

## Excise 23: Excise Tax on Retail Marijuana

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Colorado imposes an excise tax on the first sale or transfer of marijuana from a retail marijuana cultivation facility to a retail marijuana store or a facility that manufactures marijuana products. The tax does not apply to sales or transfers made by a retail marijuana cultivation facility to another cultivation facility, but see the section below entitled “Virtual transfers”. The excise tax does not apply to the sale or transfer of any unprocessed medical marijuana to a medical marijuana center.

The excise tax is different from and in addition to the retail marijuana sales tax imposed on the retail sale of marijuana from a retail marijuana store to a consumer. See FYI Sales 93 for information about retail marijuana sales tax.

The information in this FYI pertains only to marijuana excise tax imposed and administered by the State of Colorado. The Department does not administer any marijuana excise taxes imposed by any city, county, special district, or other local jurisdiction. Please contact the appropriate local jurisdiction for information about any marijuana excise tax they impose and administer.

### CULTIVATION FACILITIES THAT MUST PAY THE TAX

Marijuana excise tax must be paid by any retail marijuana cultivation facility licensed by the State of Colorado to cultivate, prepare, package, and sell marijuana to retail marijuana stores or facilities that manufacture marijuana products.

### SALES AND TRANSFERS SUBJECT TO THE TAX

Marijuana excise tax is imposed on the first sale or transfer of unprocessed retail marijuana from a cultivation facility to either a retail marijuana store or a facility that manufactures marijuana products. Retail marijuana subject to this excise tax includes all parts of the plant of the genus cannabis (whether growing or not), the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. Sales and transfers subject to the excise tax include any grant, conveyance, handing over, assignment, exchange, or barter of unprocessed marijuana by any means whatsoever, with or without consideration.

#### Virtual transfers

Transfers subject to the excise tax include virtual transfers of retail marijuana and retail marijuana products that are accurately reflected in the inventory tracking system, Metrc, even if the physical movement of the marijuana or marijuana product does not follow the virtual transfer. However, the taxability of a transfer will not be determined exclusively on the basis of information entered in the inventory tracking system. If any transfer does not accurately represent legitimate business activity or is in any way designed to avoid or defeat the proper imposition and calculation of the tax, the Executive Director may determine the transfer of the retail marijuana upon which the tax is properly imposed.

Any retail marijuana cultivation facility utilizing a virtual transfer must maintain documentation regarding the virtual transfer and any subsequent transfer of the retail marijuana (see the section below entitled “Recordkeeping requirements”).

See Dept. Rule 1 CCR 201-18, 39-28.8-302(1)(a) for additional information regarding virtual transfers.

#### Sales and transfers not subject to the tax

No excise tax is due on the sale or transfer of any unprocessed marijuana from a cultivation facility to another cultivation facility or to a medical marijuana center. In addition, the transfer of retail marijuana to a testing facility for testing purposes is exempt from the excise tax so long as the marijuana is destroyed during or following the testing. No excise tax is due on the sale or transfer of industrial hemp, as defined by law, fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

No excise tax is imposed on the transfer or virtual transfer of seeds or immature plants for subsequent cultivation in another retail marijuana cultivation facility, in which case the excise tax is imposed on the subsequent transfer of retail marijuana cultivated from such seeds or immature plants.

## CALCULATION OF THE TAX

The excise tax is imposed at a rate of 15%. The base upon which the tax is calculated depends upon whether the cultivation facility is “affiliated” with the retail marijuana store or manufacturing facility to which the sale or transfer is made and whether a contract price is established at the time of the sale or transfer. A cultivation facility and retail marijuana store or manufacturing facility are considered “affiliated” if they are owned by:

- the same individuals or entities,
- individuals who are related by blood or marriage, or
- entities that are directly or indirectly under common control.

### Sales and transfers between unaffiliated parties

If the cultivation facility and the retail marijuana store or manufacturing facility engaged in the sale or transfer are *not* affiliated, the excise tax is 15% of the contract price for the unprocessed marijuana sold or transferred. The contract price used to calculate the tax is the price charged on the written invoice, not including any tax and not reduced by any discount or other reductions. The invoice price charged includes all consideration the seller receives from the buyer in whatever form and regardless of the time of receipt. In the case of multiple invoices reflecting multiple prices for the same transaction, the highest price must be used to calculate the excise tax due.

