, the following are also subject to Colorado sales tax:

- The sale and furnishing of electrical energy, gas, steam, or telecommunications services (Colo. Rev. Stat. Ann. § 39-26-102(10)).
- The furnishing of rooms or accommodations to a person for consideration in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park (Colo. Rev. Stat. Ann. § 39-26-102(11)).
- The sale of food or drink served or furnished in or by a restaurant, cafe, pushcart, nightclub, caterer, or carryout shop (Colo. Rev. Stat. Ann. § 39-26-104(1)(e)).

#### 4. What are the most common exclusions from the tax base, tax-exempt transactions or tax deductible items?

A number of transactions are exempt from the Colorado sales or use tax. The exemptions are expressed in several ways, including:

- Explicit exemptions.
- Exceptions to the definition of a taxable sale.
- Exceptions to the definition of tangible personal property.
- Exclusions from a taxable category of transactions.

Exemptions generally fall into three categories, based on:

- The nature of the item purchased (see Exemptions Based on the Nature of the Item Purchased).
- The identity of the purchaser or vendor (see Exemptions for Exempt Sellers or Purchasers).
- The use of the property (see Exemptions Based on the Use of the Item Purchased).

If a transaction is exempt from sales tax, then the storage, use, or consumption of the item or service generally is also exempt from use tax.

Most state exemptions are listed in Part 7 of the Sales and Use Tax Article of the Colorado Revised Statutes.

Local sales and use taxes are not required to have the same exemptions for local sales and use taxes that apply to statewide sales and use taxes, so the exemptions discussed below may or may not apply on the local level. Restrictions on the authority of local governments to exact exemptions from local sales and use taxes are found in Colo. Rev. Stat. Ann. § 29-2-105.

### Exemptions Based on the Nature of the Item Purchased

A number of exemptions are based on the nature of the item purchased, including:

- Internet access services (Colo. Rev. Stat. Ann. § 39-26-706(2)).
- Food, except candy and soft drinks (Colo. Rev. Stat. Ann. § 39-26-707(1)(e)).
- Electricity, coal, wood, gas, fuel oil, or coke sold for residential use (Colo. Rev. Stat. Ann. § 39-26-715(1)(a)(II)).
- Farm equipment, including farm tractors, implements of husbandry, irrigation equipment, and dairy equipment. This excludes:
  - vehicles subject to registration and maintenance;
  - janitorial equipment and supplies; and
  - equipment and supplies used in a manner that is incidental to a farm operation.(Colo. Rev. Stat. Ann. § 39-26-716(1)(d).)
- Prescription drugs dispensed by a licensed provider, insulin, glucose, urine, and blood-testing kits, syringes, needles, prosthetic devices, medical oxygen, durable medical equipment, corrective eyeglasses and contact

lenses, hearing aids, and other medical supplies dispensed under a prescription (Colo. Rev. Stat. Ann. § 39-26-717(2)).

- 48% of the purchase price of a manufactured home for the first sale. Further transfers are entirely exempt. (Colo. Rev. Stat. Ann. § 39-26-721.)
- Custom software (Colo. Rev. Stat. Ann. § 39-26-102(15)(c)).
- Rooms and accommodations occupied for 30 or more consecutive days (1 Colo. Code Regs. § 201-4:39-26-704.3).
- Medical marijuana to an indigent patient who holds a valid registry identification card (Colo. Rev. Stat. Ann. § 39-26-726).
- All retail sales of marijuana on which retail marijuana sales tax is imposed (Colo. Rev. Stat. Ann. § 39-26-729).

