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**HOUSE BILL 2181**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representatives Waters and Chapman

Prefiled 01/05/24. Read first time 01/08/24. Referred to Committee on Finance.

1 AN ACT Relating to the pipe tobacco excise tax rate; and amending  
2 RCW 82.26.010 and 82.26.020.

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

4 **Sec. 1.** RCW 82.26.010 and 2020 c 139 s 31 are each amended to  
5 read as follows:

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

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

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

15 (3) "Board" means the liquor and cannabis board.

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

19 (5) "Cigar" means a roll for smoking that is of any size or shape  
20 and that is made wholly or in part of tobacco, irrespective of  
21 whether the tobacco is pure or flavored, adulterated or mixed with

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

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

4 (7) "Department" means the department of revenue.

5 (8) "Distributor" means (a) any person engaged in the business of  
6 selling tobacco products in this state who brings, or causes to be  
7 brought, into this state from without the state any tobacco products  
8 for sale, (b) any person who makes, manufactures, fabricates, or  
9 stores tobacco products in this state for sale in this state, (c) any  
10 person engaged in the business of selling tobacco products without  
11 this state who ships or transports tobacco products to retailers in  
12 this state, to be sold by those retailers, (d) any person engaged in  
13 the business of selling tobacco products in this state who handles  
14 for sale any tobacco products that are within this state but upon  
15 which tax has not been imposed.

16 (9) "Indian country" means the same as defined in chapter 82.24  
17 RCW.

18 (10) "Little cigar" means a cigar that has a cellulose acetate  
19 integrated filter.

20 (11) "Manufacturer" means a person who manufactures and sells  
21 tobacco products.

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

25 (13) "Moist snuff" means tobacco that is finely cut, ground, or  
26 powdered; is not for smoking; and is intended to be placed in the  
27 oral, but not the nasal, cavity.

28 (14) "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  
34 group 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  
38 enrolled tribal members, conducting business within Indian country.

39 (15) "Pipe tobacco" means any tobacco which, because of its  
40 appearance, type, packaging, or labeling, is suitable for use and

1 likely to be offered to, or purchased by, consumers as tobacco to be  
2 smoked in a pipe.

3 (16) "Place of business" means any place where tobacco products  
4 are sold or where tobacco products are manufactured, stored, or kept  
5 for the purpose of sale, including any vessel, vehicle, airplane,  
6 train, or vending machine.

7 ~~((16))~~ (17) "Retail outlet" means each place of business from  
8 which tobacco products are sold to consumers.

9 ~~((17))~~ (18) "Retailer" means any person engaged in the business  
10 of selling tobacco products to ultimate consumers.

11 ~~((18))~~ (19)(a) "Sale" means any transfer, exchange, or barter,  
12 in any manner or by any means whatsoever, for a consideration, and  
13 includes and means all sales made by any person.

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

17 ~~((19))~~ (20)(a) "Taxable sales price" means:

18 (i) In the case of a taxpayer that is not affiliated with the  
19 manufacturer, distributor, or other person from whom the taxpayer  
20 purchased tobacco products, the actual price for which the taxpayer  
21 purchased the tobacco products;

22 (ii) In the case of a taxpayer that purchases tobacco products  
23 from an affiliated manufacturer, affiliated distributor, or other  
24 affiliated person, and that sells those tobacco products to  
25 unaffiliated distributors, unaffiliated retailers, or ultimate  
26 consumers, the actual price for which that taxpayer sells those  
27 tobacco products to unaffiliated distributors, unaffiliated  
28 retailers, or ultimate consumers;

29 (iii) In the case of a taxpayer that sells tobacco products only  
30 to affiliated distributors or affiliated retailers, the price,  
31 determined as nearly as possible according to the actual price, that  
32 other distributors sell similar tobacco products of like quality and  
33 character to unaffiliated distributors, unaffiliated retailers, or  
34 ultimate consumers;

35 (iv) In the case of a taxpayer that is a manufacturer selling  
36 tobacco products directly to ultimate consumers, the actual price for  
37 which the taxpayer sells those tobacco products to ultimate  
38 consumers;

39 (v) In the case of a taxpayer that has acquired tobacco products  
40 under a sale as defined in subsection ~~((18))~~ (19)(b) of this

1 section, the price, determined as nearly as possible according to the  
2 actual price, that the taxpayer or other distributors sell the same  
3 tobacco products or similar tobacco products of like quality and  
4 character to unaffiliated distributors, unaffiliated retailers, or  
5 ultimate consumers; or

6 (vi) In any case where (a)(i) through (v) of this subsection do  
7 not apply, the price, determined as nearly as possible according to  
8 the actual price, that the taxpayer or other distributors sell the  
9 same tobacco products or similar tobacco products of like quality and  
10 character to unaffiliated distributors, unaffiliated retailers, or  
11 ultimate consumers.

