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ENGROSSED SUBSTITUTE HOUSE BILL 2493

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State of Washington

61st Legislature

2010 Regular Session

By House Finance (originally sponsored by Representatives Cody, Williams, Pedersen, Kagi, Nelson, Orwall, McCoy, Dickerson, White, Hunt, Darneille, Moeller, and Roberts)

READ FIRST TIME 03/10/10.

1 AN ACT Relating to the taxation of cigarettes and other tobacco  
2 products; amending RCW 82.24.020, 82.24.026, 82.26.010, 82.26.020, and  
3 82.26.030; adding a new section to chapter 82.26 RCW; creating new  
4 sections; repealing RCW 82.24.027 and 82.24.028; providing an effective  
5 date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to use  
8 revenue raised from taxes levied on the sales of cigarettes and other  
9 tobacco products to fund basic health care services.

10 **Sec. 2.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to read  
11 as follows:

12 (1) There is levied and (~~there shall be~~) collected as provided in  
13 this chapter, a tax upon the sale, use, consumption, handling,  
14 possession, or distribution of all cigarettes, in an amount equal to  
15 (~~one and fifteen one hundredths~~) 12.125 cents per cigarette.

16 (2) (~~An additional tax is imposed upon the sale, use, consumption,~~  
17 ~~handling, possession, or distribution of all cigarettes, in an amount~~  
18 ~~equal to five hundred twenty five one thousandths of a cent per~~

1 cigarette.—All — revenues — collected — during — any — month — from — this  
2 additional — tax — shall — be — deposited — in — the — state — general — fund — by — the  
3 twenty — fifth — day — of — the — following — month.

4 ~~(3) An additional tax is imposed upon the sale, use, consumption,~~  
5 ~~handling, possession, or distribution of all cigarettes, in an amount~~  
6 ~~equal to two and five one hundredths cents per cigarette. All revenues~~  
7 ~~collected during any month from this additional tax shall be deposited~~  
8 ~~in the state general fund by the twenty fifth day of the following~~  
9 ~~month.~~

10 (4)) Wholesalers subject to the payment of this tax may, if they  
11 wish, absorb five one-hundredths cents per cigarette of the tax and not  
12 pass it on to purchasers without being in violation of this section or  
13 any other act relating to the sale or taxation of cigarettes.

14 ((+5)) (3) For purposes of this chapter, "possession" ((shall))  
15 means both (a) physical possession by the purchaser and, (b) when  
16 cigarettes are being transported to or held for the purchaser or his or  
17 her designee by a person other than the purchaser, constructive  
18 possession by the purchaser or his or her designee, which constructive  
19 possession ((shall-be)) is deemed to occur at the location of the  
20 cigarettes being so transported or held.

21 ((+6)) (4) In accordance with federal law and rules prescribed by  
22 the department, an enrolled member of a federally recognized Indian  
23 tribe may purchase cigarettes from an Indian tribal organization under  
24 the jurisdiction of the member's tribe for the member's own use exempt  
25 from the applicable taxes imposed by this chapter. Except as provided  
26 in subsection ((+7)) (5) of this section, any person, who purchases  
27 cigarettes from an Indian tribal organization and who is not an  
28 enrolled member of the federally recognized Indian tribe within whose  
29 jurisdiction the sale takes place, is not exempt from the applicable  
30 taxes imposed by this chapter.

31 ((+7)) (5) If the state enters into a cigarette tax contract or  
32 agreement with a federally recognized Indian tribe under chapter 43.06  
33 RCW, the terms of the contract or agreement ((shall)) take precedence  
34 over any conflicting provisions of this chapter while the contract or  
35 agreement is in effect.

36 **Sec. 3.** RCW 82.24.026 and 2009 c 479 s 67 are each amended to read  
37 as follows:

1 (1) In addition to the tax imposed upon the sale, use, consumption,  
2 handling, possession, or distribution of cigarettes set forth in RCW  
3 82.24.020, there is imposed a tax in an amount equal to three cents per  
4 cigarette.

5 (2) The revenue collected under this section (~~shall~~) must be  
6 deposited as follows:

7 (a) (~~28.5~~) 14 percent (~~shall~~) must be deposited into the  
8 general fund.

9 (b) The remainder (~~shall~~) must be deposited into the education  
10 legacy trust account.

