

VERMONT DEPARTMENT OF TAXES

ACT 72 OF 2023 REPORT ON TAX REFUND NOTICE TO PURCHASERS

SUBMITTED TO

House Committee on Commerce and Economic Development
House Committee on Ways and Means
Senate Committee on Economic Development, Housing and General Affairs
Senate Committee on Finance

SUBMITTED BY

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INTRODUCTION

Pursuant to [Act 72 of 2023, Sec. 7 \(https://legislature.vermont.gov/bill/status/2024/H.471\)](https://legislature.vermont.gov/bill/status/2024/H.471), on or before January 15, 2024, the Department of Taxes is tasked with submitting a written report to the Vermont General Assembly committees of jurisdiction recommending legislative action needed to require licensed operators, restaurants, and sellers to notify purchasers of the occurrence of erroneously or illegally collected Sales and Use Tax, Meals and Rooms Tax, Alcoholic Beverages Tax, and any associated Local Option Tax.

The report must also include recommendations for legislative action regarding:

- Purchasers' right to request a refund for overpayment of taxes.
- A threshold based on a dollar amount and/or a number of transactions that would trigger a requirement for sellers to notify purchasers of overpayment of taxes.
- Options for types, forms, and duration of required notices.
- The role of the Department in identifying erroneous or illegal tax collection, alerting license holders of their notice requirements, and providing oversight of license holders' compliance with the required notices.
- Other relevant considerations, including tax information confidentiality requirements.

By focusing on notice requirements and purchaser rights, this study presents some novel questions relating to tax administration, compliance, and consumer protection. The Department conducted comparative research on how other states approach these issues with regard to trust taxes, primarily through examining Sales and Use Tax statutes¹. The Department learned that there is little to no precedent across the nation for sellers to be required to notify purchasers about a sales tax collection error. We also learned that, under current law, Vermont is among the more purchaser-friendly states when it comes to ease of requesting a refund due to erroneous tax collection. In this report, the Department shares how Vermont fits into the national landscape on this topic and explores any further directions that Vermont legislators could choose to move in to support purchasers and sellers in situations where trust taxes are overcharged in error.

CURRENT LAW

Situations can arise where a seller erroneously or illegally collects trust taxes that were not owed from one or more purchasers. Among other reasons, an overpayment may happen because the seller inadvertently charged tax on an exempt product or transaction, potentially due to a lack of awareness of a legal change, or the seller may incorrectly apply local option tax in a jurisdiction that does not have one. A statutory refund process exists to address these overcollections. See, 32 V.S.A. §§ 9245 and 9781.

¹ Under current law, there are several Vermont tax types referred to as “trust” taxes: primarily sales and use tax, meals and rooms tax, and alcoholic beverages tax. These are called “trust” taxes because the purchaser owes the tax, but generally does not pay it directly to the State. Instead, the seller collects the tax from the purchaser at the point of sale on behalf of the State, and then holds those collections “in trust” until the due date for remittance (payment) to the State. 32 V.S.A. §§ 9245 and 9781.

Refund requests for overpayment of trust taxes may be made by either the purchaser who actually paid the tax or the seller who collected the tax, but only by the latter if the seller establishes that the purchaser has been repaid the amount of the requested refund. To be eligible for refund, the tax must have been erroneously or illegally collected or computed. Refunds must be requested within three years of the due date for the return. Return (and payment) due dates depend on the amount of the seller's tax liability for the immediately preceding calendar year. The due date may be annually, for sellers with low dollar amounts of tax liability, or it may be quarterly or monthly, depending on the tax type and the amount of the seller's annual tax liability. See, 32 V.S.A. §§ 9245 and 9781.

CURRENT DEPARTMENT PRACTICES

Under the current statutory process, if a purchaser notices that they were overcharged tax and decides to contact the Department, then the Department's first response is typically to advise the purchaser to contact the business to request a refund. This is generally considered the most streamlined way for a purchaser to get their refund. If the purchaser is unable to obtain a refund from the seller, or if they simply prefer to work through the Department instead, they have the right to request a refund directly from the Department.

