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VIA FEDERAL EXPRESS

Colorado Department of Revenue
Attn: Josh Pens, Director of Tax Policy Analysis
1881 Pierce St.
Entrance B
Lakewood, CO 80214

Colorado Department of Revenue
Attn: Mark Ferrandino, Executive Director
1375 Sherman St.
Denver, CO 80261

Re: House Bill 20-1427 and Attempts to Collect Excise Tax from “Delivery Sellers”

Dear Messrs. Pens and Ferrandino:

We write regarding House Bill 20-1427 (“the Legislation”) – passed as part of the State’s larger revenue bill – and issuance by the Department of Revenue (“DOR”) of a “**Notice to Distributors of Cigarettes, Nicotine Products and Tobacco Products**” regarding the same.

We represent the Premium Cigar Coalition and the Cigar Association of America, Inc. (“PCC” and “CAA,” respectively), two of the leading trade associations for the cigar industry, and representing the interests of online retailers of premium cigars and pipe tobacco.

Our concerns with the Legislation are set forth below. In addition, DOR has been virtually silent as to implementation of the Legislation, with no bulletins or guidance issued to assist online sellers attempting to comply with, or even understand, the Legislation.

As explained below, the Legislation presents significant and insurmountable obstacles to

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada
New Jersey **New York** North Carolina Pennsylvania South Carolina Texas Virginia Washington

compliance for online cigar and pipe tobacco retailers:

First, The Legislation does not set forth any methodology for an online retailer to calculate tobacco excise tax on a retail transaction to a consumer based on the Legislation as written;¹

Second: The Legislation does not sufficiently identify the taxable point of a transaction; and

Third: The Legislation poses significant constitutional concerns.

First: As we understand the Legislation, Colorado intends for the sale to a consumer in Colorado to trigger a requirement to pay tax on a transaction that occurred in the past, upstream in the distribution process, and outside of Colorado. Unlike other products, cigars are not perishable and may remain in a retailer's inventory for months and even years. Any purchase of cigars by these retailers, therefore, occurs outside of Colorado, and may be far removed in time from the ultimate retail sale to a Colorado consumer. Tracking the actual prices retailers paid for thousands of different cigar products, purchased at different times and at different prices, and then sold at different retail prices at a later time, is a significant compliance burden with respect to even a single state.

Second: While the Legislation attempts to set forth a licensing scheme for defined "distributors," the Legislation does not sufficiently identify the point of taxation. Absent a clear understanding of the point of taxation, it is impossible for online retailers to attempt to comply.

Separately, and in addition to the compliance obstacles set forth above, the Legislation also poses significant constitutional concerns, as the Legislation does not include any monetary or transactional thresholds in order for an online seller to be subject to the excise tax. There is no constitutional basis to impose tobacco excise taxes on online retailers with no physical or economic nexus to Colorado. The only constitutional basis to impose state tax on interstate retail transactions stems from the decision of the U.S. Supreme Court in *South Dakota v. Wayfair*. As the Department is aware, *South Dakota v. Wayfair* mandates that in order to impose an obligation to remit state sales tax on out of state online retailers, there must be an economic nexus between the sales of the online retailer and the taxing jurisdiction. The Legislation has given DOR a mandate that cannot be complied with in that it attempts to impose a "nexusless" requirement to collect tobacco excise tax on online retailers without further legislation. This would result in disparate treatment of similarly situated companies, violating this constitutional principle. For example, one online retailer would be responsible for both tobacco excise taxes *and* sales taxes (if it has economic nexus), while another online retailer would only be responsible for remitting tobacco excise taxes. This is illogical and provides no path to compliance.

PCC and CAA are continuing to work with the Federation of Tax Administrators ("FTA") Uniformity Committee and with other states to prepare model legislation to assist states seeking to

¹ As far as we know, there was never a notice to taxpayers prior to the passing of the Legislation.



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address this novel, complex question. Until such time as the issues noted in this letter are resolved, however, online retailers that are members of PCC and CAA have no path to compliance with the Legislation and, therefore, will not be remitting tobacco excise taxes to the Colorado Department of Revenue.

Should you have any questions regarding this letter, or working towards a path to compliance, please do not hesitate to contact me.

