

Colorado Department of Revenue



A Revenue Publication for Businesses, Tax Professionals, Local Governments and Individuals

September 2005

Tax Topics

[Income Tax](#)

[Sales Tax](#)

[Other Tax Information](#)

NOTE: All links to DOR forms referenced in this document require you to have the free [Adobe Acrobat Reader](#) software

Income Tax:

- [2004 Extension of Time to File Approaches](#)
- [FYI Publications for Corporations](#)
- [Income Tax Publication Relates to Interstate Employees](#)
- [Make Colorado Estimated Income Tax Payments Easy With Electronic Payment \(EFT\)](#)
- [DRAFT 2005 Income Tax Forms Online Review](#)
- [House Bill 05-1244: Gross Conservation Easement Credit](#)

- [Income Tax Returns Available for Previous Years](#)



[\[Top\]](#)

2004 Extension of Time to File Approaches

Colorado provides an automatic six-month filing extension for those taxpayers who were unable to file their 2004 individual income tax returns by April 15. The extension is an extension to file however, not an extension to pay.

The extension means that taxpayers need not to file, either electronically or by paper, until October 17, 2005. The extension applies only to filing the actual form. It does not apply to any money owed to the state.

If an individual uses the extension, 90 percent of the tax owed must have been paid on or before the filing deadline of April 15 to avoid penalty charges. Those who owe, but pay less than the 90 percent due, will be charged penalty and interest on the unpaid balance. If the payment is 90 percent or more of the amount owed, the department charges interest but no penalty as long as the return and balance owed are sent by the October 17 extension deadline.

The interest rate is 7 percent of the tax owed. Penalty is 5 percent of the balance due for the first month past the April 15 deadline, then an additional 0.5 percent for each month thereafter, up to a maximum of 12 percent.

Taxpayers who do not owe tax, or are filing for a refund, do not have to file until the October 17 deadline.

See the [Colorado Income and Estate Tax Forms](#) for individual and corporation income tax filing.



[\[Top\]](#)

FYI Publications for Corporations

A new FYI publication written specifically for corporate income tax filings is now available online at www.taxcolorado.com

[FYI Income 60 "Combined and Consolidated Corporation Returns"](#) provides detailed information for corporations in an affiliated group electing to file either a separate, consolidated, or combined return. This informative FYI includes examples, information on foreign corporations, net operating losses, apportionment factors, and a summary illustration.

Other FYIs exclusive to corporations include [FYI Income 58 "C Corporations"](#) and [FYI Income 59 "Apportionment of Income"](#) primarily for Colorado C Corporations.

These and many other FYIs are available online at Colorado Department of Revenue's Web site at www.taxcolorado.com



[\[Top\]](#)

Income Tax Publication Relates to Interstate Employees

A new FYI publication for interstate transportation and commerce employees is now available online at www.taxcolorado.com

[FYI Income 61 "Interstate Transportation and Commerce Employees"](#) is a tax publication for taxpayers who regularly work in interstate transportation. This FYI includes information on interstate airline, railroad, motor carrier and water carrier employees as well as examples and wage withholding requirements.

This FYI and more than 170 other tax related FYIs are available online at www.taxcolorado.com



[\[Top\]](#)

Make Colorado Estimated Income Tax Payments Easy With Electronic Payment (EFT)

The Colorado Department of Revenue continues to provide alternatives for taxpayers to file and pay taxes. Now, **Colorado estimated income tax payments by individuals and corporations** are easier with the Department of Revenue's Electronic Payment (EFT) option -- available on online or by telephone.

Convenient and secure, there are no worries about mailing or misplaced checks, or if your payment has

made it safely to the department. You control which bank account the payment comes from, you'll also know when the payment will be made and when the department receives it. The online version of EFT allows you to see your pending (planned) payments and payment history.

If you choose, EFT will remind you when to make payments. Payments and payment dates can be set up in advance for each quarter -- up to 365 days in advance.

If for any reason you need to make changes to a planned payment, you may change the date until the day *before* the payment is scheduled to be paid.

To sign up for estimated income tax online or telephone EFT use [Form DR 5774](#) "EFT

Authorization Individual Estimated Income Tax" or [Form DR 5778](#) "EFT Authorization Corporate Estimated Income Tax ACH Debit or Credit." These forms are located on the Web at www.taxcolorado.com under "[Forms](#)" and "[Electronic Payment of Taxes EFT](#)."

You may also sign up for online or telephone EFT by using [Form DR 5785](#)

"Authorization For Electronic Funds Transfer (EFT) For Tax Payments," available at www.taxcolorado.com This form features "drop-down" boxes with the type tax you can choose from to make payments. After completing the form, print it before you close or exit, then mail a copy to the Department of Revenue.

