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An Act

SENATE BILL 18-179

BY SENATOR(S) Hill and Williams A., Grantham, Guzman, Baumgardner, Cooke, Coram, Crowder, Holbert, Kagan, Lundberg, Marble, Martinez Humenik, Neville T., Priola, Scott, Smallwood, Sonnenberg, Tate; also REPRESENTATIVE(S) Hooton and Pabon, Coleman, Humphrey, Melton, Rosenthal, Sias, Williams D., Benavidez, Covarrubias, Leonard.

CONCERNING ADJUSTMENTS TO TOTAL GROSS PURCHASES FOR PURPOSES OF CALCULATING THE EXCISE TAX ON TOBACCO PRODUCTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that the purpose of this act is to clarify the law by recognizing that certain credits against the excise tax on tobacco products are really adjustments of distributors' total gross purchases and to extend such an adjustment for sales of tobacco products to out-of-state consumers and thereby retain the businesses that have expanded or opened as a result of the "Cigar On-line Sales Equalization Act", enacted in 2015.

SECTION 2. In Colorado Revised Statutes, 24-22-117, **amend** (2)(c)(II) as follows:

24-22-117. Tobacco tax cash fund - accounts - creation - legislative declaration. (2) There are hereby created in the state treasury the following funds:

(c) (II) The interest and income derived from the deposit and investment of ~~moneys~~ MONEY in the tobacco education programs fund and credited to the tobacco education programs fund may be used to give credit to a wholesaler ~~or distributor~~ for taxes paid on cigarettes ~~or other tobacco products~~ that are bad debts pursuant to ~~sections 39-28-104 and 39-28.5-107, C.R.S. SECTION 39-28-104;~~ except that the interest earned on the tobacco education programs fund shall be used only for that portion of the bad debt attributable to the taxes imposed pursuant to section 21 of article X of the state constitution.

SECTION 3. In Colorado Revised Statutes, 39-28.5-105, **amend** (1) and (3) as follows:

39-28.5-105. Books and records to be preserved. (1) Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer WITHIN THE STATE.

(3) When a licensed distributor sells tobacco products exclusively to the ultimate consumer WITHIN THE STATE at the address given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least three years after the date of the documents, unless the department, in writing, authorizes their destruction or disposal at an earlier date.

SECTION 4. In Colorado Revised Statutes, 39-28.5-107, **amend** (1), (2)(a), (2)(c), and (2)(d); and **add** (3) and (4) as follows:

39-28.5-107. Total gross purchases - reduction - out-of-state sales - returned or destroyed products - definitions. (1) ~~Where~~ IF

tobacco products ~~upon which the tax imposed by this article has been reported and paid~~, are shipped or transported by the distributor to retailers without the state to be sold by those retailers, are shipped or transported by the distributor to a consumer without the state on or after September 1, 2015, ~~but prior to September 1, 2018~~, or are returned to the manufacturer by the distributor or destroyed by the distributor, ~~credit of such tax may be made to the distributor~~ THEN THE DISTRIBUTOR'S TOTAL GROSS PURCHASES ARE ADJUSTED BY THE AMOUNT OF THE OUT-OF-STATE SALES AND THE RETURNED OR DESTROYED TOBACCO PRODUCTS in accordance with regulations prescribed by the department.

(2) (a) ~~Credit shall be given by the department to a distributor for all taxes levied pursuant to this article and section 21 of article X of the state constitution and paid pursuant to the provisions of this article that are~~ A DISTRIBUTOR'S TOTAL GROSS PURCHASES ARE ADJUSTED BY AN AMOUNT EQUAL TO THE DISTRIBUTOR'S bad debts. ~~Such credit shall offset~~ THE ADJUSTMENT APPLIES TO taxes levied pursuant to this ~~article~~ ARTICLE 28.5 and section 21 of article X of the state constitution and paid pursuant to ~~the provisions of this article~~ ARTICLE 28.5 only. No ~~credit shall be given~~ ADJUSTMENT IS PERMITTED unless the bad debt has been charged off as uncollectible on the books of the distributor. Subsequent to receiving the ~~credit~~ ADJUSTMENT, if the distributor receives a payment for the bad debt, the distributor shall be liable to the department for the amount received and shall remit this amount in the next payment to the department under section 39-28.5-106.

(c) ~~If credit is given to a distributor~~ ADJUSTS THE DISTRIBUTOR'S TOTAL GROSS PURCHASES for a bad debt, the person who ordered and received the tobacco products but did not pay the distributor for them ~~shall be~~ IS liable ~~in an amount equal to the credit~~ for the tax imposed in this ~~article~~ ARTICLE 28.5 on the tobacco products FOR WHICH A BAD DEBT IS CLAIMED. Subsequent to receiving the ~~credit~~ ADJUSTMENT, if the distributor receives a payment for the bad debt and the distributor makes a payment to the department, the amount of taxes owed by such person ~~shall be~~ IS reduced by the amount paid to the department.

(d) As used in this subsection (2), "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of tobacco products subject to tax under this ~~article~~ ARTICLE 28.5, that is not otherwise deductible or excludable, that has become worthless or uncollectible, ~~in the~~

~~time after the tax has been paid pursuant to section 39-28.5-106~~, and that is eligible to be claimed as a deduction pursuant to section 166 of the federal "Internal Revenue Code of 1986", as amended. A bad debt shall not include any interest on the wholesale price of tobacco products, uncollectible amounts on property that remain in the possession of the distributor until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, an account receivable that has been sold to a third party for collection, or repossessed property.

(3) THE ADJUSTMENTS PERMITTED UNDER SUBSECTIONS (1) AND (2) OF THIS SECTION ARE BASED ON THE MANUFACTURER'S LIST PRICE OF THE TOBACCO PRODUCTS.

(4) AS USED IN THIS SECTION, "TOTAL GROSS PURCHASES" MEANS THE TOTAL AMOUNT OF TOBACCO PRODUCTS PURCHASED BY A DISTRIBUTOR THAT IS INCLUDED ON THE DISTRIBUTOR'S QUARTERLY RETURN UNDER SECTION 39-28.5-106 AND THAT IS USED FOR PURPOSES OF CALCULATING THE TAX A DISTRIBUTOR PAYS BASED ON THE MANUFACTURER'S LIST PRICE OF THE TOBACCO PRODUCTS PURSUANT TO THIS ARTICLE 28.5.

SECTION 5. Appropriation. (1) For the 2017-18 state fiscal year, \$39,039 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$14,999 for use by the executive director's office for personal services, which amount is based on an assumption that the office will require an additional 0.2 FTE;

(b) \$22,840 for tax administration IT system (GenTax) support; and

(c) \$1,200 for the purchase of document management services.

(2) For the 2017-18 state fiscal year, \$1,200 is appropriated to the department of personnel. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(c) of this section. To implement this act, the department of personnel may use this appropriation to provide document management services for the department of revenue.

(3) (a) Any money appropriated in subsection (1) of this section not expended prior to July 1, 2018, is further appropriated to the department of revenue for the 2018-19 state fiscal year for the same purposes.

(b) Any money appropriated in subsection (2) of this section not expended prior to July 1, 2018, is further appropriated to the department of personnel for the 2018-19 state fiscal year for the same purpose.

SECTION 6. Effective date. This act takes effect upon passage; except that section 4 of this act takes effect July 1, 2018.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
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Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO