
SENATE BILL 6443

State of Washington

61st Legislature

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By Senators Keiser, McDermott, Fairley, Kohl-Welles, Fraser, and Tom

Read first time 01/14/10. Referred to Committee on Labor, Commerce & Consumer Protection.

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, and 82.26.020;
3 adding a new section to chapter 82.26 RCW; creating a new section; and
4 repealing RCW 82.24.027 and 82.24.028.

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

6 **Sec. 1.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to read
7 as follows:

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

12 (~~An additional tax is imposed upon the sale, use, consumption,~~
13 ~~handling, possession, or distribution of all cigarettes, in an amount~~
14 ~~equal to five hundred twenty five one thousandths of a cent per~~
15 ~~cigarette. All revenues collected during any month from this~~
16 ~~additional tax shall be deposited in the state general fund by the~~
17 ~~twenty fifth day of the following month.~~

18 (~~3) An additional tax is imposed upon the sale, use, consumption,~~
19 ~~handling, possession, or distribution of all cigarettes, in an amount~~

1 equal to two and five one-hundredths cents per cigarette. All revenues
2 collected during any month from this additional tax shall be deposited
3 in the state general fund by the twenty-fifth day of the following
4 month.

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

9 ~~((5))~~ (3) For purposes of this chapter, "possession" ~~((shall))~~
10 means both (a) physical possession by the purchaser and, (b) when
11 cigarettes are being transported to or held for the purchaser or his or
12 her designee by a person other than the purchaser, constructive
13 possession by the purchaser or his or her designee, which constructive
14 possession ~~((shall be))~~ is deemed to occur at the location of the
15 cigarettes being so transported or held.

16 ~~((6))~~ (4) In accordance with federal law and rules prescribed by
17 the department, an enrolled member of a federally recognized Indian
18 tribe may purchase cigarettes from an Indian tribal organization under
19 the jurisdiction of the member's tribe for the member's own use exempt
20 from the applicable taxes imposed by this chapter. Except as provided
21 in subsection ~~((7))~~ (5) of this section, any person, who purchases
22 cigarettes from an Indian tribal organization and who is not an
23 enrolled member of the federally recognized Indian tribe within whose
24 jurisdiction the sale takes place, is not exempt from the applicable
25 taxes imposed by this chapter.

26 ~~((7))~~ (5) If the state enters into a cigarette tax contract or
27 agreement with a federally recognized Indian tribe under chapter 43.06
28 RCW, the terms of the contract or agreement ~~((shall))~~ take precedence
29 over any conflicting provisions of this chapter while the contract or
30 agreement is in effect.

31 (6) By July 1, 2011, and by July 1st of each year thereafter, the
32 state treasurer must transfer eighteen million dollars from the general
33 fund into the tobacco prevention and control account under RCW
34 43.79.480.

35 **Sec. 2.** RCW 82.24.026 and 2009 c 479 s 67 are each amended to read
36 as follows:

37 (1) In addition to the tax imposed upon the sale, use, consumption,

1 handling, possession, or distribution of cigarettes set forth in RCW
2 82.24.020, there is imposed a tax in an amount equal to three cents per
3 cigarette.

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

6 (a) (~~28.5~~) 16 percent (~~shall~~) must be deposited into the
7 general fund.

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

10 **Sec. 3.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to read
11 as follows:

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

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

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

27 (3) "Distributor" means (a) any person engaged in the business of
28 selling tobacco products in this state who brings, or causes to be
29 brought, into this state from without the state any tobacco products
30 for sale, (b) any person who makes, manufactures, fabricates, or stores
31 tobacco products in this state for sale in this state, (c) any person
32 engaged in the business of selling tobacco products without this state
33 who ships or transports tobacco products to retailers in this state, to
34 be sold by those retailers, (d) any person engaged in the business of
35 selling tobacco products in this state who handles for sale any tobacco
36 products that are within this state but upon which tax has not been
37 imposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (v) In the case of a taxpayer that has acquired tobacco products
33 under a sale as defined in subsection (5)(b) of this section, the
34 price, determined as nearly as possible according to the actual price,
35 that the taxpayer or other distributors sell the same tobacco products
36 or similar tobacco products of like quality and character to
37 unaffiliated distributors, unaffiliated retailers, or ultimate
38 consumers; or

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

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

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

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

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

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

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

26 (23) "Small cigar" means a cigar that weighs less than four one-
27 thousandths of a pound.

