

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0894.01 Ed DeCecco x4216

SENATE BILL 18-179

SENATE SPONSORSHIP

Hill and Williams A., Grantham, Guzman, Baumgardner, Cooke, Coram, Crowder, Holbert, Kagan, Lundberg, Marble, Martinez Humenik, Neville T., Priola, Scott, Smallwood, Sonnenberg, Tate

HOUSE SPONSORSHIP

Hooton and Pabon, Coleman, Humphrey, Melton, Rosenthal, Sias, Williams D.

Senate Committees
Finance

House Committees
Finance

A BILL FOR AN ACT

101 **CONCERNING ADJUSTMENTS TO TOTAL GROSS PURCHASES FOR**
102 **PURPOSES OF CALCULATING THE EXCISE TAX ON TOBACCO**
103 **PRODUCTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Currently and until September 1, 2018, a distributor can claim a credit for taxes paid on tobacco products that are shipped or transported by the distributor to a consumer outside of the state. The bill makes the credit permanent.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
April 9, 2018

HOUSE
Amended 2nd Reading
April 6, 2018

SENATE
3rd Reading Unamended
March 5, 2018

SENATE
Amended 2nd Reading
March 2, 2018

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

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

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

12 **24-22-117. Tobacco tax cash fund - accounts - creation -**
13 **legislative declaration.** (2) There are hereby created in the state treasury
14 the following funds:

15 (c) (II) The interest and income derived from the deposit and
16 investment of ~~moneys~~ MONEY in the tobacco education programs fund
17 and credited to the tobacco education programs fund may be used to give
18 credit to a wholesaler or distributor for taxes paid on cigarettes or other
19 tobacco products that are bad debts pursuant to ~~sections 39-28-104 and~~
20 ~~39-28.5-107, C.R.S. SECTION 39-28-104~~; except that the interest earned
21 on the tobacco education programs fund shall be used only for that
22 portion of the bad debt attributable to the taxes imposed pursuant to
23 section 21 of article X of the state constitution.

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

26 **39-28.5-105. Books and records to be preserved.** (1) Every

1 distributor shall keep at each licensed place of business complete and
2 accurate records for that place of business, including itemized invoices of
3 tobacco products held, purchased, manufactured, brought in or caused to
4 be brought in from without the state, or shipped or transported to retailers
5 in this state, and of all sales of tobacco products made, except sales to the
6 ultimate consumer WITHIN THE STATE.

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

16 **SECTION 4.** In Colorado Revised Statutes, 39-28.5-107, **amend**
17 **(1), (2)(a), (2)(c), and (2)(d); and add (3) and (4) as follows:**

18 **39-28.5-107. Total gross purchases - reduction -**
19 **out-of-state sales - returned or destroyed products - definitions.**

20 **(1) ~~Where~~ IF tobacco products upon which the tax imposed by this article**
21 **~~has been reported and paid,~~ are shipped or transported by the distributor**
22 **to retailers without the state to be sold by those retailers, are shipped or**
23 **transported by the distributor to a consumer without the state on or after**
24 **September 1, 2015, ~~but prior to September 1, 2018,~~ or are returned to the**
25 **manufacturer by the distributor or destroyed by the distributor, ~~credit of~~**
26 **~~such tax may be made to the distributor~~ THEN THE DISTRIBUTOR'S TOTAL**
27 **GROSS PURCHASES ARE ADJUSTED BY THE AMOUNT OF THE OUT-OF-STATE**

1 SALES AND THE RETURNED OR DESTROYED TOBACCO PRODUCTS in
2 accordance with regulations prescribed by the department.

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

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

26 (d) As used in this subsection (2), "bad debt" means the taxes
27 attributable to any portion of a debt that is related to a sale of tobacco

1 products subject to tax under this ~~article~~ ARTICLE 28.5, that is not
2 otherwise deductible or excludable, that has become worthless or
3 uncollectible, ~~in the time after the tax has been paid pursuant to section~~
4 ~~39-28.5-106~~ and that is eligible to be claimed as a deduction pursuant to
5 section 166 of the federal "Internal Revenue Code of 1986", as amended.
6 A bad debt shall not include any interest on the wholesale price of
7 tobacco products, uncollectible amounts on property that remain in the
8 possession of the distributor until the full purchase price is paid, expenses
9 incurred in attempting to collect any account receivable or any portion of
10 the debt recovered, an account receivable that has been sold to a third
11 party for collection, or repossessed property.

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

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

22 **SECTION 5. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2018 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.