### *Sales and transfers for which there is no contract price at the time of the sale or transfer*

If no contract price is established at the time of the first sale or transfer the excise tax is calculated based on the average market rate (see below) of the retail marijuana sold or transferred. Examples of such sales or transfers include:

- a temporary transfer, that does not constitute a sale, of retail marijuana from a cultivation facility to an unaffiliated manufacturing facility that will process or manufacture the retail marijuana before returning it to the cultivation facility or to a retail marijuana store affiliated with the cultivation facility; or
- a transfer of retail marijuana from a cultivation facility to an unaffiliated retail marijuana store for which a price is not established at the time of transfer, but instead depends upon the revenue generated from the subsequent sale of the retail marijuana to the end consumer.

### Sales and transfers between affiliated parties

If the cultivation facility and the retail marijuana store or manufacturing facility engaged in the sale or transfer *are* affiliated, the excise tax is 15% of the average market rate (see below) for the unprocessed marijuana sold or transferred.

### Average market rate

The Department determines and publishes the average market rate used for the calculation of marijuana excise tax and updates these rates on a quarterly basis. The Department publishes separate rates for the following categories of retail marijuana:

- bud
- trim
- bud allocated for extraction
- trim allocated for extraction
- immature plants
- wet whole plants
- seeds

The various rate categories are defined in Department Regulation 1 CCR 201-18, 39-28.8-101. The current rates can be found online at: [Colorado.gov/Tax/marijuana-taxes-file](https://colorado.gov/Tax/marijuana-taxes-file).

In order to calculate the tax using the average market rate, the weight of the marijuana sold or transferred must be multiplied by the average market rate and the result must be multiplied by 15%. For example, if the average market rate for trim is \$499 per pound and a cultivation facility sells 15 pounds of trim to an affiliated party, the cultivation facility must multiply the 15 pounds of trim sold times \$499 per pound to calculate the total \$7,485 average market rate for the sale. The excise tax is 15% of the \$7,485 calculated average market rate for the sale, or a total of \$1,123 tax due.

If multiple categories of retail marijuana are included in the transfer, the excise tax must be calculated separately for each category of retail marijuana included in the transfer.

#### *Bud and trim allocated for extraction*

Any marijuana categorized as bud allocated for extraction or trim allocated for extraction for the purpose of calculating the excise tax may not be subsequently transferred for direct sale to consumers unless it has first been subject to the extraction process. If any such bud or trim is subsequently transferred for direct sale to consumers and has not been subjected to extraction, the retail marijuana cultivation facility must amend the return upon which the tax was initially paid in order to recalculate the tax, and any applicable penalty and interest, using the average market rates for the applicable categories of bud or trim. If a retail marijuana product manufacturing facility transfers any bud or trim that has been allocated for extraction without first subjecting it to extraction, such facility must notify the cultivation facility, in writing, within seven days.

#### *Wet whole plant*

The excise tax for the category wet whole plants is calculated on the total weight of the entire wet whole plant. The weight of the entire wet whole plant is subject to the excise tax because the average market rate for wet whole plant already reflects an allowance for water weight and waste. The wet whole plant may not undergo any further processing (i.e., drying the plant and subsequently selling separately the bud and trim) prior to being weighed when the excise tax is calculated using the wet whole plant category. The wet whole plant must be harvested and packaged in the same day.

Any marijuana categorized as wet whole plant for excise tax purposes must be weighed within 2 hours of the plant being harvested and without any further processing, including any artificial drying such as increasing the ambient temperature of the room or any other form of drying, curing, or trimming. The tax must be calculated and paid on the total wet whole plant weight. If the wet whole plant is not weighed within 2 hours of being harvested or is subjected to further processing before being weighed, the excise tax on such plant cannot be calculated with the average market rate for wet whole plant and must instead be calculated with the average market rate(s) for bud, trim, bud allocated for extraction, and/or trim allocated for extraction, as applicable.