### Exemptions for Exempt Sellers or Purchasers

A number of exemptions are based on the identity of the buyer or retailer in the transaction. These include:

- The US government, the state of Colorado, and their departments, institutions, and political subdivisions (Colo. Rev. Stat. Ann. § 39-26-704(1)).
- Schools, excluding schools held for private or corporate profit (Colo. Rev. Stat. Ann. § 39-26-704(4)).
- Sales made to charitable organizations in the conduct of their charitable functions and activities (Colo. Rev. Stat. Ann. § 39-26-718(1)(a)).
- Occasional sales by charitable organizations for fund-raising purposes (Colo. Rev. Stat. Ann. § 39-26-718(1)(b)).
- Equipment sales to a bingo-raffle licensee (Colo. Rev. Stat. Ann. § 39-26-720(1)).
- Sales benefiting a Colorado school if the sale is made by:
  - the school;
  - an organization of parents and teachers;
  - a booster club;
  - a school class; or
  - a student club or organization.

(Colo. Rev. Stat. Ann. § 39-26-725(2).)

Unlike many other states, Colorado does not have an occasional sale exemption or an exemption that applies to

a sale of all or substantially all of the assets of a business. Therefore, an asset sale transaction is a retail sale and is subject to sales and use tax.

### Exemptions Based on the Use of the Item Purchased

A number of exemptions are based on the use of the acquired property. Some of the more common exemptions include sales of:

- Machinery, machine tools, and necessary parts costing more than \$500 to be used in Colorado directly and predominantly in the manufacturing of tangible personal property for sale or profit (Colo. Rev. Stat. Ann. § 39-26-709(1)(a)(II)).
- Refractory materials and carbon electrodes used in the manufacturing of iron and steel, and all inorganic chemicals used in the processing of vanadium-uranium ores (Colo. Rev. Stat. Ann. § 39-26-706(3)).
- Construction and building materials to contractors and subcontractors for the use in building, altering, and repairing structures, highways, streets, and public works owned by:
  - governmental agencies;
  - charitable organizations in the conduct of their regular charitable functions; or
  - not-for-profit and public schools.(Colo. Rev. Stat. Ann. § 39-26-708(1).)
- Machinery, machine tools, and necessary parts used in the production of electricity in certain facilities (Colo. Rev. Stat. Ann. § 39-26-709(1)(a)(IV)).
- Aircrafts used or purchased for use in interstate commerce by a commercial airline, and component parts of those aircraft (Colo. Rev. Stat. Ann. § 39-26-711(1)).
- Tangible personal property sold for resale in Colorado, either in its original form or as an ingredient or component in a manufactured product (Colo. Rev. Stat. Ann. § 39-26-713(2)(b)).
- Agricultural compounds and pesticides to be consumed by or used in caring for livestock or in production of agricultural or livestock products (Colo. Rev. Stat. Ann. § 39-26-716(a)).
- Components used in the production of electricity from a renewable energy source and, until 2017, components used in solar thermal systems (Colo. Rev. Stat. Ann. § 39-26-724(1)).

### Claiming a Tax Exemption

Exempt organizations must be able to prove to the retailer that they are entitled to an exemption. Public works contractors may also apply for exemption certificates.

If a dispute arises between the retailer and the buyer concerning an exemption, it is the duty of the retailer to collect the tax and the duty of the buyer to pay the tax (Colo. Rev. Stat. Ann. §§ 39-26-102(22) and 39-26-703(1)). The retailer must issue a receipt to the buyer, and the buyer may then apply for a refund from the [Colorado Department of Revenue](#) (Colo. Rev. Stat. Ann. § 39-26-703(1), (2)).

### Miscellaneous Items

#### Bad Debts

A vendor may be credited for sales tax paid on a sale on credit when the account is found to be worthless. However, if a vendor collects any of the amount, tax must be paid on this amount. (Colo. Rev. Stat. Ann. § 39-26-102(5).)

#### Returned Property

A vendor may claim a credit for returned property when the full sale price, either in cash or credit, is refunded. The fair market value of any exchanged property which will be later sold in the usual course of the vendor's business is excluded from gross sales. (Colo. Rev. Stat. Ann. § 39-26-102(5).)

