

MinnesotaCare Taxes

2021 Legend Drug Use Tax

Instructions for filing your MinnesotaCare Legend Drug Use Tax Return (Minnesota Statutes, Chapter 295)

Contact Us

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Contents

What's New	1
Receive Email Updates	1
Register for a Minnesota Tax ID Number	2
General Information.	2-4
Who Must File	
Taxable Presence (Nexus)	
Definition of Legend Drugs	
Tax Expense Transfer	
Electronic Filing and Payment Requirements	
Filing Due Date	
Estimated Tax Payments	
Reporting Business Changes	
Recordkeeping	
Statute of Limitations	
Electronic Payment Options	
How to File Your Annual Return	5-6
How to Amend Your Return.	6-7
Manage Your Profile in e-Services.	7

This information is available in alternate formats.

Your 2021 Annual Return is Due March 15, 2022

File your return electronically starting **January 24, 2022.**

Go to our website and log in to e-Services to file or pay.

What's New

Updated Webpage for Legend Drug Use Tax

We updated our Legend Drug Use Tax webpage. It now includes information on:

- How the tax applies to remote sellers and compounding pharmacies
- Registering for a Minnesota Tax ID Number and Legend Drug Use Tax account
- Transferring the cost of the tax, or the "tax expense"
- Calculating the lines on your annual return

Go to our website at www.revenue.state.mn.us and enter **Legend Drug Use Tax** in the Search box to find the webpage.

Out-of-State Pharmacies

File a Legend Drug Use Tax Return

Out-of-state pharmacies selling legend drugs to consumers in Minnesota can no longer report these sales on a MinnesotaCare Wholesale Drug Distributor Tax Return.

You must now report this information on a Legend Drug Use Tax Return and file the return by March 15. Use these instructions for information on how to register for a Legend Drug Use Tax account and prepare your annual return.

2021 Tax and Interest Rates

The tax rate is 1.8% for 2021. This rate applies to the price you paid for legend drugs that you delivered or received in Minnesota during 2021 (regardless of when you purchased the legend drugs).

The interest rate is 3% for 2021.

Receive Email Updates

Stay informed about MinnesotaCare taxes! Sign up to receive email updates about:

- Filing and payment due date reminders
- New or updated publications
- Educational tax seminars
- Tax law changes

To sign up, go to our website at www.revenue.state.mn.us and subscribe for email updates. Enter your email address and select **MinnesotaCare Tax Updates** from the list.

Register for a Minnesota Tax ID Number

You need a Minnesota Tax ID Number and a MinnesotaCare Legend Drug Use Tax account to file returns and make estimated tax payments. A Minnesota ID number is a seven-digit number assigned to you when you register with the Minnesota Department of Revenue.

If you do not have a Minnesota ID number, you must apply for one. You can apply on our website at www.revenue.state.mn.us or by contacting Business Registration (refer to *Contact Us* on Page 1). You can add a Legend Drug Use Tax account at the same time you apply for a Minnesota ID number.

If you currently have a Minnesota ID number for other Minnesota taxes, you can add a Legend Drug Use Tax account to your number. To add an account, go to our website and log in to e-Services or contact Business Registration.

General Information

Who Must File

You must file a MinnesotaCare Legend Drug Use Tax Return if you have taxable presence, or nexus, in Minnesota and either of the following apply:

- You are located outside of Minnesota and you sell, deliver, or distribute legend drugs into Minnesota that are not subject to Wholesale Drug Distributor Tax
- You are located in Minnesota and you receive legend drugs from a vendor that is not subject to Wholesale Drug Distributor Tax

These situations are common examples of when you are subject to the tax:

- You are an out-of-state pharmacy that sells legend drugs at retail to consumers in Minnesota (including by mail order)
- You are a Minnesota pharmacy that purchases legend drugs from a vendor that is not subject to Wholesale Drug Distributor Tax

To determine if a vendor is subject to tax, check your purchase invoice for a MinnesotaCare tax expense charge or contact the vendor for verification.

Remote Sellers

Remote sellers are out-of-state businesses that sell products to customers in Minnesota without having physical presence, or nexus, in the state.

Remote sellers that sell, deliver, or distribute legend drugs into Minnesota that are not subject to Wholesale Drug Distributor Tax must file a Legend Drug Use Tax Return if they meet one or both of these thresholds during a calendar year:

- 200 or more legend drug sales, deliveries, or distributions into Minnesota
- More than \$100,000 in total price you paid for legend drugs sold, delivered, or distributed into Minnesota (regardless of when you purchased the drugs)

Small Seller Exception for Remote Sellers. Remote sellers that are below both thresholds during a calendar year qualify for the Small Seller Exception and are not subject to tax for that year.

