

DEPARTMENT OF REVENUE

Taxpayer Service Division – Tax Group

PROCEDURE AND ADMINISTRATION

1 CCR 201-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

PROCEDURE AND ADMINISTRATION REGULATIONS

Basis: The statutory bases for these regulations are C.R.S. 39-21-112 (1).

Purpose: The purpose of this regulation is to issue regulations regarding the effect of law changes on mailing requirements, hearings and other clarifications to existing regulations.

REGULATION 24-35-103.5. PRIVATE LETTER RULINGS AND INFORMATIONAL LETTERS [Eff. 04/30/2009]

1) Scope.

This regulation describes the procedures for applying for and issuing Private Letter Rulings and Information Letters to a taxpayer in response to the taxpayer's request for an interpretation of tax law or application of tax laws to a specific set of facts. This regulation does not govern "For Your Information" Publications ("FYIs"), Department published "Questions & Answers," instructions, oral or email communications to or from the department, general correspondence, assessments, refunds, final determinations, forms, and other statements or publications issued by the department.

2) Definitions.

- a) "Authorized representative" means the attorney, agent, or person designated by the taxpayer as contact for the department pursuant to an executed DR 0145 (power of attorney).
- b) "Department" means the Colorado Department of Revenue.
- c) "General Information Letter" or "Letter" means a non-binding letter issued to a specific taxpayer in response to the taxpayer's written request for interpretation or application of any tax administered by the Department pursuant to title 29 or 39, C.R.S. General information letters are designed to provide general background information on topics of interest to a taxpayer and do not contain tax advice with respect to a specific factual setting. An information letter is advisory only and the provisions of section 10 of this regulation do not apply.
- d) "Person" includes individuals, corporations, partnerships, limited liability companies and others set forth in §39-21-101(3), C.R.S.
- e) "Private Letter Ruling" or "Ruling" means a binding letter issued by the department addressed to a specifically designated taxpayer in response to a written request by that taxpayer regarding the tax consequences of a proposed or completed transaction under any tax administered by the department pursuant to title 29 or 39, C.R.S.
- f) "Related Party" means a person required to be included in a Colorado combined report pursuant to §39-22-303, C.R.S., and regulations thereunder, or a related party or a

member of an affiliated group of which the taxpayer is a member as defined by 26 U.S.C. § § 267 and 1504 of the Internal Revenue Code of 1986.

- g) "Tax" means those state and local taxes (including interest and penalties related to those taxes) administered by the department (Titles 29 and 39, C.R.S.)

3) Subject Matter of Letters and Rulings.

- a) Matters subject to Letters and Rulings. A designee of the executive director of the department will issue Letters and Rulings in response to a taxpayer's inquiry on a broad range of subject matters that involve an interpretation of a tax law (including statute, resolution and regulation), the applicability of tax to a given set of facts, a taxpayer's tax status, and procedural issues relating to such taxes.
- b) Matters not subject to Letters and Rulings. Unless otherwise specifically agreed to by the department, the department will not issue Letters or Rulings regarding:
- i) An issue, whether related to a prospective or a completed transaction, if the same or a closely related issue is before the department or Internal Revenue Service in connection with an examination or audit by the department or Internal Revenue Service of the same taxpayer for the same or any other period.
 - ii) An issue if that issue or a closely related issue is pending appeal with the tax conferee, executive director, or courts.
 - iii) A matter involving the tax consequence of any proposed federal, state, or local legislation.
 - iv) Whether "reasonable," "good cause," "good faith," or other similar standard exists in circumstances where such criteria is a requirement of tax law.
 - v) Whether a proposed transaction would subject the taxpayer to civil fraud or criminal penalty.
 - vi) Questions of fact, such as valuation.
 - vii) Factual scenarios that require documentation or facts so voluminous as to be onerous to resolve, including but not limited to questions of "business purpose" and "economic substance."
 - viii) Federal law or state constitutional law.
 - ix) Only part of an integrated or step transaction, unless as a part of a Ruling regarding the entire transaction (see also subsection (4)(b)(vi) of this regulation relating to required disclosures in this regard).
 - x) Issues brought forward by business, trade or industrial associations, or other similar groups, to the extent such request relates to their members' or constituency's tax status or liability.
- c) The department will decline to issue Rulings and Letters if it lacks sufficient resources to prepare a response to the same. If the department lacks resources generally and will be unable to respond to most or any requests for Rulings, it will issue a notice of such fact and publish such notice on a Letter-Ruling page on its Web site.

- d) The department reserves the right not to issue Rulings or Letters when it determines that it would not be in the best interest of the State. The taxpayer may request that any Ruling request denied pursuant to this paragraph be reviewed by the executive director of the department.

4) Applications for Letters and Rulings.

- a) Letters. In general, a request for a Letter can be informal and not as comprehensive as is required for a request for a Ruling. The Letter request should contain a reasonable description of the facts and identification of issues. Citation to statutes or legal authority is helpful, but not necessary. The department does not charge a fee for issuing a Letter.

- b) Rulings. The following must be included in every request for a Ruling.

- i) A statement that the taxpayer is requesting a Ruling pursuant to this regulation.
- ii) Statement of facts and issues. The request must include a complete and detailed statement of all relevant facts. This statement will, unless expressly agreed to by the department, constitute the factual basis for the Ruling. Therefore, relevant and material facts contained in documents submitted with the request must be specifically set forth in the statement of facts, together with specific citations to the pertinent documents where such facts are contained. It is insufficient disclosure to incorporate by reference factual material contained in documents (e.g., "See Sales Contract for more details.").
- iii) A discussion of the business reasons for the transaction.
- iv) True and complete copies of all documents relevant to the Ruling.
- v) A statement that the same or substantially similar issue is not being considered by the department or Internal Revenue Service in connection with an active examination, audit of the taxpayer or related party.
- vi) For requests that pertain only to one step of a large integrated transaction, documents relating to the entire transaction.
- vii) If the request is with respect to a corporate distribution, reorganization, or other similar or related transaction, the corporate balance sheet nearest the date of the transaction shall be submitted. If the request relates to a prospective transaction, the most recent balance sheet shall be submitted.
- viii) A statement as to whether the taxpayer, related party, or member of an affiliated group, has made the same or similar request for a Ruling relating to the same or similar issue to the Internal Revenue Service or the taxing authority of another state or local jurisdiction. The request to, and Ruling of (if issued), the Internal Revenue Service or other taxing jurisdiction must be attached.
- ix) The taxpayer should furnish a discussion of the relevant issues underlying its request for a Ruling. A taxpayer should make its best efforts in this regard, although it is not required that taxpayers utilize external counsel.
- x) Identification of the taxpayer. A request for Letter may be submitted without disclosing the taxpayer's identity. A request for Ruling may be submitted initially so as not to disclose the identity of the taxpayer. A taxpayer may maintain its anonymity through its receipt of the draft of the department's ruling. Upon receiving the draft,

unless the taxpayer withdraws the ruling request, the taxpayer must disclose in writing the following to the department before the department will issue the Ruling:

