

**COLORADO DEPARTMENT OF REVENUE**

**OFFICE OF TAX POLICY**

**Proposed Amendments to Manufacturer's List Price Definition**

In Colorado Revised Statutes, 39-28.5-101, **amend** (3) and **add** (4.5) as follows:

**39-28.5-101. Definitions.** As used in this article 28.5, unless the context otherwise requires:

(3) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED IN SUBSECTIONS (3)(b) AND (3)(c) OF THIS SECTION, the invoice price for which a manufacturer or supplier sells a tobacco product to a distributor exclusive of any discount or other reduction.

(b) FOR A DELIVERY SELLER, IF DETERMINING THE INVOICE PRICE DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION IS IMPRACTICABLE, THEN "MANUFACTURER'S LIST PRICE" MEANS THE AVERAGE OF THE ACTUAL PRICE PAID FOR THE TOBACCO PRODUCT'S STOCK KEEPING UNIT DURING THE PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY WRITTEN NOTICE TO THE DELIVERY SELLER, PROSPECTIVELY REQUIRE A DELIVERY SELLER TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE DEPARTMENT FINDS THAT THE DELIVERY SELLER'S USE OF THE AVERAGE PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

(c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER OR A RETAILER, AND WHO SELLS A TOBACCO PRODUCT EXCLUSIVELY TO CONSUMERS AND NOT TO SUPPLIERS OR DISTRIBUTORS, "MANUFACTURER'S LIST PRICE" MEANS THE MANUFACTURER'S COST TO MANUFACTURE THE TOBACCO PRODUCT, WHICH INCLUDES THE MANUFACTURING OVERHEAD AND THE COST OF ALL DIRECT MATERIALS AND DIRECT LABOR USED.

(4.5) "STOCK KEEPING UNIT" MEANS THE UNIQUE IDENTIFIER ASSIGNED BY THE DISTRIBUTOR TO VARIOUS ITEMS IN ORDER TO TRACK INVENTORY.

In Colorado Revised Statutes, 39-28.6-102, **amend** (5) and **add** (9) as follows:

**39-28.6-102. Definitions.** As used in this article 28.6, unless the context otherwise requires:

(5) (a) “Manufacturer’s list price” means, EXCEPT AS PROVIDED IN SUBSECTIONS (3)(b) AND (3)(c) OF THIS SECTION, the invoice price for which a manufacturer or supplier sells a nicotine product to a distributor exclusive of any discount or other reduction.

(b) FOR A DELIVERY SELLER, IF DETERMINING THE INVOICE PRICE DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION IS IMPRACTICABLE, THEN “MANUFACTURER’S LIST PRICE” MEANS THE AVERAGE OF THE ACTUAL PRICE PAID FOR THE NICOTINE PRODUCT’S STOCK KEEPING UNIT DURING THE PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY WRITTEN NOTICE TO THE DELIVERY SELLER, PROSPECTIVELY REQUIRE A DELIVERY SELLER TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE DEPARTMENT FINDS THAT THE DELIVERY SELLER’S USE OF THE AVERAGE PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

(c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER OR A RETAILER, AND WHO SELLS A NICOTINE PRODUCT EXCLUSIVELY TO CONSUMERS AND NOT TO SUPPLIERS OR DISTRIBUTORS, “MANUFACTURER’S LIST PRICE” MEANS THE MANUFACTURER’S COST TO MANUFACTURE THE NICOTINE PRODUCT, WHICH INCLUDES THE MANUFACTURING OVERHEAD AND THE COST OF ALL DIRECT MATERIALS AND DIRECT LABOR USED.

(9) “STOCK KEEPING UNIT” MEANS THE UNIQUE IDENTIFIER ASSIGNED BY THE DISTRIBUTOR TO VARIOUS ITEMS IN ORDER TO TRACK INVENTORY.



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To: Jon Catlett, Joint Budget Committee

From: Josh Pens, Director of Tax Policy

Date: March 11, 2022

Re: Remote Cigar and Pipe Tobacco Sales

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You asked for background and analysis on a proposed bill presented to Senator Hansen regarding remote cigar and tobacco sales. The Department is very familiar with this issue and believes that HB21-1470 (Proposition EE) adequately addressed it. We would, however, support further clarification of the term “manufacturer’s list price.” We are happy to meet and discuss this issue further with you or Senator Hansen. We have also been working with Senator Rodriguez on this issue over the last several months and have provided him with similar feedback.

The tobacco products excise is a wholesale-level tax imposed upon distributors of tobacco products (including cigars and pipe tobacco). The tax is currently 50% of the “manufacturer’s list price.” That term essentially means the invoice price for which a manufacturer or supplier sells a tobacco product to a distributor. Prior to HB 1470, the tax was primarily imposed when a distributor imported tobacco products for sale, or shipped products to Colorado retailers for sale. There was no mechanism for imposing the tax on direct-to-consumer sales from outside the state.

