



**COLORADO**  
**Department of Revenue**  
Taxation Division

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## Notice of Revised Proposed Rule

To All Interested Parties,

Pursuant to section 24-4-103(4)(a), C.R.S., the Colorado Department of Revenue, Division of Taxation is making available a revised proposed rule in advance of the hearing scheduled for November 2, 2023. The Department issued a notice of proposed rulemaking on September 25, 2023, for proposed Rule 39-26-703–1 and proposed Rule 39-26-703–2. The Department has revised proposed Rule 39-26-703–2 to incorporate the contents of proposed Rule 39-26-703–1. A statement and basis and purpose for the revised proposed rule and a redline version of the revised proposed rule appear on the following pages of this notice.

### Revised Proposed Rule:

- **Rule 39-26-703–2. Buyer’s Claims for Refund of Sales or Use Tax Paid.** The purpose of this rule is to prescribe, pursuant to section 39-26-703(2)(d), C.R.S., the form for making an application for refund of sales or use taxes and the data, information, and documentation an applicant must provide. The rule also provides guidance regarding protective refund claims for sales and use tax paid to the seller and the penalty imposed for incomplete refund claims.

The public rulemaking hearing for the revised proposed rule will take place **10:00 a.m. on November 2, 2023**, at **[1881 Pierce Street, Entrance B, Room 110, Lakewood, CO 80214](#)**. Entrance B is on the west side of the building at the northern end.

Those interested in attending the hearing remotely should **[register to participate virtually](#)**. The Department has created a **[Virtual Rulemaking Hearing Guide](#)** that provides more information for participants. The Department encourages remote participants to participate through video conference because of additional participation features. Participants are welcome to use a webcam to appear by video but can also leave their video camera off. If you would like to virtually attend the rulemaking hearing, please **[register to participate virtually](#)**.

Parties wishing to attend or participate by teleconference should connect as follows:

**Phone Number: 1 (669) 900-6833**

**Meeting ID: 813 6426 8625**

The Department will accept oral and written comments on the revised proposed rule. Oral comments will be accepted at the rulemaking hearing. Written comments may be submitted to **[dor\\_taxrules@state.co.us](mailto:dor_taxrules@state.co.us)** in advance or in lieu of oral commentary at the hearing and will be accepted until 5:00 p.m. on November 2, 2023.

DEPARTMENT OF REVENUE

Taxation Division

SALES AND USE TAX

1 CCR 201-4

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**Rule 39-26-703–2. Buyer’s Claims for Refund of Sales or Use Tax Paid.**

**Basis and Purpose.** The bases for this rule are sections 39-21-112(1), 39-26-702, and 39-26-703, C.R.S. The purpose of this rule is to prescribe, pursuant to section 39-26-703(2)(d), C.R.S., the form for making an application for refund of sales or use taxes and the data, information, and documentation an applicant must provide. The rule also provides guidance regarding [protective refund claims for sales and use tax paid to the seller and](#) the penalty imposed for incomplete refund claims.

- (1) **General Rule.** Any applicant filing a refund claim after the effective date of this rule for sales tax paid to a seller must comply with the requirements of this rule. For the purpose of this rule, unless context otherwise requires, an “applicant” includes both the purchaser who paid the sales tax for which the refund claim is filed and any person who prepares the refund claim, in whole or in part, on the purchaser’s behalf. An applicant does not include a seller who is claiming a sales tax refund that the seller will distribute to the purchaser pursuant to section 39-26-703(2.5), C.R.S.
- (2) **Required Data, Information, and Documentation.** Except as otherwise provided in paragraphs (7) and (8) of this rule, an applicant must submit with their claim for refund of sales tax paid:
  - (a) a completed Department form DR 0137B, Claim for Refund of Tax Paid to Vendors, signed by the purchaser and the preparer, if any, including:
    - (i) the purchaser’s name, address, and either their:
      - (A) Colorado account number;
      - (B) social security number (if the purchaser is an individual); or
      - (C) federal employer identification number (if the purchaser is a corporation, partnership, or other legal entity); and
    - (ii) a description of the purchaser’s business activity and the products or services it provides (if any);
  - (b) a complete itemization of all purchases included in the claim, pursuant to paragraph (3) of this rule;
  - (c) invoices, purchase orders, and receipts, pursuant to paragraph (4) of this rule;
  - (d) proof of payment, pursuant to paragraph (5) of this rule; and
  - (e) any additional data, information, and documentation required by paragraph (6) of this rule based on the nature of the claim.
- (3) **Itemization of Purchases.**