Note that the purchaser's right to request a refund was recently clarified in the Meals and Rooms Tax chapter in Act 72 of 2023, Sec. 5, to mirror the same treatment allowed under the Sales and Use Tax chapter. See, 32 V.S.A. §§ 9245(b) and 9781. This addition was considered a technical clarification, as statute had previously been interpreted as providing the same refund rights for sales and use tax and meals and rooms tax. For context, most other states include meals as one category of sales subject to the sales tax. Many also include accommodations (rooms) as another sales category under their sales tax type. In Vermont, we have two different statutory chapters that impose separate tax types: sales and use tax and meals and rooms tax (as well as the alcoholic beverages tax).

The Department has a form specifically for refund requests, [Form REF-620](#), which was updated in 2023 to clarify that it is for both sellers' and individual purchasers' refund requests.

NATIONAL CONTEXT - RIGHT TO A REFUND

Most states generally handle trust tax refunds similarly to Vermont. There is some differentiation, however, in the way states handle a purchaser's right to request a refund. Vermont is among the more purchaser-friendly states in terms of refunds, allowing the purchaser to seek a refund directly from the State without any conditions or requirements. Among 46 states (including Washington, D.C.) with a sales tax, only 16 other states allow this flexibility.

What kind of conditions or requirements apply to trust tax refunds in other states? Generally, the limitations on refund requests (from either the purchaser or the seller) aim to protect the state against potentially double issuing a refund and/or to reduce fraud. As outlined below, a majority of states (33 of 46) do this by either eliminating the possibility of a purchaser refund outright, or by placing requirements on the purchaser to ensure the seller is not also seeking a refund simultaneously. Examples of the latter include requiring the purchaser to get documentation from the seller that formally "assigns the right" of requesting a refund to the purchaser, or requiring the purchaser to document that a refund request from the seller was already refused. Interestingly, a handful of states use monetary thresholds ranging from \$1 to \$2,500 in this context to set a minimum allowable refund amount.

Key takeaways:

- 9 states do not allow purchasers to directly petition the state in any circumstances.
- 8 states require the purchaser to document that they first approached the seller for a refund and were refused.
- 5 states require the purchaser to obtain the right to petition the state for a refund from the seller in a written document (i.e., purchaser must be “assigned the right” from the seller).
- Another 3 states require documentation of either seller refusal of a refund or seller assignment of the right to petition the state for a refund.
- 3 states require some other requirement to be satisfied before a purchaser can petition the state for a refund.
- 5 states require varying monetary thresholds (ranging from \$1 to \$2,500) for the purchaser to petition the state for a refund.

Other states put limitations on the seller instead, or in addition to, the purchaser limitations listed above. These safeguards often require a guarantee that the purchaser is getting their refund from the seller to ensure the seller is not being unjustly enriched. Vermont is among the 18 states that require the seller to first show evidence that it has refunded the purchaser before it can be eligible for a refund from the state.

HURDLES TO ADMINISTRATING NOTICE REQUIREMENTS

In reviewing this area of law across other states, the Department did not find examples of laws that require sellers to notify purchasers of overpayment of taxes. While it is certainly possible to legislate a notice requirement, there are significant hurdles to implementing or enforcing the notice in a meaningful way. Those hurdles are both practical and legal, which may explain, at least in part, why other states do not have any analogous notice requirements for sellers to communicate with purchasers.

Administrative hurdles for the Department start with the Department’s limited access to information exchanged between sellers and purchasers due to the “trust tax” system predicated on the seller-purchaser relationship. Regulating this relationship is not a role that the Department, or any tax department, typically holds because that is more a matter of consumer protection. Additionally, the Department has finite resources to devote to monitoring or enforcing notices amid its other competing compliance priorities. Lastly, the Department has strict statutorily imposed tax confidentiality requirements.

Confidentiality laws are by far the most significant factor in narrowing the role that a tax department can play in regulating the relationship between seller and purchaser. The big takeaway from the confidentiality requirements in Vermont law under 32 V.S.A. § 3102 is that the Department can work with an individual seller on any compliance issue, but cannot make the seller’s tax issue public in any way. A key piece of statute is excerpted here:

“No present or former officer, employee, or agent of the Department of Taxes shall disclose any return or return information to any person who is not an officer, employee, or agent of the Department of Taxes except in accordance with the provisions of this section.” 32 V.S.A. § 3102(a).

