

SHB 1943 - S AMD 317

By Senators Honeyford, Keiser

ADOPTED 04/14/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 82.24.020 and 1994 sp.s. c 7 s 904 are each amended
4 to read as follows:

5 (1) There is levied and there shall be collected as provided in
6 this chapter, a tax upon the sale, use, consumption, handling,
7 possession or distribution of all cigarettes, in an amount equal to the
8 rate of eleven and one-half mills per cigarette.

9 (2) An additional tax is imposed upon the sale, use, consumption,
10 handling, possession, or distribution of all cigarettes, in an amount
11 equal to the rate of five and one-fourth mills per cigarette. All
12 revenues collected during any month from this additional tax shall be
13 deposited in the violence reduction and drug enforcement account under
14 RCW 69.50.520 by the twenty-fifth day of the following month.

15 (3) An additional tax is imposed upon the sale, use, consumption,
16 handling, possession, or distribution of all cigarettes, in an amount
17 equal to the rate of ten mills per cigarette through June 30, 1994,
18 eleven and one-fourth mills per cigarette for the period July 1, 1994,
19 through June 30, 1995, twenty mills per cigarette for the period July
20 1, 1995, through June 30, 1996, and twenty and one-half mills per
21 cigarette thereafter. All revenues collected during any month from
22 this additional tax shall be deposited in the health services account
23 created under RCW 43.72.900 by the twenty-fifth day of the following
24 month.

25 (4) Wholesalers (~~and retailers~~) subject to the payment of this
26 tax may, if they wish, absorb one-half mill per cigarette of the tax
27 and not pass it on to purchasers without being in violation of this
28 section or any other act relating to the sale or taxation of
29 cigarettes.

1 (5) For purposes of this chapter, "possession" shall mean both (a)
2 physical possession by the purchaser and, (b) when cigarettes are being
3 transported to or held for the purchaser or his or her designee by a
4 person other than the purchaser, constructive possession by the
5 purchaser or his or her designee, which constructive possession shall
6 be deemed to occur at the location of the cigarettes being so
7 transported or held.

8 **Sec. 2.** RCW 82.24.030 and 1995 c 278 s 2 are each amended to read
9 as follows:

10 (1) In order to enforce collection of the tax hereby levied, the
11 department of revenue shall design and have printed stamps of such size
12 and denominations as may be determined by the department. The stamps
13 must be affixed on the smallest container or package that will be
14 handled, sold, used, consumed, or distributed, to permit the department
15 to readily ascertain by inspection, whether or not such tax has been
16 paid or whether an exemption from the tax applies.

17 (2) Except as otherwise provided in this chapter, (~~every person~~)
18 only a wholesaler shall cause to be affixed on every package of
19 cigarettes, stamps of an amount equaling the tax due thereon or stamps
20 identifying the cigarettes as exempt before he or she sells, offers for
21 sale, uses, consumes, handles, removes, or otherwise disturbs and
22 distributes the same: PROVIDED, That where it is established to the
23 satisfaction of the department that it is impractical to affix such
24 stamps to the smallest container or package, the department may
25 authorize the affixing of stamps of appropriate denomination to a large
26 container or package.

27 (3) Only wholesalers may purchase or obtain cigarette stamps.
28 Wholesalers shall not sell or provide stamps to any other wholesaler or
29 person.

30 (4) Each roll of stamps, or group of sheets, shall have a separate
31 serial number, which shall be legible at the point of sale. The
32 department of revenue shall keep records of which wholesaler purchases
33 each roll or group of sheets. If the department of revenue permits
34 wholesalers to purchase partial rolls or sheets, in no case may stamps
35 bearing the same serial number be sold to more than one wholesaler.

1 The remainder of the roll or sheet, if any, shall either be retained
2 for later purchases by the same wholesaler or destroyed.

3 (5) Nothing in this section shall be construed as limiting any
4 otherwise lawful activity under a cigarette tax compact pursuant to
5 chapter 43.06 RCW.

6 **Sec. 3.** RCW 82.24.040 and 1995 c 278 s 3 are each amended to read
7 as follows:

8 (1) Except as authorized by this chapter, no person other than a
9 licensed wholesaler shall possess in this state unstamped cigarettes.

10 (2) No wholesaler in this state may possess within this state
11 unstamped cigarettes except that:

12 (a) Every wholesaler in the state who is licensed under Washington
13 state law may possess within this state unstamped cigarettes for such
14 period of time after receipt as is reasonably necessary to affix the
15 stamps as required; and

16 (b) Any wholesaler in the state who is licensed under Washington
17 state law and who furnishes a surety bond in a sum satisfactory to the
18 department, shall be permitted to set aside, without affixing the
19 stamps required by this chapter, such part of the wholesaler's stock as
20 may be necessary for the conduct of the wholesaler's business in making
21 sales to persons in another state or foreign country or to
22 instrumentalities of the federal government. Such unstamped stock
23 shall be kept separate and apart from stamped stock.