If a buyer returns an item to the vendor for adjustment, replacement, or exchange under a guarantee on quality or service, and the buyer receives another item under the guarantee, either free or at a reduced price, sales tax must be recomputed on the actual amount paid to the vendor for the new item (1 Colo. Code Regs. § 201-4:39-26-102.5).

### Exemptions from Local Sales and Use Taxes

Certain transactions that are exempt from state sales and use tax are subject to local sales tax, unless they are specifically exempt by:

- A county, city, or town ordinance or resolution at the time of its initial adoption.
- An amendment.

(Colo. Rev. Stat. Ann. § 29-2-105(1).)

These exemptions include, but are not limited to, the following:

- Purchases of certain machinery or machine tools.
- Sales and purchases of utilities for residential purposes.

- Occasional sales by charitable organizations.
- Sales of pesticides used in agricultural or livestock production.
- Purchases, leases, and rentals of farm equipment.
- Retail sales of marijuana upon which the retail marijuana sales tax is imposed.

(Colo. Rev. Stat. Ann. § 29-2-105(1).)

Although home rule cities can exempt any transaction, the Colorado Revised Statutes provide for certain exemptions from sales tax, including:

- The sale of construction and building materials if the buyer both:
    - picks up the materials; and
    - presents a building permit.
- (Colo. Rev. Stat. Ann. § 29-2-105(2).)
- When the purchaser previously paid sales or use tax in another county (Colo. Rev. Stat. Ann. § 29-2-105(3)).

In addition, local use tax does not apply to the storage, use, or consumption of the following tangible personal property:

- Construction materials.
- Building materials.
- Property subject to a local retail sales tax.
- Property purchased for resale.
- Property belonging to either:
  - the federal government;
  - the state government;
  - a religious organization; or
  - a charitable organization.
- Property either:
  - used in the manufacturing of a product; or
  - to be incorporated into a manufactured product.

(Colo. Rev. Stat. Ann. § 29-2-109(1).)

## Multi-State Transactions

**5. What types of business activities create “nexus” for sales and use tax liability in the state?**

Colorado requires that any retailer “doing business in” Colorado and selling taxable property or services for storage, use, or consumption in Colorado must collect sales or use tax from the buyer (Colo. Rev. Stat. Ann. §§ 39-26-103, 39-26-104, 39-26-106, and 39-26-204).

Doing business in Colorado is defined as either:

- Selling, leasing, or delivering tangible personal property in Colorado.
- Activity in Colorado in connection with the selling, leasing, or delivering of tangible personal property or taxable services by a retail sale.
- Economic nexus with the state of Colorado

(Colo. Rev. Stat. Ann. § 39-26-102(3).)

Doing business includes:

- Maintaining any of the following in Colorado:
  - an office;
  - distribution center;
  - salesroom;
  - warehouse;
  - employment of a Colorado resident who works from a home office located in Colorado; or
  - other place of business.
- Soliciting of business from Colorado residents and receiving orders from or selling property to those residents for use, consumption, distribution, and storage in Colorado. This solicitation may be performed by:
  - direct or indirect representatives;
  - manufacturer’s agent;
  - the distribution of catalogues or other advertising;
  - the use of any communication media; or
  - the use of the newspaper, radio, or television advertising media.
- Having economic nexus with the state of Colorado. A person has economic nexus with the state of Colorado if the person has made more than \$100,000 of retail sales of tangible personal property, commodities, or certain specified services into the state of Colorado during:
  - the previous calendar year; or
  - the current calendar year.

(Colo. Rev. Stat. Ann. § 39-26-102(3).)

In June 2018, the US Supreme Court’s *South Dakota v. Wayfair* decision eliminated the physical presence nexus

standard in favor of an economic nexus standard. The Court determined that the economic and virtual contacts required by South Dakota’s sales tax law for remote sellers were sufficient to create a substantial nexus between those remote sellers and the state. (138 S. Ct. 2080 (2018).)

### 6. Are there special rules for sales and use taxes on multi-state transactions?

Colorado does not treat multi-state transactions differently for sales and use tax purposes. For the various activities that give rise to nexus for out-of-state vendors, see Question 5.

