



Colorado Department of Revenue



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

**March 2004**

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

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## Who Pays the Use Tax? City of Aurora and Contractor Court Case May Determine

Who is supposed to pay the use tax on the construction of a building? Should it be the contractor who erected the building? Or should it be the building owner? That is the question posed in an upcoming District Court case involving the city of Aurora.

In 1998 a contractor entered into a contract to erect a building for four million dollars. Upon acquiring a building permit the contractor paid city use tax on the estimated cost of construction. However, the actual cost of the building after change orders was more than seven million dollars. The contractor never paid the difference in tax to the city and now the city wants to collect the tax from the building owner.

But can they do that? Not according to the building owner. The owner takes the position that it did not buy any tangible personal property, it bought real estate. Purchases of real estate are not subject to sales or use tax, only purchases of tangible personal property are subject to the tax. According to the owner, if the city wants its use tax, it must collect the tax from the contractor. It is the contractor who is the end user of the tangible personal property and according to the principles of sales and use tax, the contractor is the final consumer who is ultimately liable for the tax.

Aurora claims that as a home-rule city, it has full authority to determine who is the ultimate user and consumer of the tangible personal property. Unlike state law, Aurora claims that the city has never adopted a position establishing the contractor as the ultimate user.

The court's decision could have a significant impact. Not only will the determination have consequences for the other home-rule cities that, like Aurora, have been issuing assessments against building owners, but the decision could affect everyone who purchases newly constructed real estate in Colorado.



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

Corporate officers, members of a partnership or a 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 federal Trust Fund Recovery Penalty Statute.

Federal case law has shown 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.*, 88-1 USTC (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.*, 594 F2d 219 (1979), aff'g in part, rev'g in part 76-1 USTC ¶¶9449 (1976); *Brown v. U.S.*, 591 F2d 1136 (1979).

Once a determination is made to pursue the penalty against a particular individual, the department will mail out a Notice of Deficiency to the individual. 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 along 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 not be discharged in a bankruptcy filed by the responsible person.



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## **Refund of Sales Tax License Deposit**

Individuals who open a business for the purpose of conducting retail sales must pay a \$50 deposit when applying for a state sales tax license. [C.R.S. 39-26-103(1)(c)]. The \$50 deposit is in addition to the \$16 sales tax license fee. There are circumstances when a business is not required to pay the deposit such as certain special event participants, wholesalers, and charitable organizations. [C.R.S. 39-26-103(8) and (9).]

The statute provides that the deposit is only refundable to the extent the business remits state sales tax. For example, if a taxpayer closes his/her business after collecting and remitting \$30 in state sales tax, the department will refund only \$30. If \$50 or more is remitted in state sales tax then the deposit will automatically be refunded.

There is no provision in the law that allows the deposit to be refunded if no tax is collected. Therefore, no portion of the \$50 deposit will be refunded if a business owner who closes the business without doing any business or does not collect or fails to collect and remit any sales tax.



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## Income Tax Index Ready For Use

The Colorado Department of Revenue's Web Site has a new and easy to use information program. The "Income Tax Index" Web site program is a one-stop method to locating income tax forms, publications, regulations, Colorado Revised Statutes, and answers to many questions all in one program covering more than 180 specific income tax topics.

As the income tax portion of the index continues to grow, eventually it will also provide the same service for those needing sales and use tax, withholding tax, estate, excise, and cigarette and tobacco taxes information.

Visit the index site located at: [www.taxcolorado.com](http://www.taxcolorado.com) under both the "[Publications and Resources](#)" and "[Tax Professionals](#)" links.



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## Web Redesign Brings New View To Colorado Taxes and Revenue Information

The Colorado Department of Revenue Web site has a new look offering easy navigation and access to information regarding many functions of the department. The site address is [www.revenue.state.co.us](http://www.revenue.state.co.us)

One of the links on the main Revenue page is directed specifically toward Colorado taxes. This taxation Web page that can be accessed directly at [www.taxcolorado.com](http://www.taxcolorado.com) offers information on various Colorado taxation issues.

The new Web format features a "Main Categories" listing. Three new general areas never offered before are pages that highlight areas of interest to **Individuals**, **Businesses** and **Tax Professionals**.

All forms are categorized by tax type under the "Forms" link. If you know the form number you're looking for, you can find it in numeric order under "[Forms by DOR Number](#)." A new feature is the "[Top Ten Forms](#)," updated regularly, covering the most widely used income and business tax forms depending on the time of year. The ranking is based on the number of hits each form has received during the previous month.

