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HOUSE BILL 2493

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State of Washington

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By Representatives Cody, Williams, Pedersen, Kagi, Nelson, Orwall, McCoy, Dickerson, White, Hunt, Darneille, Moeller, and Roberts

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

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

18       (ii) The cigarette tax under chapter 82.24 RCW multiplied by  
19 twenty, increased proportionately for each ounce or fractional part of  
20 an ounce where the single unit consumer-sized can or package is in  
21 excess of one and two-tenths ounces;

22       (d) For small cigars, an amount per cigar equal to the cigarette  
23 tax under chapter 82.24 RCW;

24       (e) For roll-your-own tobacco: On each single unit consumer-sized  
25 can or package, the greater of:

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

27       (ii) The cigarette tax under chapter 82.24 RCW multiplied by  
28 twenty, increased proportionately for each ounce or fractional part of  
29 an ounce where the single unit consumer-sized can or package is in  
30 excess of sixty-five one-hundredths ounces; or

31       (f) For capsular smokeless tobacco, an amount per single-use unit  
32 or single-dose unit equal to the greater of: Ninety-five percent of  
33 the taxable sales price per single-use unit or single-dose unit or the  
34 cigarette tax under chapter 82.24 RCW.

35       (2) Taxes under this section (~~shall~~) must be imposed at the time  
36 the distributor (a) brings, or causes to be brought, into this state  
37 from without the state tobacco products for sale, (b) makes,  
38 manufactures, fabricates, or stores tobacco products in this state for

1 sale in this state, (c) ships or transports tobacco products to  
2 retailers in this state, to be sold by those retailers, or (d) handles  
3 for sale any tobacco products that are within this state but upon which  
4 tax has not been imposed.

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

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

9 (1)(a) Within one year following the date on which the requirement  
10 for a tobacco product code is effective, payment of, or exemption from,  
11 the tax imposed in section 4 of this act must be verifiable on each  
12 single-unit consumer-sized can or package of moist snuff, as provided  
13 in (b) of this subsection.

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

23 (2) If notice of proposed rulemaking to require a tobacco product  
24 code is not published in the federal register by July 1, 2011, the  
25 department must determine and recommend to the legislature by November  
26 1, 2014, a method to verify payment of, or exemption from, the tax  
27 imposed in section 4 of this act, by means of stamping, use of  
28 manufacturers' digitally readable product identifiers, or any other  
29 method, and must complete and present to the legislature a study of  
30 compliance with the tax imposed in section 4 of this act, the effect of  
31 noncompliance on state revenue, and the effect of adopting a method to  
32 verify payment of, or exemption from, the tax.

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



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

3        (1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the  
4 general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925,  
5 & 1986 c 3 s 12; and

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

8        NEW SECTION.   **Sec. 7.**   (1) Section 1, chapter . . ., Laws of 2010  
9 (this act) applies only with respect to tax liability incurred under  
10 this chapter on or after July 1, 2010, for the sale, use, consumption,  
11 handling, possession, or distribution of cigarettes.

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

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