

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

(b) [Editor's note: This version of subsection (1)(b) is effective until a ballot issue is approved by the people at the next regular general election in November 2020. See the editor's note following this section.] There is hereby created in the state treasury the tobacco tax enforcement cash fund. The fund shall consist of moneys deposited therein pursuant to paragraph (a) of this subsection (1) and section 39-28.5-106 (4). The moneys in the fund shall be subject to annual appropriation by the general assembly to the department for the purpose of enforcing the provisions of this article and article 28.5 of this title. Any moneys not appropriated by the general assembly shall remain in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(b) [Editor's note: This version of subsection (1)(b) takes effect only if a ballot issue is approved by the people at the next regular general election in November 2020. See the editor's note following this section.] There is hereby created in the state treasury the tobacco tax enforcement cash fund. The fund consists of money deposited therein pursuant to subsection (1)(a) of this section and sections 39-28-116 (5), 39-28.5-106 (4), and 39-28.6-107 (4). The money in the fund is subject to annual appropriation by the general assembly to the department for the purpose of enforcing this article 28 and articles 28.5 and 28.6 of this title 39. Any money not appropriated by the general assembly remains in the fund and shall not be transferred or revert to the general fund at the end of any fiscal year.

(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.

(2) Any cigarettes seized by virtue of the provisions of this section shall be confiscated, and the department shall sell such confiscated goods at a public sale to a licensed wholesaler to the best advantage of this state. The proceeds from such sale shall be remitted to the state treasurer and distributed as provided in section 39-28-110 (1). Such sale by the state shall not relieve the purchaser at such sale from paying the tax and stamping the articles so sold to him or her in the manner provided in this article. The act or omission of any officer, agent, or other person acting for or employed by any person, firm, limited liability company, partnership, or corporation shall be deemed to be the act or omission of such person, firm, limited liability company, partnership, or corporation, as well as his or her own.

Source: L. 64: p. 823, § 7. C.R.S. 1963: § 138-8-7. L. 90: (2) amended, p. 459, § 46, effective April 18. L. 2005: Entire section amended, p. 909, § 6, effective June 2; entire section amended, p. 924, § 7, effective June 2. L. 2009: (1) amended, (HB 09-1173), ch. 372, p. 2016, § 3, effective August 5. L. 2010: (1)(a) amended and (1)(c) added, (HB 10-1058), ch. 158, p. 543, § 1, effective August 11. L. 2020: (1)(b) amended, (HB 20-1427), ch. 248, p. 1190, § 6, effective (see editor's note).

Editor's note: Section 27(2) of chapter 248 (HB 20-1427), Session Laws of Colorado 2020, provides that changes to this section take effect on the date of the governor's proclamation or January 1, 2021, whichever is later, only if, at the November 2020 statewide election, a majority of voters approve the ballot issue referred in accordance with section 39-28-401.

Cross references: For the legislative declaration contained in the 2005 act amending this section, see section 1 of chapter 241, Session Laws of Colorado 2005.