24 ~~((+2))~~ (3) Every wholesaler licensed under Washington state law
25 shall, at the time of shipping or delivering any of the articles taxed
26 herein to a point outside of this state or to a federal
27 instrumentality, make a true duplicate invoice of the same which shall
28 show full and complete details of the sale or delivery, whether or not
29 stamps were affixed thereto, and shall transmit such true duplicate
30 invoice to the department, at Olympia, not later than the fifteenth day
31 of the following calendar month. For failure to comply with the
32 requirements of this section, the department may revoke the permission
33 granted to the taxpayer to maintain a stock of goods to which the
34 stamps required by this chapter have not been affixed.

35 ~~((+3))~~ (4) Unstamped cigarettes possessed by a wholesaler under

1 subsection (2) of this section that are transferred by the wholesaler
2 to another facility of the wholesaler within the borders of Washington
3 shall be transferred in compliance with RCW 82.24.250.

4 (5) Every wholesaler who is licensed by Washington state law shall
5 sell cigarettes to retailers located in Washington only if the retailer
6 has a current cigarette retailer's license or is an Indian tribal
7 organization authorized to possess untaxed cigarettes under this
8 chapter and the rules adopted by the department.

9 (6) Nothing in this section shall be construed as limiting any
10 otherwise lawful activity under a cigarette tax compact pursuant to
11 chapter 43.06 RCW.

12 **Sec. 4.** RCW 82.24.050 and 1995 c 278 s 4 are each amended to read
13 as follows:

14 (1) No retailer in this state may possess unstamped cigarettes
15 within this state (~~except as provided in this chapter~~) unless the
16 person is also a wholesaler in possession of the cigarettes in
17 accordance with RCW 82.24.040.

18 (2) A retailer may obtain cigarettes only from a wholesaler subject
19 to the provisions of this chapter.

20 **Sec. 5.** RCW 82.24.110 and 1999 c 193 s 2 are each amended to read
21 as follows:

22 (1) Each of the following acts is a gross misdemeanor and
23 punishable as such:

24 (a) To sell, except as a licensed wholesaler engaged in interstate
25 commerce as to the article being taxed herein, without the stamp first
26 being affixed;

27 (b) To sell in Washington as a wholesaler to a retailer who does
28 not possess and is required to possess a current cigarette retailer's
29 license;

30 (c) To use or have in possession knowingly or intentionally any
31 forged or counterfeit stamps;

32 (d) For any person other than the department of revenue or its duly
33 authorized agent to sell any stamps not affixed to any of the articles
34 taxed herein whether such stamps are genuine or counterfeit;

35 (e) To violate any of the provisions of this chapter;

- 1 (f) To violate any lawful rule made and published by the department
2 of revenue or the board;
- 3 (g) To use any stamps more than once;
- 4 (h) To refuse to allow the department of revenue or its duly
5 authorized agent, on demand, to make full inspection of any place of
6 business where any of the articles herein taxed are sold or otherwise
7 hinder or prevent such inspection;
- 8 (i) (~~Except as provided in this chapter,~~) For any retailer to
9 have in possession in any place of business any of the articles herein
10 taxed, unless the same have the proper stamps attached;
- 11 (j) For any person to make, use, or present or exhibit to the
12 department of revenue or its duly authorized agent, any invoice for any
13 of the articles herein taxed which bears an untrue date or falsely
14 states the nature or quantity of the goods therein invoiced;
- 15 (k) For any wholesaler or retailer or his or her agents or
16 employees to fail to produce on demand of the department of revenue all
17 invoices of all the articles herein taxed or stamps bought by him or
18 her or received in his or her place of business within five years prior
19 to such demand unless he or she can show by satisfactory proof that the
20 nonproduction of the invoices was due to causes beyond his or her
21 control;
- 22 (l) For any person to receive in this state any shipment of any of
23 the articles taxed herein, when the same are not stamped, for the
24 purpose of avoiding payment of tax. It is presumed that persons other
25 than dealers who purchase or receive shipments of unstamped cigarettes
26 do so to avoid payment of the tax imposed herein;
- 27 (m) For any person to possess or transport in this state a quantity
28 of sixty thousand cigarettes or less unless the proper stamps required
29 by this chapter have been affixed or unless: (i) Notice of the
30 possession or transportation has been given as required by RCW
31 82.24.250; (ii) the person transporting the cigarettes has in actual
32 possession invoices or delivery tickets which show the true name and
33 address of the consignor or seller, the true name and address of the
34 consignee or purchaser, and the quantity and brands of the cigarettes
35 so transported; and (iii) the cigarettes are consigned to or purchased
36 by any person in this state who is authorized by this chapter to
37 possess unstamped cigarettes in this state;

1 (n) To possess, sell, or transport within this state any container
2 or package of cigarettes that does not comply with this chapter.