- (1) Name and trade name, if any.
 - (2) Address of physical location and, if different from the location address, mailing address.
 - (3) Social Security Number (SSN), Colorado Tax account number, and Federal Employment Identification Number (FEIN), if any.
 - (4) Telephone numbers and email addresses of the taxpayers about whom the request is made.
 - (5) The same information required in subsection 4(b)(x)(1-4) for each person with respect to whom the taxpayer expects the Ruling to apply.
- c) The taxpayer must supplement the request with any additional statements, facts, arguments, citations of authority (including relevant Colorado statutes and published court decisions issued or enacted after the request was submitted but before the Ruling is issued), not previously disclosed but known to the taxpayer at any time prior to the issuance of the Ruling.
- d) At the time of disclosure of the taxpayer's identity to the department, as set forth in subsection 4(b)(x), the taxpayer must also submit:
- i) A request signed by the taxpayer and, if submitted by an authorized representative, also by the authorized representative. The signature of the signer shall be accompanied by a declaration that the signer, "declares that I have examined this request, including the accompanying documents, and, to the best of my knowledge and belief, the facts and representations presented in support of the request are true, correct, and complete." The request must be signed by a person authorized to sign on behalf of the entity, and if such person does not have personal knowledge of each of the relevant facts contained in the request, the request must include signed affidavits from those who have such knowledge.
 - ii) If submitted by an authorized representative, an executed DR 0145 must be submitted with the request unless an effective authorization is already on file with the department.
- e) The department may determine, after examining the request, that additional information is needed. The department shall request this information from the taxpayer and the taxpayer must submit such information as is requested.
- f) The request for a Ruling or Letter shall be addressed to:

Colorado Department of Revenue

Policy Group Division

P.O. Box 17087

Denver, Colorado 80217-0087

g) A taxpayer who desires a conference to discuss the request should indicate such desire in writing when filing the request.

5) Fee for Rulings.

a) Pursuant to §24-35-103.5(6), C.R.S. the department charges a fee in order to offset the direct and indirect costs of the Private Letter Ruling program. The following fee tiers are established for Rulings:

i) First Tier Ruling, Initial fee and base evaluation - \$500

ii) Second tier Ruling - \$1,000

ii) Third tier Ruling - \$2,500

iii) Fourth tier Ruling - \$5,000

iv) Fifth tier Ruling - \$7,500

v) Sixth tier Ruling – highest complexity – Fee in excess of \$10,000

b) Fee Process

i) The base fee is charged on all Rulings and must accompany the initial request. In the case of some simple Rulings, the department may be able to perform the initial evaluation and prepare a Ruling for the \$500 base fee.

ii) The department will evaluate the Ruling request and determine into which fee tier the request falls.

(1) Such analysis is based on the amount of time the department estimates will be taken in order to complete the Ruling. Such an estimate is necessarily uncertain but will be made by the department in good faith.

(2) The number of hours will be multiplied by \$60.00 per hour, which represents the department's initial estimate of direct and indirect costs associated with the employees who will evaluate the request and draft and review the Ruling.

(3) In the case of a Ruling for which the department estimates the fee to exceed \$10,000, the fee shall be the number of estimated hours times the applicable rate.

iii) Once the fee tier (or the fee amount, if a sixth tier Ruling) has been set, it will not be modified except as indicated below.

iv) Except in cases of a first tier Ruling, the department shall give notice of the fee tier (or the fee amount, if a sixth tier Ruling) to the taxpayer, at which time the taxpayer must accept and pay the fee or withdraw the request.

v) Except as noted below, the fee is non-refundable.

(1) If, during the pendency of a Ruling request, the department discovers facts that were not initially disclosed in the request, which facts both have a material effect on the department's determination and require material

additional time to complete the Ruling, the department may change the fee tier or the fee amount, if a sixth tier Ruling, upward. The taxpayer shall be given notice of the change in fee or fee tier and may withdraw the request in lieu of paying the higher fee.

- (2) If, during the pendency of a Ruling request, the taxpayer decides to withdraw the request, the department shall cease work on the Ruling and evaluate the amount of time devoted to the request. If the amount of time already devoted is materially less than the amount of time initially estimated, then the department shall refund the difference between the amount paid as the fee and the amount arrived at by multiplying the number of hours already devoted by the then operative hourly rate noted in (5)(b)(ii)(2). However, no refund of the fee shall be made if a taxpayer withdraws its request after receipt of the draft of the ruling.

6) Conferences.

- a) If a conference has been requested by the taxpayer or if the department determines that such a conference will be useful in understanding the request, the department will give notice of the date, time and place of the conference.
- b) The department will hold only one conference. To promote a free and open discussion of the issues, the conference will be held after the department has had an opportunity to study the case.

7) Issuance of Ruling.

- a) The department shall issue a Ruling within 90 days of receipt of the request, unless the department declines the request
- b) The department may place proper conditions on the Ruling, which conditions shall be consistent with statute.

8) Withdrawal of Requests.

- a) The taxpayer's request for Ruling may be withdrawn at any time prior to the issuance of the Ruling.
- b) Unless otherwise agreed to by the department, all documents and information provided as part of the request will be retained in the department and will not be returned to the taxpayer even though a request is withdrawn or declined.

9) Oral or Email Advice to Taxpayers.

The department does not issue Letters or Rulings upon oral or email requests. Although taxpayer may receive technical assistance from the department, either orally or through email, such informal advice by the department is advisory only and is not subject to the provisions of section 10, below.

10) Effect of Rulings.

- a) The department shall be bound by and give effect to the tax determinations set forth in a Ruling, unless and until the Ruling is revoked or modified. A Ruling submitted in bad faith, or that omits or misstates relevant and material facts, shall be void to the extent that such bad faith, omission or misstatement is relevant and material to the determination set forth

in the Ruling.

- b) A Ruling later determined by the department to be in error may be modified or revoked in accordance with the procedures of this regulation.
- c) The Ruling shall be revoked or modified by any of the following:
 - i) With respect to a Ruling determined to be in error pursuant to (b), by written notice to the taxpayer to whom the Ruling was issued by mailing notice of the same to the taxpayer's last known address and by e-mailing notice of the same to e-mail addresses provided by the taxpayer at the time of the Ruling request.
 - ii) Enactment of legislation that contradicts the tax determinations in the Ruling and that becomes effective subsequent to issuance of the Ruling.
 - iii) A contrary decision by the Colorado Court of Appeals or the Colorado Supreme Court.
 - iv) Enactment of department regulation that is contrary to the Ruling that becomes effective subsequent to the issuance of the Ruling.
- d) A taxpayer may not rely on a Ruling issued to another taxpayer, including a related party, unless such person is disclosed in the request and the department expressly agrees to apply the Ruling to such persons.

11) Appeals from adverse Rulings.

There is no right to appeal a Letter or Ruling.

12) Taxpayer not bound by Ruling.

A Letter or Ruling does not bind a person. However, such Letter or Ruling may be evidence relevant to the assessment of penalties and other issues of good faith.

13) Confidentiality.

- a) Taxpayers requesting a Letter or Ruling must do so on the basis that the redacted text of any Ruling may be open to public inspection in accordance with §24-35-103.5(5), C.R.S as described below.
- b) Taxpayer information excluded from the public version shall be kept confidential except as permitted or required by law.
- c) Before making any Letter or Ruling available for public inspection under subsection 14 of this regulation, the department shall delete:
 - i) the names, addresses, and other identifying details of the person to whom the Ruling pertains and of any other person identified therein;
 - ii) information specifically exempted from disclosure by any statute which is applicable to the department;
 - iii) trade secrets and commercial or financial information obtained from a person and privileged or confidential; and
 - iv) Information the disclosure of which would constitute a clearly unwarranted invasion of

personal privacy.

- d) The department shall submit to the taxpayer, at the time the Letter or Ruling is issued to the taxpayer, a proposed "public" version of the Letter or Ruling that the department proposes to make available to the public. The taxpayer shall, thereafter, file with the department within 60 days from the date of mailing of such proposed "public" draft Letter or Ruling any written objection to the disclosure of the "public" version of the Letter or Ruling. The department shall submit such proposed version by both mail and e-mail, if an e-mail address is provided. Failure to file an objection shall be deemed a waiver of any claim that the same contains confidential information. The objection must be detailed and specifically cite the objectionable text, provide a detailed and complete statement of the basis of the objection to the disclosure of the text, and propose specific alternative text. The department will take into consideration any objections, but the department shall make the final determination of the contents of the text of the "public" Letter or Ruling.

14) Publication of Letters and Rulings.

- a) The department will make available to the public "public" versions of Letters and Rulings to the extent permitted by Colorado law, including, if completed, "public" versions of Letters and Rulings that were withdrawn by the taxpayer.
- b) The department may, in its discretion, make "public" Letters and Rulings available to the public through the department's publications, web site, emails, and other public information and educational resources.

Regulation 39-21-102. Limitation period for recovery of erroneous or excessive refund

Under the provisions of section 13-80-101, C.R.S., the Department of Revenue has three years from the date an erroneous or excessive refund of any tax covered by the scope of section 39-21-102, C.R.S., to file suit for the recovery of such erroneous or excessive refund

Regulation 39-21-103. Hearings

- (1) **Examination and Notice of Deficiency.** – Tax returns will be examined by the agents of the Executive Director of the Department of Revenue and the correct amount of tax determined. Various sections of this article provide a complete procedure for the review of the tax returns and the final determination of the correct amount of the tax due from each taxpayer. This procedure normally comprises the following steps:

- (a) Examination of the tax return by the department of revenue.
- (b) Mailing by first class mail as set forth in C.R.S. 39-21-105.5 of a Notice of Deficiency, if the Executive Director finds from the examination that a deficiency exists.

- (2) **Protest.** –

- (a) If a taxpayer wishes to protest a Notice of Deficiency or any part thereof, it will be necessary for the taxpayer to request a hearing in writing before the executive director. Such a protest must be written and filed within thirty (30) days from date of the mailing of Notice of Deficiency. This thirty day period is fixed by statute and cannot be extended by the executive director. If the taxpayer fails to ask for a hearing within the thirty-day period, a Notice of Final Determination and Demand for Payment will automatically be mailed by certified mail at the expiration of said thirty-day period.
- (b) After a hearing or reconsideration of a deficiency, the taxpayer does not have the right to pay

the tax, file a claim for refund, and have another hearing or reconsideration of the same deficiency.

(3) Request for Hearing.

(a) The request for hearing must contain at least the following information:

- (i) Taxpayer's name, address and account number.
- (ii) The taxable period(s) involved.
- (iii) The type and amount of tax in dispute.
- (iv) An itemized schedule of the findings with which the taxpayer does not agree.
- (v) A summary statement of the grounds upon which taxpayer relies for the purpose of showing that the tax is not due.
- (vi) The request for hearing must be filed for each deficiency in duplicate and signed by the taxpayer.

(b) At the sole option of the executive director or his delegate additional time may be granted for completing items (iv) and (v), but only upon a satisfactory showing by the taxpayer that such time is necessary to prevent undue hardship.

(3.5) Frivolous Requests. - The Executive Director may reject a frivolous request for hearing related to income tax pursuant to §39-21-104.5, C.R.S.

(4) Formal Hearing. - Unless rejected under (3.5), the request for hearing will be calendared for formal hearing. At that hearing the taxpayer must present his entire case in support of his position. The Department of Revenue will be represented for hearing by an attorney from the Colorado Department of Law, Office of the Attorney General. The hearing officer may require the parties to file hearing data certificates or other materials.

(4.5) Waiver of Formal Hearing. If the taxpayer and the executive director agree that the disposition of the taxpayer's requested changes requires the resolution of a question of law arising under the United States or Colorado constitutions, the executive director shall memorialize the agreement and send the taxpayer a notice of the agreement by first-class mail as set forth in section 39-21-105.5. If a notice is sent pursuant to this subsection (4.5), a taxpayer may elect to waive a hearing pursuant to this section and appeal the notice of deficiency directly to the district court pursuant to section 39-21-105 within thirty days after the mailing of the notice.