Very truly yours,

Barry S. Schaevitz

cc: Chris Newbry (*via email*)

Mark Triplett (*via email*)

MODEL LEGISLATION OUTLINE

Section 1. Intent

- Establish the scope of the act in terms of application to products and transactions by definition.
- Clearly extend application of (State) cigar and pipe tobacco excise tax to transactions between a remote seller and consumer within (State).
- Establish clarity in defining the tax base on which (State) cigar and pipe tobacco excise tax is calculated in remote sales.
- Establish clear responsibility (or liability) for a remote seller to collect cigar and pipe tobacco excise tax from the consumer and remit the tax to (State) on all remote sales to (State) based on ship-to addresses.
- Establish procedures to collect (State) cigar and pipe tobacco excise tax on all transactions regardless of the location (in state or out of state) of the source.
- Establish a clear path to cigar and pipe tobacco excise tax compliance in (State) through licensure for remote sellers making remote sales in interstate and intrastate commerce.

Sections 2. Definitions (add or modify definitions)

- “Actual Cost” The Actual Cost for each SKU shall be the actual price paid by a Remote Seller for an individual SKU.
- “Actual Cost List” will be an annual list (prepared, maintained, and certified by each Remote Seller) of the cost of each SKU.
 - For the purposes of the Actual Cost List, Actual Cost for each SKU shall be the average of the actual price paid by the Remote Seller for the SKU over the twelve calendar months prior to January 1st of the year in which the “Remote Sale” occurs.
- Define “Cigar” (most States the existing definition will be adequate but simplify if possible).
- Define “Consumer” (excluding those who purchase for resale).
- Define “Remote Sale” as any sale of cigars or pipe tobacco to a “Consumer” if;
 - the Consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or
 - the cigars or pipe tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigars or pipe tobacco.
- Define the term “Remote Seller” as a person who makes a “Remote Sale”.
- Define “Remote Seller Permit Holder or Licensee” (as a remote seller in good standing).
- Define “Remote Delivery Service” as delivery service to the buyer by common carrier or private delivery service.
- Define "Pipe tobacco" as any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe

Section 3. Taxable Event; Report and Remit; Remote seller requirements, Compliance for remote sales into (State)

- **Taxable Event** The triggering event for the obligation to calculate, collect and remit excise tax in an individual state is the retail transaction between the Remote Seller and the Consumer in that state.
- As part of that retail transaction “Remote Sellers” must;

- Collect cigar and pipe tobacco excise tax from “Consumers” as part of all “Remote Sales” into (State).
 - Keep but do not report, all records of retail Remote Sales as required by this act. (Including all information required to be kept and made available for a Sales and Use tax audit.)
- **Report and Remit** the cigar and pipe tobacco excise tax to (State) (monthly or quarterly) at the time reports are filed for each time period.
- **Tax Base** Tobacco excise tax is a tax based on the value of an upstream transaction and included in the retail price shown to the customer in a brick and mortar store transaction. However, in a Remote Sale, tobacco excise tax cannot be calculated or assessed until the time of the retail purchase by a Consumer in (State).
 - The tax shall be calculated based on either the “Actual Cost” or the “Actual Cost List”.
 - For Remote Sales using the “Actual Cost” method, the tax shall be calculated by applying the State tax rate to the “Actual Cost” of each SKU. Remote sellers shall keep all purchasing records required to establish to the department’s satisfaction the “Actual Cost” of each SKU sold in a Remote Sale.
 - For Remote Sales using the “Actual Cost List” method, the tax shall be calculated by applying the State tax rate to the cost established for each SKU in the Remote Seller’s “Actual Cost List.” Remote sellers keep all purchasing records required to establish to the department’s satisfaction the “Actual Cost List” value of each SKU to be sold in a Remote Sale.
- **Requirements** No person shall make a Remote Sale into or within (State) unless all the requirements of this subsection are met.
 - Apply for and receive a Remote Seller license or permit to be granted by (State). (in addition to any other licenses or permit currently held)
 - If economic nexus thresholds are met, register or acquire a Sales and Use Tax certificate as required by (XXX) acts of (State).
 - Provide for age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is of age.
 - If economic nexus thresholds are met, and excise tax is being remitted using the Actual Cost List method to calculate the excise tax, provide the Remote Sellers’s certified “Actual Cost List” to the department (or other approved submission point) for each SKU to be offered for remote sale in the subsequent calendar year. The Actual Cost List shall be updated quarterly as new SKUs are added to a Remote Seller’s inventory. New SKUs will be added using the actual cost first paid for the SKU.
- **Compliance** Remote Sales into (State) must be compliant with (XXX) acts of (State) (reference to youth access and age verification statutes)
- The department shall establish a communication channel for the purpose of receiving reports of violations of this section of this act.

