



## STATE CONSUMER USE TAX

*By Greg Sobetski*

Colorado levies a 2.9 percent sales tax on purchases of most goods and some services. A complementary use tax is levied when sales tax is due but was not collected. This *issue brief* provides information on the state use tax and its collection.

### State Use Tax

The state use tax was enacted in 1937, two years after the state sales tax. Under Colorado law, the use tax is assessed:

for the privilege of storing, using, or consuming in this state any articles of tangible personal property purchased at retail (Section 39-26-202 (1)(b), C.R.S.).

Together, the sales and use taxes operate as a tax on the consumption of most goods and some services. The two taxes apply to the same tax base, meaning that they apply to the same set of taxable purchases. Furthermore, use tax is assessed only on purchases for which sales tax was not collected, meaning that no consumer is required to pay sales *and* use taxes on the same purchase.

Sales tax is collected by a retailer at the time of sale and remitted to the Department of Revenue, usually on a monthly basis. If sales tax is owed but was not collected, the consumer has the responsibility to pay use taxes to the state.

**Common scenarios.** Use tax is most frequently owed because a good or service was purchased from a seller not authorized to collect Colorado sales tax. Sellers in this category often include:

- individuals without a licensed retail business, such as individuals selling used property at a garage sale, an estate sale, or over the internet; and
- businesses without a physical presence in Colorado, including many internet, catalog, and mail-order retailers.

Use tax is also due when property worth at least \$100 is purchased in another state and brought to Colorado for use or consumption. With proof of payment, sales tax paid to another state may be credited against state use tax due in Colorado for a particular item.

**Collection.** Reporting and remitting consumer use tax is the responsibility of the purchaser. For individuals, tax is due by April 15 for purchases made during the prior calendar year. Taxes may be remitted in one of three ways: via a consumer use tax return, through the Department of Revenue's e-filing system, or via an individual income tax return.

*Consumer use tax return.* Taxpayers may file a consumer use tax return using form DR0252. This form and its filing instructions are available online at <http://www.colorado.gov/pacific/sites/default/files/DR0252.pdf>.

*E-filing system.* Consumer use tax returns can also be filed using Revenue Online, the Department of Revenue's electronic filing system. The system can be accessed at <http://www.colorado.gov/revenueonline>.

*Individual income tax return.* Beginning with tax forms for 2015, taxpayers may now remit consumer use tax payments when filing a Colorado individual income tax return. Income tax forms now include lines to report state and special district use tax liability. For 2015, taxpayers remitted \$2.2 million in state use tax payments using this mechanism.

**Tax base.** The state use tax applies to the same set of purchases as the state sales tax. In general, goods are subject to the taxes unless specifically exempted, while services are exempt unless specifically taxed.

There are 86 sales and use tax exemptions in state law. Many of these exist to avoid "tax pyramiding," whereby individual products are taxed multiple times at multiple stages of the production cycle. Other exemptions are in place to avoid taxing necessities or collecting taxes from governments. The ten largest exemptions are for:

- wholesale sales;
- component parts in a manufactured product;
- food for domestic home consumption;
- gasoline, diesel, natural gas, propane, and kerosene;
- livestock used for breeding purposes;
- sales to federal, state, and local governments;
- fuel for residential heat, lighting, and power;
- construction materials used by contractors on public works projects;
- livestock feed, seeds, and orchard trees; and
- machinery used in manufacturing.

Services subject to the sales and use tax include food and drinking services, lodging, leasing and rental of goods, and telecommunication services.

**Tax rate.** The state use tax is assessed at a rate of 2.9 percent, identical to the state sales tax rate. A history of tax rates is available in the Legislative Council Staff's Colorado Online Tax Handbook.

**Revenue.** Use tax revenue is allocated to the General Fund for spending on state operations at the discretion of the General Assembly. Preliminary, unaudited data indicate that the state collected \$243.8 million in use taxes in FY 2015-16. Use tax revenue is subject to the state's constitutional revenue limit.

## Local Government Use Taxes

Under Colorado law, counties and municipalities may establish their own use tax ordinances or resolutions. State law directly imposes use taxes for certain special districts.

If imposed, a local government use tax is usually assessed at the same rate as that local government's sales tax, and applies to the same tax base. Under the Colorado Constitution, a home rule county or municipality may establish its own tax base. State law requires that statutory counties and municipalities allow certain use tax exemptions, including exemptions for sales to governments and component parts. State law also includes specific requirements governing where an item may be taxed if it is purchased in one jurisdiction and stored, used, or consumed in another.

Use tax revenue is subject to the local government's constitutional revenue limit unless specifically exempted by voters. Some individual counties and municipalities have received voter authorization to exempt all use tax revenue from their revenue limits.

A list of county, municipality, and special district sales and use tax rates is provided at <http://www.colorado.gov/pacific/sites/default/files/DR1002.pdf>.