11 **Sec. 4.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to read  
12 as follows:

13 The definitions in this section apply throughout this chapter  
14 unless the context clearly requires otherwise.

15 (1) "Tobacco products" means cigars, cheroots, stogies, periques,  
16 granulated, plug cut, crimp cut, ready rubbed, and other smoking  
17 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-  
18 cut and other chewing tobaccos, shorts, refuse scraps, clippings,  
19 cuttings and sweepings of tobacco, and other kinds and forms of  
20 tobacco, prepared in such manner as to be suitable for chewing or  
21 smoking in a pipe or otherwise, or both for chewing and smoking, and  
22 any other product, regardless of form, that contains tobacco and is  
23 intended for human consumption or placement in the oral or nasal cavity  
24 or absorption into the human body by any other means, but (~~shall~~)  
25 does not include cigarettes as defined in RCW 82.24.010.

26 (2) "Manufacturer" means a person who manufactures and sells  
27 tobacco products.

28 (3) "Distributor" means (a) any person engaged in the business of  
29 selling tobacco products in this state who brings, or causes to be  
30 brought, into this state from without the state any tobacco products  
31 for sale, (b) any person who makes, manufactures, fabricates, or stores  
32 tobacco products in this state for sale in this state, (c) any person  
33 engaged in the business of selling tobacco products without this state  
34 who ships or transports tobacco products to retailers in this state, to  
35 be sold by those retailers, (d) any person engaged in the business of  
36 selling tobacco products in this state who handles for sale any tobacco

1 products that are within this state but upon which tax has not been  
2 imposed.

3 (4) "Retailer" means any person engaged in the business of selling  
4 tobacco products to ultimate consumers.

5 (5)(a) "Sale" means any transfer, exchange, or barter, in any  
6 manner or by any means whatsoever, for a consideration, and includes  
7 and means all sales made by any person.

8 (b) The term "sale" includes a gift by a person engaged in the  
9 business of selling tobacco products, for advertising, promoting, or as  
10 a means of evading the provisions of this chapter.

11 (6) "Business" means any trade, occupation, activity, or enterprise  
12 engaged in for the purpose of selling or distributing tobacco products  
13 in this state.

14 (7) "Place of business" means any place where tobacco products are  
15 sold or where tobacco products are manufactured, stored, or kept for  
16 the purpose of sale, including any vessel, vehicle, airplane, train, or  
17 vending machine.

18 (8) "Retail outlet" means each place of business from which tobacco  
19 products are sold to consumers.

20 (9) "Department" means the department of revenue.

21 (10) "Person" means any individual, receiver, administrator,  
22 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
23 copartnership, joint venture, club, company, joint stock company,  
24 business trust, municipal corporation, the state and its departments  
25 and institutions, political subdivision of the state of Washington,  
26 corporation, limited liability company, association, society, any group  
27 of individuals acting as a unit, whether mutual, cooperative,  
28 fraternal, nonprofit, or otherwise. The term excludes any person  
29 immune from state taxation, including the United States or its  
30 instrumentalities, and federally recognized Indian tribes and enrolled  
31 tribal members, conducting business within Indian country.

32 (11) "Indian country" means the same as defined in chapter 82.24  
33 RCW.

34 (12) "Actual price" means the total amount of consideration for  
35 which tobacco products are sold, valued in money, whether received in  
36 money or otherwise, including any charges by the seller necessary to  
37 complete the sale such as charges for delivery, freight,  
38 transportation, or handling.

1 (13) "Affiliated" means related in any way by virtue of any form or  
2 amount of common ownership, control, operation, or management.

3 (14) "Board" means the liquor control board.

4 (15) "Cigar" means a roll for smoking that is of any size or shape  
5 and that is made wholly or in part of tobacco, irrespective of whether  
6 the tobacco is pure or flavored, adulterated or mixed with any other  
7 ingredient, if the roll has a wrapper made wholly or in greater part of  
8 tobacco. "Cigar" does not include a cigarette.

9 (16) "Cigarette" has the same meaning as in RCW 82.24.010.

10 (17) "Manufacturer's representative" means a person hired by a  
11 manufacturer to sell or distribute the manufacturer's tobacco products,  
12 and includes employees and independent contractors.