3 (2) It is unlawful for any person knowingly or intentionally to
4 possess or to transport in this state a quantity in excess of sixty
5 thousand cigarettes unless the proper stamps required by this chapter
6 are affixed thereto or unless: (a) Proper notice as required by RCW
7 82.24.250 has been given; (b) the person transporting the cigarettes
8 actually possesses invoices or delivery tickets showing the true name
9 and address of the consignor or seller, the true name and address of
10 the consignee or purchaser, and the quantity and brands of the
11 cigarettes so transported; and (c) the cigarettes are consigned to or
12 purchased by a person in this state who is authorized by this chapter
13 to possess unstamped cigarettes in this state. Violation of this
14 section shall be punished as a class C felony under Title 9A RCW.

15 (3) All agents, employees, and others who aid, abet, or otherwise
16 participate in any way in the violation of the provisions of this
17 chapter or in any of the offenses described in this chapter shall be
18 guilty and punishable as principals, to the same extent as any
19 wholesaler or retailer or any other person violating this chapter.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW
21 to read as follows:

22 (1) It is unlawful for any person to knowingly manufacture, sell,
23 or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

24 (a) The cigarette or its packaging bears any reproduction or copy
25 of a trademark, service mark, trade name, label, term, design, or work
26 adopted or used by a manufacturer to identify its own cigarettes; and

27 (b) The cigarette is not manufactured by the owner or holder of
28 that trademark, service mark, trade name, label, term, design, or work,
29 or by any authorized licensee of that person.

30 (2) Any person who violates the provisions of this section is
31 guilty of a class C felony which is punishable by up to five years in
32 prison and a fine of up to ten thousand dollars.

33 (3) Any person who is convicted of a second or subsequent violation
34 of the provisions of this section is guilty of a class B felony which
35 is punishable by up to ten years in prison and a fine of up to twenty
36 thousand dollars.

1 **Sec. 7.** RCW 82.24.130 and 1999 c 193 s 3 are each amended to read
2 as follows:

3 (1) The following are subject to seizure and forfeiture:

4 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
5 that are found at any point within this state, which articles are held,
6 owned, or possessed by any person, and that do not have the stamps
7 affixed to the packages or containers; ~~((and))~~ any container or package
8 of cigarettes possessed or held for sale that does not comply with this
9 chapter; and any container or package of cigarettes that is
10 manufactured, sold, or possessed in violation of section 6 of this act.

11 (b) All conveyances, including aircraft, vehicles, or vessels,
12 which are used, or intended for use, to transport, or in any manner to
13 facilitate the transportation, for the purpose of sale or receipt of
14 property described in (a) of this subsection, except:

15 (i) A conveyance used by any person as a common or contract carrier
16 having in actual possession invoices or delivery tickets showing the
17 true name and address of the consignor or seller, the true name of the
18 consignee or purchaser, and the quantity and brands of the cigarettes
19 transported, unless it appears that the owner or other person in charge
20 of the conveyance is a consenting party or privy to a violation of this
21 chapter;

22 (ii) A conveyance subject to forfeiture under this section by
23 reason of any act or omission of which the owner thereof establishes to
24 have been committed or omitted without his or her knowledge or consent;

25 (iii) A conveyance encumbered by a bona fide security interest if
26 the secured party neither had knowledge of nor consented to the act or
27 omission.

28 (c) Any vending machine used for the purpose of violating the
29 provisions of this chapter.

30 (2) Property subject to forfeiture under this chapter may be seized
31 by any agent of the department authorized to collect taxes, any
32 enforcement officer of the board, or law enforcement officer of this
33 state upon process issued by any superior court or district court
34 having jurisdiction over the property. Seizure without process may be
35 made if:

36 (a) The seizure is incident to an arrest or a search under a search
37 warrant or an inspection under an administrative inspection warrant; or

1 (b) The department, the board, or the law enforcement officer has
2 probable cause to believe that the property was used or is intended to
3 be used in violation of this chapter and exigent circumstances exist
4 making procurement of a search warrant impracticable.

5 (3) Notwithstanding the foregoing provisions of this section,
6 articles taxed in this chapter which are in the possession of a
7 wholesaler (~~or retailer~~), licensed under Washington state law, for a
8 period of time necessary to affix the stamps after receipt of the
9 articles, shall not be considered contraband unless they are
10 manufactured, sold, or possessed in violation of section 6 of this act.

11 **Sec. 8.** RCW 82.24.250 and 1997 c 420 s 7 are each amended to read
12 as follows:

13 (1) No person other than: (a) A licensed wholesaler in the
14 wholesaler's own vehicle; or (b) a person who has given notice to the
15 board in advance of the commencement of transportation shall transport
16 or cause to be transported in this state cigarettes not having the
17 stamps affixed to the packages or containers.