The "[Publications/Resources](#)" link, also listed under the "Main Categories," allows users to find FYI publications, free tax class schedules, tax statistics and other tax information sources. One of the newest features included in both the "Publications/Resources" and "[Tax Professionals](#)" links is the "[Income Tax Index](#)" which allows a one-stop method of linking directly to forms, regulations, publications and answers to many questions covering more than 180 income tax related topics.

Through the "[Contact Us](#)" link, you'll find access to an online knowledge base containing answers to

frequently asked questions. Search by keywords or enter your question in the "Search" box. When a knowledge item is selected, you may "Send Us an E-mail" if the information provided does not fully address your question.

The department's Web site has been available since 1995 and future additions and improvements will continue to bring up-to-date information.



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## **2003 Annual Report Available Online**

The 2003 edition of the Colorado Department of Revenue's Annual Report is now available online at [www.taxcolorado.com](http://www.taxcolorado.com). Simply go to this site and click on the link entitled "[Publications/Resources](#)" and then "[Tax Statistics](#)." There you will find this latest version as well as previous year annual reports.

Published by the department's Office of Tax Analysis, the annual report allows individuals the opportunity to review statistics and accomplishments made by the department throughout the fiscal year.

The comprehensive report provides information that covers all divisions within the Department of Revenue such as Taxpayer Service, Tax Auditing and Compliance, Cash and Document Processing, Tax Analysis, Motor Vehicle, Hearings, Motor Carrier Services and Port of Entry, Information Technology, Enforcement, Racing Events, Limited Gaming, and Lottery.

Just some of the many information topics available in the report are:

- A year in perspective
- Tax collections and distribution of tax-collected funds
- Refunds processed
- Electronic filing statistics
- Total proceeds
- Collections by source
- Gross and net collections
- Administrative costs by fund and tax sources
- Local revenue collection
- Licenses and permits issued
- License fee data
- Taxpayer audit and review activities
- Population by county
- Revenue Legislative Digest
- Cigarette/Tobacco collections
- Registered vehicles by type and county

- Fuel tax data

This year's edition also includes Colorado's Tax Amnesty statistics for the amnesty program afforded to Colorado citizens in June 2003.



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### **RTD Expands into Park Meadows Area**

The Regional Transportation District (RTD) Board recently passed a resolution to include the Park Meadows Mall within the RTD boundaries. Located in unincorporated Douglas County, Park Meadows Mall will be required to collect the .6 percent RTD sales and use tax beginning April 1, 2004.

The RTD tax is in addition to the current .1 percent Metropolitan Football Stadium District (FD) tax. Park Meadow businesses will be receiving revised pre-printed Colorado sales tax returns that reflect the RTD and FD tax rate .0070 percent.



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### **Windsor Joins the Ranks of Home-Rule Cities**

In November 2003, the voters of Windsor elected to pass an ordinance to become a home-rule city effective Jan. 1, 2004. The Department of Revenue will continue to collect Colorado state sales tax and Windsor's 3.2 percent local tax. Windsor is one of 15 other cities and towns that have state collected taxes with home-rule status.



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### **RTD Extends to Lone Tree**

Effective January 1, 2004, the Regional Transportation District's (RTD) boundaries will include the city of Lone Tree. In the November 2003 election, Lone Tree voters approved by a significant margin the inclusion of RTD. The RTD sales and use tax rate is 0.6 percent.

The Scientific and Cultural Facilities District and Football District, which each have a 0.1 percent sales and use tax, are also included in Lone Tree, but only in those areas annexed by Lone Tree after May 25, 1994.

These annexed areas include:

- The Estates annexation
- Westbrook Development
- Mimi's Café
- Applebee's
- The C-470 Joint Venture annexation
- Rampart Range
- Heritage Hills
- Centennial Ridge
- Carriage Club



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### **Delinquent Taxpayers Web Site Now Available**

The new Department of Revenue Web page "[Delinquent Taxpayers](#)" is now available online at: [www.taxcolorado.com](http://www.taxcolorado.com)

This Web page allows individuals to go online and view who is delinquent in paying their Colorado state taxes.

If an individual, business, or corporation owes tax to the state of Colorado, but does not pay within a specified period of time, those delinquent taxpayers may be slated to be placed on the department's Web site for non-payment of taxes.

House Bill 1210 requires the Executive Director of the Department of Revenue to annually disclose a list of all taxpayers who owe more than \$20,000 in delinquent taxes for a period of six-months from the time that a distraint warrant is issued or may issue. This House Bill became effective in August of 2003.

The bill defines the administrative process for disclosure and requires the list to be made available for public inspection on the Web site maintained by the Department of Revenue and applies to any tax, penalty and interest for which the taxpayer owes more than \$20,000.