Colorado has enacted an “Amazon tax” law or click through nexus statute. Colorado imposes three duties on any retailer that does not collect Colorado sales tax. Retailers must:

- Inform Colorado customers that a sales or use tax is owed on certain purchases and that it is the customer’s responsibility to file a tax return.
- Send each Colorado customer a year-end notice of the date, amount, and category of each purchase made during the previous year, as well as a reminder that the state requires taxes to be paid and returns filed for certain purchases.
- Provide an annual statement to the [Colorado Department of Revenue](#) for each in-state customer showing the total amount paid for purchases during the year.

(Colo. Rev. Stat. Ann. § 39-21-112(3.5).)

Unless the retailer can show reasonable cause, each failure to notify a customer about the duty to file a state use tax return carries a \$5 penalty and each failure of the other two duties carries a \$10 penalty (Colo. Rev. Stat. Ann. § 39-21-112(3.5)).

## Collecting Taxes and Filing Returns

### 7. Who has a duty to collect and pay sales and use taxes?

#### Liability for Sales and Use Taxes

The state of Colorado imposes sales tax on the buyer (Colo. Rev. Stat. Ann. § 39-26-105(1)). However, if a transaction involves a licensed retailer, the retailer acts as the state’s agent and has the duty to collect and remit the sales tax to the [Colorado Department of Revenue](#) (CDOR) (1 Colo. Code Regs. § 201-4:39-26-104(2)(a)).

Sales tax is a debt from the buyer to the retailer until the tax is paid (Colo. Rev. Stat. Ann. § 39-26-106(2)(a)). If a retailer fails to collect the appropriate sales tax, the CDOR may assess the tax due against the retailer or the buyer.

If a disagreement arises between the seller and the purchaser about whether or not a sale is exempt from sales tax, the seller must collect the tax from the buyer, who may later apply for a refund (Colo. Rev. Stat. Ann. § 39-26-102(22)).

Colorado imposes a use tax on the person storing, using, or consuming the property (Colo. Rev. Stat. Ann. § 39-26-204(1)). When a person does not pay sales tax to the retailer, he is responsible for filing a return and the payment of the use tax directly to the CDOR.

### Registering as a Licensed Retailer

A business must obtain a sales tax license when it:

- Has a permanent location in Colorado.
- Conducts retail sales on a regular basis.

(Colo. Rev. Stat. Ann. § 39-26-103(1).)

A business must have a separate license for each location in Colorado (Colo. Rev. Stat. Ann. § 39-26-103(2)(a)).

### Responsible Person Liability

Colorado has a “responsible person” statute that imposes personal liability on any officer of a corporation, or member of a [partnership](#) or a [limited liability company](#), required to collect and remit sales tax who willfully fails to collect, account for, or pay the tax, or evade the tax. A responsible person is subject to a 150% penalty for the total amount of unpaid tax due. (Colo. Rev. Stat. Ann. § 39-21-116.5.)

Under the penalty statute, any officer or member is deemed to be subject to the statute if he voluntarily or at the direction of his superior assumes the duties and responsibilities of complying with the tax laws on behalf of the corporation, partnership, or limited liability company (Colo. Rev. Stat. Ann. § 39-21-116.5).

The “responsible person” statute can only be enforced against corporate officers who:

- Are responsible for tax compliance.
- Willfully fail to collect, account for, or pay taxes.

(*Hanson v. Dep’t of Revenue*, 140 P.3d 256, 260 (Colo. Ct. App. 2006).)

The statute does not necessarily apply to all officers of the corporation. Typically, it includes:

- The chief financial officer.
- The treasurer.
- The comptroller of the corporation.

(*Hanson*, 140 P. 3d at 260.)

