
SUBSTITUTE HOUSE BILL 2493

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: On each single unit consumer-sized can or
6 package, the greater of:

7 (i) Ninety-five percent of the taxable sales price; or

8 (ii) Eighty-three and one-half percent of the cigarette tax under
9 chapter 82.24 RCW multiplied by twenty, increased proportionately for
10 each ounce or fractional part of an ounce where the single unit
11 consumer-sized can or package is in excess of one and two-tenths
12 ounces; and

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

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

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

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

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

32 (b) Within thirty days following the date on which notice of
33 proposed rule making to require a tobacco product code is published in
34 the federal register, the department must commence to develop a method
35 for using a tobacco product code to verify payment of, or exemption
36 from, the tax imposed in RCW 82.26.020; to develop and implement a
37 pilot project to test the method; and to develop a plan for adoption of

1 rules to implement the method. The department must report to the
2 legislature on its progress annually by December 1st through the year
3 following the year in which the method is implemented.

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

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

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

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

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

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

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

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

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

14 NEW SECTION. **Sec. 11.** Section 5(1)(c), chapter . . ., Laws of
15 2010 (this act) applies only with respect to tax liability incurred
16 under chapter 82.26 RCW on or after October 1, 2010, for the sale,
17 handling, or distribution of moist snuff.

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

--- END ---