(6) Hearing Officer. The hearing shall be held before the Executive Director of the Department of Revenue or such person within the Department as the Director may designate, as provided in C.R.S. 39-21-103(6).

(7) Brief in Lieu of Hearing - The taxpayer may request that the executive director consider a brief in lieu of a hearing. After such request the executive director will proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a formal hearing.

(8) Director's Determination. - After considering the evidence and arguments presented at the hearing, the executive director will make a determination within a reasonable time and send the taxpayer by first class mail as set forth in C.R.S. 39-21-105.5, a Notice of Final Determination and Notice and Demand for Payment, if appropriate. This constitutes an assessment. Within thirty days after

the mailing of the Notice of Final Determination, the taxpayer shall either pay the tax or appeal to the district court as provided in C.R.S. 39-21-105.

If no appeal is made within thirty days, the determination of the executive director is final and is no longer subject to judicial review. Collection may then be enforced at any time within collection periods provided by statute from the date of such assessment. The thirty day period for filing an appeal is fixed by statute and cannot be extended by the executive director.

Except in case of jeopardy as provided in C.R.S. 39-21-111, the above procedure applies to all returns. The procedure prescribed in C.R.S. 39-21-111, in the case of jeopardy assessment, eliminates the protest and hearing before the executive director, but leaves the taxpayer his right to appeal from the final determination and assessment.

Regulation 39-21-104. Rejection of Claims.

Upon rejection of a claim for refund or amended income tax return claiming a refund, the Department shall send the claimant a notice of denial of refund containing an explanation of the reasons for denial by first class mail as set forth in C.R.S. 39-21-105.5. The procedure for hearings for refund claims consists of the following steps: Within thirty days after the mailing of the "Notice of Denial of Refund," the taxpayer may request a hearing or file a brief and request for reconsideration in the same manner as is provided after the sending of a "Notice of Deficiency." Hearings will be held at a place and a date fixed by the executive director. The taxpayer may present his evidence and legal arguments in support of his position at that time. After considering the evidence and arguments made at the hearing, or after consideration of a brief submitted in lieu of a hearing, the executive director will send a "Notice of Final Determination of Claim for Refund" to the taxpayer by first class mail as set forth in C.R.S. 39-21-105.5, stating the grounds for allowance or rejection of the claim. For the period of time in which suit for refund may be commenced see C.R.S. 39-21-105 and regulations thereunder.

Regulation 39-21-105. Appeals.

(3) Notice of Appeal. — The notice of appeal of the final determination shall state the name and address of the taxpayer, the name of the court to which appeal is taken, recite the order or decision appealed from, and what portion, if any, of the tax is in dispute. The notice of appeal shall state the pertinent facts upon which the taxpayer relies as constituting the basis of said appeal. The pleading must conform to the Colorado rules of civil procedures.

Regulation 39-21-105.5 Notices — first-class mail.

(1) Any notice required to be given to any taxpayer or the agent or personal representative of the estate of any taxpayer shall be sufficient if mailed, postpaid by first-class mail to the last-known address of the taxpayer or the agent or personal representative of the estate of the taxpayer. The first-class mailing of any notice under the provisions of this article and Article 22 to Article 29 of this title creates a presumption that such notice was received by the taxpayer or agent or personal representative of the estate of the taxpayer if the department maintains a record of the notice and maintains a certification that the notice was deposited in the United States mail by an employee of the department. Evidence of the record of the notice mailed to the last-known address of the taxpayer or agent or personal representative of the estate of the taxpayer as shown by the records of the department and a certification of mailing by first-class mail by a department employee is prima facie proof that the notice was received by the taxpayer or agent or personal representative of the estate of the taxpayer.

Regulation 39-21-107. Limitations on Assessments.

(1) Taxes Other than Income Taxes. — The statute of limitations on assessments of passenger-mile, gasoline, special fuel, cigarette, sales, use, or severance tax, except as hereafter noted, shall be

three years from the date the return was filed, except when there is a written agreement between the taxpayer and the executive director to waive the statute of limitations or except when a written proposed adjustment (e.g. a notice of deficiency or assessment) has been issued prior to the expiration of the three year period.

(2) Income Tax. — Except as provided in paragraphs (a) through (e) following, the statute of limitations for making assessments of Colorado income tax shall be the time provided for assessing a deficiency in federal income tax plus one year. The federal statute of limitations for making an income tax assessment is generally 3 years from the date the return is filed. Returns filed early are considered to have been filed on the due date. The following paragraphs (a) through (e) are exceptions to this general rule:

- (a) When there is a written agreement between the taxpayer and the executive director to waive the statute of limitations.
- (b) When the taxpayer fails to notify the executive director in writing within 30 days of any final determination as defined in Regulation 39-22-601(6)
- (c) When the taxpayer fails to file an amended Colorado income tax return to notify the executive director of the filing of an amended federal income tax return reflecting any change in income reportable to the state of Colorado
- (d) In the event a waiver of the statute of limitations is agreed upon between a taxpayer and the U.S. Internal Revenue Service for income tax the Colorado statute of limitations will automatically be extended for the same period plus one year. See C.R.S. 39-22-601(6).
- (e) When a written proposed adjustment (e.g. a notice of deficiency or assessment) of the tax liability has been issued by the Department, the limitation is extended one year after the final determination of assessment is made.

(3) Return Filed Prior to Due Date. — Where the return is filed prior to the due date thereof, the statute of limitations shall run beginning from the due date.

(4) False, Fraudulent or No Return Filed. — When the taxpayer fails to file a return or files a false or fraudulent return with intent to evade the tax, the tax may be assessed and collected at any time.

(5) Waiver. — Whenever the taxpayer believes the time may be too short in which to prepare full information, records and evidence, or prepare a protest and complete a hearing thereon for the correct determination of an assessment of tax, he may apply for a waiver of the period of limitation within which the assessment must be made. The taxpayer requests a waiver by signing the proper application blank provided by the department of revenue.

The executive director of the department of revenue may also initiate the procedure for obtaining a waiver. When the executive director of the department of revenue and the taxpayer sign the waiver the period for completing the assessment is thereby extended in accord with the terms thereof.