A taxpayer may contact the department to pay or possibly enter an agreement to pay the taxes to clear the debt and avoid Web site publication.

The new law requires the name of a taxpayer be removed within 15 days after the payment of the debt. It also establishes that a good faith effort by the Executive Director of the Department in preparing the list shall not be considered a violation of any statutory prohibition on the disclosure of taxpayer information.

For more information regarding House Bill 1210 visit the Governor's Legislation Web site at: [www.colorado.gov/](http://www.colorado.gov/) and search under legislative information.



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## **2004 Cigarette Tax Electronic Funds Transfer Due Dates**

The Colorado Department of Revenue's Electronic Funds Transfer (EFT) program, allows cigarette taxes collected by the state for local governments to automatically be deposited into specific accounts. 2004 due dates for cigarette tax EFT transmission are:

January 9  
February 10  
March 9  
April 9  
May 10  
June 9  
July 12  
August 10  
September 9  
October 8  
November 9  
December 9

To receive monthly cigarette tax distribution through EFT, you must complete Form DR 1011, "Authorization Agreement For Automatic Deposits (ACH credits)." Send the completed form to:

Colorado Department of Revenue  
1375 Sherman St., Room 208  
Attention: Sandra Robben or Donna Reyman  
Denver, CO 80261



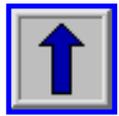
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## **2004 Electronic Filing Due Dates for Sales Tax Payment to Cities and Counties**

The due dates for the Department of Revenue to pay sales tax collections through Electronic Funds Transfer (EFT) to local governments in 2004 are:

January 14  
February 13  
March 12  
April 13  
May 12  
June 11  
July 14  
August 11  
September 13  
October 13  
November 12  
December 13

If your office is receiving payments by mail you may want to change to the EFT method for faster payment. For more information contact LouAnn Welbourn at (303) 205-8211 extension 6876 or Sandi Robben (303) 205-8211 extension 6862.



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### **Missing Documentation Leads to Delay**

Taxpayers who mail in a paper state income tax return should be aware that not attaching the necessary or appropriate documentation will create a delay in the processing of their income tax return and cause a delay in receiving their state income tax refund.

Each year hundreds of taxpayers who file a paper return often fail to attach required documentation to the return whether they are expecting a refund, claiming a credit, or making a payment. One of the most common errors is forgetting to attach the W2 or multiple W2 forms.

Other forms that are frequently missing are:

104PN (Part-year/Nonresident Tax Calculation Form); 104CR (Individual Credit Schedule); DR 1305 (Gross Conservation Easement Credit Schedule); DR 1316 (Colorado. Source Capital Gain Affidavit); and the DR 0074 (Certification of Qualified Enterprise Zone).

Apart from missing W2s, so far there have been more than 500 of the above forms with missing information creating a delay in processing.



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## Early Electronic Filing Results Come in Big

The 2003 income tax filing season is proving to be another big year so far for the various electronic filing methods offered to Colorado taxpayers.

As of February 2004 the total number of electronic filings for Colorado individual income tax returns was 206,816. This number includes Federal/State Electronic Filing (FSEF); TeleFile (Filing by Telephone); and NetFile (Filing Online). The total number of paper filings so far this year is 35,684.

To file FSEF visit your tax professional or purchase electronic filing software and file your own return. To file your state return over the Internet you may use Netfile at [www.netfile.state.co.us](http://www.netfile.state.co.us) or you may TeleFile your return by calling:

(303) 238-3278 (Denver Metro Area); other TeleFile areas call:

(719) 592-0225 (Colorado Springs);

(970) 282-7950 (Fort Collins);

(970) 243-0664 (Grand Junction);

(719) 542-2681 (Pueblo);

Toll free from all other areas call: (877) TEL-FILE or (877) 835-3453. Telefilers must use a touch-tone telephone.



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## Colorado Income Tax Credit for Child Care Expenses

Colorado taxpayers claiming a child care credit on their federal income tax return and who have a federal adjusted gross income of \$60,000 or less can claim a child care credit on their 2003 state income tax return.

The tax credit is calculated as follows:

If the federal adjusted gross income is:		The Colorado percentage is:
More than:	Not more than:	
\$0	\$25,000	50 percent of the federal credit
\$25,000	\$35,000	30 percent of the federal credit
\$35,000	\$60,000	10 percent of the federal credit

To the extent, the Colorado child care credit exceeds the Colorado tax, the excess will be refunded.

Part-year residents also are eligible. They must, however, first determine what percent of their income was earned while they were Colorado residents. They can then calculate the credit based upon this percentage. Nonresidents of Colorado are not eligible for the tax credit.



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