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- (a) With respect to each purchased item or service included in a refund claim, the claim must include, in an electronic or paper spreadsheet approved by the Department:
- (i) the seller's name;
  - (ii) except as otherwise provided in paragraph (3)(b) of this rule, the seller's Colorado account number (CAN) or federal employer identification number (FEIN);
  - (iii) the date of the purchase;
  - (iv) the invoice number for the purchase;
  - (v) the sales price for the item before tax;
  - (vi) except as otherwise provided in paragraph (3)(c) of this rule, the amount of state, city, county, and special district sales tax paid, each stated separately;
  - (vii) indication of whether a copy of the invoice has been submitted with the claim;
  - (viii) indication of whether a copy of proof of payment has been submitted with the claim;
  - (ix) a brief description of the item or service purchased;
  - (x) an explanation of how the item or service is used; and
  - (xi) an explanation of how the item or service qualifies for exemption or is otherwise not subject to tax.
- (b) *Seller's Account Number.* Refund applicants must make a good faith effort to obtain the Colorado account number (CAN) or federal employer identification number (FEIN) for the seller of every item and transaction included in the refund claim. If the applicant is unable to obtain the CAN or FEIN for the seller, despite the applicant's good faith effort, because the seller is no longer in business, refuses to provide their CAN or FEIN to the applicant, or for any other reason, the applicant must include with their refund claim information that allows the Department to identify the seller's CAN or FEIN.
- (c) *Separate Statement of Local Sales Taxes.* If the purchases included in a refund claim were made in the conduct of business by the purchaser, the applicant must separately state in their refund claim the amount of state, city, county, and special district sales tax paid, as required by paragraph (3)(a)(vi) of this rule. If the purchases included in a refund claim were not made in the conduct of business by the purchaser, the applicant is not required to separately state in their refund claim the amount of state, city, county, and special district sales tax paid.
- (4) **Proof of Purchase.** Except as otherwise provided in paragraphs (4)(c) and (4)(d) of this rule, an applicant must submit with their refund claim copies of invoices pursuant to this paragraph (4). The applicant must submit with their refund claim copies of the invoices provided to the applicant by the seller in connection with the purchase.
- (a) *Number of Invoices Required with Claim.*
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- (i) In the case of a refund claim that includes one hundred or fewer separate invoices, the applicant must submit with their refund claim copies of each invoice included in the refund claim.
  - (ii) In the case of a refund claim that includes more than one hundred separate invoices, but not more than five thousand separate invoices, the applicant must submit with their refund claim copies of at least one hundred invoices included in the claim plus twenty-five percent of the total number of invoices included in the refund claim in excess of one hundred invoices.
  - (iii) In the case of a refund claim that includes more than five thousand separate invoices, but not more than ten thousand separate invoices, the applicant must submit with their refund claim copies of at least one thousand three hundred twenty-five invoices included in the claim plus twenty percent of the total number of invoices included in the refund claim in excess of five thousand invoices.
  - (iv) In the case of a refund claim that includes more than ten thousand separate invoices, the applicant must submit with their refund claim copies of at least two thousand three hundred twenty-five invoices included in the claim plus two and one-half percent of the invoices included in the refund claim in excess of ten thousand invoices.
- (b) *Representation Required in Invoices Submitted with Claim.* The invoices submitted with the refund claim pursuant to this paragraph (4) of this rule must include:
- (i) a copy of at least one invoice from each seller included in the refund claim;
  - (ii) a copy of at least one invoice from each calendar month included in the refund claim;
  - (iii) a copy of at least one invoice with respect to each type of exemption included in the claim; and
  - (iv) copies of all invoices for which proof of payment is provided pursuant to paragraph (5) of this rule.
- (c) If a seller does not provide the applicant an invoice for a particular transaction included in a refund claim, the applicant may submit with their refund claim a copy of the receipt from the transaction, in lieu of an invoice.
- (d) If a seller does not provide the applicant either an invoice or a receipt for a particular transaction included in a refund claim, the applicant may submit with their refund claim a copy of the purchase order for the transaction, in lieu of either an invoice or a receipt.
- (e) An applicant may not submit with their refund claim accounting records, internal memos, or other documentation that is not an invoice, receipt, or purchase order to satisfy the requirements of this paragraph (4).
- (5) **Proof of Payment.** Along with their refund claim, an applicant must provide proof of payment pursuant to this paragraph (5). For the purpose of this paragraph (5), the term “invoice” includes any receipt or purchase order submitted with a refund claim pursuant to paragraph (4)(c) or (4)(d) of this rule, respectively.

