

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2542

Chapter 226, Laws of 2008

60th Legislature
2008 Regular Session

CIGARETTE TAXES--INDIAN TRIBES

EFFECTIVE DATE: 06/12/08

Passed by the House February 18, 2008
Yeas 94 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 11, 2008
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved March 28, 2008, 10:43 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2542** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 28, 2008

**Secretary of State
State of Washington**

HOUSE BILL 2542

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Representative Ericks; by request of Department of Revenue

Prefiled 01/08/08. Read first time 01/14/08. Referred to Committee on Finance.

1 AN ACT Relating to enforcement of cigarette taxes through
2 regulation of stamped and unstamped cigarettes; amending RCW 82.24.080,
3 82.24.020, 82.24.110, and 82.24.250; creating a new section; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that under Article III
7 of the treaty with the Yakamas of 1855, members of the Yakama Nation
8 have the right to travel upon all public highways. It is the
9 legislature's intent to honor the treaty rights of the Yakama Nation,
10 while protecting the state's interest in collecting and enforcing its
11 cigarette taxes.

12 **Sec. 2.** RCW 82.24.080 and 1995 c 278 s 5 are each amended to read
13 as follows:

14 (1) It is the intent and purpose of this chapter to levy a tax on
15 all of the articles taxed under this chapter, sold, used, consumed,
16 handled, possessed, or distributed within this state and to collect the
17 tax from the person who first sells, uses, consumes, handles, possesses
18 (either physically or constructively, in accordance with RCW 82.24.020)

1 or distributes them in the state. It is further the intent and purpose
2 of this chapter that whenever any of the articles taxed under this
3 chapter is given away for advertising or any other purpose, it shall be
4 taxed in the same manner as if it were sold, used, consumed, handled,
5 possessed, or distributed in this state.

6 (2) It is also the intent and purpose of this chapter that the tax
7 shall be imposed at the time and place of the first taxable event and
8 upon the first taxable person within this state. Any person whose
9 activities would otherwise require payment of the tax imposed by
10 subsection (1) of this section but who is exempt from the tax
11 nevertheless has a precollection obligation for the tax that must be
12 imposed on the first taxable event within this state. A precollection
13 obligation may not be imposed upon a person exempt from the tax who
14 sells, distributes, or transfers possession of cigarettes to another
15 person who, by law, is exempt from the tax imposed by this chapter or
16 upon whom the obligation for collection of the tax may not be imposed.
17 Failure to pay the tax with respect to a taxable event shall not
18 prevent tax liability from arising by reason of a subsequent taxable
19 event.

20 (3) In the event of an increase in the rate of the tax imposed
21 under this chapter, it is the intent of the legislature that the first
22 person who sells, uses, consumes, handles, possesses, or distributes
23 previously taxed articles after the effective date of the rate increase
24 shall be liable for the additional tax, or its precollection obligation
25 as required by this chapter, represented by the rate increase. The
26 failure to pay the additional tax with respect to the first taxable
27 event after the effective date of a rate increase shall not prevent tax
28 liability for the additional tax from arising from a subsequent taxable
29 event.

30 (4) It is the intent of the legislature that, in the absence of a
31 cigarette tax contract or agreement under chapter 43.06 RCW, applicable
32 taxes imposed by this chapter be collected on cigarettes sold by an
33 Indian tribal organization to any person who is not an enrolled member
34 of the federally recognized Indian tribe within whose jurisdiction the
35 sale takes place consistent with collection of these taxes generally
36 within the state. The legislature finds that applicable collection and
37 enforcement measures under this chapter are reasonably necessary to
38 prevent fraudulent transactions and place a minimal burden on the

1 Indian tribal organization, pursuant to the United States supreme
2 court's decision in *Washington v. Confederated Tribes of the Colville*
3 *Indian Reservation*, 447 U.S. 134 (1980).

