



Transportation
Investment
Advocacy Center

American Road & Transportation Builders Association

DELIVERY FEE MODEL LANGUAGE REPORT

FEBRUARY 2023

EXECUTIVE SUMMARY

In 2021 Colorado became the first (and only state to-date) to implement fees on retail deliveries. Senate Bill (SB 260), which also included new fees on fuel consumption, revamped the state's transportation funding system. The retail delivery fee is a flat \$0.27 imposed on each retail order and adjusts annually based on inflation

Taxes or fees on retail deliveries, like the one in Colorado, offer a new way to achieve sustainable transportation funding. They ensure delivery vehicles, which are often heavier, make frequent trips, and put additional wear and tear on roads and bridges, contribute to infrastructure maintenance and improvements.

This Transportation Investment Advocacy Center™ (TIAC) report outlines model legislative language imposing retail delivery fees on consumers. It provides information that transportation advocates can share with state lawmakers for the consideration of enacting similar legislation.

Some parts of the model legislation language are highlighted and underlined. They are variables—effective dates, fee/tax rates, and names of state funds—that can be filled-in with state-specific information.

Following the model language, a Q&A section outlines things to consider when implementing a delivery fee. This includes different ways revenues can be used, how fees are administered on out-of-state deliveries, and which types of vehicles are subject to the fee.

An addendum provides more detail about Colorado's retail delivery fee and gives a brief update on how the state has fared in its implementation and administration processes.

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SECTION 1 – DEFINITIONS

For the purposes of this act:

1. “*Retailer*” is defined as a person or entity doing business in the state, including out-of-state sellers, and selling good or services to a consumer. For the purposes of this act, a retailer is any person or entity selling only a tangible good to a consumer.
2. “*Consumer*” is defined as a person or entity who purchases a tangible good from a retailer.
3. “*Motor vehicle*” is defined as any self-propelled vehicle designed for travel on public roads and used to transport tangible goods for the purposes of this act.
4. “*Non-motorized vehicle*” is defined as any that is not self-propelled by motor or otherwise.
5. “*Tangible good*” is defined as the personal property purchased from the retailer and delivered to the consumer.
6. “*Retail sale*” is defined as the sale of a tangible good from a retailer to a consumer.
7. “*Third-party delivery company*” is defined as a company through which the delivery of a tangible good is handled.
8. “*Standard per-ride fee*” is defined as the per-ride fee for vehicles that exclusively operate on motor fuel through an internal combustion engine.
9. “*Wholesale company*” is defined as a person or entity that purchases tangible goods directly from a producer, manufacturer, or other vendor for the purposes of selling them to retailers to be sold to consumers.

SECTION 2 – TRANSPORTATION RETAIL DELIVERY FEE

1. Beginning MM, DD, YYYY a retailer shall, on behalf of the consumer, collect a retail delivery fee or tax of XX cent(s) or XX percent of the total value of the retail sale. The fee or tax is applied to each individual retail sale that results in a retail delivery in order to fulfill the retail sale.
 - a. OPTIONAL: Beginning MM, DD, YYYY a retailer shall, on behalf of the consumer, collect a retail delivery fee or tax of XX cent(s). The fee or tax is applied to each individual retail delivery.
2. The rate shall be adjusted annually as set forth in section (4) of this bill.

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SECTION 3 – FEE COLLECTION

1. The fee shall be administered by the Department of Revenue.
 - a. The fees or taxes outlined in section (2) shall be collected by the retailer on behalf of the consumer. The retailer is then responsible for remitting collected fees or taxes to the Department of Revenue.
 - b. The Department of Revenue shall require the retailer on or before the XX day of each month or within XX days of the end of each fiscal year to submit:
 - i. The number of sales made subject to the retailer delivery fee or tax.
 - ii. The total dollar amount of fees collected during the reporting period.
 - c. The Department of Revenue will automatically register all businesses with a sales or use tax license for a retail delivery fee account.
 - i. OPTIONAL: The Department of Revenue will, by MM, DD, YYYY, establish a process to register and license retailers for purposes of reporting and remitting retail delivery fees or taxes. Retailers with aggregate sales in the state of \$XX or more are required to obtain a delivery fee/tax license.
2. The Department of Revenue shall then transfer the remitted delivery fees or taxes to the [State Transportation Fund] to be used for transportation purposes. Remitted fees will be transferred to the fund annually, based on total dollar amount of collected fees from the previous year.

SECTION 4 – INDEXING (OPTIONAL)

1. At the end of each fiscal year, the fees outlined in section (2) will be adjusted annually by:
 - a. Option 1: the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U) as calculated by the U.S. Bureau of Labor Statistics (BLS).
 - b. Option 2: the percentage change in the National Highway Construction Cost Index (NHCCI) as calculated by the Federal Highway Administration (FHWA).
2. Annual adjustments shall not cause the delivery fee to fall below the rate outlined in section (2).
3. The Department of Revenue shall notify all retailers XX days in advance of the annual fee adjustment of the new rate.

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SECTION 5 – EXEMPTIONS (OPTIONAL)

1. The fees outlined in section (2) shall not apply to:
 - a. Deliveries made by a wholesale company to a retailer for purposes of re-selling to an end-consumer.
 - b. Retailers with annual revenues of \$XX or less.
 - c. Deliveries made by a non-motorized vehicle.

Q&A

Q: How are funds generated from delivery fees typically used?

