**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 Cancelation 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 reportingcan 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**