4 **Sec. 3.** RCW 82.24.020 and 2003 c 114 s 1 are each amended to read
5 as follows:

6 (1) There is levied and there shall be collected as provided in
7 this chapter, a tax upon the sale, use, consumption, handling,
8 possession or distribution of all cigarettes, in an amount equal to the
9 rate of eleven and one-half mills per cigarette.

10 (2) An additional tax is imposed upon the sale, use, consumption,
11 handling, possession, or distribution of all cigarettes, in an amount
12 equal to the rate of five and one-fourth mills per cigarette. All
13 revenues collected during any month from this additional tax shall be
14 deposited in the violence reduction and drug enforcement account under
15 RCW 69.50.520 by the twenty-fifth day of the following month.

16 (3) An additional tax is imposed upon the sale, use, consumption,
17 handling, possession, or distribution of all cigarettes, in an amount
18 equal to the rate of ten mills per cigarette through June 30, 1994,
19 eleven and one-fourth mills per cigarette for the period July 1, 1994,
20 through June 30, 1995, twenty mills per cigarette for the period July
21 1, 1995, through June 30, 1996, and twenty and one-half mills per
22 cigarette thereafter. All revenues collected during any month from
23 this additional tax shall be deposited in the health services account
24 created under RCW 43.72.900 by the twenty-fifth day of the following
25 month.

26 (4) Wholesalers subject to the payment of this tax may, if they
27 wish, absorb one-half mill per cigarette of the tax and not pass it on
28 to purchasers without being in violation of this section or any other
29 act relating to the sale or taxation of cigarettes.

30 (5) For purposes of this chapter, "possession" shall mean both (a)
31 physical possession by the purchaser and, (b) when cigarettes are being
32 transported to or held for the purchaser or his or her designee by a
33 person other than the purchaser, constructive possession by the
34 purchaser or his or her designee, which constructive possession shall
35 be deemed to occur at the location of the cigarettes being so
36 transported or held.

1 (6) In accordance with federal law and rules prescribed by the
2 department, an enrolled member of a federally recognized Indian tribe
3 may purchase cigarettes from an Indian tribal organization under the
4 jurisdiction of the member's tribe for the member's own use exempt from
5 the applicable taxes imposed by this chapter. Except as provided in
6 subsection (7) of this section, any person, who purchases cigarettes
7 from an Indian tribal organization and who is not an enrolled member of
8 the federally recognized Indian tribe within whose jurisdiction the
9 sale takes place, is not exempt from the applicable taxes imposed by
10 this chapter.

11 (7) If the state enters into a cigarette tax contract or agreement
12 with a federally recognized Indian tribe under chapter 43.06 RCW, the
13 terms of the contract or agreement shall take precedence over any
14 conflicting provisions of this chapter while the contract or agreement
15 is in effect.

16 **Sec. 4.** RCW 82.24.110 and 2003 c 114 s 5 are each amended to read
17 as follows:

18 (1) Each of the following acts is a gross misdemeanor and
19 punishable as such:

20 (a) To sell, except as a licensed wholesaler engaged in interstate
21 commerce as to the article being taxed herein, without the stamp first
22 being affixed;

23 (b) To sell in Washington as a wholesaler to a retailer who does
24 not possess and is required to possess a current cigarette retailer's
25 license;

26 (c) To use or have in possession knowingly or intentionally any
27 forged or counterfeit stamps;

28 (d) For any person other than the department of revenue or its duly
29 authorized agent to sell any stamps not affixed to any of the articles
30 taxed herein whether such stamps are genuine or counterfeit;

31 (e) For any person other than the department of revenue, its duly
32 authorized agent, or a licensed wholesaler who has lawfully purchased
33 or obtained them to possess any stamps not affixed to any of the
34 articles taxed herein whether such stamps are genuine or counterfeit;

35 (f) To violate any of the provisions of this chapter;

36 ~~((+f))~~ (g) To violate any lawful rule made and published by the
37 department of revenue or the board;

1 ~~((g))~~ (h) To use any stamps more than once;