If you qualify for the Small Seller Exception for 2021 and are not registered for Legend Drug Use Tax, you do not need to register or file a return now. If for any calendar year you no longer qualify for the Small Seller Exception, you must register, file a return, and pay tax for that year.

If you qualify for the Small Seller Exception for 2021 and are already registered, refer to *Claiming the Small Seller Exception for Remote Sellers* on Page 6.

For more information on requirements for remote sellers and the Small Seller Exception, go to our website at www.revenue.state.mn.us and enter **MinnesotaCare Remote Sellers** in the Search box.

Taxable Presence (Nexus)

You are subject to Legend Drug Use Tax if you have taxable presence, or nexus, in Minnesota. Taxable presence means you either have physical presence or economic presence in the state.

Physical Presence

You have physical presence in Minnesota if you, a subsidiary, or an affiliate have a location in the state or a representative that does work for you in the state. Representatives include those working in the state, permanently or temporarily. You also have physical presence if you own or lease property in Minnesota.

If you have physical presence in Minnesota, you must file a return every year.

Economic Presence

Economic presence in Minnesota only applies to remote sellers (out-of-state businesses that do not have physical presence in Minnesota and sell, deliver, or distribute legend drugs into the state that are not subject to Wholesale Drug Distributor Tax). Remote sellers have economic presence in Minnesota every year they do not qualify for the Small Seller Exception and must file a return for those years.

General Information (continued)

For more information on taxable presence and for common examples of locations, representatives, and property that establish physical presence in Minnesota, go to our website at www.revenue.state.mn.us and enter **MinnesotaCare Taxable Presence** in the Search box.

Definition of Legend Drugs

Legend drugs are drugs or gases required by federal law to be sold or dispensed in a container labeled with one of the following statements:

- “Caution: Federal law prohibits dispensing without prescription”
- “Rx only”

Legend drugs or gases must be classified by the U.S. Food and Drug Administration (FDA) as a drug and not a device.

Nutritional products, blood, and blood components are not considered legend drugs and are not subject to Legend Drug Use Tax.

Blood derivatives, however, that are derived from blood, plasma, or serum through a chemical manufacturing process, are considered legend drugs and are taxable.

Tax Expense Transfer

Pharmacies may transfer and recover the cost of MinnesotaCare Legend Drug Use Tax, or the “tax expense”, by passing it through to insurers or pharmacy benefits managers.

You cannot transfer the tax expense in a deceptive manner or transfer it when no tax is owed.

Pharmacies must base the transferred tax expense on the wholesale price the pharmacy paid for the legend drugs, and not on the retail price paid to the pharmacy.

Electronic Filing and Payment Requirements

Annual Return

You must file your annual return electronically using our e-Services system (refer to *How to File Your Annual Return* on Page 5).

Payments

You must pay electronically if your tax liability was more than \$10,000 for any one Minnesota business tax during the previous fiscal year (July 1 – June 30).

If you are required to pay any Minnesota business tax electronically for one year, you must pay all Minnesota business taxes electronically for all future years. We will send you a notice the first year you are required to pay electronically.

A 5% payment method penalty will be assessed on any non-electronic payments if you do not pay electronically when required.

Filing Due Date

Annual Return

The regular due date to file your annual Legend Drug Use Tax Return and pay any additional tax due for the previous calendar year is March 15.

The return must be filed even if there is no additional tax due. If March 15 falls on a weekend or holiday, returns filed the next business day are considered timely.

Extension of Time to File

If you cannot file your return by the regular due date, you may request a 60-day filing extension. To request an extension for your 2021 return, call 651-282-5533 no later than March 15, 2022.

A filing extension does not extend the time you have to pay your tax. You must pay any tax you owe by March 15 or you will be assessed penalties and interest. To pay electronically, go to our website and log in to e-Services.

Estimated Tax Payments

You must make estimated tax payments for the year if your total annual Legend Drug Use Tax was more than \$500 for the previous year and will be more than \$500 for the current year.

If you are not required to make estimated tax payments for the year, you may pay your tax when you file your annual return.

Due Dates

Estimated tax payments are due quarterly by April 15, July 15, and October 15 of the current year and January 15 of the following year.

If a due date falls on a weekend or holiday, payments electronically made or postmarked the next business day are considered timely.

Each estimated tax payment must be at least the smaller of either:

- 90% of one-fourth of your actual tax for the current year
- One-fourth of your actual tax for the previous year

To calculate your estimated tax payments, use the *MinnesotaCare Estimated Tax Instructions* for Legend Drug Use Tax available on our website.

General Information (continued)

Additional Charge for Underpaid Estimated Tax

If any payment is paid late or is less than the required amount, an additional charge will be assessed. Our e-Services system will calculate any additional charge when you file your annual return.