12 (b) For purposes of (a)(i) and (ii) of this subsection only,  
13 "person" includes both persons as defined in subsection (14) of this  
14 section and any person immune from state taxation, including the  
15 United States or its instrumentalities, and federally recognized  
16 Indian tribes and enrolled tribal members, conducting business within  
17 Indian country.

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

20 ~~((20))~~ (21) "Taxpayer" means a person liable for the tax  
21 imposed by this chapter.

22 ~~((21))~~ (22) "Tobacco products" means cigars, cheroots, stogies,  
23 periques, granulated, plug cut, crimp cut, ready rubbed, and other  
24 smoking tobacco, snuff, snuff flour, cavendish, plug and twist  
25 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,  
26 clippings, cuttings and sweepings of tobacco, and other kinds and  
27 forms of tobacco, prepared in such manner as to be suitable for  
28 chewing or smoking in a pipe or otherwise, or both for chewing and  
29 smoking, and any other product, regardless of form, that contains  
30 tobacco and is intended for human consumption or placement in the  
31 oral or nasal cavity or absorption into the human body by any other  
32 means, but does not include cigarettes as defined in RCW 82.24.010.

33 ~~((22))~~ (23) "Unaffiliated distributor" means a distributor that  
34 is not affiliated with the manufacturer, distributor, or other person  
35 from whom the distributor has purchased tobacco products.

36 ~~((23))~~ (24) "Unaffiliated retailer" means a retailer that is  
37 not affiliated with the manufacturer, distributor, or other person  
38 from whom the retailer has purchased tobacco products.

1       **Sec. 2.** RCW 82.26.020 and 2019 c 445 s 404 are each amended to  
2 read as follows:

3       (1) There is levied and collected a tax upon the sale, handling,  
4 or distribution of all tobacco products in this state at the  
5 following rate:

6       (a) For cigars except little cigars, (~~ninety-five~~) 95 percent  
7 of the taxable sales price of cigars, not to exceed (~~sixty-five~~) 65  
8 cents per cigar;

9       (b) For all tobacco products except those covered under separate  
10 provisions of this subsection, (~~ninety-five~~) 95 percent of the  
11 taxable sales price. The tax imposed on a product under this  
12 subsection must be reduced by (~~fifty~~) 50 percent if that same  
13 product is issued a modified risk tobacco product order by the  
14 secretary of the United States department of health and human  
15 services pursuant to Title 21 U.S.C. Sec. 387k(g)(1), or by (~~twenty-~~  
16 ~~five~~) 25 percent if that same product is issued a modified risk  
17 tobacco product order by the secretary of the United States  
18 department of health and human services pursuant to Title 21 U.S.C.  
19 Sec. 387k(g)(2). The tax reduction applies during the period the  
20 modified risk tobacco product order is in effect;

21       (c) For moist snuff, as established in this subsection (1)(c) and  
22 computed on the net weight listed by the manufacturer:

23       (i) On each single unit consumer-sized can or package whose net  
24 weight is (~~one and two tenths~~) 1.2 ounces or less, a rate per  
25 single unit that is equal to the greater of 2.526 dollars or  
26 (~~eighty-three and one-half~~) 83.5 percent of the cigarette tax under  
27 chapter 82.24 RCW multiplied by (~~twenty~~) 20; or

28       (ii) On each single unit consumer-sized can or package whose net  
29 weight is more than (~~one and two tenths~~) 1.2 ounces, a  
30 proportionate tax at the rate established in (c)(i) of this  
31 subsection (1) on each ounce or fractional part of an ounce; (~~and~~)

32       (d) For little cigars, an amount per cigar equal to the cigarette  
33 tax under chapter 82.24 RCW; and

34       (e) For pipe tobacco, 65 percent of the taxable sales price.

35       (2) Taxes under this section must be imposed at the time the  
36 distributor (a) brings, or causes to be brought, into this state from  
37 without the state tobacco products for sale, (b) makes, manufactures,  
38 fabricates, or stores tobacco products in this state for sale in this  
39 state, (c) ships or transports tobacco products to retailers in this  
40 state, to be sold by those retailers, or (d) handles for sale any

1 tobacco products that are within this state but upon which tax has  
2 not been imposed.

3 (3) The moneys collected under this section must be deposited  
4 into the state general fund.

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