13 (18)(a) "Taxable sales price" means:

14 (i) In the case of a taxpayer that is not affiliated with the  
15 manufacturer, distributor, or other person from whom the taxpayer  
16 purchased tobacco products, the actual price for which the taxpayer  
17 purchased the tobacco products;

18 (ii) In the case of a taxpayer that purchases tobacco products from  
19 an affiliated manufacturer, affiliated distributor, or other affiliated  
20 person, and that sells those tobacco products to unaffiliated  
21 distributors, unaffiliated retailers, or ultimate consumers, the actual  
22 price for which that taxpayer sells those tobacco products to  
23 unaffiliated distributors, unaffiliated retailers, or ultimate  
24 consumers;

25 (iii) In the case of a taxpayer that sells tobacco products only to  
26 affiliated distributors or affiliated retailers, the price, determined  
27 as nearly as possible according to the actual price, that other  
28 distributors sell similar tobacco products of like quality and  
29 character to unaffiliated distributors, unaffiliated retailers, or  
30 ultimate consumers;

31 (iv) In the case of a taxpayer that is a manufacturer selling  
32 tobacco products directly to ultimate consumers, the actual price for  
33 which the taxpayer sells those tobacco products to ultimate consumers;

34 (v) In the case of a taxpayer that has acquired tobacco products  
35 under a sale as defined in subsection (5)(b) of this section, the  
36 price, determined as nearly as possible according to the actual price,  
37 that the taxpayer or other distributors sell the same tobacco products

1 or similar tobacco products of like quality and character to  
2 unaffiliated distributors, unaffiliated retailers, or ultimate  
3 consumers; or

4 (vi) In any case where (a)(i) through (v) of this subsection do not  
5 apply, the price, determined as nearly as possible according to the  
6 actual price, that the taxpayer or other distributors sell the same  
7 tobacco products or similar tobacco products of like quality and  
8 character to unaffiliated distributors, unaffiliated retailers, or  
9 ultimate consumers.

10 (b) For purposes of (a)(i) and (ii) of this subsection only,  
11 "person" includes both persons as defined in subsection (10) of this  
12 section and any person immune from state taxation, including the United  
13 States or its instrumentalities, and federally recognized Indian tribes  
14 and enrolled tribal members, conducting business within Indian country.

15 (c) The department may adopt rules regarding the determination of  
16 taxable sales price under this subsection.

17 (19) "Taxpayer" means a person liable for the tax imposed by this  
18 chapter.

19 (20) "Unaffiliated distributor" means a distributor that is not  
20 affiliated with the manufacturer, distributor, or other person from  
21 whom the distributor has purchased tobacco products.

22 (21) "Unaffiliated retailer" means a retailer that is not  
23 affiliated with the manufacturer, distributor, or other person from  
24 whom the retailer has purchased tobacco products.

25 (22) "Moist snuff" means tobacco that is finely cut, ground, or  
26 powdered; is not for smoking; and is intended to be placed in the oral,  
27 but not the nasal, cavity.

28 (23) "Little cigar" means a cigar that has a cellulose acetate  
29 integrated filter.

30 **Sec. 5.** RCW 82.26.020 and 2009 c 479 s 70 are each amended to read  
31 as follows:

32 (1) There is levied and (~~there shall be~~) collected a tax upon the  
33 sale, handling, or distribution of all tobacco products in this state  
34 at the following rate:

35 (a) (~~Seventy-five~~) For cigars except little cigars, ninety-five  
36 percent of the taxable sales price of cigars, not to exceed (~~fifty~~)  
37 sixty-five cents per cigar; (~~or~~)

1 (b) (~~Seventy-five~~) For all tobacco products except those covered  
2 under separate provisions of this subsection, ninety-five percent of  
3 the taxable sales price (~~of all tobacco products that are not~~  
4 cigars));

5 (c) For moist snuff, as established in this subsection (1)(c) and  
6 computed on the net weight listed by the manufacturer:

7 (i) On each single unit consumer-sized can or package whose net  
8 weight is one and two-tenths ounces or less, a rate per single unit  
9 that is equal to the greater of 2.526 dollars or eighty-three and one-  
10 half percent of the cigarette tax under chapter 82.24 RCW multiplied by  
11 twenty; or

12 (ii) On each single unit consumer-sized can or package whose net  
13 weight is more than one and two-tenths ounces, a proportionate tax at  
14 the rate established in (c)(i) of this subsection (1) on each ounce or  
15 fractional part of an ounce; and

16 (d) For little cigars, an amount per cigar equal to the cigarette  
17 tax under chapter 82.24 RCW.

