



July 7, 2017

Update on Colorado Remote Sellers Law

Last Fall, Wine Institute reported on the Supreme Court's refusal to hear a Colorado-based case on "remote sellers" legislation passed a couple of years ago. The law requires remote sellers to send customer sales reports to the Department of Revenue (DOR) if they do not collect sales taxes on remote purchases in Colorado. With the Court's refusal, enforcement of the law began on July 1, 2017. Over the last two months, the Colorado DOR has been developing a rule to implement the new law. Wine Institute has been involved in the committee devising this rule to ensure that wineries' remote sales are considered in the rulemaking.

The DOR adopted an emergency rule June 30. The rule requires remote sellers that have \$100,000 or more in "Total Gross Sales" (the *de minimus* threshold) to (a) notify the customer at the transactional level that the customer may owe tax on their purchase, and (b) send (via email or mail) an annual purchase summary with tax information to each of their customers that purchased a product. The definition of "Total Gross Sales" includes the total sales of "Colorado Reportable Purchases" made by all entities controlled by or under common control with the "Non-collecting Retailer." A "Colorado Reportable Purchase" does not include a purchase on which sales tax was collected at the time of sale, whether collected by the non-collecting retailer or a third party. In answering a question posed by the Wine Institute, the DOR has averred that wines sold to wholesalers are not included in reportable purchases.

Based on the law that went into effect July 1 and the corresponding rule implementing the law, the Wine Institute recommends that all wineries shipping directly to customers in Colorado collect and remit the tax to avoid (a) the need to calculate whether they fall below or above the *de minimus* standard, and (b) any and all reporting requirements relating to remote sellers transactions.

Winery Direct Shippers that wish to collect and remit Colorado sales and use tax, should download and complete the Sales Tax / Wage Withholding Account Application (CR 0100AP) to request a Retailer's Use Tax Account. For more details, see the attached instructions.

Colorado Sales and Use Tax Information for Out-of-State Direct Wine Shippers

Remote sellers that have no physical presence in Colorado, including Winery Direct Shippers, should complete the Sales Tax / Wage Withholding Account Application to request a Retailer's Use Tax Account

Allow 4-6 weeks for mailed applications to be processed (*see application for mailing instructions*).

Allow 3-4 days for faxed applications to be processed.

Fax Number: 303-866-4176

Attn: Registration Control

- Completed CR 0100AP
- When applying by fax, a copy of a driver's license belonging to one of the owner, partner or corporate officer's listed on your application must be attached.

How to Register for a Retailer's Use Tax Account:

- Download and complete the paper Sales Tax / Wage Withholding Account Application (CR 0100AP) to request a Retailer's Use Tax Account. (It is not possible to apply for a Retailer's Use Tax Account online.) www.colorado.gov/pacific/sites/default/files/CR0100.pdf.
- Direct Wine Shipper applicants should enter "NO" to the *Section A Box 1 question, Do you have a Department of Revenue Account Number*. Do not enter your excise tax account number.
- The retailer's use tax license does not require a deposit or license fee, and does not expire.
- The Colorado use tax of 2.9 percent should be collected by vendors who have no business location in the state but sell products in Colorado. RTD/CD and RTA local taxes must also be collected, if applicable. A separate Retailer's Use Tax Return, form DR 0173 must be attached for each RTA use tax that is reported.
- You may begin collecting CO sales and use tax from consumers on the date entered in *Section C Box 2b. First Day of Sales*. It is permissible to begin collecting tax on sales on the date that you report in this box even if you have not yet received your license.
- Delivery and freight charges are generally not taxable so long as the charges are both separable from the purchase and separately stated on the customer invoice. The charges are considered separable from the purchase if they are for service performed after the property is offered for sale and the seller allows the buyer to use the seller's transportation service or to use alternative transportation service, including but not limited to the buyer picking up or taking the property from the seller's location.
- Retailer's Use Tax Returns can be filed online through www.Colorado.gov/RevenueOnline or by completing and mailing in form DR 0173 <https://www.colorado.gov/pacific/sites/default/files/DR0173.pdf>.
- The filing frequency depends on the amount of tax collected each month: \$15 or less/month – file annually; less than \$300/month – file quarterly; \$300/month or more – file monthly.

Resources:

- Colorado Sales and Use Tax General Information and Reference Guide <https://www.colorado.gov/pacific/sites/default/files/DR0099.pdf>
- FYI 62: Guidelines for Determining When to Collect State-Collected Local Sales Tax <https://www.colorado.gov/pacific/sites/default/files/Sales62.pdf>
- FYI 5: Sales Tax Information for Out-of-State Businesses <https://www.colorado.gov/pacific/sites/default/files/Sales05.pdf>