
HOUSE BILL 2202

State of Washington 55th Legislature 1997 Regular Session

By Representative Dyer; by request of Revenue

Read first time 02/26/97. Referred to Committee on Finance.

1 AN ACT Relating to modifying the tobacco products tax by clarifying
2 the base, but not changing the rates; amending RCW 82.26.010,
3 82.26.020, and 82.26.025; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 clarify that the measure of the tobacco products tax is on the
7 established price at which the product is offered to a purchaser, by or
8 through, a manufacturer. The tobacco products tax is imposed once
9 during the manufacturer-to-consumer chain of supply. The tax is
10 imposed on the first person who brings, or causes to be brought, the
11 tobacco product into the state. Tobacco products are almost
12 exclusively manufactured outside of the state of Washington.
13 Generally, it is a wholesaler, buying from a manufacturer, who is the
14 first person to bring the tobacco product into this state, although
15 some retailers do buy directly from manufacturers. It is this
16 wholesaler or retailer from whom tax is usually collected. The tax
17 rate is applied against the tax base, resulting in tax owed. The tax
18 base is the price at which the wholesaler or retailer purchases the
19 product.

1 The legislature's original intent in enacting this law was to
2 impose the tax upon the wholesaler who purchases from the manufacturer
3 or the retailer who purchases from the manufacturer, these persons
4 computing tax on the price they paid for the product. It was not the
5 intent of the legislature to afford a manufacturer, utilizing a
6 marketing affiliate or affiliates, a competitive advantage through a
7 tax likely to be reduced by reason of the price of a tobacco product
8 based upon a sale and purchase between related entities.

9 **Sec. 2.** RCW 82.26.010 and 1995 c 278 s 16 are each amended to read
10 as follows:

11 As used in this chapter:

12 (1) "Tobacco products" means cigars, cheroots, stogies, periques,
13 granulated, plug cut, crimp cut, ready rubbed, and other smoking
14 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
15 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
16 cuttings and sweepings of tobacco, and other kinds and forms of
17 tobacco, prepared in such manner as to be suitable for chewing or
18 smoking in a pipe or otherwise, or both for chewing and smoking, but
19 shall not include cigarettes as defined in RCW 82.24.010;

20 (2) "Manufacturer" means a person who manufactures and sells
21 tobacco products;

22 (3) "Distributor" means (a) any person engaged in the business of
23 selling tobacco products in this state who brings, or causes to be
24 brought, into this state from without the state any tobacco products
25 for sale, (b) any person who makes, manufactures, or fabricates tobacco
26 products in this state for sale in this state, (c) any person engaged
27 in the business of selling tobacco products without this state who
28 ships or transports tobacco products to retailers in this state, to be
29 sold by those retailers;

30 (4) "Subjobber" means any person, other than a manufacturer or
31 distributor, who buys tobacco products from a distributor and sells
32 them to persons other than the ultimate consumers;

33 (5) "Wholesaler" means a person who makes "sales at wholesale," as
34 defined in chapter 82.04 RCW, of tobacco products;

35 (6) "Retailer" means any person engaged in the business of selling
36 tobacco products to ultimate consumers;

37 ((+6+)) (7) "Sale" means any transfer, exchange, or barter, in any
38 manner or by any means whatsoever, for a consideration, and includes

1 and means all sales made by any person. It includes a gift by a person
2 engaged in the business of selling tobacco products, for advertising,
3 as a means of evading the provisions of this chapter, or for any other
4 purposes whatsoever;

5 ~~((7))~~ ~~"Wholesale")~~ (8) "Distribution sales price" means the
6 ~~((established))~~ price for which a manufacturer or a manufacturer's
7 affiliate sells a tobacco product ~~((to a distributor))~~, exclusive of
8 any discount or other reduction, to a wholesaler or retailer, who is
9 not an affiliate of the manufacturer. Sales between affiliates are not
10 sales for the purpose of establishing distribution sales price;

11 ~~((8))~~ (9) "Business" means any trade, occupation, activity, or
12 enterprise engaged in for the purpose of selling or distributing
13 tobacco products in this state;

14 ~~((9))~~ (10) "Place of business" means any place where tobacco
15 products are sold or where tobacco products are manufactured, stored,
16 or kept for the purpose of sale or consumption, including any vessel,
17 vehicle, airplane, train, or vending machine;

18 ~~((10))~~ (11) "Retail outlet" means each place of business from
19 which tobacco products are sold to consumers;

20 ~~((11))~~ (12) "Department" means the state department of revenue;

21 (13) "Affiliate" means a person whose relationship with another
22 person is such that one person either directly or indirectly controls
23 or has the power to control the other, or two or more persons over
24 which a third party or parties has the power to control such persons or
25 does control such persons.

26 **Sec. 3.** RCW 82.26.020 and 1993 c 492 s 309 are each amended to
27 read as follows:

28 (1) There is levied and there shall be collected a tax upon the
29 sale, use, consumption, handling, or distribution of all tobacco
30 products in this state at the rate of forty-five percent of the
31 ~~((wholesale))~~ distribution sales price of such tobacco products.

32 (2) Taxes under this section shall be imposed at the time the
33 distributor (a) brings, or causes to be brought, into this state from
34 without the state tobacco products for sale, (b) makes, manufactures,
35 or fabricates tobacco products in this state for sale in this state, or
36 (c) ships or transports tobacco products to retailers in this state, to
37 be sold by those retailers.

1 (3) An additional tax is imposed equal to seven percent multiplied
2 by the tax payable under subsection (1) of this section.

3 (4) An additional tax is imposed equal to ten percent of the
4 ((wholesale)) distribution sales price of tobacco products. The moneys
5 collected under this subsection shall be deposited in the health
6 services account created under RCW 43.72.900.

7 **Sec. 4.** RCW 82.26.025 and 1986 c 3 s 14 are each amended to read
8 as follows:

9 (1) In addition to the taxes imposed under RCW 82.26.020, there is
10 levied and there shall be collected a tax upon the sale, use,
11 consumption, handling, or distribution of all tobacco products in this
12 state at the rate of sixteen and three-fourths percent of the
13 ((wholesale)) distribution sales price of such tobacco products. Such
14 tax shall be imposed at the time the distributor (a) brings, or causes
15 to be brought, into this state from without the state tobacco products
16 for sale, (b) makes, manufactures, or fabricates tobacco products in
17 this state for sale in this state, or (c) ships or transports tobacco
18 products to retailers in this state, to be sold by those retailers.

19 (2) The moneys collected under this section shall be deposited in
20 the water quality account under RCW 70.146.030 through June 30, 2021,
21 and in the general fund thereafter.

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