If you are already signed up for EFT estimated income tax payments but have not tried the online version of the service, visit the [Electronic Payments \(EFT\) Web](#) site at www.taxcolorado.com to pay online and manage your account.

If you have questions once you start using EFT, call the Colorado Department of Revenue Help Line at (303) 205-8333.

For more information on the Electronic Payment (EFT) Program, visit the Web at www.taxcolorado.com [Publication DRP 5782](#) "Colorado Department of Revenue Electronic

Funds Transfer (EFT) Program For Tax Payments." This publication provides instructions for using the online and telephone EFT system.



[\[Top\]](#)

DRAFT 2005 Income Tax Forms Online Review

Each year the Colorado Department of Revenue's Policy and Innovation Section provides **DRAFT** income tax forms online for tax professionals and software developers for comment and suggestions – 2005 is no different.

Most forms will be provided for review including schedules associated with the forms.

IMPORTANT: DRAFT forms are available *only* for review and comment. **DO NOT** use these forms to file your Colorado income tax!! **FINAL DRAFT** forms will be available in October.

FINALIZED versions all income tax forms for the income tax season filing will be available on the Web in December at www.taxcolorado.com under [Tax Professionals](#)

At this time individuals may review the [DRAFT](#) forms at:

Comments and suggestions regarding **DRAFT** forms should be emailed to:
rgiardini@spike.dor.state.co.us

All comments or suggestions must be submitted as soon as possible. Comments received after September 30, 2005 may *not* be considered until next year due to printing deadlines.



[\[Top\]](#)

House Bill 05-1244: Gross Conservation Easement Credit

House Bill 05-1244 amending provisions regarding the gross conservation easement income tax credit became law on June 7, 2005. This bill includes several changes to provide a streamlined process for claiming the credit.

- The donor of an easement is considered the "tax matters representative" with all matters with respect to a credit that is transferred to other taxpayers. This streamlines communication and protest procedures between the Department of Revenue and the taxpayers who claim a credit. Under the old law, if a purchased credit was denied or adjusted by the Department, a protest had to be filed by the transferee of the credit even though the donor of the easement is the person who has the information needed to file a protest. Furthermore, each transferee involved in the dispute had to file a separate protest. This change allows the Department to deal directly with the donor of the easement who has the necessary documentation, and all transferees will be bound by the

determination reached with the donor.

- Previously a taxpayer wishing to purchase a tax credit had to complete the transaction prior to December 31. This often did not allow time for sufficient tax planning or for completing the easement donation and sale before the end of the tax year. In the future taxpayers have until the due date of the return, April 15 for a calendar year filer to purchase a credit. This will allow for better tax planning by taxpayers wishing to purchase a credit for use against the taxes due for the prior year. The change is effective for any tax year ending after June 7, 2005.
- Prior to the passage of HB 1244 the gross conservation easement credit did not transfer to the decedent's estate upon the taxpayer's death. The law now provides that, not only may the estate use the credit on its own return, but assuming all other requirements are met the credit may also be sold. The change is retroactive to tax year 2000.
- The bill clarifies that in reviewing any credit the Department has the authority to review, contest or reject the conservation easement appraisal upon which the credit is claimed.

A more thorough explanation of these changes is available in publication [FYI Income 39 "Gross Conservation Easement Credit."](#)



[\[Top\]](#)

Income Tax Returns Available for Previous Years

The following Colorado State Income Tax returns and schedules are available on the Web for previous tax filing years. The Department of Revenue no longer offers income tax returns or schedules online for tax years 1994 through 1997.

However, 1994 – 1997 forms and earlier are available through the Department's Call Center at (303) 238-SERV (7378) or visit the Department of Revenue Forms Section located at 1375 Sherman St., Denver, CO, 80261.

- [2003 Colorado Income Tax Forms](#)
- [2002 Colorado Income Tax Forms](#)
- [2001 Colorado Income Tax Forms](#)
- [2000 Colorado Income Tax Forms](#)
- [1999 Colorado Income Tax Forms](#)
- [1998 Colorado Income Tax Forms](#)

Visit the Web site at www.taxcolorado.com for income and other tax forms.



[\[Top\]](#)

Sales Tax:

- [Account Closures for Non-Filers](#)
- [Reminder: Service Fee Increase](#)
- [July 1, 2005 Local Tax Changes \(State and Self Collected\)](#)



[\[Top\]](#)

Account Closures for Non-Filers

The Department of Revenue has closed the account of any business that has failed to file a retail sales tax return since July 1, 2004.

More than 900 accounts were closed. This figure includes individual, or single location and multiple location businesses.

The accounts that have been closed will not be reopened unless the business files a return for each missing period in which a sales tax return was due. If money is owed, the business must file both the return and remit the tax due, including applicable penalty and interest for that filing period(s). Returns must be filed even if it is a zero filing and no taxes are due. A business must then file a [CR 0100 "Colorado Business Registration"](#) form with appropriate fees to reopen the account with the same account number.



