

CHAPTER 158

TAXATION

HOUSE BILL 10-1058

BY REPRESENTATIVE(S) Riesberg, Court, Labuda, Todd, Vigil, Fischer;
also SENATOR(S) Hodge, Hudak.

AN ACT

**CONCERNING THE AUTHORITY OF THE DEPARTMENT OF REVENUE TO IMPOSE A CIVIL PENALTY FOR
UNSTAMPED CIGARETTES, AND MAKING AN APPROPRIATION THEREFOR.**

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

SECTION 1. 39-28-107 (1) (a), Colorado Revised Statutes, is amended, and the said 39-28-107 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

39-28-107. Unstamped packages - tax collected - fines - subject to confiscation - tobacco tax enforcement cash fund - creation. (1) (a) Any package of cigarettes found at any place in this state without a stamp or imprint affixed thereto as provided in this article, unless such cigarettes are in the possession of a licensed wholesaler in the original unopened shipping package or in transit to such wholesaler, are declared to be contraband goods and may be seized without a warrant by the department, its agents or employees, or by any peace officer in this state when directed or requested by the department to do so. Nothing in this section shall be construed to require the department to confiscate unstamped packages of cigarettes when it has reason to believe that the owner thereof is not willfully or intentionally evading the taxes imposed by the provisions of this article and section 21 of article X of the state constitution. The executive director may impose a civil penalty on any person, firm, limited liability company, partnership, or corporation ~~from whom cigarettes have been confiscated~~ FOR THE PURCHASE OR POSSESSION OF UNSTAMPED CIGARETTES, REGARDLESS OF WHETHER THE CIGARETTES HAVE BEEN CONFISCATED, in an amount that does not exceed twenty-five cents per cigarette ~~seized~~ PURCHASED OR POSSESSED; EXCEPT THAT THE PENALTY SHALL NOT APPLY IF THE CIGARETTES ARE IN THE POSSESSION OF A LICENSED WHOLESALER IN THE ORIGINAL UNOPENED SHIPPING PACKAGE OR IN TRANSIT TO SUCH WHOLESALER. Any civil penalties received pursuant to this paragraph (a) shall be remitted to the state

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

treasurer for deposit in the tobacco tax enforcement cash fund created in paragraph (b) of this subsection (1).

(c) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CIGARETTES PURCHASED FROM A UNITED STATES MILITARY EXCHANGE OR COMMISSARY, SO LONG AS THE CIGARETTES ARE NOT FOR RESALE IN THIS STATE.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the tobacco tax enforcement cash fund created in section 39-28-107 (1) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of revenue, for allocation to the central department operations division, for the fiscal year beginning July 1, 2010, the sum of one thousand four hundred dollars (\$1,400) cash funds, or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Act subject to petition - 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 (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to unstamped cigarettes purchased on or after the applicable effective date of this act.

Approved: April 21, 2010