2 ~~((h))~~ (i) To refuse to allow the department of revenue or its
3 duly authorized agent, on demand, to make full inspection of any place
4 of business where any of the articles herein taxed are sold or
5 otherwise hinder or prevent such inspection;

6 ~~((i))~~ (j) For any retailer to have in possession in any place of
7 business any of the articles herein taxed, unless the same have the
8 proper stamps attached;

9 ~~((j))~~ (k) For any person to make, use, or present or exhibit to
10 the department of revenue or its duly authorized agent, any invoice for
11 any of the articles herein taxed which bears an untrue date or falsely
12 states the nature or quantity of the goods therein invoiced;

13 ~~((k))~~ (l) For any wholesaler or retailer or his or her agents or
14 employees to fail to produce on demand of the department of revenue all
15 invoices of all the articles herein taxed or stamps bought by him or
16 her or received in his or her place of business within five years prior
17 to such demand unless he or she can show by satisfactory proof that the
18 nonproduction of the invoices was due to causes beyond his or her
19 control;

20 ~~((l))~~ (m) For any person to receive in this state any shipment of
21 any of the articles taxed herein, when the same are not stamped, for
22 the purpose of avoiding payment of tax. It is presumed that persons
23 other than dealers who purchase or receive shipments of unstamped
24 cigarettes do so to avoid payment of the tax imposed herein;

25 ~~((m))~~ (n) For any person to possess or transport in this state a
26 quantity of ~~((sixty))~~ ten thousand cigarettes or less unless the proper
27 stamps required by this chapter have been affixed or unless: (i)
28 Notice of the possession or transportation has been given as required
29 by RCW 82.24.250; (ii) the person transporting the cigarettes has in
30 actual possession invoices or delivery tickets which show the true name
31 and address of the consignor or seller, the true name and address of
32 the consignee or purchaser, and the quantity and brands of the
33 cigarettes so transported; and (iii) the cigarettes are consigned to or
34 purchased by any person in this state who is authorized by this chapter
35 to possess unstamped cigarettes in this state;

36 ~~((n))~~ (o) For any person to possess or receive in this state a
37 quantity of ten thousand cigarettes or less unless the proper stamps

1 required by this chapter have been affixed or unless the person is
2 authorized by this chapter to possess unstamped cigarettes in this
3 state and is in compliance with the requirements of this chapter; and

4 (p) To possess, sell, distribute, purchase, receive, ship, or
5 transport within this state any container or package of cigarettes that
6 does not comply with this chapter.

7 (2) It is unlawful for any person knowingly or intentionally to
8 possess or to:

9 (a) Transport in this state a quantity in excess of ((sixty)) ten
10 thousand cigarettes unless the proper stamps required by this chapter
11 are affixed thereto or unless: ((+a)) (i) Proper notice as required
12 by RCW 82.24.250 has been given; ((+b)) (ii) the person transporting
13 the cigarettes actually possesses invoices or delivery tickets showing
14 the true name and address of the consignor or seller, the true name and
15 address of the consignee or purchaser, and the quantity and brands of
16 the cigarettes so transported; and ((+c)) (iii) the cigarettes are
17 consigned to or purchased by a person in this state who is authorized
18 by this chapter to possess unstamped cigarettes in this state; or

19 (b) Receive in this state a quantity in excess of ten thousand
20 cigarettes unless the proper stamps required by this chapter are
21 affixed thereto or unless the person is authorized by this chapter to
22 possess unstamped cigarettes in this state and is in compliance with
23 this chapter.

24 Violation of this ((section)) subsection (2) shall be punished as
25 a class C felony under Title 9A RCW.

26 (3) All agents, employees, and others who aid, abet, or otherwise
27 participate in any way in the violation of the provisions of this
28 chapter or in any of the offenses described in this chapter shall be
29 guilty and punishable as principals, to the same extent as any
30 wholesaler or retailer or any other person violating this chapter.

