

CHAPTER 80

TAXATION

HOUSE BILL 04-1071

BY REPRESENTATIVE(S) Decker, Lee, and Ragsdale;
also SENATOR(S) McElhany, Chlouber, and Jones.

AN ACT**CONCERNING A CREDIT FOR TOBACCO TAXES THAT ARE BAD DEBTS.**

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

SECTION 1. 39-28-104, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

39-28-104. Evidence of payment of tax - credits - redemptions.

(4) (a) CREDIT SHALL BE GIVEN BY THE DEPARTMENT TO A WHOLESALER FOR ALL TAXES PAID PURSUANT TO THE PROVISIONS OF THIS ARTICLE THAT ARE BAD DEBTS. SUCH CREDIT SHALL OFFSET TAXES PAID PURSUANT TO THE PROVISIONS OF THIS ARTICLE ONLY. NO CREDIT SHALL BE GIVEN UNLESS THE BAD DEBT HAS BEEN CHARGED OFF AS UNCOLLECTIBLE ON THE BOOKS OF THE WHOLESALER. SUBSEQUENT TO RECEIVING THE CREDIT, IF THE WHOLESALER RECEIVES A PAYMENT FOR THE BAD DEBT, THE WHOLESALER SHALL BE LIABLE TO THE DEPARTMENT FOR THE AMOUNT RECEIVED AND SHALL REMIT THIS AMOUNT IN THE NEXT PAYMENT TO THE DEPARTMENT UNDER THIS SECTION OR SECTION 39-28-105.

(b) ANY CLAIM FOR A BAD DEBT CREDIT UNDER THIS SUBSECTION (4) SHALL BE SUPPORTED BY ALL OF THE FOLLOWING:

(I) A COPY OF THE ORIGINAL INVOICE ISSUED BY THE WHOLESALER;

(II) EVIDENCE THAT THE CIGARETTES DESCRIBED IN THE INVOICE WERE DELIVERED TO THE PERSON WHO ORDERED THEM; AND

(III) EVIDENCE THAT THE PERSON WHO ORDERED AND RECEIVED THE CIGARETTES DID NOT PAY THE WHOLESALER FOR THEM AND THAT THE WHOLESALER USED REASONABLE COLLECTION PRACTICES IN ATTEMPTING TO COLLECT THE DEBT.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) IF CREDIT IS GIVEN TO A WHOLESALER FOR A BAD DEBT, THE PERSON WHO ORDERED AND RECEIVED THE CIGARETTES BUT DID NOT PAY THE WHOLESALER FOR THEM SHALL BE LIABLE IN AN AMOUNT EQUAL TO THE CREDIT FOR THE TAX IMPOSED IN THIS ARTICLE ON THE CIGARETTES. SUBSEQUENT TO RECEIVING THE CREDIT, IF THE WHOLESALER RECEIVES A PAYMENT FOR THE BAD DEBT AND THE WHOLESALER MAKES A PAYMENT TO THE DEPARTMENT, THE AMOUNT OF TAXES OWED BY SUCH PERSON SHALL BE REDUCED BY THE AMOUNT PAID TO THE DEPARTMENT.

(d) AS USED IN THIS SUBSECTION (4), "BAD DEBT" MEANS THE TAXES ATTRIBUTABLE TO ANY PORTION OF A DEBT THAT IS RELATED TO A SALE OF CIGARETTES SUBJECT TO TAX UNDER THIS ARTICLE, THAT IS NOT OTHERWISE DEDUCTIBLE OR EXCLUDABLE, THAT HAS BECOME WORTHLESS OR UNCOLLECTIBLE IN THE TIME AFTER THE TAX HAS BEEN PAID PURSUANT TO THIS SECTION OR SECTION 39-28-105, 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 CIGARETTES, UNCOLLECTIBLE AMOUNTS ON PROPERTY THAT REMAIN IN THE POSSESSION OF THE WHOLESALER 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.

SECTION 2. 39-28.5-107, Colorado Revised Statutes, is amended to read:

39-28.5-107. When credit may be obtained for tax paid. (1) Where 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 or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with regulations prescribed by the department.

(2) (a) CREDIT SHALL BE GIVEN BY THE DEPARTMENT TO A DISTRIBUTOR FOR ALL TAXES PAID PURSUANT TO THE PROVISIONS OF THIS ARTICLE THAT ARE BAD DEBTS. SUCH CREDIT SHALL OFFSET TAXES PAID PURSUANT TO THE PROVISIONS OF THIS ARTICLE ONLY. NO CREDIT SHALL BE GIVEN UNLESS THE BAD DEBT HAS BEEN CHARGED OFF AS UNCOLLECTIBLE ON THE BOOKS OF THE DISTRIBUTOR. SUBSEQUENT TO RECEIVING THE CREDIT, 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.

(b) ANY CLAIM FOR A BAD DEBT CREDIT UNDER THIS SUBSECTION (2) SHALL BE SUPPORTED BY ALL OF THE FOLLOWING:

(I) A COPY OF THE ORIGINAL INVOICE ISSUED BY THE DISTRIBUTOR;

(II) EVIDENCE THAT THE TOBACCO PRODUCTS DESCRIBED IN THE INVOICE WERE DELIVERED TO THE PERSON WHO ORDERED THEM; AND

(III) EVIDENCE THAT THE PERSON WHO ORDERED AND RECEIVED THE TOBACCO

PRODUCTS DID NOT PAY THE DISTRIBUTOR FOR THEM AND THAT THE DISTRIBUTOR USED REASONABLE COLLECTION PRACTICES IN ATTEMPTING TO COLLECT THE DEBT.

(c) IF CREDIT IS GIVEN TO A DISTRIBUTOR FOR A BAD DEBT, THE PERSON WHO ORDERED AND RECEIVED THE TOBACCO PRODUCTS BUT DID NOT PAY THE DISTRIBUTOR FOR THEM SHALL BE LIABLE IN AN AMOUNT EQUAL TO THE CREDIT FOR THE TAX IMPOSED IN THIS ARTICLE ON THE TOBACCO PRODUCTS. SUBSEQUENT TO RECEIVING THE CREDIT, 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 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, 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.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004, if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to any bad debt that is evidenced by an original invoice that is dated on or after the effective date of this act.

Approved: April 5, 2004