Regulation 39-21-108. Refunds [Eff 11/30/2007]

(1) Limitations.

(a) Income Tax and Wage Withholding.

- (i) The taxpayer must file any claim for refund or overpayment credit of Colorado income tax not later than one year after the expiration of the time provided for filing a claim for refund of federal income tax.

- (ii) If a tax return is filed prior to the due date of the return, then the return is considered to have been filed on the due date for purposes of the statute of limitations.
- (iii) The federal statute of limitations may be extended beyond the usual three year time frame when a payment of income tax is made after the due date. The federal statute of limitations is two years from the date of the payment of tax if this date is after the three-year statute of limitations date. Colorado extends the statute of limitations to three years from the date of last payment (the federal two-year time frame plus one year). Any refund or credit claim under this extended statute of limitations is limited to the amount of tax paid within the three-year period, not previous payments or tax issues. Estimated tax payments, wage withholding credits and refundable credits are deemed paid on the due date of the return for purposes of determining whether a refund is available under the statute of limitations.
- (iv) If there is a federal waiver of the statute of limitations, the Colorado statute of limitations is extended by the same period of time as the federal waiver.
- (v) The Colorado statute of limitations can be extended beyond the federal statute of limitations plus one year when there is a written agreement between the taxpayer and the executive director to extend the statute of limitations pursuant to §39-21-107(5), C.R.S.
- (vi) An overpayment on an income tax year closed under the statute may not be applied to a balance of tax due for another tax year open under the statute for assessment or, if the assessment was timely made, open under the statute for collection as such application would be in effect allowing a refund to be made for such closed year.
- (vii) If a refund claim is rejected in whole or in part, the appeal rights granted in Title 39 Article 21 of the Colorado Revised Statutes may be pursued upon receipt of the notice of final determination.
- (viii) The applicable due date for wage withholding returns is the due date for the annual reconciliation for that tax year.

(b) Other Taxes.

- (i) Unless otherwise specified in statute, claims for refund of other taxes covered by Article 21 shall be filed not later than three years after the date of payment or the due date of the return, whichever is later.
- (ii) Should a dispute arise between the purchaser and the seller as to whether or not the sales tax was correctly charged, the purchaser must submit a claim for refund within sixty days after the item was purchased pursuant to §39-26-703(2), C.R.S.
- (iii) The Colorado statute of limitations can be extended when there is a written agreement between the taxpayer and the executive director to extend the statute of limitations pursuant to §39-21-107(5), C.R.S.

(c) Tax Refunds for Exempt Use of Fuel. A claim for refund of the Colorado fuel tax paid on the fuel purchased and used in Colorado for tax exempt purposes must be submitted within twelve months after the date of purchase of the fuel pursuant to §39-27-103(3)(d), C.R.S.

- (2) Issuance of Refund. - The facts relied upon in support of the claim must be clearly set forth. Warrants in payment of claims allowed by the executive director will be drawn in the names of persons entitled to the money. A claim for refund should be filed on the form provided by the executive director of the Department of Revenue. Under this section the executive director of the Department of Revenue is authorized to make a refund when the overpayment is discovered by the executive director without any action on the part of the taxpayer. In any case where the taxpayer files an application for refund, it must be accompanied by a statement of facts upon which the application is based, and if the refund is claimed because of an error in the return, the application may be accompanied by an amended return. Interest on such refunds shall be at the rate imposed under section 39-21-110.5, C.R.S.

All pertinent and relevant information requested by the return, the facts indicated by the several schedules thereof and such specific information as is essential to the final determination of the correct amount of the tax due from the taxpayer must be set forth in detail on the papers filed for consideration of a claim for a refund.

- (3) Overpayment May Be Offset. - An overpayment of a tax shall first be credited to any unpaid balance of tax, interest and penalty which, according to the records of the executive director, are owed by such taxpayer. Any remaining balance may be credited to an intercept due to another agency as allowed by law. Any remaining balance of overpayment of tax shall be refunded or applied to estimated tax as designated by the taxpayer.

Regulation 39-21-109. Interest on Amount Due.

- (1) **Rate.** — In all cases where there is a delay in payment for any cause beyond the due date on which the tax should have been paid then interest at the rate imposed under section 39-21-110.5, C.R.S., must be paid on the amount due from such due date to the date of payment. Where there is a deficiency assessment, interest is computed on the amount of the deficiency from the date the tax was due.

- (2) **Rules for application of interest discount.** Section 39-21-109, C.R.S., provides that interest on underpayments shall be computed at the prime rate plus 3 percent as described in section 39-21-110.5, C.R.S. If, however, payment or an agreement to pay is made within 30 days of the Department's notice to pay, the Director will waive the three percentage points in excess of the prime rate unless the Director determines there has been willful neglect or failure to pay the tax.

- (a) For purposes of applying this provision, the full interest assessment authorized under 39-21-110.5, C.R.S., will be imposed and only two circumstances will authorize the 3% interest reduction:
- (i) payment within 30 days of notice, or
 - (ii) an agreement to pay made within 30 days of notice.
- (b) If a taxpayer makes a payment with a short check, he will not receive the 3% interest reduction because payment with a short check is considered a willful failure to pay the tax.
- (c) A 3% reduction in penalty interest will be calculated when regular interest is reduced by 3% due to payment or agreement to pay within the authorized 30 day period.
- (d) Non-filers with major tax accounts are to receive a 3% reduction in interest provided payment or agreement to pay is made within 30 days of the issuance of the second notice (the estimated of amount due).

- (e) Income tax non-filers are to receive a 3% reduction in interest provided payment or agreement to pay is made within 30 days of notice of tax due.

Regulation 39-21-110. Interest on Overpayments.

- (1) **Rate.** - Interest shall be allowed and paid upon the allowance of a credit or refund of any tax and upon any penalty or interest erroneously or illegally paid at the rate imposed under section 39-21-110.5, C.R.S. 1973.
 - (a) For the purpose of this section the date of overpayment shall mean the date upon which such tax, penalty and interest was paid or the due date of the return, whichever is later, except that the date of overpayment of wage withholding shall be the 15th day of the seventh month following the close of the taxable year.
 - (b) Interest on an overpayment will be computed from the date of overpayment of such tax, penalty, or interest to the date the order for refund or credit is issued.
- (3) **Refund Paid Within Ninety Days.** - No interest will be paid in any case where the refund of the overpayment is issued by the Department within ninety days of the due date of the return, if the return was timely filed. But see Section 39-22-622, C.R.S. 1973 for filing of personal income tax returns.
- (4) **Net Operating Loss.** Interest shall be computed from the close of the taxable year in which the operating loss occurred where the overpayment of income taxes arises from a net operating loss carry-back.

Regulation 39-21-110.5- Rate of interest.

(1) Net Colorado Tax Liability Defined

- (a) The net Colorado tax liability for income tax is defined as the total Colorado tax, alternative minimum tax and recapture of prior year credits less all income tax credits other than the state sales tax refund, withholding credits, and estimated tax credits.
- (b) The net Colorado tax liability for severance tax is defined as the total tax less the ad valorem credit, the impact assistance credit, and the underground/lignitic coal credits.
- (c) The net Colorado tax liability for sales tax is defined as the tax due after deducting the service fee and includes the tax due on items removed from inventory. The net tax liability and accompanying interest will be computed separately for sales tax collected from customers and for sales tax paid to vendors for each taxing jurisdiction.
- (d) The net Colorado tax liability for consumer use tax is defined as the total tax less the credit for sales tax paid in another state. The net tax liability and accompanying rate of interest will be computed separately for each taxing jurisdiction included on a taxpayer's account.
- (e) The net Colorado tax liability for wage withholding tax is defined as the tax withheld.
- (f) The net Colorado tax liability for estate tax is defined as the total tax payable to Colorado from the estate tax and the generation skipping transfer tax.
- (g) The net Colorado tax liability for retailers use tax is defined as the tax due after deducting the service fee. The net tax liability and accompanying rate of interest will be computed separately for each taxing jurisdiction included on a taxpayer's account.

- (h) The net Colorado tax liability for gasoline and special fuel tax is defined as the total tax due less the tax paid at retail during the tax period. For international fuel tax agreement (IFTA) payments, any tax refund subject to interest shall only include a refund of Colorado fuel taxes.
 - (i) The net Colorado tax liability for gasoline or special fuel tax paid by a distributor is defined as the tax imposed on the gasoline acquired during the month less the 2% credit for losses and the .5% credit for expenses and bad debts.
 - (j) The net Colorado tax liability for passenger mile tax is defined as the total passenger mile tax due.
 - (k) The net Colorado tax liability for cigarette tax is gross amount of tax due less the discount allowed.
 - (l) The net Colorado tax liability for tobacco products tax is the total tax computed on the invoice price less exempt sales, the credit for exported, returned and destroyed products and the service fee allowed.
- (2) The calculation of the net Colorado tax liability will include all tax and credit adjustments including those reported on original and amended returns, refund claims, and audit adjustments. This calculation will include adjustments reported on a refund claim, which is the subject of the interest computation.
 - (3) Multiple amended returns and claims for refund may be combined in determining the correct interest rate to be paid.
 - (4) The period for which the net tax liability is computed generally means the reporting period for which the tax return is filed. If a refund claim cannot be accurately matched to the original return reporting period, the Department shall make a determination of the refund distribution when determining the appropriate interest rate to be paid.

Regulation 39-21-111. Jeopardy Assessment and Demands.

- (1) **Termination of Taxable Period.** The provisions of 39-21-111, C.R.S. 1973 shall include, but shall not be limited to, cases where a taxpayer intends to leave the state, where properties are being moved from the state or sold and the proceeds transported beyond the borders of Colorado, or where funds are being dissipated. In any case where the executive director finds it necessary to immediately collect the tax, he may declare the taxable period closed, immediately demand payment of the tax and levy upon any property or money of the taxpayer.
- (2) **Demand for Payment.** If the tax has not been paid in full or no return has been filed, or whenever the examination of a return discloses a deficiency, and the executive director of the department of revenue believes that the collection of the tax or deficiency will be jeopardized by delay, a jeopardy assessment will be made and a distraint warrant issued immediately. The assessment is due and payable at the time specified in the notice of assessment.
- (3) **Stay of Collection.** If bond or other security, acceptable to the executive director, is given in an amount sufficient to secure payment of the amount(s) due on a jeopardy assessment, collection of same may be stayed by the executive director.

REGULATION 39-21-112.3.5

- 1. Definition of "Retailer that does not collect Colorado sales tax" – A retailer that does not collect Colorado sales tax is a retailer that sells taxable property or services to customers who are not

exempt from sales and use tax but does not collect Colorado sales or use tax. Such retailers are also referred to in this regulation as “non-collecting retailers” .

2. Definition of “Colorado purchaser”

- a. With respect to sales of goods that are shipped to the purchaser, a Colorado purchaser is a purchaser that requests the goods be shipped to Colorado.
- b. With respect to sales of goods that are downloaded or otherwise delivered electronically
 - i. If the purchaser provides a “bill to” address, then a Colorado purchaser is a purchaser whose “bill to” address is in Colorado;
 - ii. If the purchaser does not provide a “bill to” address, then the non-collecting retailer shall make a determination of Colorado purchaser using any other reasonable method.

3. Obligation to give notice with each purchase – §39-21-112(3.5)(c) C.R.S.

- a. A non-collecting retailer must give notice with respect to all Colorado destination sales that Colorado tax is due on all non-exempt purchases. This notice must appear on each invoice or, if no invoice is normally provided, must be given to the purchaser as part of the sale, either immediately before or immediately after the sale. If the non-collecting retailer does not provide an invoice and does not have a reasonable means of providing the notice either immediately before or immediately after the sale, the notice shall be considered sufficient if the non-collecting retailer sends a confirmation e-mail containing the notice.
- b. The notice shall contain the following information:
 - i. The non-collecting retailer is not obligated, and does not, collect Colorado sales tax;
 - ii. The purchase is subject to Colorado sales and use tax unless it is specifically exempt from taxation;
 - iii. The purchase is not exempt merely because it is made over the Internet or by other remote means;
 - iv. The State of Colorado requires that the taxpayer file a sales/use tax return at the end of the year reporting all of the purchases that were not taxed and pay tax on those purchases;
 - v. Retailers that do not collect Colorado sales tax are obligated to provide purchasers an end-of-year summary of purchases in order to assist purchasers in filing their tax report;
 - vi. Details of how to file this return may be found at the Colorado Department of Revenue’s website, www.taxcolorado.com ;
 - vii. Retailers that do not collect Colorado sales tax are required by law to provide the Colorado Department of Revenue with a report of the total amount of all of a purchaser’s purchases at the end of the year.
- c. The above referenced notice must be clearly legible and reasonably prominent on the invoice. The notice in (a) must be accompanied by a notice in bold typeface in a font size used by

the retailer for other text on the invoice appearing immediately adjacent to the dollar total of the transaction referencing the notice in (a) and reading as follows: "Please see important sales tax information" .