Vermont statute allows the Commissioner to administer taxes in a way that may require disclosure of certain tax information, but only to the extent that the disclosure is reasonably necessary for “the verification of a tax return or claim for [...] refund; the investigation, assessment, determination, litigation, or collection of a tax liability of any person; [...] or the enforcement of a tax statute.” 32 V.S.A. § 3102(b)(4) and (d)(2).

The Department regularly engages directly with sellers around collection issues within the parameters of our confidentiality provisions. Engagement is a crucial tool for the Department to ensure compliance before issues escalate into more formal – and resource-intensive – administrative procedures. “Leads” for this kind of direct, collaborative engagement may arise when the Department notices a pattern with the seller’s tax return (especially common with erroneous collection of local option tax around the roll-out of a new local option tax jurisdiction), when an outreach or refund request is made by a purchaser, as the result of an audit discovery, or at the request of the business itself. In a vast majority of cases, businesses are trying to comply with the law and do things right. Any discussion of legislation formalizing a public notice process should consider the existing, beneficial engagement between front line staff and businesses that supports the latter in correcting collection errors.

It is important to note that Vermont’s tax system, like all tax systems around the country, is built primarily on voluntary compliance. The Department would generally have to rely on sellers to self-identify erroneous collection and to take steps to notify purchasers. In that sense, requiring notice would add another layer of administration onto the existing system without fundamentally changing the efficacy of getting purchasers their refunds. Additionally, sellers may make good faith attempts at locating or contacting purchasers to give refunds, only to be unsuccessful because of lack of information. This is especially challenging in cash payment situations where the seller has no identifying information for purchasers. Whatever the level of outreach, a key part of the equation will always be some level of purchaser responsibility. The purchaser needs to be aware and provide evidence of erroneous collection. From another perspective, even if a seller takes reasonable steps to refund or notify purchasers of their right to a refund, a purchaser may simply not interact with the seller frequently enough, or in the right manner, to receive that notice of erroneous collection.

In the scenario where a purchaser is aware of an overcollection issue, they may not know that they already have the right under current law to request a refund directly from the Department. This is absolutely an area for improved taxpayer education that became evident in the context of erroneous collection of local option tax in non-taxing jurisdictions. This context has become a platform for the Department to strengthen its outreach and education efforts to individuals who have been directly impacted. One way that the Department has responded is to add more detail to a local option tax web page that addresses what a purchaser should do when mischarged local option tax by a seller. See, <https://tax.vermont.gov/business/local-option-tax>.

LEGISLATIVE OPTIONS

Act 72 charged the Department with recommending statutory parameters, including thresholds, to require sellers to notify purchasers of erroneous trust tax collection and of the purchasers’ right to a refund. In conducting comparative research on other states’ laws, the Department has learned that Vermont is among the more purchaser-friendly states in terms of allowing purchasers to seek a refund directly from the State

without any conditions or requirements. The Department did not find examples of laws in other states that require sellers to notify purchasers of overpayment of taxes. Given that this is an unprecedented area for state tax legislation, the Department recommends against legislative action that would make Vermont the first state to impose such a requirement.

Over the last 18 months, the Department has actively enhanced efforts around responding to erroneous collection leads while onboarding new local option tax jurisdictions and formalized regular follow-up to correct issues. This momentum has pushed the Department to better publicize a purchaser's right to a refund and improve the process around claiming a refund from the State. The Department is committed to furthering education around purchasers' refund rights in our outreach and resources. The Department further continues to benefit from the strong rapport between sellers and the Department's business tax unit when working directly with sellers to correct errors. These existing processes naturally align with the Department's tax confidentiality requirements and serve to bolster both businesses' and individuals' trust in the Department.

If the Vermont General Assembly decides to enact new notice requirements, some potential next steps could include enacting standard notice language and requiring sellers to post that notice in their place of business, both physical location and on any online presence. That notice could also include a statement of purchasers' right to a refund.