#### *Marijuana concentrate produced by a retail marijuana cultivation facility*

If a retail marijuana cultivation facility produces marijuana concentrate from marijuana it cultivates and the marijuana is subject to taxation based upon the average market rate, the excise tax for the concentrate must be calculated on the basis of the bud allocated for extraction, trim allocated for extraction, and/or wet whole plant used in the production of the concentrate.

### **LICENSING, FILING, AND RECORDKEEPING REQUIREMENTS**

Every retail cultivation facility must apply for a sales tax license and file excise tax returns with the Department. These requirements are in addition to any licensing requirements administered by the Marijuana Enforcement Division of the Department. Each cultivation facility must file monthly returns to report and remit the excise tax due.

#### **Licensing requirements**

A retail marijuana cultivation facility must obtain and maintain either a sales tax license or a wholesale tax license. If the owner of the cultivation facility owns and operates a retail marijuana store at the same location and has already obtained a retail sales tax license for the store, no additional sales tax license is required for the cultivation facility. A cultivation facility owner that does not already have a sales tax license must apply for either a retail sales tax license or a wholesale license. Application may be made with Form CR 0100AP "Colorado Sales Tax Withholding Account Application" or online at [apps.colorado.gov/apps/jboss/cbe/index.xhtml](https://apps.colorado.gov/apps/jboss/cbe/index.xhtml).

#### **Filing requirements**

Every retail marijuana cultivation facility must file a return by the 20<sup>th</sup> day of each month to report and remit the excise tax due for the unprocessed retail marijuana sold or transferred during the preceding month. A return must be filed for each month, even if the cultivation facility did not sell or transfer any unprocessed marijuana during the month. Marijuana excise tax returns must be filed electronically at [Colorado.gov/RevenueOnline](https://Colorado.gov/RevenueOnline).

If a cultivation facility does not file a required marijuana excise tax return by the applicable due date, penalty and interest will be due. See FYI General 11 for information about penalty and interest imposed for late filing.

#### **Recordkeeping requirements**

In addition to any books, accounts, or records necessary to determine the correct amount of tax, every retail marijuana cultivation facility must maintain complete and accurate electronic records, including itemized invoices of all retail marijuana grown, held, shipped, or otherwise transported or sold. Such records must include the names and addresses

of all retail marijuana stores, manufacturing facilities, or other cultivation facilities to which the taxpayer has sold or transferred any unprocessed retail marijuana, including any such stores or facilities the taxpayer owns. The records maintained by the taxpayer must also include the inventory of all unprocessed retail marijuana on hand and all pertinent papers and documents relating to the sale or transfer of unprocessed retail marijuana. The taxpayer must maintain records for a minimum of three years and provide such records to the Department upon request.

For each transfer that is subject to the excise tax, both the retail marijuana cultivation facility and the purchaser or transferee must maintain documentation sufficient to determine the amount of tax due for the transfer. Such documentation must include all of the following:

- the name and license number of the retail marijuana cultivation facility
- the name and license number of first purchaser or transferee
- the category of retail marijuana transferred
- the date of transfer
- the weight of the retail marijuana transferred
- the contract price for the transfer, if applicable

#### ADDITIONAL RESOURCES

- *Colorado statutes and regulations*
  - Colo. Const. Art. XVIII, Section 16. Personal use and regulation of marijuana.
  - §§ 39-28.8-301 through 308, C.R.S. Retail marijuana excise tax.
  - Dept. Regs. 1 CCR 201-18, 39-28.8-101, 302, 303, 304, and 308
- *Colorado forms, publications, and guidance*
  - FYI Sales 93 - Sales Tax on Marijuana
  - Colorado Sales Tax Withholding Account Application (CR 0100AP)
  - Publication of average market rates: [Colorado.gov/Tax/marijuana-taxes-file](https://colorado.gov/Tax/marijuana-taxes-file)
  - [Colorado.gov/RevenueOnline](https://colorado.gov/RevenueOnline) for the electronic filing of returns
  - [Colorado.gov/Tax](https://colorado.gov/Tax) for additional information regarding marijuana taxes
- *Other resources*
  - Marijuana Enforcement Division: [Colorado.gov/MarijuanaEnforcement](https://colorado.gov/MarijuanaEnforcement)
  - Marijuana Inventory Tracking System (Metrc): [metrc.com](https://metrc.com)

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FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.