28 (24) "Roll-your-own tobacco" has the meaning provided in 26 U.S.C.
29 Sec. 5702 of the federal internal revenue code of 1986, as existing on
30 January 1, 2010.

31 (25) "Capsular smokeless tobacco" means any product containing
32 tobacco that is intended or expected for oral consumption that does not
33 consist of loose tobacco and is offered in discrete single-dose or
34 single-use lozenges, pouches, pills, capsules, or other single-dose or
35 single-use units or in packages of such single-dose or single-use
36 units.

1 **Sec. 4.** RCW 82.26.020 and 2009 c 479 s 70 are each amended to read
2 as follows:

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

6 (a) (~~Seventy-five~~) For cigars other than small cigars, the
7 greater of: Ninety-five percent of the taxable sales price of cigars
8 or the cigarette tax under chapter 82.24 RCW multiplied by five, but
9 not to exceed (~~fifty cents~~) an amount per cigar equal to the
10 cigarette tax under chapter 82.24 RCW multiplied by twenty; (~~or~~)

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

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

17 (i) On each single unit consumer-sized can or package whose net
18 weight is one and two-tenths ounces or less, a rate that is equal to
19 the tax rate under chapter 82.24 RCW multiplied by twenty; or

20 (ii) On each single unit consumer-sized can whose net weight is
21 more than one and two-tenths ounces, a proportionate tax at the rate
22 established in (c)(i) of this subsection (1) on each ounce or
23 fractional part of an ounce.

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

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

34 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.26 RCW
35 to read as follows:

36 (1)(a) Within one year following the date on which the requirement
37 for a tobacco product code is effective, payment of, or exemption from,

1 the tax imposed in section 4 of this act must be verifiable on each
2 single-unit consumer-sized can or package of moist snuff, as provided
3 in (b) of this subsection.

4 (b) Within thirty days following the date on which notice of
5 proposed rulemaking to require a tobacco product code is published in
6 the federal register, the department must commence to develop a method
7 for using a tobacco product code to verify payment of, or exemption
8 from, the tax imposed in section 4 of this act; to develop and
9 implement a pilot project to test the method; and to develop a plan for
10 adoption of rules to implement the method. The department must report
11 to the legislature on its progress annually by December 1st through the
12 year following the year in which the method is implemented.

13 (2) If notice of proposed rulemaking to require a tobacco product
14 code is not published in the federal register by July 1, 2011, the
15 department must determine and recommend to the legislature by November
16 1, 2014, a method to verify payment of, or exemption from, the tax
17 imposed in section 4 of this act, by means of stamping, use of
18 manufacturers' digitally readable product identifiers, or any other
19 method, and must complete and present to the legislature a study of
20 compliance with the tax imposed in section 4 of this act, the effect of
21 noncompliance on state revenue, and the effect of adopting a method to
22 verify payment of, or exemption from, the tax.

23 (3) For purposes of this section, "tobacco product code" means a
24 code that is required on the label of a tobacco product for purposes of
25 tracking or tracing the product through the distribution system under
26 final regulations promulgated by the secretary of the United States
27 department of health and human services.

28 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each
29 repealed:

30 (1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the
31 general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925,
32 & 1986 c 3 s 12; and

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

35 NEW SECTION. **Sec. 7.** (1) Section 1, chapter . . ., Laws of 2010

1 (this act) applies only with respect to tax liability incurred under
2 this chapter on or after July 1, 2010, for the sale, use, consumption,
3 handling, possession, or distribution of cigarettes.

4 (2) Section 5(1), chapter . . ., Laws of 2010 (this act) applies
5 only with respect to tax liability incurred under this chapter on or
6 after July 1, 2010, for the sale, handling, or distribution of moist
7 snuff, cigars, small cigars, roll-your-own tobacco, and other tobacco
8 products.

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