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SENATE BILL 6128

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State of Washington

61st Legislature

2009 Regular Session

By Senator Keiser

Read first time 03/25/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to taxation of little cigars; and amending RCW  
2 82.26.010, 82.26.020, and 82.26.030.

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

4 **Sec. 1.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to read  
5 as follows:

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

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

16 (2) "Manufacturer" means a person who manufactures and sells  
17 tobacco products.

18 (3) "Distributor" means (a) any person engaged in the business of  
19 selling tobacco products in this state who brings, or causes to be

1 brought, into this state from without the state any tobacco products  
2 for sale, (b) any person who makes, manufactures, fabricates, or stores  
3 tobacco products in this state for sale in this state, (c) any person  
4 engaged in the business of selling tobacco products without this state  
5 who ships or transports tobacco products to retailers in this state, to  
6 be sold by those retailers, (d) any person engaged in the business of  
7 selling tobacco products in this state who handles for sale any tobacco  
8 products that are within this state but upon which tax has not been  
9 imposed.

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

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

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

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

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

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

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

28 (10) "Person" means any individual, receiver, administrator,  
29 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
30 copartnership, joint venture, club, company, joint stock company,  
31 business trust, municipal corporation, the state and its departments  
32 and institutions, political subdivision of the state of Washington,  
33 corporation, limited liability company, association, society, any group  
34 of individuals acting as a unit, whether mutual, cooperative,  
35 fraternal, nonprofit, or otherwise. The term excludes any person  
36 immune from state taxation, including the United States or its  
37 instrumentalities, and federally recognized Indian tribes and enrolled  
38 tribal members, conducting business within Indian country.

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

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

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

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

11 (15) "Cigar" means a roll for smoking that is of any size or shape  
12 and that is made wholly or in part of tobacco, irrespective of whether  
13 the tobacco is pure or flavored, adulterated or mixed with any other  
14 ingredient, if the roll has a wrapper made wholly or in greater part of  
15 tobacco. "Cigar" does not include a cigarette.

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

17 (17) "Little cigar" means a roll for smoking made wholly or in part  
18 of tobacco if such product is wrapped in any substance containing  
19 tobacco, other than natural leaf tobacco, and weighs not more than  
20 three pounds per thousand. However, if a product also meets the  
21 definition of "cigarette" under RCW 82.24.010, the product must be  
22 treated as a cigarette and not as a little cigar.

23 (18) "Manufacturer's representative" means a person hired by a  
24 manufacturer to sell or distribute the manufacturer's tobacco products,  
25 and includes employees and independent contractors.

26 ((+18)) (19)(a) "Taxable sales price" means:

27 (i) In the case of a taxpayer that is not affiliated with the  
28 manufacturer, distributor, or other person from whom the taxpayer  
29 purchased tobacco products, the actual price for which the taxpayer  
30 purchased the tobacco products;

31 (ii) In the case of a taxpayer that purchases tobacco products from  
32 an affiliated manufacturer, affiliated distributor, or other affiliated  
33 person, and that sells those tobacco products to unaffiliated  
34 distributors, unaffiliated retailers, or ultimate consumers, the actual  
35 price for which that taxpayer sells those tobacco products to  
36 unaffiliated distributors, unaffiliated retailers, or ultimate  
37 consumers;

1 (iii) In the case of a taxpayer that sells tobacco products only to  
2 affiliated distributors or affiliated retailers, the price, determined  
3 as nearly as possible according to the actual price, that other  
4 distributors sell similar tobacco products of like quality and  
5 character to unaffiliated distributors, unaffiliated retailers, or  
6 ultimate consumers;

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

10 (v) In the case of a taxpayer that has acquired tobacco products  
11 under a sale as defined in subsection (5)(b) of this section, the  
12 price, determined as nearly as possible according to the actual price,  
13 that the taxpayer or other distributors sell the same tobacco products  
14 or similar tobacco products of like quality and character to  
15 unaffiliated distributors, unaffiliated retailers, or ultimate  
16 consumers; or

17 (vi) In any case where (a)(i) through (v) of this subsection do not  
18 apply, the price, determined as nearly as possible according to the  
19 actual price, that the taxpayer or other distributors sell the same  
20 tobacco products or similar tobacco products of like quality and  
21 character to unaffiliated distributors, unaffiliated retailers, or  
22 ultimate consumers.

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

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

30 ~~((+19+))~~ (20) "Taxpayer" means a person liable for the tax imposed  
31 by this chapter.

32 ~~((+20+))~~ (21) "Unaffiliated distributor" means a distributor that  
33 is not affiliated with the manufacturer, distributor, or other person  
34 from whom the distributor has purchased tobacco products.

35 ~~((+21+))~~ (22) "Unaffiliated retailer" means a retailer that is not  
36 affiliated with the manufacturer, distributor, or other person from  
37 whom the retailer has purchased tobacco products.

1       **Sec. 2.** RCW 82.26.020 and 2005 c 180 s 3 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 percent of the taxable sales price of cigars,  
7 other than little cigars, not to exceed fifty cents per such cigar;  
8 (~~or~~)

9       (b) For little cigars, an amount per little cigar that is equal, in  
10 total, to the combined taxes per cigarette imposed on cigarettes under  
11 RCW 82.24.020 (1), (2), and (3); 82.24.026; and 82.24.027; or

12       (c) Seventy-five percent of the taxable sales price of all tobacco  
13 products that are not cigars or little cigars.

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

22       (3) The moneys collected under this section shall be deposited as  
23 follows:

24       (a) Thirty-seven percent in the general fund;

25       (b) Fifty percent in the health services account created under RCW  
26 43.72.900; and

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

30       **Sec. 3.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to read  
31 as follows:

32       It is the intent and purpose of this chapter to levy a tax on all  
33 tobacco products sold, used, consumed, handled, or distributed within  
34 this state and to collect the tax from the distributor as defined in  
35 RCW 82.26.010. It is the further intent and purpose of this chapter to  
36 impose the tax once, and only once, on all tobacco products for sale in  
37 this state, but nothing in this chapter shall be construed to exempt

1 any person taxable under any other law or under any other tax imposed  
2 under Title 82 RCW. It is the further intent and purpose of this  
3 chapter that the distributor who first possesses the tobacco product in  
4 this state shall be the distributor liable for the tax (~~and that~~).  
5 In most instances, except in the case of little cigars, which are taxed  
6 on a different basis, the tax will be based on the actual price that  
7 the distributor paid for the tobacco product, unless the distributor is  
8 affiliated with the seller.

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