
SENATE BILL 6159

State of Washington

61st Legislature

2009 Regular Session

By Senator Oemig

1 AN ACT Relating to the taxation of moist snuff; amending RCW
2 82.26.010 and 82.26.020; and providing an effective date.

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, cheroots, stogies, periques,
9 granulated, plug cut, crimp cut, ready rubbed, and other smoking
10 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-
11 cut and other chewing tobaccos, shorts, refuse scraps, clippings,
12 cuttings and sweepings of tobacco, and other kinds and forms of
13 tobacco, prepared in such manner as to be suitable for chewing or
14 smoking in a pipe or otherwise, or both for chewing and smoking, and
15 any other product, regardless of form, that contains tobacco and is
16 intended for human consumption or placement in the oral or nasal cavity
17 or absorption into the human body by any other means, but shall not
18 include cigarettes as defined in RCW 82.24.010.

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

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

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

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

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

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

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

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

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

32 (10) "Person" means any individual, receiver, administrator,
33 executor, assignee, trustee in bankruptcy, trust, estate, firm,
34 copartnership, joint venture, club, company, joint stock company,
35 business trust, municipal corporation, the state and its departments
36 and institutions, political subdivision of the state of Washington,
37 corporation, limited liability company, association, society, any group
38 of individuals acting as a unit, whether mutual, cooperative,

1 fraternal, nonprofit, or otherwise. The term excludes any person
2 immune from state taxation, including the United States or its
3 instrumentalities, and federally recognized Indian tribes and enrolled
4 tribal members, conducting business within Indian country.

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

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

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

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

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

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

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

24 (18)(a) "Taxable sales price" means:

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

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

36 (iii) In the case of a taxpayer that sells tobacco products only to
37 affiliated distributors or affiliated retailers, the price, determined
38 as nearly as possible according to the actual price, that other

1 distributors sell similar tobacco products of like quality and
2 character to unaffiliated distributors, unaffiliated retailers, or
3 ultimate consumers;

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

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

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

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

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

27 (19) "Taxpayer" means a person liable for the tax imposed by this
28 chapter.

29 (20) "Unaffiliated distributor" means a distributor that is not
30 affiliated with the manufacturer, distributor, or other person from
31 whom the distributor has purchased tobacco products.

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

35 (22) "Moist snuff" means any finely cut, ground, or powdered
36 tobacco that is not intended to be smoked but does not include any
37 finely cut, ground, or powdered tobacco that is intended to be placed
38 in the nasal cavity.

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, not
7 to exceed fifty cents per cigar; (~~(or)~~)

8 (b) For moist snuff, the greater of:

9 (i) Seventy-five percent of the taxable sales price; or

10 (ii) 2.025 dollars per single unit of a consumer-sized can or
11 package that has a net weight of one and two-tenths ounces or less.
12 For single units of a quantity greater than one and two-tenths ounces
13 a proportionate tax at the rate established in this subsection on each
14 ounce or fractional part of an ounce. The department must annually
15 increase the rate in this subsection (1)(b)(ii) by two percent; or

16 (c) Seventy-five percent of the taxable sales price of all tobacco
17 products that are not cigars or moist snuff.

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

26 (3) The moneys collected under this section shall be deposited as
27 follows:

28 (a) (~~(Thirty-seven)~~) Twenty-nine percent in the general fund;

29 (b) (~~(Fifty)~~) Sixty percent in the health services account created
30 under RCW 43.72.900; and

31 (c) (~~(Thirteen)~~) Eleven percent in the water quality account under
32 RCW 70.146.030 for the period beginning July 1, 2005, through June 30,
33 2021, and in the general fund for the period beginning July 1, 2021.

34 NEW SECTION. **Sec. 3.** This act takes effect October 1, 2009.

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