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- (a) *Number of Invoices for Which Proof of Payment is Required.* Except as provided in paragraph (5)(b) of this rule, refund applicants must provide with their refund claim proof of payment for the number of invoices prescribed by this paragraph (5)(a).
- (i) In the case of a refund claim that includes one hundred or fewer separate invoices, the applicant must submit with their refund claim proof of payment for each invoice included in the refund claim.
  - (ii) In the case of a refund claim that includes more than one hundred separate invoices, the applicant must submit with their refund claim proof of payment for at least one hundred invoices plus two tenths percent of the invoices included in the refund claim in excess of one hundred invoices.
- (b) *Limitation for Sales from the Same Seller, During the Same Period, and for the Same Exemption Type.* Notwithstanding the provisions of paragraph (5)(a) of this rule, a refund applicant is not required to provide proof of payment for more than twenty-five percent of the invoices included in the refund claim that:
- (i) were from the same seller;
  - (ii) occurred during the same calendar quarter; and
  - (iii) qualified for the same exemption type.
- (c) *Representation Required in Proof of Payment Submitted with Claim.* Proof of payment submitted with the refund claim pursuant to this paragraph (5) must include:
- (i) proof of payment for at least one purchase made from each seller included in the refund claim;
  - (ii) proof of payment for at least one purchase made in each calendar month included in the refund claim; and
  - (iii) proof of payment for at least one purchase made with respect to each type of exemption included in the claim.
- (d) *Types of Proof of Payment.* Proof of payment required pursuant to this paragraph (5) must be furnished in the following forms.
- (i) *Canceled Check.* For any payment the purchaser made by check, the applicant must submit with their refund claim a copy of the front and back of the cancelled check.
  - (ii) *Electronic Payments.* For any payment the purchaser made electronically, the applicant must submit with their refund claim a copy of the bank statement reflecting the payment or EFT transaction details and confirmation.
  - (iii) *Payment Processing Services.* For any payment the purchaser made using payment processing services provided by a third party, the applicant must submit with their refund claim a copy of the account statement or other documentation from the third party detailing the payment.
  - (iv) *Payments Made with Credit Cards or Purchasing Cards.* For any payment the purchaser made with a credit card or purchasing card, the applicant must submit

with their refund claim a copy of the credit card or purchasing card statement reflecting the payment.

- (v) *Other Payments.* For payments the purchaser made in any form not described in paragraphs (5)(d)(i) through (5)(d)(iv) of this rule, the applicant must submit with their refund claim documentation verifying the payer, payee, amount, date, and confirmation of the payment. An applicant may not submit with their refund claim accounting records, internal memos, or other documentation created by the purchaser in order to satisfy the requirements of this paragraph (5).