Section 4. Licensure- Remote Seller Permit or License Required All Remote Sellers as defined herein must apply for and receive a Remote Seller license or permit before making Remote Sales into (State)

- **Qualifications** In order to obtain a license a Remote Seller

- Must use third party age verification technology
 - Report to (State), on an annual basis, sales volumes (by transaction number and gross sales). Once (State) economic nexus thresholds have been met, a Remote Seller must register for a sales tax license and begin to remit sales tax according to (xxx) and tobacco excise taxes pursuant to this Chapter.
- **Application requirements** (keep in mind this is a virtual setting) An application must include the applicant's name, address, federal employer identification number, and any other information required by the (State) authority. A license is not transferable or assignable and each individual virtual store or catalog store must apply for and receive a separate license regardless of ownership.
- **Denial** (State) authority may refuse to issue or renew a license to an applicant that has done any of the following:
 - Submitted false or misleading information on its application.
 - Had a license issued under this Article revoked by the Secretary.
 - Had a tobacco products license or registration issued by another state revoked.
 - Been convicted of fraud or misrepresentation.
 - Been convicted of any other offense that indicates the applicant may not comply with this Article if issued a license.
 - Failed to remit payment for a tax debt under this Chapter.
 - Failed to file a return due under this Chapter.
 - Failed to meet the requirements set out in the application requirements.

No License or permit shall be denied solely because the applicant's business is not domiciled in (State)

- **Permitted acts** by licensees or permit holders
 - A Remote Seller license or permit shall authorize the holder to ship "Cigars" or "Pipe Tobacco" to consumers within (State).
- **Prohibited acts** by licensees or permit holders
 - Sell "Cigars" or "Pipe Tobacco" to minors within (State) in violation of the delivery seller requirements contained in this act.
 - Sell any tobacco product other than "Cigars" or "Pipe Tobacco" to consumers within (State) without obtaining a license to do so.
 - Make a sale permitted that would be permitted while in possession any other license or permit without possessing the license or permit required by this section.
- **Revocation or Cancellation Reasons and Procedure** (Should fall in line with other licenses however again this business is conducted in a virtual setting).

Section 5. Record Keeping- Records of Remote Sales, Records of purchases of products to be sold in Remote Sales. Invoices or Receipts.

- Maintain records of retail Remote Sales as required by this act. (Including all information required to be kept and made available for a Sales and Use tax audit.)
 - Keep all purchasing records required to establish to the department's satisfaction the "Actual Cost" of each SKU to be sold in a Remote Sale.
- OR
- Keep all purchasing records required to establish to the department's satisfaction the "Actual Cost List" value of each SKU to be sold in a Remote Sale.
 - Invoices or receipts for remote sales presented to the consumer must display:
 - Remote Seller's Identity

- Date of the sale
- The Name of the consumer
- The ship-to (delivery) address (adequate to confirm the State)
- The final price and quantity purchased by SKU
- Itemized sales tax
- Shipping charges if stated separately.

Consumer's name and address information shall not be reported on reports accompanying sales tax or excise tax filings. This information must be kept and made available for audit purposes.

Section 6. Reporting monthly or Quarterly, Payment of the tax based on reporting and at the time of reporting.

- Reporting of Remote Sales for the previous month or quarter.
- Reporting of Remote Sales shall include sufficient information for the State to identify for the reporting period: total costs per product tax classification; relevant tax rate for each product tax classification and total taxes due
- Reporting of Remote Sales shall not be required to include consumer identity information.

(Structure and level of reporting can vary widely from State to State)

Section 7. Effective Dates

(Effective Date should be at a minimum one year out from date of passage as to accommodate the department of revenue need for IT resources and form amendments.)

END

A BILL for COLORADO

Section 1. Section 39-28.5-101 – Definitions is amended as follows.