### 8. Do out-of-state sellers have a duty to collect sales and use taxes?

Colorado requires any out-of-state seller doing business in Colorado and making sales of tangible personal property for storage, use, or consumption in Colorado to collect use tax from the buyer, as long as they have substantial nexus with Colorado. For more information activities creating a substantial nexus with Colorado, see Question 5.

Colorado imposes three duties on any ‘retailer that does not collect Colorado sales tax’. Retailers must:

- Inform Colorado customers that a sales or use tax is owed on certain purchases and that it is the customer’s responsibility to file a tax return.
- Send each Colorado customer, by January 31 of each year, notice of the date, amount, and category of each purchase made during the previous year, as well as a reminder that the state requires taxes to be paid and returns filed for certain purchases.
- Provide an annual statement to the [Colorado Department of Revenue](#) for each in-state customer showing the total amount paid for purchases during the year.

(Colo. Rev. Stat. Ann. § 39-21-112(3.5).)

### 9. What is the last day payment of sales and use tax can be made without incurring a penalty and to whom is payment made?

Retailers liable for collecting sales tax must file sales tax returns on or before the 20th day of each month for the preceding month and remit the taxable amount (minus 3 1/3% to cover the retailer’s sales tax expenses) to the [Colorado Department of Revenue](#) (CDOR). If the vendor does not submit on time, it must remit the 3 1/3% as well. (Colo. Rev. Stat. Ann. § 39-26-105(1).)

Payment is made to the CDOR, which collects taxes for the local jurisdictions.



Returns must be filed on forms prescribed by the CDOR. Colorado offers an option to pay by electronic funds transfer.

Businesses subject to use tax that have not paid sales or use tax to a retailer generally must file a use tax return and remit the use tax as follows:

- If the tax due for the monthly period is more than \$300, the return is due by the 20th day of the following month.
- If the total tax due for the calendar year is less than \$300, the business may file an annual return by January 20 of the following year.

Individuals file use tax returns and remit the tax annually along with their Colorado income taxes. (Colo. Rev. Stat. Ann. § 39-26-204(1).)

If monthly returns impose an unnecessary hardship on a retailer, the retailer can make a written request that the filing of returns occur at intervals more suitable to the retailer's business (Colo. Rev. Stat. Ann. § 39-26-109). Approval of requests for quarterly, seasonal, annual, or 13 four-week reporting periods will be granted only if:

- Approval will not jeopardize the collection of the tax.
- The retailer is not delinquent.

(1 Colo. Code Regs. § 201-4:39-26-109(4).)

Seasonal retailers can apply for permission to file returns only in those months of the year when they operate the business (1 Colo. Code Regs. § 201-4:39-26-109(3)(b)).

The executive director of the CDOR can extend the time for making a return and the payment of taxes for an individual taxpayer or retailer, but not beyond three months (Colo. Rev. Stat. Ann. §§ 39-26-105(2) and 39-26-109).

A retailer closing its business must file a return and pay all taxes due within ten days of the sale (Colo. Rev. Stat. Ann. § 39-26-117(1)(d)). The buyer of the business is liable for:

- Any unpaid tax due on sales made by the predecessor.
- Taxes on outstanding accounts where the predecessor did not remit the sales tax.

(1 Colo. Code Regs. § 201-4:39-26-117.1.)

### 10. What are the penalties for failure to comply with the sales and use tax statute(s)?

Colorado imposes a number of penalties for failure to comply with the sales and use tax statutes.

## Civil Penalties

The following civil penalties may be imposed:

- When a person neglects or refuses to file a timely return and pay the tax due, a penalty of \$15 or 10% of the delinquent taxes, plus 0.5% per month from the due date (but not exceeding 18% in the aggregate), plus interest added to the assessment of taxes (Colo. Rev. Stat. Ann. § 39-26-118(2)).
- If a sales tax deficiency is due to negligence or intentional disregard for the sales tax statutes, but without intent to defraud, 10% of the total deficiency is added as a penalty (Colo. Rev. Stat. Ann. § 39-26-115).
- If the tax deficiency is due to fraud with the intent to evade the sales tax, a 100% penalty is added to the deficiency and the whole amount becomes due ten days after written notice of demand from the [Colorado Department of Revenue](#) (CDOR). An additional 3% per month is added from the date the return was due until it is paid. (Colo. Rev. Stat. Ann. § 39-26-115.)

