
HOUSE BILL 2382

State of Washington

61st Legislature

2009 Regular Session

By Representatives Santos, Moeller, Morrell, Cody, Kretz, Hinkle, Armstrong, Walsh, and Cox

1 AN ACT Relating to taxation of moist snuff; amending RCW 82.26.010,
2 82.26.020, and 82.26.030; adding new sections to chapter 82.26 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 82.26 RCW
6 to read as follows:

7 The legislature finds that use of wholesale price as the measure of
8 tobacco products tax on moist snuff makes fair and consistent
9 administration more difficult, because of the numerous and complex ways
10 moist snuff can be valued before it is sold to consumers. The
11 legislature further finds that wholesale price as the measure of tax
12 does not provide a stable revenue stream, because proliferation of low-
13 cost product reduces the tax base. The legislature further finds that
14 such proliferation of low-cost product makes moist snuff more
15 accessible, especially to the young, contrary to state policy regarding
16 tobacco products.

17 It is the intent of the legislature to establish weight, rather
18 than wholesale price, as the measure of tobacco products tax on moist
19 snuff, and impose the tax at a rate that is equivalent to cigarette

1 tax, with a specified minimum of tax on each consumer-sized package.
2 It is further the intent of the legislature to dedicate any new revenue
3 attributable to this act to the health services account, to the extent
4 possible, while keeping other accounts whole.

5 **Sec. 2.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Tobacco products" means cigars, cheroots, stogies, periques,
10 granulated, plug cut, crimp cut, ready rubbed, and other smoking
11 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
12 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
13 cuttings and sweepings of tobacco, and other kinds and forms of
14 tobacco, prepared in such manner as to be suitable for chewing or
15 smoking in a pipe or otherwise, or both for chewing and smoking, and
16 any other product, regardless of form, that contains tobacco and is
17 intended for human consumption or placement in the oral or nasal cavity
18 or absorption into the human body by any other means, but shall not
19 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, fabricates, or stores
26 tobacco products in this state for sale in this state, (c) any person
27 engaged in the business of selling tobacco products without this state
28 who ships or transports tobacco products to retailers in this state, to
29 be sold by those retailers, (d) any person engaged in the business of
30 selling tobacco products in this state who handles for sale any tobacco
31 products that are within this state but upon which tax has not been
32 imposed.

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

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

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

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

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

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

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

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

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

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

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

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

35 (15) "Cigar" means a roll for smoking that is of any size or shape
36 and that is made wholly or in part of tobacco, irrespective of whether
37 the tobacco is pure or flavored, adulterated or mixed with any other

1 ingredient, if the roll has a wrapper made wholly or in greater part of
2 tobacco. "Cigar" does not include a cigarette.

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

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

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

8 (i) In the case of a taxpayer that is not affiliated with the
9 manufacturer, distributor, or other person from whom the taxpayer
10 purchased tobacco products, the actual price for which the taxpayer
11 purchased the tobacco products;

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

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

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

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

35 (vi) In any case where (a)(i) through (v) of this subsection do not
36 apply, the price, determined as nearly as possible according to the
37 actual price, that the taxpayer or other distributors sell the same

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

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

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

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

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

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

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

22 **Sec. 3.** RCW 82.26.020 and 2005 c 180 s 3 are each amended to read
23 as follows:

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

27 (a) Until October 1, 2009:

28 (i) Seventy-five percent of the taxable sales price of cigars, not
29 to exceed fifty cents per cigar; or

30 ((+b)) (ii) Seventy-five percent of the taxable sales price of all
31 tobacco products that are not cigars.

32 (b) As of October 1, 2009:

33 (i) For cigars, seventy-five percent of the taxable sales price of
34 cigars, not to exceed fifty cents per cigar;

35 (ii) For all tobacco products that are not cigars or moist snuff,
36 seventy-five percent of the taxable sales price; or

1 (iii) For moist snuff, as established in this subsection
2 (1)(b)(iii) and computed on the net weight listed by the manufacturer:

3 (A) On each single unit consumer-sized can or package whose net
4 weight is one and two-tenths ounces or less, a rate that is equal to
5 2.025 dollars per single unit; or

6 (B) On each single unit consumer-sized can whose net weight is more
7 than one and two-tenths ounces, a proportionate tax at the rate
8 established in (b)(iii)(A) of this subsection (1) on each ounce or
9 fractional part of an ounce.