18 (2) When transporting unstamped cigarettes, such persons shall have
19 in their actual possession or cause to have in the actual possession of
20 those persons transporting such cigarettes on their behalf invoices or
21 delivery tickets for such cigarettes, which shall show the true name
22 and address of the consignor or seller, the true name and address of
23 the consignee or purchaser, and the quantity and brands of the
24 cigarettes so transported.

25 (3) If the cigarettes are consigned to or purchased by any person
26 in this state such purchaser or consignee must be a person who is
27 authorized by this chapter (~~(82.24—RCW)~~) to possess unstamped
28 cigarettes in this state.

29 (4) In the absence of the notice of transportation required by this
30 section or in the absence of such invoices or delivery tickets, or, if
31 the name or address of the consignee or purchaser is falsified or if
32 the purchaser or consignee is not a person authorized by this chapter
33 (~~(82.24—RCW)~~) to possess unstamped cigarettes, the cigarettes so
34 transported shall be deemed contraband subject to seizure and sale
35 under the provisions of RCW 82.24.130.

1 (5) Transportation of cigarettes from a point outside this state to
2 a point in some other state will not be considered a violation of this
3 section provided that the person so transporting such cigarettes has in
4 his possession adequate invoices or delivery tickets which give the
5 true name and address of such out-of-state seller or consignor and such
6 out-of-state purchaser or consignee.

7 (6) In any case where the department or its duly authorized agent,
8 or any peace officer of the state, has knowledge or reasonable grounds
9 to believe that any vehicle is transporting cigarettes in violation of
10 this section, the department, such agent, or such police officer, is
11 authorized to stop such vehicle and to inspect the same for contraband
12 cigarettes.

13 (7) For purposes of this section, the term "person authorized by
14 this chapter ((82.24 RCW)) to possess unstamped cigarettes" means:

15 (a) A wholesaler ((~~or retailer~~)), licensed under Washington state
16 law;

17 (b) The United States or an agency thereof; and

18 (c) Any person, including an Indian tribal organization, who, after
19 notice has been given to the board as provided in this section, brings
20 or causes to be brought into the state unstamped cigarettes, if within
21 a period of time after receipt of the cigarettes as the department
22 determines by rule to be reasonably necessary for the purpose the
23 person has caused stamps to be affixed in accordance with RCW 82.24.030
24 or otherwise made payment of the tax required by this chapter in the
25 manner set forth in rules adopted by the department.

26 (8) Nothing in this section shall be construed as limiting any
27 otherwise lawful activity under a cigarette tax compact pursuant to
28 chapter 43.06 RCW.

29 **Sec. 9.** RCW 82.24.260 and 1995 c 278 s 11 are each amended to read
30 as follows:

31 (1) Other than:

32 (a) A ((~~person~~)) wholesaler required to be licensed under this
33 chapter;

34 (b) A federal instrumentality with respect to sales to authorized
35 military personnel; or

1 (c) An Indian tribal organization with respect to sales to enrolled
2 members of the tribe,
3 a person who is in lawful possession of unstamped cigarettes and who
4 intends to sell or otherwise dispose of the cigarettes shall pay, or
5 satisfy its precollection obligation that is imposed by this chapter,
6 the tax required by this chapter by remitting the tax or causing stamps
7 to be affixed in the manner provided in rules adopted by the
8 department.

9 (2) When stamps are required to be affixed, the person may deduct
10 from the tax collected the compensation allowable under this chapter.
11 The remittance or the affixing of stamps shall, in the case of
12 cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be
13 made at the same time and manner as required in RCW 82.24.250(7)(c).

14 (3) This section shall not relieve the buyer or possessor of
15 unstamped cigarettes from personal liability for the tax imposed by
16 this chapter.

17 (4) Nothing in this section shall relieve a wholesaler (~~or a~~
18 ~~retailer~~) from the requirements of affixing stamps pursuant to RCW
19 82.24.040 and 82.24.050.

20 **Sec. 10.** RCW 82.24.500 and 1986 c 321 s 4 are each amended to read
21 as follows:

22 No person may engage in or conduct the business of purchasing,
23 selling, consigning, or distributing cigarettes in this state without
24 a license under this chapter. A violation of this section is a
25 (~~misdemeanor~~) class C felony."

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By Senators Honeyford, Keiser

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26 On page 1, line 2 of the title, after "forfeiture;" strike the
27 remainder of the title and insert "amending RCW 82.24.020, 82.24.030,
28 82.24.040, 82.24.050, 82.24.110, 82.24.130, 82.24.250, 82.24.260, and

1 82.24.500; adding a new section to chapter 82.24 RCW; and prescribing
2 penalties."

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