Interest is imposed on unpaid or unremitted taxes from the time the tax was due until paid (Colo. Rev. Stat. Ann. §§ 39-26-118(2) and 39-26-207). The annual rate of interest is the prime rate reported in the Wall Street Journal, plus three points (Colo. Rev. Stat. Ann. § 39-21-110.5(2)).

Additionally, after notice and a full hearing, any person violating any provision of the sales or use tax statutes may lose their license (Colo. Rev. Stat. Ann. § 39-26-103(4)).

A person engaging in the business of selling at retail without obtaining a license may be subject to a civil penalty of \$50 per day, to a maximum of \$1000. However, the executive director of the CDOR may waive or reduce the penalty when the failure is due to reasonable cause and not willful neglect or intent to defraud. (Colo. Rev. Stat. Ann. § 39-26-103(4).)

The CDOR may waive, for good cause shown, any penalty or interest assessed for a violation of the sales or use tax statutes (Colo. Rev. Stat. Ann. § 39-26-118(9)).

## Criminal Penalties

It is a misdemeanor for a seller to:

- Fail to collect or a purchaser to fail to pay sales or use tax, including the tax on sales on which taxability or exemption is disputed (Colo. Rev. Stat. Ann. § 39-26-102(2)).
- Collect tax in excess of 3% and to fail to remit the excess to the CDOR (Colo. Rev. Stat. Ann. § 39-26-112).

It is a felony if a retailer willfully does any of the following:

- Refuses to file a required return.
- Files a false or fraudulent return.
- Makes a false statement on a return.

Fails to remit collected taxes.

Additionally, any person who knowingly and willfully swears to or verifies any false statement is guilty of second degree perjury. (Colo. Rev. Stat. Ann. § 39-26-120.)

Any person or corporation guilty of these acts is subject to the penalties imposed under Section 39-21-118 of the Colorado Revised Statutes.

### **11. Is the purchaser, transferee, or assignee of the assets of a business liable for the seller's unpaid sales tax?**

The sales and use tax imposed has a first and prior lien on tangible personal property purchased, stored, used, or consumed in Colorado (Colo. Rev. Stat. Ann. §§ 39-26-117(1)(a) and 39-26-205(1)).

A retailer closing its business must file a return and pay all taxes due within ten days of the sale (Colo. Rev. Stat. Ann. § 39-26-117(1)(d)). The buyer of the business is liable for:

- Any unpaid tax due on sales made by the predecessor.
- Taxes on outstanding accounts where the predecessor did not remit the sales tax.

(1 Colo. Code Regs. 201-4:39-26-117.1.)

The successor is also required to withhold sufficient purchase money to cover the amount of taxes due, and unpaid, until the former owner produces either:

- A receipt from the executive director of the [Colorado Department of Revenue](#) showing that the taxes have been paid.
- A certificate that no taxes are due.

(Colo. Rev. Stat. Ann. § 39-26-117(1)(d).)

If the successor fails to withhold the purchase money, and the taxes remain due after the ten-day period, both the successor and the former owner are personally liable for the taxes (Colo. Rev. Stat. Ann. § 39-26-117(1)(e)).

The purchaser must remit sales tax on the price paid for non-inventory tangible personal property acquired with the purchase of a business and for use or consumption in the operation of the business (1 Colo. Code Regs. 201-4:39-26-117.1).

The taxable amount is based on the price paid for the property as recorded in the purchase agreement. Where the transfer of ownership is a lump-sum transaction, sales tax is based on either:

- The book value set up by the buyer for income tax depreciation purposes.
- The fair market value, if no book value is established.

(1 Colo. Code Regs. 201-4:39-26-117.1.)

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