

General 11: Colorado Civil Tax Penalties and Interest

If a taxpayer does not pay their tax by the applicable due date, that taxpayer will owe penalty and interest. Interest rates may vary from year to year and are listed below. Penalty calculations vary depending on the type of tax (income tax, sales tax, severance tax, etc.). Taxpayers can calculate and pay the applicable penalty and interest on any late or amended return. The Department will issue a notice of deficiency for any unpaid penalty and interest that is due. In addition to interest and penalties for the late payment of tax, there are several other types of penalties that may be imposed under certain circumstances.

INTEREST ON LATE PAYMENTS OF TAX

The interest due on the late payment of tax accrues from the original due date of the tax to the date the tax is paid. Since the interest rate may differ from year to year, it may be necessary to use multiple rates to calculate interest due. For example, if the tax was due April 15, 2016, but was not paid until October 1, 2017, the interest rate for 2016 will be used to calculate the interest accrued from April 15, 2016 to December 31, 2016 and the interest rate for 2017 will be used to calculate the interest accrued from January 1, 2017 to October 1, 2017.

The interest rates for each calendar year are listed in the table to the right. The first rate listed is the “discounted rate”, which applies if the taxpayer pays the tax prior to the issuance of a notice of deficiency or if the taxpayer pays or makes an agreement to pay the tax within 30 days of the issuance of the notice of deficiency for the unpaid tax. Criteria for the discounted rate are prescribed by law. If the taxpayer does not meet the criteria necessary to qualify for this discounted interest rate, the second rate listed in the table, the “regular rate” applies.

Interest will accrue for only that part of the year in which the tax was due, but not paid. For example, if tax due April 15, 2014 was paid on August 24, 2014, interest does not accrue over the entirety of 2014. Instead, interest accrues for only the 131 days between the due date and the date of payment. The daily interest rate used to compute interest accrued over partial years can be calculated by dividing the annual rate by 365 (or 366 for leap years).

Example

A taxpayer files a 2014 individual income tax return on February 22, 2017. The return reports a total of \$1,000 in tax and \$800 of wage withholding, resulting in a \$200 underpayment of tax, which the taxpayer pays with the return. The 2014 income tax was originally due April 15, 2015, so interest accrues on the \$200 underpayment from the April 15, 2015 due date to February 22, 2017. The taxpayer is eligible for the discounted interest rate because the tax is paid prior to the issuance of any notice of deficiency. Interest must be calculated from April 15, 2015 to December 31, 2015 at an annual rate of 3%, for all of 2016 at an annual rate of 3%, and from January 1, 2017 to February 22, 2017 at an annual rate of 4%. The interest calculation is illustrated below.

Annual Interest Rates on Tax Underpayments

Calendar Year	Discounted Rate	Regular Rate
2009	5%	8%
2010	3%	6%
2011	3%	6%
2012	3%	6%
2013	3%	6%
2014	3%	6%
2015	3%	6%
2016	3%	6%
2017	4%	7%
2018	4%	7%

** For calculation of interest over only part of a year, daily interest rates can be calculated by dividing the above rates by 365 (or 366 for leap years).*

Accrual period	Tax	(times)	Days	(times)	Daily rate	(equals)	Interest	
4/15/15 - 12/31/15	\$200.00	X	260	X	0.00008219	=	\$4.27	
1/1/16 - 12/31/16	\$200.00	X	366	X	0.00008197	=	\$6.00	
1/1/17 - 2/22/17	\$200.00	X	53	X	0.00010959	=	\$1.16	
Total accrued interest								\$11.43

International Fuel Tax Agreement (IFTA)

The above interest rates do not apply to IFTA. See iftach.org for IFTA interest rates.

PENALTIES

Colorado law authorizes several kinds of civil tax penalties. The calculation of these penalties varies depending on the tax type and the circumstances in which the penalty is imposed. The most common of these penalties are for late payment of tax or for the failure to file a required return. More severe penalties may also be charged under a variety of other circumstances, such as negligence, fraud, or willful failure to file.

This FYI discusses only civil penalties and does not address any criminal penalties that may be imposed by law.

Penalties for failure to file or pay in a timely manner

If a taxpayer does not file a return or pay the tax due by the applicable due date, the taxpayer will owe a penalty. The calculation of such penalties varies by tax type. The following table details the penalties for failure to file or pay various taxes administered by the Department.

Penalties for Failure to File or Pay Tax By the Applicable Due Date

Tax type	Penalty calculation
Income and wage withholding taxes	The greater of \$5 or a percentage of the unpaid tax equal to 5% plus ½% for each full or partial month the tax remains unpaid, not to exceed a total of 12%
Sales tax, marijuana sales tax, and marijuana excise tax*	The greater of \$15 or a percentage of the unpaid, unaccounted, or incorrectly accounted tax equal to 10% plus ½% for each month the tax remains unpaid, not to exceed a total of 18% ; late filing and/or payment of tax will also result in a disallowance of the service fee
Consumer and retailer use tax	A percentage of the unpaid tax equal to 10% plus ½% for each month the tax remains unpaid; late filing and/or payment of tax will also result in a disallowance of the service fee; an additional penalty equal to the amount of interest due may also be assessed
Severance tax	The greater of \$30 or 30% of the unpaid tax
Cigarette tax	\$100 for failure to file; for failure to pay, a percentage of the unpaid tax equal to 10% plus ½% for each month the tax remains unpaid, not to exceed a total of 18%
Tobacco tax	\$25 for failure to file; for failure to pay, a percentage of the unpaid tax equal to 10% plus ½% for each month the tax remains unpaid, not to exceed a total of 18%
Fuel tax	The greater of \$30 or a percentage of the unpaid tax equal to 10% plus ½% for each month the tax remains unpaid, not to exceed a total of 18%
Liquor excise taxes	A percentage of the unpaid tax equal to 10% plus 1% for each month the tax remains unpaid
Passenger mile tax	For failure to pay, 3% of the unpaid tax for each month the tax remains unpaid; for failure to file, a percentage of the unpaid tax equal to 10% plus ½% for each month the tax remains unpaid, not to exceed a total of 18%
IFTA	The greater of \$50 or 10% of the unpaid tax

* The failure to file/pay penalty imposed for sales, marijuana sales, and marijuana excise taxes is also imposed for failure to correctly account for the tax due.