Among other things, HB 1470 changed a number of key definitions to remedy this gap. Specifically, the bill defined a “delivery seller” as a person located outside the state who makes a “delivery sale.” A “delivery sale” is essentially a direct-to-consumer sale ordered by telephone, mail, or internet and delivered by common carrier or mail. Delivery sellers were added to the definition of “distributors,” making them taxpayers under article 28.5 (tobacco). Delivery sales were added to the list of taxable events in section 39-28.5-103(4), C.R.S. Similar changes were made to cigarettes (article 28) and included in nicotine products (article 28.6).

Because of these changes, out-of-state delivery sellers have been subject to the tax on all direct-to-consumer delivery sales in Colorado since January 1, 2021. In addition to a legal obligation to pay the tax, remote sellers of cigars and pipe tobacco have the practical means to do so. Registration, filing, and payment may all be completed online using the Department’s Revenue Online system.

The proposal aims to create a parallel tax for “remote sellers” and “remote sales.” These terms are substantially similar to “delivery seller” and “delivery sale” but only apply to cigars and pipe tobacco. “Remote seller” also includes in-state retailers making delivery sales, which is problematic as discussed below. The proposal then largely replicates each section of article 28.5 for these remote sellers and remote sales with a few key differences:

- First, remote sellers would be allowed to use an average price to calculate the tax if the seller determines that the actual price paid is not available.

- Second, remote sellers (including those with in-state locations) would not be subject to the tax unless and until they make \$100,000 in sales of cigars and pipe tobacco, or more than 200 separate sales.
- Third, the proposed model would make the tax akin to a special sales tax collected from the consumer rather than being imposed on the remote seller. This provision does not appear to be included in the Colorado draft, but the draft also does not modify the taxable events in section 39-28.5-103 (4). Therefore, it is not clear how and when the tax would be imposed.

The Department has several concerns with the proposal:

- Economic nexus limits—similar those that were applied to the sales tax following the *Wayfair* decision—create an unfair competitive advantage for remote sellers and for sales of cigars and pipe tobacco. They are also unnecessary. *Wayfair* and the *Quill* decision it overturned were sales tax cases. The physical presence rule in *Quill* was not extended to other tax types by the court.
- Creating a separate special sales tax collection for cigar and pipe tobacco remote sales will be burdensome for the Department to administer. It will also further exacerbate the competitive advantage by reducing (or potentially eliminating) the general state sales tax applicable to such sales. A special sales tax on consumers may also be a “new tax” that would trigger a TABOR election.
- In-state retailers should not be “remote sellers” because all cigars and pipe tobacco in their inventory should be tax paid. The proposal provides no remedy for the resulting duplicate taxation.
- Creating separate but similar provisions for “delivery sellers” and “remote sellers” presents high risk of error (as several omissions in the draft illustrate) and is unnecessarily duplicative. The proposal offers no explanation for why sales of cigars and pipe tobacco should be treated differently from other tobacco products.

I made more detailed notes on a draft proposal that was provided to Senator Rodriguez last fall. I redlined that draft against the current draft and attached it here.

The Department agrees that alternatives for the “manufacturer’s list price” definition may be helpful, with appropriate safeguards. We recommended such changes to Senator Rodriguez. I have included a copy of those suggestions with this memo. These changes are not critical, however, to the imposition of the tax. All retailers must know the price they paid for their inventory for basic financial accounting purposes such as inventory control and valuation and cost-of-goods-sold calculations.

As I mentioned during our call, we have identified a separate issue with the definition of “manufacturer’s list price” that we recommend clarifying. Specifically, it is unclear how the price is calculated when a manufacturer is also the retailer. This integration occurs particularly with nicotine products, as vape shops often manufacture and sell their own vaping solutions. The attached draft supplies a solution.

As I said, we would be happy to have further discussions about this proposal with you, Senator Hansen, and/or Senator Rodriguez. Please let us know how we can be of further help.

# 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:

**Commented [PJ1]:** If a "remote retail seller" is separately defined (see comment below), that type of seller must be added to the definition of a "distributor."

**Commented [PJ2]:** This definition is substantively the same as the definition of "delivery sale," except that it is applied only to cigars and pipe tobacco. Likewise, the definition of "remote retail seller" is essentially the same as "delivery seller."

We do not recommend separate definitions. If certain delivery sales are subject to exceptional treatment, that special treatment can be provided for without creating a second definition. In particular, it is risky to use slightly different wording, as courts will interpret that to mean that a different result was intended, which does not appear to be the case.

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 sales of cigars or  
8 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 1<sup>st</sup> 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.

**Commented [PJ3]:** Sellers within the state cannot be subject to this regime because their inventory will be taxed upon import (i.e., before the remote sale occurs). Sellers within the state should not be allowed to maintain an inventory of untaxed product, as that increases the risk of evasion.