As used in this article 28.5, unless the context otherwise requires:

(1) "Delivery sale" means the sale of smokeless tobacco products to a consumer in this state when:

(a) The consumer submits an order for the smokeless tobacco products to a delivery seller for sale by means other than an over-the-counter sale on the delivery seller's premises, including, but not limited to, telephone or other voice transmission, the mail or other delivery service, or the internet or other online service; and

(b) The smokeless tobacco products are delivered when the seller is not in the physical presence of the consumer when the consumer obtains possession of the smokeless tobacco products by use of a common carrier, private delivery service, mail, or any other means.

(1.2) "Delivery seller" means a person located outside of this state who makes delivery sales of smokeless tobacco.

(1.4) "Department" means the department of revenue.

(1.5) "Distributing subcontractor" means every person, firm, limited liability company, partnership, or corporation who purchases tobacco products from a distributor for resale to a retailer in this state.

(2) "Distributor" means every person who:

(a) First receives tobacco products in this state;

(b) Sells tobacco products in this state and is primarily liable for the tobacco products tax on such products;

(c) First sells or offers for sale in this state tobacco products imported into this state from any other state or country; or

(d) Is a delivery seller.

(3) "Manufacturer's list price" means the invoice price for which a manufacturer or supplier sells a tobacco product to a distributor exclusive of any discount or other reduction.

(3.3) "Modified risk tobacco product" means any tobacco product for which the secretary of the United States department of health and human services has issued an order authorizing the product to be commercially marketed as a modified risk tobacco product in accordance with 21 U.S.C. sec. 387k, or any successor section.

(3.7) "Moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked but does not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

(4) "Remote Retail Sale" means any sale of cigars or pipe tobacco to a consumer in this state when:

1 (a) the Consumer submits the order for the sale by means of a telephone or other method of voice transmission, the
2 mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when
3 the request for purchase or order is made; or

4 (b) the cigars or pipe tobacco are delivered to the buyer by common carrier, private delivery service, or other method of
5 remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the
6 cigars or pipe tobacco.

7 (5)“Remote Retail Seller” means a person located within or outside of this state who makes remote retail sales of cigars
8 or pipe tobacco.

9 ~~(4)~~(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration,
10 including all sales made by any person. The term includes:

11 (a) A gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the
12 provisions of this article or for any other purposes whatsoever; and

13 (b) A delivery sale.

14 (c) A remote retail sale

15 (7)“Smokeless Tobacco” means any finely cut, ground, powdered, or leaf tobacco, or other product containing tobacco,
16 that is intended to be placed in the oral or nasal cavity or otherwise consumed without being combusted.

17 ~~(5)~~(8) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and
18 other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos,
19 shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in
20 such manner as to be suitable for chewing or for smoking in a pipe or otherwise, or both for chewing and smoking, but
21 does not include cigarettes which are taxed separately pursuant to article 28 of this title.

22 **Section 2. Section 39-28.5-102 - Tax levied** is amended as follows.

23 (1) Except as set forth in subsection (3) of this section, there is levied a tax upon the sale, use, consumption, handling, or
24 distribution of all tobacco products in this state, excluding modified risk tobacco products, at the rate of:

25 (a) Twenty percent of the manufacturer's list price of the tobacco products for the tax levied prior to January 1, 2021;

26 (b) Thirty percent of the manufacturer's list price of the tobacco products for the tax levied on and after January 1, 2021,
27 but prior to July 1, 2024;

28 (c) Thirty-six percent of the manufacturer's list price of the tobacco products for the tax levied on and after July 1, 2024,
29 but prior to July 1, 2027; and

30 (d) Forty-two percent of the manufacturer's list price of the tobacco products for the tax levied on and after July 1, 2027.

31 (2) For cigars and pipe tobacco sold by remote retail sellers the tax rates delineated in subsection (1) of this section
32 applies to:

33 (a) The actual price paid by a remote retail seller for a stock keeping unit ; or

34 (b) if the actual price paid by a remote retail seller is not available, the average of the actual price paid by a remote retail
35 seller for a stock keeping unit over the 12 calendar months before January 1st of the year in which the sale occurs.

36 Remote retail sellers shall keep all records prescribed by the department to establish the validity of (a) and (b) of this
37 subsection to the department’s satisfaction.