[\[Top\]](#)

Reminder: Service Fee Increase

Effective July 1, 2005, the state service fee (vendor's fee) rate increased to 3.33 percent. This change is reflected in the 2005 coupon booklet beginning with the July return on line 8 (a). Prior to July 1, 2005 the service fee was 2.33 percent.



[\[Top\]](#)

July 1, 2005 Local Tax Changes (State and Self Collected)

<u>Self-Collected</u>	<u>Tax Rate</u>	<u>Service Fee</u>	<u>License Fee</u>
Durango (increased sales tax rate from 2.5% -- increased by .5%)	3.0%	3 1/3%	\$2.50
Frisco (previously state-collected, rate unchanged)	2.0%	3 1/3%	\$75
Ridgway (increased sales tax rate from 3.0% -- increased by .6%)	3.6%	3 1/3%	\$25
Sheridan (previously state- collected, rate unchanged)	3.5%	None	\$10

NOTICE: Additional Tax Changes Effective in January and May 2005

Effective January 1, 2005, the Roaring Forks Rural Transportation Authority (RTA) expanded to certain unincorporated areas of Eagle County. This includes businesses located in the El Jebel area and outside the city limits of Carbondale.

<u>State-Collected</u>	<u>Tax Rate</u>	<u>Exempt</u>	<u>Use Tax</u>	<u>Service Fee</u>
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Roaring Forks

RTA

(Additional areas of unincorporated Eagle County, in the El Jebel area and businesses located outside Carbondale)

<u>State-Collected</u>	<u>Tax Rate</u>	<u>Exempt</u>	<u>Use Tax</u>	<u>Service Fee</u>
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Steamboat Springs

(Local Marketing District Effective May 1, 2005)

<u>Self-Collected</u>	<u>Tax Rate</u>	<u>Exempt</u>	<u>Service Fee</u>	<u>License Fee</u>
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La Junta

(decreased sales tax .25% effective May 1, 2005)

See the Publication [DRP 1002 "Colorado Sales and Use Tax Rates"](#) located on the Web at www.taxcolorado.com under forms.

- *A = Food for home consumption
- *B = Machinery and machine tools (as defined on form [DR 1191](#))
- *C = Gas, electricity, etc., for residential use
- *D = Occasional sales by charitable organizations
- *E = Farm equipment
- *F = Pesticides
- *G = Food sold through vending machines
- *H = Low-emitting vehicles
- *W = Contact the city directly
- *Y = Motor vehicles
- *Z = Building materials
- 6 = Cap at a certain amount

Other Tax Information:

- [IFTA Fill-in Form Arrives Online](#)

- [Pay or Protest - Take Notice of the 30-Day Rule](#)
- [Retailer's Use Tax - Going Online to File That Zero Return](#)
- [Unclaimed Property Subject To Seizure for Unpaid Debts](#)
- [150 Percent Penalty Statute](#)



[\[Top\]](#)

IFTA Fill-in Form Arrives Online

The Colorado Department of Revenue's Special Tax Accounting Section now offers IFTA filers an online fill-in "International Fuel Tax Agreement Tax Report" ([Form DR 0122](#)). This fill-in return allows IFTA filers to complete their IFTA return online for convenience and accuracy. The fill-in form adjusts the tax rates automatically as well as the surcharge amount according to the jurisdiction(s) entered by the taxpayer. Simply fill-in the form with the required information and the figures will be automatically calculated on the return eliminating math errors.

Filers should note that once the return is filled out – they should **always print a copy** of the return for their records prior to exiting the online return. Completed forms cannot be saved and will be lost once a filer has "closed" the document.

If a filer discovers an error on the return but has not mailed it to the Department, they will have to start the process over from the beginning. However, if a filer has mailed the return to the Department and later discovers an error the filer must re-file the form with the word "AMENDED" written on top of the return with an attached note stating the nature of the error. If it is an overpayment, the Department will issue a refund. If the error results in an underpayment, then a check for that amount should also be attached to the AMENDED return, including applicable penalty and interest, if the return and payment are late.

The form includes a drop down menu allowing users to choose the correct quarterly filing period beginning with the April – June 2005 return.

This form is available on the Department's Web site at: www.taxcolorado.com under the "Forms," "[FuelTax /IFTA](#)" links. **NOTE:** To download the form users must have Adobe Acrobat Reader version 6.02 or higher. Click here to download a free copy of [Acrobat Reader](#).

Print the completed return and mail the original form to the Colorado Department of Revenue, Denver, CO 80261-0013.