18 (2) Taxes under this section (~~shall~~) must be imposed at the time  
19 the distributor (a) brings, or causes to be brought, into this state  
20 from without the state tobacco products for sale, (b) makes,  
21 manufactures, fabricates, or stores tobacco products in this state for  
22 sale in this state, (c) ships or transports tobacco products to  
23 retailers in this state, to be sold by those retailers, or (d) handles  
24 for sale any tobacco products that are within this state but upon which  
25 tax has not been imposed.

26 (3) The moneys collected under this section (~~shall~~) must be  
27 deposited into the state general fund.

28 NEW SECTION. Sec. 6. A new section is added to chapter 82.26 RCW  
29 to read as follows:

30 (1)(a) Within one year following the date on which the requirement  
31 for a tobacco product code is effective, payment of, or exemption from,  
32 the tax imposed in RCW 82.26.020 must be verifiable on each single-unit  
33 consumer-sized can or package of moist snuff, as provided in (b) of  
34 this subsection.

35 (b) Within thirty days following the date on which notice of  
36 proposed rule making to require a tobacco product code is published in  
37 the federal register, the department must commence to develop a method

1 for using a tobacco product code to verify payment of, or exemption  
2 from, the tax imposed in RCW 82.26.020; to develop and implement a  
3 pilot project to test the method; and to develop a plan for adoption of  
4 rules to implement the method. The department must report to the  
5 legislature on its progress annually by December 1st through the year  
6 following the year in which the method is implemented.

7 (2) If notice of proposed rule making to require a tobacco product  
8 code is not published in the federal register by July 1, 2011, the  
9 department must determine and recommend to the legislature by November  
10 1, 2014, a method to verify payment of, or exemption from, the tax  
11 imposed in RCW 82.26.020, by means of stamping, use of manufacturers'  
12 digitally readable product identifiers, or any other method, and must  
13 complete and present to the legislature a study of compliance with the  
14 tax imposed in RCW 82.26.020, the effect of noncompliance on state  
15 revenue, and the effect of adopting a method to verify payment of, or  
16 exemption from, the tax.

17 (3) For purposes of this section, "tobacco product code" means a  
18 code that is required on the label of a tobacco product for purposes of  
19 tracking or tracing the product through the distribution system under  
20 final regulations adopted by the secretary of the United States  
21 department of health and human services.

22 **Sec. 7.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to read  
23 as follows:

24 It is the intent and purpose of this chapter to levy a tax on all  
25 tobacco products sold, used, consumed, handled, or distributed within  
26 this state and to collect the tax from the distributor as defined in  
27 RCW 82.26.010. It is the further intent and purpose of this chapter to  
28 impose the tax once, and only once, on all tobacco products for sale in  
29 this state, but nothing in this chapter (~~shall~~) may be construed to  
30 exempt any person taxable under any other law or under any other tax  
31 imposed under Title 82 RCW. It is the further intent and purpose of  
32 this chapter that the distributor who first possesses the tobacco  
33 product in this state (~~shall be~~) is the distributor liable for the  
34 tax and that (1) for moist snuff the tax will be based on the net  
35 weight listed by the manufacturer and (2) in most other instances the  
36 tax will be based on the actual price that the distributor paid for the  
37 tobacco product, unless the distributor is affiliated with the seller.



1        NEW SECTION.    **Sec. 8.**    The following acts or parts of acts are each  
2 repealed:

3        (1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the  
4 general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925,  
5 & 1986 c 3 s 12; and

6        (2) RCW 82.24.028 (Additional tax imposed--Rate--Deposited into the  
7 general fund) and 2009 c 479 s 69, 2008 c 86 s 304, & 2002 c 2 s 3.

8        NEW SECTION.    **Sec. 9.**    Section 2 of this act applies only with  
9 respect to tax liability incurred under chapter 82.24 RCW on or after  
10 April 1, 2010, for the sale, use, consumption, handling, possession, or  
11 distribution of cigarettes.

12        NEW SECTION.    **Sec. 10.**    Section 5(1) (a), (b), and (d) of this act  
13 applies only with respect to tax liability incurred under chapter 82.26  
14 RCW on or after April 1, 2010, for the sale, handling, or distribution  
15 of cigars, little cigars, and other tobacco products.

16        NEW SECTION.    **Sec. 11.**    Section 5(1)(c), chapter . . ., Laws of  
17 2010 (this act) applies only with respect to tax liability incurred  
18 under chapter 82.26 RCW on or after October 1, 2010, for the sale,  
19 handling, or distribution of moist snuff.

20        NEW SECTION.    **Sec. 12.**    This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 April 1, 2010.

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