(6) **Additional Data, Information, and Documentation Required for Certain Claims.**

- (a) *Exempt Use of Gas or Electricity.* Along with any refund claim for exempt use of gas or electricity pursuant to section 39-26-102(21)(a), C.R.S., the applicant must submit:
  - (i) a completed copy of form DR 1666, *Sales Tax Exempt Certificate Electricity & Gas for Industrial Use*; and
  - (ii) computations and documentation reflecting the applicant's exempt and non-exempt use of gas or electricity, including:
    - (A) in the case of exempt usage determined by utility study, a copy of the utility study report; or
    - (B) in the case of exempt usage estimated based on square footage, a blueprint of the applicant's facility or business location.
- (b) *Machinery Used in an Enterprise Zone.* Along with any refund claim for machinery used in oil and gas exploration or production that is exempt under section 39-30-106, C.R.S., the applicant must provide with their refund claim the American Petroleum Institute (API) well number for the well at which the machinery is used within the enterprise zone. In lieu of the API well number, the applicant may provide the latitude and longitude for the geographic location of the well.
- (c) *Computer Software.* Along with any refund claim for computer software that is excluded from the definition of "tangible personal property" pursuant to section 39-26-102(15)(c), C.R.S., the applicant must submit:
  - (i) in the case of computer software, the use of which is not governed by a tear-open nonnegotiable license agreement, as defined in section 39-26-102(15)(c)(II)(G), C.R.S., a copy of the written license agreement or contract signed by the licensor and the licensee; or
  - (ii) in the case of computer software that is not delivered in a tangible medium, as defined in section 39-26-102(15)(c)(II)(F), C.R.S., documentation demonstrating the computer software was:
    - (A) provided through an application service provider, as defined in section 39-26-102(15)(c)(II)(A), C.R.S.;
    - (B) delivered by electronic computer software delivery, as defined in section 39-26-102(15)(c)(II)(C), C.R.S.; or
    - (C) transferred by load and leave computer software delivery, as defined in section 39-26-102(15)(c)(II)(D), C.R.S.

(7) **Requests for Permission to Submit Alternate Forms of Documentation.** No less than forty-five calendar days prior to submitting a refund claim, an applicant may request permission from the Department to submit with their claim an alternate form of documentation in lieu of the documentation required by paragraphs (4), (5), and (6) of this rule. A request to submit an alternate form of documentation must explain how the alternate form of documentation provides sufficient evidence in support of the claim in a manner comparable to the documentation required by paragraphs (4), (5), and (6) of this rule. Such permission, if granted by the Department, applies only to the specific refund claim for which it is requested. A request to submit an alternate form of documentation is not itself a refund claim and, therefore, cannot satisfy the requirement in section 39-26-703(2)(d), C.R.S., regarding the deadline for filing a claim.

(8) **Protective Claims.**

(a) Protective Claims Defined.

(i) For the purpose of this paragraph (8), a protective claim is a present claim for refund of sales or use tax paid to the seller:

(A) that is contingent on future events, such as the resolution of pending litigation or reasonably expected changes in the tax law, other legislation, or regulations;

(B) where the future event is unlikely to occur until after the time period for filing a claim for refund expires such that the claim's validity cannot be determined when it is filed; and

(C) that the Department may immediately allow or disallow once the contingency is resolved.

(ii) A refund claim is not a protective claim merely because the claimant labels it as such. For example, a refund claim that fails to state an actual amount of the claim or provide required documentation because of the taxpayer's failure to compile records, rather than from a stated contingency affecting the amount of the claim, is not a protective claim.

(b) Requirements for Protective Claims. A protective claim must satisfy all of the following requirements:

(i) The claim must be in writing and signed by the claimant.

(ii) The claim must include the claimant's name, address, and either social security number (if the claimant is an individual) or federal employer identification number or Colorado account number (if the claimant is a corporation, partnership, or other legal entity).