1 ~~(2)~~(3) There is levied a tax upon the sale, use, consumption, handling, or distribution of modified risk tobacco products in
2 this state at the rate of:

3 (a) Fifteen percent of the manufacturer's list price of the modified risk tobacco products for the tax levied on and after
4 January 1, 2021, but prior to July 1, 2024;

5 (b) Eighteen percent of the manufacturer's list price of the modified risk tobacco products for the tax levied on and after
6 July 1, 2024, but prior to July 1, 2027; and

7 (c) Twenty-one percent of the manufacturer's list price of the modified risk tobacco products for the tax levied on and
8 after July 1, 2027.

9 ~~(3)~~(4) (a) If the total of the tax imposed upon the sale, use, consumption, handling, or distribution of moist snuff under
10 subsection (1) of this section and section 39-28.5-102.5 is less than the minimum moist snuff tax specified in subsection
11 ~~(3)~~(4)(b) of this section, then the tax imposed upon the sale, use, consumption, handling, or distribution of moist snuff
12 under this section is equal to the minimum moist snuff tax minus the tax imposed under section 39-28.5-102.5.

13 (b)(I) The minimum moist snuff tax is equal to:

14 (A) One dollar forty-eight cents for each one and two-tenth ounce container for the tax levied on and after January 1,
15 2021, but prior to July 1, 2024;

16 (B) One dollar eighty-four cents for each one and two-tenth ounce container for the tax levied on and after July 1, 2024,
17 but prior to July 1, 2027; and

18 (C) Two dollars twenty-six cents for each one and two-tenth ounce container for the tax levied on and after July 1, 2027.

19 (II) The amount specified in subsection ~~(3)~~(4)(b)(I) of this section is proportionally increased for any container larger than
20 one and two-tenths ounces.

21 (4) The tax set forth in this section is collected by the department and is imposed at the time the distributor:

22 (a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

23 (b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state;

24 (c) Ships or transports tobacco products to retailers in this state to be sold by those retailers; or

25 (d) Makes a delivery sale.

26 **NEW SECTION 3. Section 39-28.5-104.6- Licensing required of Remote Retail Sellers- rules - fines**

27 (1) It is unlawful for any person to engage in the business of making remote retail sales of cigars or pipe tobacco without
28 first obtaining a license granted and issued by the department, which license shall be in effect until June 30 following the
29 date of issue, unless sooner revoked. Such license shall be granted only to a person who owns or operates the place
30 from which the person engages in the business of, making remote sales of cigars or pipe tobacco and, if such business is
31 operated under two or more separate FEIN's by any such person, a separate license for each FEIN shall be required. Such
32 license shall be renewed only upon timely application and payment of the required fee prior to expiration. Such licenses
33 may be transferred in the discretion of and pursuant to the rules adopted by the department. The fee for a license shall
34 be ten dollars per year, and such fee shall be credited to the general fund. Such fee shall be reduced at the rate of two
35 dollars and fifty cents for each expired quarter of the license year. The department shall, on reasonable notice and after
36 a hearing, suspend or revoke the license of any person violating any provision of this article, and no license shall be
37 issued to such person within a period of two years thereafter. The department shall refuse to issue a new or renewal
38 remote retail sellers license, and shall revoke a remote retail seller's license, if the remote retail seller owes the state any
39 delinquent taxes administered by the department or interest thereon pursuant to this title that have been determined

1 by law to be due and unpaid, unless the remote retail seller has entered into an agreement approved by the department
2 to pay the amount due. The department shall only issue a new or renewal remote retail seller license to a remote retail
3 seller that has a current license issued pursuant to section 39-26-103.

4 **NEW SECTION 4. Section 39-28.5-105.5 - Books and records to be preserved.**

5 (1) Every remote retail seller shall keep at each licensee complete and accurate records for that licensee ace of business,
6 including itemized invoices to validate the actual cost paid by the remote retail seller for all cigars and pipe tobacco,
7 offered in remote retail sales to the ultimate consumer within the state.

8 (2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products on hand, and
9 other pertinent papers and documents relating to the average of the actual price paid by a remote retail seller for a
10 stock keeping unit over the 12 calendar months before January 1st of the year in which any sale occurs.