- d. If the taxpayer is required to provide a similar notice for another state in addition to Colorado, and the retailer provides a single such notice to all purchasers with respect to items purchased for delivery into all states, the notice required in (a) shall be sufficient if it contains substantially the information required in a form that is generalized to any state.
- e. De minimis non-collecting retailer – any non-collecting retailer that made total gross sales in the prior year of less than \$100,000 and reasonably expects sales in the current year will be less than \$100,000 shall be exempt from the notice requirement in (3)(a).

f. Penalties

- i. The non-collecting retailer shall pay a penalty of \$5 for each invoice documenting a sale to a Colorado purchaser on which the required notice does not appear.
- ii. Waiver of penalties due to implementation time frame and notice – Because of the brief time period between enactment of the governing statute and required implementation, if a non-collecting retailer begins to provide the required notices or begins to collect Colorado sales tax prior to May 1, 2010, any penalties that would otherwise be due for invoices issued between March 1, 2010 and April 30, 2010 shall be waived. However, no such waiver shall automatically apply if the non-collecting retailer does not begin to issue the required notices or begin to collect Colorado sales tax prior to May 1, 2010.

4. Obligation to give Colorado purchasers notice of total purchases made - §39 21 112(3.5)(d)(I) C.R.S.

Because non-collecting retailers will not be required to provide this notice until 2011, this paragraph is reserved for permanent rulemaking.

5. Obligation to give the Colorado Department of Revenue notice of purchases made by Colorado purchasers - §39 21 112(3.5)(d)(II) C.R.S.

Because non-collecting retailers will not be required to provide this notice until 2011, this paragraph is reserved for permanent rulemaking.

Regulation 39-21-113. Reports and Returns.

(1) Maintenance of Records. Every person, firm, or corporation liable to the state of Colorado for a tax shall keep such books, accounts, and records that are necessary for the determination of a tax liability for such period as provided by law. The books, accounts, and records shall be kept at a location accessible to the executive director or his authorized agent, and shall be available for inspection by the executive director or his authorized agent at any time.

(4) Returns Confidential. Every tax return and all information therein contained together with correspondence, papers, affidavits, assessments, protest, and hearing thereon are secret and confidential and no information relating thereto can be disclosed except by the direction of the executive director in accordance with C.R.S. 39-21-113 and as provided by subsections (7), (8), (10), (13), (14) and (15) of such section or in the limited manner provided under subsections (4), (9), (11), (12), (16) or (17) of such section.

Regulation 39-21-116. Closing Agreements.

- (1) Application.** Where, under the provisions of this section, it is necessary to make a final determination of tax liability for purposes of facilitating the closing of an estate, or upon dissolution of a corporation or partnership, or termination of a trust or receivership, such determination may be made for the taxpayer upon application therefor on the form Agreement as to Final Determination of Tax Liability. Such agreements shall be deemed final only in the absence of fraud or misrepresentation.
- (2) Persons Liable for Unpaid Taxes.** If such request for final determination is not made, then the personal representative of the decedent or the surviving directors of the corporation or any member of a partnership shall become personally liable for any unpaid tax to the extent of the property distributed.
- (3) Transferee Liability.** Irrespective of the termination of the liability of the personal representative, trustee, receiver, or other fiduciary, or the surviving directors, or members of a partnership, the distributees of the decedent's estate, or of the trust's, receivership's or corporation's or partnership's assets will remain liable for the tax due from the decedent, decedent's estate, trust, receivership, corporation, or partnership to the same extent and during the same period as the decedent, decedent's estate, trust, receivership, corporation, or partnership would have been liable had the assets of the estate, trust, receivership, corporation or partnership not been distributed. If deficiency assessment is made under this section the matter will proceed as on any other deficiency assessment by payment in due course or through protest and hearing to the courts.
- (4) Action Required Within Eighteen Months.**
- (a) After a filing of a final return for a decedent, a decedent's estate, a trust, a receivership, a corporation or a partnership or after the filing of any return for a decedent's estate, a trust, or receivership a request may be made by the personal representative of the decedent, the decedent's estate, or the trustee, receiver or other person acting in a fiduciary capacity, or any director of the corporation or any member of a partnership that the executive director within 18 months either execute the agreement as to a final determination of tax liability tendered with the request or make a final determination of the tax. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the final determination of tax liability is requested, and must clearly indicate that it is a request for a final determination of tax liability under the provisions of this section.
- (c) If, within such 18 month period, the executive director shall neither execute the tendered agreement nor make a final determination of the tax due in the manner provided in 39-21-103, C.R.S. 1973, the personal representative, trustee, receiver or other fiduciary, or surviving directors of the corporation or member of a partnership shall be relieved of personal liability for the tax period described in the tendered agreement.

REGULATION 39- 21-116.5

The department waives, subject to the limitations below, penalties and penalty interest set forth in § 39-26-115, 118(2)(a), 207 and §39-21-116.5, C.R.S. on a non-payment of a sales or use tax liability owed by a retailer or consumer and that arises as a result of statutory amendments enacted by House Bills 10-1189, 1190, 1192, 1194, and 1195 if the sale, use, storage, or consumption giving rise to such tax liability occurred on or after March 1, 2010 and before June 1, 2010. Penalty interest for non-payment of such tax is hereby waived for a period of the first three months following the date on which payment for such tax was first due to the department by the retailer (in the case of retailer's use tax) or, in the case of a consumer's use tax or a direct pay permit holder, by the purchaser or consumer. Penalty interest accruing thereafter on such tax liability is not waived by this emergency regulation. Penalties resulting from fraudulent non-payment or fraudulent late payment are not waived by this regulation. The waivers set forth herein are in addition to penalties and interest waived in House Bill 10-1194 concerning articles and

containers sold in connection with sales of food.