Reporting Business Changes

Be sure to update your business information if you do any of the following:

- Change the name, address, owner/officers, or ownership of your business
- Make any other changes (such as email address, phone number, or contact person)
- Need to add or close a tax account
- Close your business
- Are no longer required to file and pay the tax

To update business information, go to our website and log in to e-Services. For more information, refer to *Manage Your Profile in e-Services* on Page 7.

Recordkeeping

Keep all internal accounting records and external third-party documentation that support the amounts reported on your Legend Drug Use Tax Return.

This includes any paper records and any records you receive or store electronically. Some examples of paper and electronic records include:

- Legend drug purchase invoices
- Audited and compiled financial statements
- All other summary and detail reports, schedules, ledgers, and journals
- Computer system or software back-ups

If you are audited, you will be asked to provide between 4 and 6 years of records. All documentation must be made available for the department to review.

Statute of Limitations

The department may audit your return within 3½ years from the due date of the return or the date you filed the return, whichever is later. If there is an error in the amount of tax you reported, and the difference between the original amount and the correct amount is 25% or more, we have 6½ years to audit the return. There is no time limit if we find you have filed a false or fraudulent return, or if you have not filed a return.

Electronic Payment Options

e-Services

You can make payments using our online e-Services system. You will need your bank routing and account numbers. You cannot use a foreign bank account. Go to our website at www.revenue.state.mn.us and log in to **e-Services**.

To be timely, you must submit your payment and receive a confirmation number on or before the payment due date. If you pay through e-Services, you can view a record of your payments online once they have processed.

Credit or Debit Card

For a fee, you can use your credit or debit card to make a payment. The department uses a third-party vendor to process credit and debit card payments. For more information on how to pay with a card, go to our website at www.revenue.state.mn.us and select **Make a Payment**. Then, select **Credit or Debit Card**.

Automated Clearing House (ACH) Credit

ACH credit payments are initiated by you through your bank. You authorize your bank to transfer funds to the state's bank account. The bank must use ACH file formats, which are available on our website. Your bank may charge you a fee for these payments.

Bank Wire

You can authorize a direct transfer from your bank account to the department. For information on how to make a bank wire transfer, call us at 651-556-3003 or 1-800-657-3909.

How to File Your Annual Return

Your 2021 MinnesotaCare Legend Drug Use Tax Return is due March 15, 2022.

File your return using our e-Services system starting January 24, 2022.

Information You Need to File Your Return

You must file your Legend Drug Use Tax Return electronically using our e-Services system. Go to our website at www.revenue.state.mn.us to log in to e-Services. Before you can file your return, you need this information:

- Your username and password
- Dates and amounts of any estimated tax payments you made for the year
- Total legend drug purchases subject to Legend Drug Use Tax (refer to the *Line Instructions* on this page for help calculating this amount)
- Your bank's nine-digit routing number and your bank account number (if you are making a payment with your return)

You must have a Legend Drug Use Tax account to file a return. To add an account, log in to e-Services or contact Business Registration (refer to *Contact Us* on Page 1).

If you have an account, but the period you are filing is not listed in e-Services, call the MinnesotaCare Taxes Unit at 651-282-5533 so we can add it to your account.

Line Instructions

Use this information when you electronically file your return.

Out-of-State Pharmacies

Report the total price you paid for legend drugs delivered to consumers in Minnesota during the year (regardless of when you purchased the drugs).

Do not include the price you paid for legend drugs delivered into Minnesota that were returned to you during the year.

Minnesota Pharmacies

Report the total price you paid during the year for legend drugs you received from vendors who were not subject to Wholesale Drug Distributor Tax.

Do not include the price you paid for legend drugs:

- Returned to the vendors
- Delivered or shipped outside of Minnesota (that were not returned to you later)

For the definition of legend drugs, refer to Page 3.

Tax

Our e-Services system will calculate your tax. The tax rate for 2021 is 1.8%.

Estimated Tax Payments

Any estimated tax payments you made for the year will be applied to your return. You will be asked to review the payments in e-Services when filing your return. If there are discrepancies between the payments in e-Services and your records, please contact us.

Penalties and Interest

Late Payment Penalty

A late payment penalty is assessed on any tax not paid by March 15. The penalty is 5% of the unpaid tax for every 30-day period (or part of a 30-day period) that your tax is not paid in full, up to 15%.

Late Filing Penalty

There is also a penalty for filing your return after the due date. The late filing penalty is 5% of any unpaid tax.

Extended Delinquency Penalty

If the department sends a written demand to file a tax return and the return is not filed within 30 days, an extended delinquency penalty of 5% of the unpaid tax or \$100, whichever is greater, will be assessed.

