

DEPARTMENT OF REVENUE

Taxation Division

INCOME TAX

1 CCR 201-2

Rule 39-22-555. Electric Bicycle Tax Credit.

Basis and Purpose. The bases for this rule are sections 39-21-112(1) and 39-22-555, C.R.S. The purpose of this rule is to provide guidance regarding the electric bicycle tax credit.

(1) **General Rule.** For the income tax years set forth in section 39-22-555, C.R.S., a qualified retailer is allowed a credit for each qualifying sale made during the qualified retailer's income tax year to a qualified purchaser. A qualified purchaser is not eligible to claim this credit even if a qualified retailer did not provide the qualified purchaser a discount at the time of the qualifying sale.

(2) **Definitions.** As used in this rule, unless the context otherwise requires:

(a) "Marketplace" has the same meaning as set forth in section 39-26-102(5.8), C.R.S.

(b) "Marketplace facilitator" has the same meaning as set forth in section 39-26-102(5.9), C.R.S.

(c) "Marketplace seller" has the same meaning as set forth in section 39-26-102(6), C.R.S.

(d) "Multichannel seller" has the same meaning as set forth in section 39-26-102(6.2), C.R.S.

(e) As used in section 39-22-555(2)(f), C.R.S., "person who is a resident of the state" means a resident individual and does not include corporations, partnerships, or any other legal entity.

(f) "Qualifying sale" means the sale of a new qualified electric bicycle that meets all qualifying criteria to be eligible for the credit including:

(i) the sale must be made by a qualified retailer;

(ii) the sale must be a retail sale;

(iii) the sale must be sourced to Colorado pursuant to section 39-26-104(3)(a), C.R.S.;

(iv) the sale must be made to a qualified purchaser;

(v) the qualified retailer must provide, at the time of the retail sale of the new qualified electric bicycle, the required discount to the qualified purchaser; and

(vi) the qualified retailer must collect, at the time of the retail sale of the new qualified electric bicycle, the required affidavit from the qualified purchaser.

(3) **Qualified Retailer.**

- (a) A retailer satisfies the requirements established in section 39-22-555(2)(g)(II) and (III), C.R.S., only if:

 - (i) the retailer timely filed a monthly sales tax return for at least twelve months;
 - (ii) each monthly sales tax return reported a tax liability the retailer was required to remit; and
 - (iii) the retailer paid the sales taxes due on each monthly sales tax return.
- (b) A retailer that files sales tax returns and remits sales taxes on a basis less frequent than monthly pursuant to section 39-26-109, C.R.S., cannot be a qualified retailer. As such, a seasonal business, or retailer that filed zero returns for one or more of the past twelve months, cannot be a qualified retailer.
- (c) A retailer that operates from more than one location is a qualified retailer if at least one location meets the requirements set forth in section 39-22-555(2)(g), C.R.S., and this paragraph (3).
- (d) Special Rules.

 - (i) In the case of a combined group pursuant to section 39-22-303, C.R.S., the combined group is a qualified retailer if at least one member meets the qualifications in section 39-22-555(2)(g), C.R.S., and this paragraph (3).
 - (ii) In the case of an affiliated group of C corporations that elect to file a consolidated return pursuant to section 39-22-305, C.R.S., the consolidated group is a qualified retailer if at least one member meets the qualifications in section 39-22-555(2)(g), C.R.S., and this paragraph (3).
 - (iii) In the case of a partnership or S corporation, the partnership or S corporation is a qualified retailer if it meets the qualifications in section 39-22-555(2)(g), C.R.S., and this paragraph (3).
 - (iv) In the case of an entity that, for federal income tax purposes, is disregarded as an entity separate from its owner, such as a single-member LLC that has not elected to be classified as an association, the member or owner may claim the credit if the disregarded entity meets the qualifications in section 39-22-555(2)(g), C.R.S., and this paragraph (3).
- (4) **Registration.** A retailer that meets the criteria set forth in section 39-22-555(2)(g), C.R.S., and paragraph (3) of this rule must, prior to selling a new qualified electric bicycle for which the retailer intends to claim this credit, register as a qualified retailer with the Department. A retailer must register as a qualified retailer in its Revenue Online account as set forth in this paragraph (4).

 - (a) A qualified retailer must register as such under its income tax account.

 - (i) A qualified retailer that is an affiliated corporation included in a combined report pursuant to section 39-22-303, C.R.S., or a consolidated return pursuant to section 39-22-305, C.R.S., must register under the account for the parent corporation or the filing member if the filing member is not the common parent.
 - (ii) A qualified retailer that is a partnership or S corporation must register under the account for the partnership or S corporation.