- a. *Example No. 1.* Out-of-state retailer sells coal to a manufacturer from January 1, 2010 to July 1, 2010. Such sales prior to March 1 are exempt from sales tax. House Bill 10-1190 eliminates the exemption for such sales beginning March 1, 2010. Retailer bills its consumers in April for March sales. Consumers pay the retailer's invoice in May. Tax collected by retailer in May for March sales is due to the department June 20, 2010. Penalty interest that otherwise accrues for nonpayment of such tax beginning June 21 through September 20, 2010 is waived. Any such unpaid tax that remains unpaid as of September 22, 2010 begins accruing penalty interest. Similarly, penalty interest that would otherwise accrue beginning August 21, 2010 for May sales collected by the retailer in July and due to the department on August 20, 2010 are waived for three months following August 21.
- b. *Example No. 2.* In May 2010, retailer, who is required to file monthly sales tax returns, sells candy and soft drinks that were previously exempt as food for domestic home consumption but, as a result of House Bill 10-1191, are now subject to tax for sales on or after May 1, 2010. Retailer underestimates the sales tax due on its May sales as reported on its sales tax return filed on June 20, 2010. This regulation does not govern the waiver of penalty for such sales because it is not one of the House bills listed in section 1, above. House Bill 10-1191 sets forth conditions for waiver of interest (waiver of interest and penalty that are otherwise due or nonpayment of tax if the nonpayment is a result of an error made in connection with the elimination of the exemption for candy and soft drinks).

Regulation 39-21-120. Tax Return — Signature and Filing Alternatives.

(1) Tax Return — Filing Does Not Excuse Late or Non-Payment. Nothing in this regulation shall excuse a taxpayer from paying the tax owed by the due date for payment.

(2) Document Method.

- (a) To make a return, in the case of a tax return prepared in the traditional document method, means preparing and completing by typing or writing the paper tax return document prescribed by the Executive Director, or a reproduced copy thereof, and executing a signature ascribing to the accuracy of said return, under penalty of perjury if required. The signature shall be that of the owner, general partner, agent authorized by power of attorney, a person legally acting in a fiduciary capacity or corporate official authorized to sign tax returns by the corporate board of directors.
- (b) To file a return, in the case of a tax return filed in the traditional document method, means entering in the U.S. Mail, first class postage prepaid, addressed to the main office of the Colorado Department of Revenue, the tax return document made under (a), or otherwise delivering or causing to be delivered the tax return document to the main office of the Colorado Department of Revenue.

(3) Electronic Data Interchange Method. Under section 39-21-120(1), C.R.S., the Executive Director may adopt rules and regulations to define and implement acceptable alternates for tax return filing. The Electronic Data Interchange method shall be adopted by this regulation, and taxpayers may elect to file under this method upon the Executive Director's acceptance of an Electronic Filing Application and Agreement.

(a) Definitions — construction of terms. As used in this Regulation (39-)21-120, unless the context otherwise requires:

- (l) "Direct Communications" means a transmission via public telephone networks of a transaction set from a taxpayer computer directly with a computer maintained by

the State of Colorado, with no Value Added Network involved.

- (II) "Electronic Data Interchange" or "EDI" means exchanging or transmitting standardized digital representations of written communications via electronic means including public telephone networks.
- (III) "Electronic Filing Application and Agreement" means the application for an electronic filing agreement, and the agreement document specified by the Executive Director to establish the existence of an Electronic Filing method accepted by the taxpayer and the Executive Director.
- (IV) "Signing, subscribing, or verifying" means the addition of the personal identification of the individual(s) authorized to sign tax returns for the taxpayer to the tax return electronic transmission, or other guarantees of authenticity the Executive Director may prescribe and specify in the Electronic Filing Application and Agreement.

(b) Returns filed by Electronic Data Interchange.

- (I) Electronic Data Interchange Implementation. The Director will specify, and the electing businesses shall complete, an Electronic Filing Application and Agreement specified by the Director, to be signed and submitted by the owner, general partner, agent authorized by power of attorney, a person legally acting in a fiduciary capacity or corporate official authorized to sign such application. Such Electronic Filing Application and Agreement may be accepted or rejected based on any history of delinquencies, failure to file or failure to file timely and other matters at the discretion of the Executive Director. Upon completion of any test period to establish transmission accuracy, and upon notification of acceptance by the Executive Director, Electronic Data Interchange (EDI) filing will constitute the official tax return for the taxpayer entity involved, supplanting traditional document methods. The Electronic Filing Application and Agreement shall specify the personal identification method used under Regulation (39-)21-120(3)(a)(IV) for signing the tax return.
- (II) The EDI transmission will be deemed received by the Executive Director at the date recorded by the log of the Department's Value Added Network to handle the transaction set. In the case of Direct Communication with the Department, the EDI tax return will be deemed received by the Executive Director upon acceptance.
- (III) Taxpayer Record Keeping. The taxpayer shall maintain records, either electronically or on paper, equivalent to, and for the period specified under the specific statutes of the tax filed under the Electronic Data Interchange Method.
- (IV) Payment for taxes due. Payments for tax returns reported on an EDI basis may be made by mailing or delivering payments accompanied by documents specified by the Executive Director, or by Electronic Funds Transfer (EFT). Payments by mail are subject to the provisions of section 39-21-119, C.R.S. Payments by Electronic Funds Transfer are deemed received by the Department on the date properly entered in the ACH network.
- (V) Suspension or Cancellation. The taxpayer may elect to temporarily suspend electronic filing under the Electronic Filing Agreement by notifying the Executive Director in writing and using the Document Method to file all tax returns which are due or become due during the suspension period. The taxpayer may resume electronic filing under the Electronic Filing Application and Agreement seventy-

two hours after mailing notice of resumption to the Executive Director, or immediately upon direct telephone contact with the Executive Director's designee. Either the taxpayer or the Department may cancel this method and return to Document methods immediately upon written notification delivered to the other party. Such cancellation by the taxpayer will not extend the time for filing any return, due before, on or after the cancellation notice date or effective date.

Regulation 39-21-201. Amnesty — REGULATION REPEALED.

Editor's Notes

History

Reg. 39-21-108 eff. 4/30/2007.

Reg. 39-21-108 eff. 11/30/2007.

Reg. 24-35-103.5 eff. 06/30/2008.

Reg. 39-21-113 eff. 1/1/09.

Regulation 24-35-103.5 eff. 04/30/2009.

Regulations 39-21-112.3.5, 39-21-116.5 emer. rules eff. 03/01/2010.