11 (3) When a licensed remote retail seller sells exclusively to the ultimate consumer within the state from the FEIN given in
12 the license, no invoice of those sales shall be required. All books, records, and other papers and documents required by
13 this section to be kept shall be preserved for a period of at least three years after the date of the documents, unless the
14 department, in writing, authorizes their destruction or disposal at an earlier date.

15 **NEW SECTION 5. New Section 39-28.5-106.5 - Returns and remittance of tax - civil penalty**

16 (1) A Remote retail Seller shall be responsible for payment of the tax imposed under section 39-28.5-102.5 (2) only if the
17 Remote retail Seller makes (i) gross revenue from the sales of cigars and pipe tobacco into the state in excess of
18 \$100,000 or (ii) the person sold cigars or pipe tobacco into the state in 200 separate transactions.

19 (2) Once a Remote Retail Seller has satisfied Subsection (1) of this Section then the remote retail seller shall file a return
20 with the department each quarter. The return, which shall be upon forms prescribed and furnished by the department,
21 shall contain, among other things, the total amount of cigars and pipe tobacco purchased by the remote retail seller
22 then sold in a remote retail sale during the preceding quarter and the tax due thereon.

23 (3) Once a Remote Retail Seller has satisfied Subsection (1) of this Section then the remote retail seller shall file a return
24 with the department by the twentieth day of the month following the month reported and shall therewith remit the
25 amount of tax due, less one and six-tenths percent of any sum so remitted that consists of tax collected on or after
26 January 1, 2021, to cover the remote retail seller's expense in the collection and remittance of said tax; except that no
27 part of the tax imposed pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be
28 subject to the discount provided for in this subsection (2). If any remote retail seller is delinquent in remitting said tax,
29 other than in unusual circumstances shown to the satisfaction of the executive director of the department, the
30 distributor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax,
31 and in addition the penalty imposed under section 39-28.5-110(2)(b) shall apply.

32 (4)

33 (a) Any person, firm, limited liability company, partnership, or corporation, other than a remote retail seller, in
34 possession of cigars and pipe tobacco for which taxes have not otherwise been remitted pursuant to this section shall be
35 liable and responsible for the uncollected tax that is levied pursuant to section 39-28.5-102 and section 21 of article X of
36 the state constitution on behalf of the remote retail seller who failed to pay the tax. The person or entity shall make the
37 payment to the department within thirty days of first taking possession of the product. The department shall establish a
38 form to be used for remittance of the payment. The department shall remit the proceeds it receives pursuant to this
39 paragraph (a) to the state treasurer for distribution as follows:

40 (l) For all moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102, fifteen percent
41 shall be credited to the tobacco tax enforcement cash fund created in section 39-28-107(1)(b), and eighty-five percent
42 shall be credited to the old age pension fund; and

1 (II) All moneys received and collected in payment of the tax imposed pursuant to section 39-28.5-102.5 shall be credited
2 to the tobacco tax cash fund created in section 24-22-117, C.R.S.

3 (b) The executive director of the department may impose a civil penalty on any person, firm, limited liability company,
4 partnership, or corporation in possession of cigars and pipe tobacco that fails to make a payment required pursuant to
5 paragraph (a) of this subsection (4) or who is a distributor by virtue of being the first person who receives the tobacco
6 products in the state and who fails to make a payment required pursuant to this section in an amount that does not
7 exceed five hundred percent of such payment. Any moneys received pursuant to this paragraph (b) shall be remitted to
8 the state treasurer for deposit in the tobacco tax enforcement cash fund created in section 39-28-107(1)(b).

9
10 **NEW SECTION 6. 39-28.6-102. Definitions.**

11 As used in this article 28.6, unless the context otherwise requires:

12 (7) "Nicotine product" means a product in solution or liquid form that contains nicotine derived from tobacco or created
13 synthetically that is intended for human consumption, ~~whether~~ by vaporizing, ~~chewing~~, smoking, ~~absorbing~~, ~~dissolving~~,
14 ~~inhaling~~, snorting, sniffing, aerosolizing, or by any other means of inhaling, and that is not:

15 (a) A cigarette;

16 (b) Tobacco products, as defined in section 39-28.5-101(5); or

17 (c) A drug, device, or combination product authorized for sale by the United States department of health and human
18 services, as those terms are defined in the "Federal Food, Drug, and Cosmetic Act", 21 U.S.C. sec. 301 et seq.

19 END