- (iii) A qualified retailer that is, for federal income tax purposes, disregarded as an entity separate from its owner, such as a single-member LLC that has not elected to be classified as an association, must register under the account of the member or owner.
 - (b) Once a retailer is approved as a qualified retailer, it remains a qualified retailer unless and until it notifies the Department that it wishes to revoke or withdraw its designation as a qualified retailer, or the Department revokes the registration because a qualified retailer no longer meets the qualifications to receive the credit.
 - (c) *Advanced Payments Registration.* A retailer that registers as a qualified retailer pursuant to section 39-22-555(3)(e)(III), C.R.S., and this paragraph (4) satisfies the requirement to register with the Department for advanced payment pursuant to section 39-22-629(2)(a), C.R.S., and such registration remains in effect unless and until the retailer revokes or withdraws its registration or the Department revokes the registration because the retailer no longer meets the qualifications to receive the credit or advanced payments.
- (5) **Required Affidavit.**
 - (a) A qualified retailer shall, at the time of the retail sale, collect from a purchaser an affidavit prescribed by the Colorado Energy Office affirming the purchaser is a Colorado resident individual who has not previously purchased a qualified electric bicycle that was discounted by a qualified retailer claiming this credit in the same calendar year.
 - (b) As part of the process of collecting a required affidavit from a purchaser, a qualified retailer shall review the documentation a purchaser provides and ensure the box on the required affidavit that is checked or listed corresponds with the document the qualified retailer reviewed. A qualified retailer shall not retain a copy of the documentation for its records.
 - (i) If a purchaser provides a Colorado driver license or Colorado identification card, a qualified retailer shall verify the Colorado driver license or Colorado identification card is not expired.
 - (ii) If a purchaser provides one of the alternative proof of residency documents listed on the required affidavit, a qualified retailer shall review the documentation to verify it is dated within three months from the date of the purchase of the new qualified electric bicycle.
- (6) **Required Discount.**
 - (a) The discount required pursuant to section 39-22-555(3)(b), C.R.S., and this paragraph (6) must be shown on a written or electronic receipt, invoice, or other document offered to the purchaser that details the purchase price. The required discount must be listed as a separate and distinct item from the price of the items purchased and any applicable taxes or fees and must be in an amount that conforms to section 39-22-555(6), C.R.S., for the income tax years set forth in section 39-22-555(6), C.R.S.
 - (b) The requirements of section 39-22-555(3)(b), C.R.S., and this paragraph (6) are not satisfied if the written or electronic receipt, invoice, or other document offered to the purchaser that details the purchase price:
 - (i) shows only the discounted price of the qualifying sale without explicitly showing the required discount as a separate and distinct item from the price of the item purchased; or

- (ii) shows only the discounted price of the qualifying sale and states in a description section that the discounted price includes the required discount.
 - (c) The discount required pursuant to section 39-22-555(3)(b), C.R.S., and this paragraph (6) does not affect the purchase price, determined pursuant to section 39-26-102(7), C.R.S., for the purpose of computing sales tax for the new qualified electric bicycle. The applicable sales tax is calculated on the full purchase price without reduction for the required discount provided by the qualified retailer to the qualified purchaser.
- (7) **New Qualified Electric Bicycle.** A qualified electric bicycle must be new at the time of purchase to qualify for the credit. An electric bicycle is new if it is being transferred for the first time from a manufacturer, dealer or agent of a manufacturer, or retailer to the end user or consumer. Qualified electric bicycles used by a qualified retailer as a rental are not considered new.
 - (a) Electric bicycles previously sold and returned to the qualified retailer are considered new on a subsequent qualifying sale if:
 - (i) the qualified retailer provided a full refund of the purchase price (less the required discount) to the original qualified purchaser; and
 - (ii) the electric bicycle that was returned is marketed and sold in new condition for the full price on a subsequent sale and is not discounted because it was previously returned.
 - (b) Electric bicycles used by a qualified retailer for the purpose of demonstration are considered new if the electric bicycle:
 - (i) was not used by a qualified retailer as a rental; and
 - (ii) is marketed and sold in new condition for the full price and is not discounted because it was previously used for purposes of demonstration.
- (8) **Sales Made Through Marketplaces.**
 - (a) A marketplace seller or multichannel seller is considered the qualified retailer when making qualifying sales in or through a marketplace owned, operated, or controlled by a marketplace facilitator. A marketplace facilitator cannot claim any credit for any qualifying sales made by a marketplace seller or multichannel seller in or through the marketplace facilitator's marketplace.
 - (b) The marketplace seller or multichannel seller must meet the requirements set forth in section 39-22-555(2)(g), C.R.S., and paragraph (3) of this rule to be a "qualified retailer" regardless of whether the marketplace facilitator meets those requirements.
 - (c) The marketplace seller or multichannel seller must register pursuant to paragraph (4) of this rule to make qualifying sales.
 - (d) A marketplace seller or multichannel seller must ensure that all requirements of section 39-22-555, C.R.S., and this rule are met for a sale to be considered a qualifying sale including collecting and submitting the affidavit required by paragraph (5) of this rule.
- (9) **Returns.** No credit is allowed if the qualified electric bicycle is returned to the qualified retailer. However, a returned qualified electric bicycle is eligible for a credit on a subsequent sale if it meets the conditions required to be considered new pursuant to paragraph (7) of this rule.