31 (4) For purposes of this section, "person authorized by this
32 chapter to possess unstamped cigarettes in this state" has the same
33 meaning as in RCW 82.24.250.

34 **Sec. 5.** RCW 82.24.250 and 2003 c 114 s 8 are each amended to read
35 as follows:

36 (1) No person other than: (a) A licensed wholesaler in the
37 wholesaler's own vehicle; or (b) a person who has given notice to the

1 board in advance of the commencement of transportation shall transport
2 or cause to be transported in this state cigarettes not having the
3 stamps affixed to the packages or containers.

4 (2) When transporting unstamped cigarettes, such persons shall have
5 in their actual possession or cause to have in the actual possession of
6 those persons transporting such cigarettes on their behalf invoices or
7 delivery tickets for such cigarettes, which shall show the true name
8 and address of the consignor or seller, the true name and address of
9 the consignee or purchaser, and the quantity and brands of the
10 cigarettes so transported.

11 (3) If (~~the~~) unstamped cigarettes are consigned to or purchased
12 by any person in this state such purchaser or consignee must be a
13 person who is authorized by this chapter to possess unstamped
14 cigarettes in this state.

15 (4) In the absence of the notice of transportation required by this
16 section or in the absence of such invoices or delivery tickets, or, if
17 the name or address of the consignee or purchaser is falsified or if
18 the purchaser or consignee is not a person authorized by this chapter
19 to possess unstamped cigarettes, the cigarettes so transported shall be
20 deemed contraband subject to seizure and sale under the provisions of
21 RCW 82.24.130.

22 (5) Transportation of cigarettes from a point outside this state to
23 a point in some other state will not be considered a violation of this
24 section provided that the person so transporting such cigarettes has in
25 his possession adequate invoices or delivery tickets which give the
26 true name and address of such out-of-state seller or consignor and such
27 out-of-state purchaser or consignee.

28 (6) In any case where the department or its duly authorized agent,
29 or any peace officer of the state, has knowledge or reasonable grounds
30 to believe that any vehicle is transporting cigarettes in violation of
31 this section, the department, such agent, or such police officer, is
32 authorized to stop such vehicle and to inspect the same for contraband
33 cigarettes.

34 (7) For purposes of this section, the term "person authorized by
35 this chapter to possess unstamped cigarettes in this state" means:

36 (a) A wholesaler, licensed under Washington state law;

37 (b) The United States or an agency thereof; (~~and~~)

1 (c) Any person, including an Indian tribal organization, who, after
2 notice has been given to the board as provided in this section, brings
3 or causes to be brought into the state unstamped cigarettes, if within
4 a period of time after receipt of the cigarettes as the department
5 determines by rule to be reasonably necessary for the purpose the
6 person has caused stamps to be affixed in accordance with RCW 82.24.030
7 or otherwise made payment of the tax required by this chapter in the
8 manner set forth in rules adopted by the department; and

9 (d) Any purchaser or consignee of unstamped cigarettes, including
10 an Indian tribal organization, who has given notice to the board in
11 advance of receiving unstamped cigarettes and who within a period of
12 time after receipt of the cigarettes as the department determines by
13 rule to be reasonably necessary for the purpose the person has caused
14 stamps to be affixed in accordance with RCW 82.24.030 or otherwise made
15 payment of the tax required by this chapter in the manner set forth in
16 rules adopted by the department.

17 Nothing in this subsection (7) shall be construed as modifying RCW
18 82.24.050 or 82.24.110.

19 (8) Nothing in this section shall be construed as limiting any
20 otherwise lawful activity under a cigarette tax compact pursuant to
21 chapter 43.06 RCW.

22 (9) Nothing in this section shall be construed as limiting the
23 right to travel upon all public highways under Article III of the
24 treaty with the Yakamas of 1855.

Passed by the House February 18, 2008.

Passed by the Senate March 11, 2008.

Approved by the Governor March 28, 2008.

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