(iii) The claim must identify and describe the contingencies upon which it depends.

(iv) The claim must clearly alert the Department to the nature of the claim.

(v) The claim must identify the specific calendar month(s) for which the refund is sought.

(c) Processing of Protective Claims. The Department has discretion in deciding how to process protective claims. In general, it is in the interests of the Department and

taxpayers to delay action on protective claims until the pending litigation or other contingency is resolved.

- (ad) Required Data, Information, and Documentation. A refund applicant may submit a valid protective claim that satisfies all of the requirements of ~~Rule 39-26-703-1 and~~ paragraphs (2)(a) and (8) of this rule ~~may be submitted by the applicable deadline pursuant to section 39-26-703(2)(d), C.R.S.,~~ without the data, information, and documentation required by paragraphs (2)(b) through (2)(e) and (3) through (6) of this rule. ~~Except as otherwise provided in paragraph (8)(b) of this rule,~~ the refund applicant must perfect the claim by submitting ~~the any additional~~ data, information, and documentation required by paragraphs (2)(b) through (2)(e) and (3) through (6) of this rule, or withdraw the claim, within sixty calendar days of the earlier of:
- (i) notification from the Department that the refund claim is not a protective claim pursuant to this paragraph (8)~~Rule 39-26-703-1~~; or
  - (ii) the resolution of the contingency upon which the protective claim is based, plus any additional time requested by the applicant and allowed by the Department for reasonable cause shown.
- ~~(b) — An applicant may request, and the Department may allow for reasonable cause shown, additional time beyond the sixty calendar days allowed in paragraph (8)(a) of this rule to submit the data, information, and documentation required by paragraphs (2)(b) through (2)(e) and (3) through (6) of this rule.~~
- (e) Penalty Assessment for Incomplete Claims. If the Department identifies an application for refund at the time of filing as a protective claim filed in order to preserve the right to a refund prior to the expiration of the statute of limitations and all of the requirements of this paragraph (8) are met, the Department shall determine if the claim for refund is subject to the penalty under section 39-26-703(5)(a)(I)(A), C.R.S., after the claim for refund is perfected as described in paragraph (8)(d) of this rule. However, the identification of a refund claim as a protective claim does not preclude the Department from deciding how to process it (see paragraph (8)(c) of this rule).
- (9) **Penalty for Incomplete Refund Claims.** Subject to the requirements of section 39-26-703(5)(c)(II), C.R.S., and paragraph (9)(b) of this rule, a penalty equal to five percent of the total refund claimed is imposed pursuant to section 39-26-703(5)(a)(I)(A), C.R.S., if a refund claim totaling five thousand dollars or more is found to be materially incomplete.
- (a) *Incomplete Claims.* Under section 39-26-703(5)(b)(I), C.R.S., a claim for refund is subject to the penalty if it is incomplete. A claim for refund is incomplete if it does not include both:
    - (i) the form required by paragraph (2)(a) of this rule; and
    - (ii) substantially all of the pertinent data, information, and documentation required by section 39-26-703(2)(d), C.R.S., and this rule.
  - (b) *Notification and Period to Correct or Withdraw.*
    - (i) Prior to assessing a penalty for an incomplete claim for refund, the Department must notify the purchaser, or the preparer of the claim, if any, that the claim appears to be incomplete.