(10) **Quarterly Reports.** A qualified retailer shall electronically submit quarterly reports to the Department that detail the number of qualifying sales made by the qualified retailer during the reporting period. As part of submitting a complete quarterly report, the qualified retailer shall submit all required affidavits the qualified retailer collected pursuant to section 39-22-555(3)(b), C.R.S., and paragraph (5) of this rule from qualified purchasers during the reporting period.

(a) Filing Quarterly Reports.

- (i) If the qualified retailer is an affiliated corporation included in a combined report pursuant to section 39-22-303, C.R.S., or consolidated return pursuant to section 39-22-305, C.R.S., the parent corporation or the filing member, if the filing member is not the common parent, must file the quarterly reports through its own Revenue Online account.
- (ii) If the qualified retailer is a partnership or S corporation, the partnership or S corporation must file the quarterly reports through its own Revenue Online account.
- (iii) If the qualified retailer is, for federal income tax purposes, disregarded as an entity separate from its owner, such as a single-member LLC that has not elected to be classified as an association, the member or owner must file the quarterly reports through its own Revenue Online account.

(b) Quarterly Reports. Each quarterly report must include all qualifying sales made and the corresponding affidavits collected during the quarter. A qualified retailer that made no qualifying sales during the reporting period need not file a quarterly report reporting no sales.

- (i) First Quarter. The first quarter consists of the first, second, and third months of the qualified retailer's tax year.
- (ii) Second Quarter. The second quarter consists of the fourth and fifth months of the qualified retailer's tax year.
- (iii) Third Quarter. The third quarter consists of the sixth, seventh, and eighth months of the qualified retailer's tax year.
- (iv) Fourth Quarter. The fourth quarter consists of the ninth, tenth, and eleventh months of the qualified retailer's tax year.
- (v) Final Report. The qualified retailer must file a separate final electronic report that includes any qualifying sales made and the corresponding affidavits collected during the twelfth month of the qualified retailer's tax year and any qualifying sales made and the corresponding affidavits collected during any prior month in the qualified retailer's tax year but not included in any quarterly report filed for the first, second, third, or fourth quarter of the qualified retailer's tax year. The qualified retailer must file the final report by the due date for the qualified retailer's income tax return, determined without regard to any extensions. However, the final report must be filed before the qualified retailer files their income tax return pursuant to section 39-22-601, C.R.S.

(c) Deadlines for Submitting Quarterly Reports. A qualified retailer must file each quarterly report after the close of the quarter and no later than the fifteenth day following the close of the quarter.

- (d) Failure to Report Qualifying Sales Timely. If the qualified retailer fails to include any qualifying sale or corresponding affidavit or both in a timely filed quarterly report, the qualified retailer may include that qualifying sale or corresponding affidavit or both in a quarterly report filed for a subsequent quarter within the same tax year. Any qualifying sale or corresponding affidavit or both not included in any quarterly report for the tax year must be included in the final report required by paragraph (10)(b)(v) of this rule. If the qualified retailer fails to include the qualifying sale or corresponding affidavit or both in any quarterly report or final report submitted for the tax year, the qualified retailer may not claim a credit or request an advanced payment for the unreported qualifying sale.
- (e) Reporting Returns on Quarterly Reports. Each qualifying sale that is returned to the qualified retailer is not eligible for the credit. The qualified retailer shall deduct the credit amount previously earned from the returned qualifying sale when reporting the amount of credit earned on the quarterly report. Each quarterly report must include all qualifying sales that are returned to the qualified retailer during the quarter.
- (i) If the qualified retailer fails to include any returned qualifying sale in a timely filed quarterly report, the qualified retailer must include that returned qualifying sale in a quarterly report filed for a subsequent quarter within the same tax year.
- (ii) Any returned qualifying sale made during the twelfth month of the qualified retailer's tax year and any returned qualifying sales not included in any quarterly report for the tax year must be included in the final report required by paragraph (10)(b)(v) of this rule.
- (11) **Disallowed Credits.** If for any reason a credit is disallowed, the qualified retailer is liable for the disallowed credit regardless of whether the retailer is able to recover the required discount provided with respect to the disallowed credit from the qualified purchaser.
- (12) **Books and Records.** It is the duty of every qualified retailer to keep and preserve for a period of four years following the due date of the income tax return suitable records of all qualifying sales, and the corresponding affidavits, made by the qualified retailer, and such other books, accounts, or records as may be necessary to determine the amount of credit for which the qualified retailer is eligible.