10 (2) Taxes under this section shall be imposed at the time the
11 distributor (a) brings, or causes to be brought, into this state from
12 without the state tobacco products for sale, (b) makes, manufactures,
13 fabricates, or stores tobacco products in this state for sale in this
14 state, (c) ships or transports tobacco products to retailers in this
15 state, to be sold by those retailers, or (d) handles for sale any
16 tobacco products that are within this state but upon which tax has not
17 been imposed.

18 (3) The moneys collected under this section shall be deposited as
19 follows:

20 (a) Until January 1, 2010:

21 (i) Thirty-seven percent in the general fund; and

22 (~~(b)~~) (ii) Fifty percent in the health services account created
23 under RCW 43.72.900;

24 (b) As of January 1, 2010:

25 (i) Twenty-nine percent in the general fund; and

26 (ii) Fifty-eight percent in the health services account created
27 under RCW 43.72.900; and

28 (c) Thirteen percent in the water quality account under RCW
29 70.146.030 for the period beginning July 1, 2005, through June 30,
30 2021, and in the general fund for the period beginning July 1, 2021.

31 **Sec. 4.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to read
32 as follows:

33 It is the intent and purpose of this chapter to levy a tax on all
34 tobacco products sold, used, consumed, handled, or distributed within
35 this state and to collect the tax from the distributor as defined in
36 RCW 82.26.010. It is the further intent and purpose of this chapter to
37 impose the tax once, and only once, on all tobacco products for sale in

1 this state, but nothing in this chapter shall be construed to exempt
2 any person taxable under any other law or under any other tax imposed
3 under Title 82 RCW. It is the further intent and purpose of this
4 chapter that the distributor who first possesses the tobacco product in
5 this state shall be the distributor liable for the tax and that (1) for
6 moist snuff the tax will be based on the net weight listed by the
7 manufacturer and (2) in most other instances the tax will be based on
8 the actual price that the distributor paid for the tobacco product,
9 unless the distributor is affiliated with the seller.

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

12 (1) For purposes of this section, "tobacco product code" means a
13 code that is required on the label of a tobacco product for purposes of
14 tracking or tracing the product through the distribution system under
15 final regulations adopted by the secretary of the United States
16 department of health and human services.

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

22 (b) Within thirty days following the date on which notice of
23 proposed rule making to require a tobacco product code is published in
24 the federal register, the department shall commence to develop a method
25 for using a tobacco product code to verify payment of, or exemption
26 from, the tax imposed in RCW 82.26.020; to develop and implement a
27 pilot project to test the method; and to develop a plan for adoption of
28 rules to implement the method. The department must report to the
29 legislature on its progress annually by December 1st through the year
30 following the year in which the method is implemented.

31 (3) If notice of proposed rule making to require a tobacco product
32 code is not published in the federal register by July 1, 2011, the
33 department must determine and recommend to the legislature by November
34 1, 2014, a method to verify payment of, or exemption from, the tax
35 imposed in RCW 82.26.020, by means of stamping, use of manufacturers'
36 digitally readable product identifiers, or any other method, and shall
37 complete and present to the legislature a study of compliance with the

1 tax imposed in RCW 82.26.020, the effect of noncompliance on state
2 revenue, and the effect of adopting a method to verify payment of, or
3 exemption from, the tax.

4 NEW SECTION. **Sec. 6.** The legislature recognizes the role that tax
5 policy plays in the levels of consumption of moist snuff by youth due
6 to impacts on price. Discouraging youth access to moist snuff and
7 youth consumption is an important state policy. The legislature
8 directs the department of health, with the assistance of the department
9 of revenue and the office of financial management, to study this issue.
10 The study must examine the historic, current, and future trends and
11 data, including but not limited to which products are consumed, by
12 which age group, and how the products were acquired. The study should
13 cover the period beginning with the year 2000, if possible. The
14 department of health must report to the appropriate fiscal and health
15 care committees of the legislature by December 1, 2010. The department
16 of health may consult with academics, other experts, and industry
17 representatives in studying this issue and preparing any reports
18 required under this section.

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