- (ii) The notification the Department provides to the purchaser, or the preparer of the claim, if any, must specify the pertinent data, information, and documentation that appears to be missing.
- (iii) The purchaser, or the preparer of the claim, if any, must, within sixty calendar days of the date of the notice, plus any additional time allowed by the Department for reasonable cause shown either:
  - (A) correct any omission by providing the missing data, information, and documentation and demonstrating why the claim is not incomplete, or
  - (B) withdraw the claim for refund.
- (c) *Requests for Additional Time to Provide Required Data, Information, and Documentation.*
  - (i) An applicant may request additional time to submit the data, information, and documentation required by this rule. The Department may allow additional time for reasonable cause shown. An applicant may make a request for additional time either at the time the applicant submits their refund claim or after submitting their refund claim.
  - (ii) Any refund claim submitted with a request for additional time to provide the data, information, and documentation required by this rule must, at a minimum, include:
    - (A) the information required by paragraphs (2)(a)(i) and (2)(a)(ii) of this rule;
    - (B) identification of the time period included in the claim;
    - (C) a general statement about the types of purchased items included in the claim and the basis on which the items are exempt or nontaxable;
    - (D) a reasonable estimate of the total amount of tax included in the claim;
    - (E) a statement acknowledging the claim is incomplete and identifying the types of required data, information, and documentation not included with the claim;
    - (F) an explanation of the reasonable cause for which additional time is requested; and
    - (G) the amount of additional time requested, not to exceed one hundred and eighty calendar days from the date of the request.
- (d) *Penalty Assessment.* If the purchaser, or the preparer of the claim, if any, does not within sixty calendar days of the date of the notice, plus any additional time allowed by the Department either correct the omission or withdraw the claim, the Department will impose the penalty pursuant to section 39-26-703(5)(a)(I)(A), C.R.S. The executive director shall give the person against whom the penalty is assessed written notice of the penalty in accordance with section 39-21-105.5, C.R.S. Within thirty days after such notice is mailed, the person against whom the penalty was assessed may petition the executive director for a hearing on the notice in the manner provided in section 39-21-103, C.R.S., and may appeal to the district court in the manner provided in section 39-21-105, C.R.S. The Department may waive the penalty for good cause demonstrated by the applicant.

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- (10) **Additional Documentation May Be Required.** Notwithstanding any provision of this rule, the Department may require a refund applicant to provide any additional data, information, or documentation it reasonably determines is necessary for the evaluation and processing of a refund claim. Refund applicants must maintain and provide to the Department upon request invoices and proof of payment with respect to each sales transaction included in the refund claim. The Department shall not assess a penalty pursuant to section 39-26-703(5)(a)(I)(A), C.R.S., with respect to any additional data, information, or documentation that is not required by this rule.

**COLORADO DEPARTMENT OF REVENUE  
OFFICE OF TAX POLICY**

**STATEMENT OF BASIS AND PURPOSE**

**Buyer's Claims for Refund of Sales or Use Tax Paid  
Rule 39-26-703-2  
1 CCR 201-4**

**Basis**

The statutory bases for this rule are sections 39-21-112(1), 39-26-702, and 39-26-703, C.R.S.

**Purpose**

The purpose of this rule is to prescribe, pursuant to section 39-26-703(2)(d), C.R.S., the form for making an application for refund of sales or use taxes and the data, information, and documentation an applicant must provide. The rule requires applicants to provide a complete itemization of purchases included in the claim, along with proof of purchase and proof of payment for a specified portion of the invoices included in the claim. Under the rule, refund applicants may request permission to submit alternate forms of documentation. The rule establishes additional data, information, and documentation requirements for certain claims.

The rule also provides guidance regarding protective refund claims for sales and use tax paid to the seller by defining protective claims and establishing requirements for them. The rule advises that the Department has discretion in deciding how to process protective claims, but also that the Department will generally delay action on protective claims until the pending litigation or other contingency is resolved. Additionally, the rule prescribes the deadline for submitting any required data, information, and documentation required after resolution of the contingency upon which the protective claim is based. The rule also explains the application of the penalty for incomplete claims to protective claims.

Furthermore, the rule also provides guidance regarding the penalty imposed for incomplete refund claims and permits applicants to request Department approval for additional time to provide the required data, information, and documentation.

Finally, the rule acknowledges that the Department may require a refund applicant to provide any additional data, information, or documentation it reasonably determines is necessary for the evaluation and processing of a refund claim.