[\[Top\]](#)

Pay or Protest - Take *Notice of the 30-Day Rule*

Taxpayers who owe Colorado state income tax or sales and use tax need to be aware of the Department of Revenue's 30-Day Rule.

The 30-Day Rule applies to taxpayers who have failed to file and pay tax owed and have received a notice of deficiency for failure to pay the tax. Once a notice of deficiency has been mailed, the taxpayer has 30 days from the date of the actual notice (not date of receipt) to either pay the tax, including applicable penalty and/or interest, or protest the notice of deficiency.

If a taxpayer fails to respond within the prescribed timeline, the 30-day protest period is no longer applicable, the taxpayer's appeal rights are gone, and the tax must be paid.

Taxpayers are strongly encouraged to always remit their tax to the Department of Revenue timely to avoid notices as well as to respond to a notice immediately after receipt.



[\[Top\]](#)

Retailer's Use Tax - Going Online to File That Zero Return

Retailer's Use Tax filers are reminded they have the option of filing a "zero" tax return online through the Department of Revenue's "[Retailer's Use Tax Zero Filing System](#)." Businesses that have no tax or "zero" tax due for a specific filing period may use this convenient and safe filing of their Colorado Retailer's Use Tax Return" (Form [DR 0173](#)). This service is available for quarterly, monthly, annual and seasonal filers.

Colorado Retailer's Use Tax Return Filers should always keep in mind that even if their business had no net sales and no state tax is due, they must still file a timely return indicating "zero" tax due on their tax return. The zero filing system allows most businesses to file online or by telephone.

This service for retailer's use tax filing serves as a compliment to other zero filing options for sales and wage withholding.

For more information on who is eligible to use the service and what is required visit the Web at www.taxcolorado.com under "Online Services," then click on the "Electronic Filing Options" link.

Filing by Telephone:

Zero filers may also file by telephone. The system will give a confirmation number for returns submitted successfully. To file a zero return by telephone call: (303) 205-TAX0 (8290).



[\[Top\]](#)

Unclaimed Property Subject To Seizure for Unpaid Debts

The Colorado Department of Revenue is developing a program that will eventually allow the interception of unclaimed property to pay debts owed to the state.

The unclaimed property program also known as the Great Colorado Payback is provided by the state of Colorado Treasurer's Office as a method to locate unclaimed property owners.

If an individual requests a payment from unclaimed property but owes money for unpaid taxes to the state, the money can be intercepted and remitted to the department to satisfy a debt either in full or in part depending upon the amount claimed and amount owed.

The amount of the pay back to the state has to be greater than \$600. When completed, the intercept program will include both individuals and sole proprietorships with any outstanding liabilities. The projected completion date for the unclaimed property interception program is early 2006.



[\[Top\]](#)

150 Percent Penalty Statute

The **150% Penalty Statute** is meant to encourage payment of taxes by allowing the Colorado Department of Revenue to assert a liability against responsible third parties. The 150% penalty is civil in nature, not criminal, and is generally implemented as a collection tool by the Department of Revenue to

collect trust fund taxes, such as wage withholding and sales tax, when other methods of collection have been unsuccessful.

Corporate officers and members of a partnership or limited liability company required to collect, account for, and pay any tax administered by Article 21 of Title 39 who willfully fail to collect, account for, or pay such tax, or who willfully attempt in any manner to evade or defeat any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to 150% of the total amount of the tax. The statute is similar to the responsible party penalty at IRC §6672.

Federal case law provides that willfulness does not require a finding of an attempt to defraud or to deprive the government of taxes. The term willfully does not require a criminal or other bad motive on the part of the responsible person, but simply a voluntary, conscious or intentional failure to collect, truthfully account for, and pay over taxes withheld from the employees. *Bowen v. U.S.*, 836 F2d 965(CA-5, 1988). Some courts have gone so far as to state that failure to make the monthly deposits required by regulations is sufficient to show willfulness. *Barnett v. U.S.*, 988 F2d 1449 (CA-5 1993); *Brown v. U.S.*, 591 F2d 1136 (CA-5, 1979).

Once a determination is made to pursue the penalty against a particular individual, the department will mail the Notice of Deficiency. If the individual chooses to protest this determination, or any part thereof, it is necessary for that person to make written application to the Executive Director for a hearing and to present the facts, the law, and arguments in written protest within thirty days from the date of the notice. If the individual fails to respond within the thirty-day protest period, the Executive Director is required by law to make a final determination and mail it with a "Notice of Final Determination" and "Demand for Payment."

The filing of bankruptcy by the corporation will not stay the department from attempting to assess the 150% penalty against the responsible person. The amount of penalty equal to the tax is treated as tax for the purposes of dischargeability and will generally not be discharged in bankruptcy.



[\[Top\]](#)

[\[State Home | Revenue Home | Top \]](#)

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