This penalty is in addition to any late filing penalty that may be assessed and applies to all unfiled returns, even if you paid the correct amount of tax on time, or do not have a tax liability.

Payment Method Penalty

If you are required to make your tax payments electronically and do not, a 5% penalty will be assessed on any non-electronic payments (such as paper checks or money orders).

How to File Your Annual Return (continued)

Claiming the Small Seller Exception for Remote Sellers

Remote sellers that do not have physical presence (nexus) in Minnesota and sell, deliver, or distribute legend drugs into the state that are not subject to Wholesale Drug Distributor Tax may qualify for the Small Seller Exception. To qualify for the Small Seller Exception, you must meet **both** of the following requirements for a calendar year:

- Less than 200 legend drug sales, deliveries, or distributions into Minnesota
- \$100,000 or less in total price you paid for legend drugs sold, delivered, or distributed into Minnesota (regardless of when you purchased the drugs)

If you qualify for the Small Seller Exception for 2021 and are currently registered for Legend Drug Use Tax, you must notify us by March 15, 2022, using our online e-Services system.

To notify us, follow these steps:

1. Log in to e-Services.
2. Select **Returns and Periods** for your Legend Drug Use Tax account.
3. Select **File Return** for the 2021 period.
4. Review any payments you made for the year.
5. Confirm if you qualify for the Small Seller Exception.
6. If you qualify, enter the total:
 - Number of legend drug sales you made into Minnesota for the year
 - Price you paid for legend drugs sold into Minnesota for the year
7. Follow the prompts to submit a return reporting zero tax.

The return you submit serves as your Small Seller Exception notification for the year.

If you qualify for the Small Seller Exception but the screen to confirm the exception is not available on your annual return in e-Services, contact us at 651-282-5533 or MinnesotaCare.tax@state.mn.us. We will update your e-Services account to include the screen on your return.

For more information on the Small Seller Exception for remote sellers, go to our website at www.revenue.state.mn.us and enter **MinnesotaCare Remote Sellers** in the Search box.

Interest

We charge interest on unpaid tax and penalties from the regular due date of the tax until it is paid in full. The interest rate is determined each year.

The interest rate for 2021 is 3%.

Paying the Balance Due

If you owe additional tax, you can use e-Services to pay at the same time you file your return. You will need your bank routing and account numbers.

If you pay through e-Services, you can view a record of your payments online once they have processed.

If you want to pay electronically another way, refer to the additional payment options on Page 4.

How to Amend Your Return

To adjust your return, you must file an amended return electronically using our e-Services system.

To claim a refund, you must file your amended return within 3½ years of the regular due date for the year you are amending.

Keep all supporting documentation for any amended return you file. All documentation should be made available on request for the department to review. All amended returns are subject to audit.

Filing Instructions

To amend a return, follow these steps:

1. Go to our website at www.revenue.state.mn.us and log in to e-Services.
2. Select **Returns and Periods** for your Legend Drug Use Tax account.
3. Select **View or Change Return** for the return you want to amend.
4. Select **Change** on the return screen.
5. Enter your corrected amounts and the reason you are amending the return.

How to Amend Your Return (continued)

6. Follow the remaining prompts and select **Submit**.

You will receive a confirmation number if your amended return is filed successfully. If you need help or have questions about amending a return, please contact us.

Manage Your Profile in e-Services

Our e-Services system lets you:

- Update your profile information
- Store your email address, phone number, and banking information
- Create access to your and other people's accounts
- Add additional users with varying security, as well as request and approve third-party access

Set Up and Manage Users

Access Types

There are two access types to choose from in e-Services:

- **e-Services Masters** can view, file returns, and/or make payments for one or more accounts. They can add, delete, and change security levels for all users.
- **Account Managers** can view, file returns, and/or make payments for one or more accounts depending on the access level an e-Services Master has set up for the user.

Access Levels

e-Services access level options include:

- **All Access** - allows user to view all information, file returns, make payments, and update account information
- **File** - allows user to view all information and file returns
- **Pay** - allows user to view all information and make payments
- **View** - allows user to only view all information

For instructions on how to create additional logons for users, refer to Help in e-Services.

Two-Step Verification

Two-step verification adds a second layer of security to prevent unauthorized access to your account. You must enter a username, password, and a verification code we send you to log in to your account.

Third-Party Access

Third-party access provides a secure and convenient way for users to manage accounts, file returns, and/or make payments for other businesses.

Both parties must work together to establish this access. First, a user must request third-party access from a customer in e-Services. Second, the customer must approve or deny the access request in e-Services.

For more information, go to our website at www.revenue.state.mn.us and enter **Third-Party Access** in the Search box.