A: Colorado crafted its fee to have revenues distributed into separate enterprises to then be used for specified transportation projects managed by each individual enterprise. For this report we simply designated that all remitted fees or taxes be distributed into a state highway where funds can only be used for transportation projects. In general, revenue distribution will vary state to state.

See the table in Appendix B for more information.

Q: Are retailers required to register a separate account with the state in order remit delivery fee returns?

A: Colorado simply auto registered all business that were already in the Department of Revenues system for sales and use tax remittance. However, a state could decide to create a separate system that retailers would have to register for to file delivery fee or tax returns. The model language includes options for both methods.

Q: Are out-of-state retailers who make a sale delivered into the state required to remit the tax?

A: In Colorado the only qualifier for whether a retailer is responsible for retail fee or tax collection is if they also collect sales and use taxes. The nexus for determining whether an out-of-state retailer is required to collect sales and use taxes varies state to state. In Colorado the threshold is \$100,000, that is an out-of-state retailer whose sales within the state exceed \$100,000 a year are required to remit state sales taxes and therefore also required to remit retail delivery fees. The model language report includes an additional option to determine whether a retailer is responsible for the delivery fee or tax based on the amount of sales made in the state.

Q: What if one single order requires multiple deliveries? Does the fee apply to each delivery made?

A: Colorado bases its delivery fee on the number of orders, not the number of deliveries. If a single order requires more than one delivery only one \$0.27 fee will be applied. However, a state could choose to charge the fee or tax per-delivery instead of per-order. The model language includes options for both.

Q: Are deliveries made by non-motorized vehicles, such as a bicycle, required to pay the tax?

A: Colorado specifies that only deliveries made by motor vehicles are required to pay the tax. However, it is unclear how the state will differentiate deliveries made by a motor vehicle and a non-motorized vehicle, like a bicycle. The model language includes an explicit exemption for deliveries made by non-motorized vehicles.

COLORADO'S RETAIL DELIVERY FEE

BACKGROUND AND FEE STRUCTURE

SB 260, which contains Colorado's new retail delivery fee, was signed into law June 2021. The fee took effect the following July officially establishing a flat \$0.27 fee. It is comprised of six smaller fees but is reported on a company invoice as a single fee. The six smaller fees represent the portion of the fee that is appropriated to state funding enterprises – government run entities with the power to issue revenue bonds. For example, the Clean Fleet Retail Delivery Fee helps fund operations of the Clean Fleet Enterprise, which supports and incentivizes the use of zero-emission vehicles. Overall, the fee is expected to raise \$1.2 billion for transportation infrastructure over the next decadeⁱ.

Fee Type	Rate July 2022 to June 2023 ¹
Community Access Retail Delivery Fee	\$ 0.0690
Clean Fleet Retail Delivery Fee	\$ 0.0530
Clean Transit Retail Delivery Fee	\$ 0.0300
General Retail Delivery Fee	\$ 0.0840
Bridge and Tunnel Retail Delivery Fee	\$ 0.0270
Air Pollution Mitigation Retail Delivery fee	\$0.0070
Total Retail Delivery Fee	\$0.27

IMPLEMENTATION CHALLENGES

The Colorado Department of Revenue did not issue final rules on the new delivery fee before it took effect. Upon taking effect, many retailers in the state had no idea how to begin complying with reporting rules and struggled to update accounting systems in timeⁱⁱ. As a result of the confusion and complexities, the Department agreed to postpone enforcement of reporting requirementsⁱⁱⁱ. Leaders in the state are now calling for legislation to make it easier for businesses to comply. Gov. Jared Polis (D) is planning to push for certain exemptions for small businesses^{iv}. President of the Colorado Senate Steve Fenberg (D), who co-sponsored the law creating the delivery fee, went on record supporting updates to address unforeseen issues^v. He and members of Sales and Use Tax Simplification Tax Force expressed a willingness to ease requirements on a controversial provision that requires each receipt to list the delivery fee as a separate line item. This requirement forces retailers to update their accounting software and can be costly. Some legislators are also concerned about the potential for home-rule cities to tax the fee – including the delivery fee as part of the total price of a product for sales tax purposes^{vi}.

¹ The \$0.27 is subject to annual inflationary adjustments.

REFERENCES

ⁱ “Revised Fiscal Note”, Colorado Legislative Council Staff.

https://leg.colorado.gov/sites/default/files/documents/2021A/bills/fn/2021a_sb260_r1.pdf.

ⁱⁱ “Confusion swirls as Colorado imposes new retail delivery fee, catching businesses by surprise”, The Denver Gazette.

https://denvergazette.com/news/business/confusion-swirls-as-colorado-imposes-new-retail-delivery-fee-catching-businesses-by-surprise/article_9adf61f4-fedd-11ec-a76c-d32b3bedaf4e.html?clearUserState=true

ⁱⁱⁱ “Ibid.”

^{iv} “Colorado Lawmakers Eye Adjustments to Retail Delivery Fee”, Bloomberg Tax. <https://news.bloombergtax.com/daily-tax-report-state/colorado-lawmakers-eye-adjustments-to-retail-delivery-fee>

^v “Colorado Senate president willing to nix frustrating provision of retail delivery fee”, Denver Business Journal.

<https://www.bizjournals.com/denver/news/2022/08/17/colorado-retail-delivery-fee-fenberg-receipt-nix.html>

^{vi} “Colorado businesses say new retail delivery fee hurts them more than Amazon, DoorDash.

<https://www.bizjournals.com/denver/news/2022/07/14/colorado-new-retail-delivery-fee-sprawling-taxes.html>