Other tax penalties

In addition to penalties for failure to file or pay tax in a timely manner, the Department may impose a variety of other, often more severe penalties under certain circumstances. The following table lists some of the other penalties that the Department may impose.

Other Tax Penalties

Tax Type	Penalties
Income and wage withholding taxes	<ul style="list-style-type: none"> ➤ Underpayment of estimated tax (see FYI Income 51) ➤ Failure to pay a notice and demand for payment (collection penalty) ➤ Fraudulent or willful failure to file ➤ Filing a fraudulent, frivolous, or willfully false return ➤ Fraudulent failure to pay tax when due or willful attempt to evade tax ➤ Negligence or disregard for laws, rules, or regulations, without intent to defraud ➤ Tax preparer's penalty for willful or reckless disregard for applicable laws or rules
Sales tax, marijuana sales tax, and marijuana excise tax	<ul style="list-style-type: none"> ➤ Fraud with intent to evade tax ➤ Negligence or intentional disregard of rules and regulations, without intent to defraud ➤ Unregistered vending machine ➤ Making retail sales without a valid license
Use tax	<ul style="list-style-type: none"> ➤ Fraud with intent to evade tax ➤ Negligence or intentional disregard of rules and regulations, without intent to defraud
Cigarette and tobacco taxes	<ul style="list-style-type: none"> ➤ Purchase or possession of unstamped cigarette ➤ Possession of untaxed tobacco
Severance tax	<ul style="list-style-type: none"> ➤ Negligence or disregard for law
Oil and gas withholding	<ul style="list-style-type: none"> ➤ Failure to withhold ➤ Failure to file an annual reconciliation
Fuel tax	<ul style="list-style-type: none"> ➤ Failure or refusal to file or pay or filing of an incorrect or fraudulent return ➤ Selling fuel or blending dyed diesel without a valid license
Passenger mile tax	<ul style="list-style-type: none"> ➤ False or fraudulent return with intent to evade tax ➤ Inclusion of an error in required records, either negligently or knowingly

Collection penalties

Certain collection penalties authorized by law are not specific to particular tax types, but may be imposed for a variety of the taxes the Department administers.

Penalty type	Penalty description
Corporate officer's penalty	A penalty imposed on corporate officers or partnership/LLC members for willful failure to collect, account for, and pay over any tax administered by the Department or for willfully attempting to evade or defeat any such tax or the payment thereof
Recurring distraint warrant penalty (RDWP)	A penalty imposed for the repeatedly failing, neglecting, or refusing to pay delinquencies and thereby requiring the issuance of distraint warrants to enforce the collection of unpaid taxes
Returned check penalty	A penalty imposed for a check remitted to the Department for payment of tax, but that is returned to the Department unpaid due to insufficient funds, a closed account, or a stop payment order

ADDITIONAL RESOURCES

- Colorado statutes
 - § 39-21-109, C.R.S. (imposing interest on underpayments)
 - § 39-21-110.5, C.R.S. (fixing the rate of interest)
 - § 39-22-621, C.R.S. (imposing income tax penalties)
 - §§ 39-28.8-201 and 301, C.R.S. (subjecting marijuana taxes to same penalties as sales tax)
 - § 39-26-118(2), C.R.S. (imposing sales and marijuana tax penalties)
 - §§ 39-26-204(5)(a) and 207, C.R.S. (imposing use tax penalties)
 - § 39-29-115, C.R.S. (imposing severance tax penalties)
 - §§ 39-28-107 and 108, C.R.S. (imposing cigarette tax penalties)
 - §§ 39-28.5-106(4)(b) and 110, C.R.S. (imposing tobacco tax penalties)
 - § 39-27-105, C.R.S. (imposing fuel tax penalties)
 - § 12-47-503(7), C.R.S. (imposing liquor excise tax penalties)
 - §§ 42-3-308 and 309, C.R.S. (imposing passenger mile tax penalties)
 - IFTA Articles of Agreement R1220 and R1230 (imposing IFTA penalties and interest)
 - § 39-26-115, C.R.S. (imposing fraud and negligence penalties for sales and marijuana taxes)
 - § 39-26-714(1)(d), C.R.S. (imposing penalty for unregistered vending machines)
 - § 39-21-116.5, C.R.S. (imposing corporate officer's penalty)
 - § 39-21-114(7), C.R.S. (imposing recurring distraint warrant penalty)
 - § 24-35-114, C.R.S. (imposing returned check penalty)

FYIs represent a good faith effort to provide general information concerning a variety of Colorado tax topics in simple and straightforward language. By their nature, however, FYIs cannot and do not address all taxpayer situations nor do they provide a comprehensive overview of Colorado's tax laws. For this reason, FYIs are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations.

A taxpayer seeking additional guidance regarding the tax consequences of a particular transaction or factual scenario can request a Private Letter Ruling (PLR) or General Information Letter (GIL). Requests for PLRs and GILs must comply with certain requirements, which are currently set forth at 1 Code of Colorado Regulations 201-1, Regulation 24-35-103.5. PLRs are binding upon the Department only with respect to the specific taxpayer that requested the PLR. GILs are for informational purposes only and are not binding on the Department.