**Commented [PJ4]:** If it's necessary to create a separate regime for cigars and pipe tobacco, then smokeless tobacco must encompass all tobacco products other than cigars and pipe tobacco. Otherwise, there is a subset of tobacco products that will not be subject to tax on delivery sales.

**Commented [PJ5]:** The problem of tracing the actual cost for inventory sold in a delivery sale is not limited to cigars and pipe tobacco. We recommend changing the definition of "manufacturer's list price" to accommodate this issue for all tobacco products and will attach recommended language to accomplish this goal.

**Commented [PJ6]:** This definition is substantively the same as "the invoice price charged by the manufacturer or supplier" (i.e., the "manufacturer's list price" as defined in section 39-28.5-101(3), C.R.S.). As such, the exception in (b) is just an alternative basis for computing the "manufacturer's list price," and should be added to that definition.

**Commented [PJ7]:** This condition needs to be more specific to avoid abuse.

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 Sellers- rules - fines**

27 (1) It is unlawful for any person to engage in the business of making remote sales of cigars or pipe tobacco without first  
28 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 sellers license, and shall revoke a remote seller's license, if the remote seller owes the state any delinquent taxes  
39 administered by the department or interest thereon pursuant to this title that have been determined by law to be due

**Commented [PJ8]:** If the bill does separate "remote retail sales" from "delivery sales," then "Makes a remote sale." must be added to this list.

**Commented [PJ9]:** A remote seller should be added to the definition of "distributor," in which case there is no need for duplicative licensing and record keeping requirements. This was what was done in HB19-1427 with "delivery seller."

**Commented [PJ10]:** In this draft, some references have been changed to "remote retail sale" while others have been left at "remote sale." Likewise "remote retail seller" has not been consistently updated.

1 and unpaid, unless the remote seller has entered into an agreement approved by the department to pay the amount  
2 due. The department shall only issue a new or renewal remote seller license to a remote seller that has a current license  
3 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 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 seller for all cigars and pipe tobacco, offered in  
7 remote 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 seller for a stock  
10 keeping unit over the 12 calendar months before January 1st of the year in which any sale occurs.

11 (3) When a licensed remote seller sells exclusively to the ultimate consumer within the state from the FEIN given in the  
12 license, no invoice of those sales shall be required. All books, records, and other papers and documents required by this  
13 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 Seller shall be responsible for payment of the tax imposed under section 39-28.5-102.5 (2) only if the  
17 Remote Seller makes (i) gross revenue from the sales of cigars and pipe tobacco into the state in excess of \$100,000 or  
18 (ii) the person sold cigars or pipe tobacco into the state in 200 separate transactions.

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

23 (3) Once a Remote Seller has satisfied Subsection (1) of this Section then the remote seller shall file a return with the  
24 department by the twentieth day of the month following the month reported and shall therewith remit the amount of  
25 tax due, less one and six-tenths percent of any sum so remitted that consists of tax collected on or after January 1, 2021,  
26 to cover the remote seller's expense in the collection and remittance of said tax; except that no part of the tax imposed  
27 pursuant to section 39-28.5-102.5 and section 21 of article X of the state constitution shall be subject to the discount  
28 provided for in this subsection (2). If any remote seller is delinquent in remitting said tax, other than in unusual  
29 circumstances shown to the satisfaction of the executive director of the department, the distributor shall not be allowed  
30 to retain any amounts to cover his or her expense in collecting and remitting said tax, and in addition the penalty  
31 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 seller, in possession of  
34 cigars and pipe tobacco for which taxes have not otherwise been remitted pursuant to this section shall be liable and  
35 responsible for the uncollected tax that is levied pursuant to section 39-28.5-102 and section 21 of article X of the state  
36 constitution on behalf of the remote seller who failed to pay the tax. The person or entity shall make the payment to the  
37 department within thirty days of first taking possession of the product. The department shall establish a form to be used  
38 for remittance of the payment. The department shall remit the proceeds it receives pursuant to this paragraph (a) to the  
39 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

**Commented [PJ11]:** A remote seller should be added to the definition of "distributor," in which case there is no need for duplicative licensing and record keeping requirements. This was what was done in HB19-1427 with "delivery seller."

**Commented [PJ12]:** A remote seller should be added to the definition of "distributor," in which case there is no need for duplicative licensing and record keeping requirements. This was what was done in HB19-1427 with "delivery seller."

**Commented [PJ13]:** We do not believe these economic nexus thresholds are necessary, but if they are desirable, they should apply to both "delivery sellers" and "remote retail sellers." If retained, these limits should not apply to any in-state sellers. Finally, the measurement period must be clarified. We recommend replicating section 39-26-102(3)(c), C.R.S.

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

**Commented [PJ14]:** We do not recommend changing this definition. Furthermore, it's not clear how this change is within the subject of remote sales of cigars and pipe tobacco.