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SENATE BILL 6605

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State of Washington

65th Legislature

2018 Regular Session

By Senator Ranker

1 AN ACT Relating to the taxation of vapor products; amending RCW  
2 43.348.080; reenacting and amending RCW 82.26.010; adding a new  
3 section to chapter 82.26 RCW; and creating a new section.

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

5 **Sec. 1.** RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each  
6 reenacted and amended to read as follows:

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

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

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

16 (3) "Board" means the state liquor (~~((control))~~) and cannabis  
17 board.

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

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

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

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

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

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

21 (10) "Little cigar" means a cigar that has a cellulose acetate  
22 integrated filter.

23 (11) "Manufacturer" means a person who manufactures and sells  
24 tobacco products.

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

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

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

1 instrumentalities, and federally recognized Indian tribes and  
2 enrolled tribal members, conducting business within Indian country.

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

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

11 (18)(a) "Sale" means any transfer, exchange, or barter, in any  
12 manner or by any means whatsoever, for a consideration, and includes  
13 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)(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)(b) of this section, the

1 price, determined as nearly as possible according to the actual  
2 price, that the taxpayer or other distributors sell the same tobacco  
3 products or similar tobacco products of like quality and character to  
4 unaffiliated distributors, unaffiliated retailers, or ultimate  
5 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) "Taxpayer" means a person liable for the tax imposed by this  
21 chapter.

22 (21) "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 or contains nicotine derived from tobacco and is intended for  
31 human consumption or placement in the oral or nasal cavity or  
32 absorption into the human body by any other means, but does not  
33 include cigarettes as defined in RCW 82.24.010. "Tobacco products"  
34 includes any product containing a solution or other consumable  
35 substance that contains tobacco or nicotine derived from tobacco that  
36 employs a mechanical heating element, battery, or electronic circuit  
37 that can be used to produce vapor from the solution or other  
38 substance.

1 (22) "Unaffiliated distributor" means a distributor that is not  
2 affiliated with the manufacturer, distributor, or other person from  
3 whom the distributor has purchased tobacco products.

4 (23) "Unaffiliated retailer" means a retailer that is not  
5 affiliated with the manufacturer, distributor, or other person from  
6 whom the retailer has purchased tobacco products.

7 **Sec. 2.** RCW 43.348.080 and 2015 3rd sp.s. c 34 s 9 are each  
8 amended to read as follows:

9 (1) The cancer research endowment fund match transfer account is  
10 created in the custody of the state treasurer as a nonappropriated  
11 account to be used solely and exclusively for the cancer research  
12 endowment program created in RCW 43.348.040. The purpose of the  
13 account is to provide matching funds for the CARE fund and  
14 administrative costs.

15 (2) Revenues to the account must consist of deposits into the  
16 account, legislative appropriations including appropriations to  
17 comply with the statutory distributions under section 3 of this act,  
18 and any gifts, grants, or donations received by the department for  
19 this purpose.

20 ~~(3) ((The legislature must appropriate a state match, up to a~~  
21 ~~maximum of ten million dollars annually, beginning July 1, 2016, and~~  
22 ~~each July 1st following the end of the fiscal year from tax~~  
23 ~~collections and penalties generated from enforcement of state taxes~~  
24 ~~on cigarettes and other tobacco products by the state liquor and~~  
25 ~~cannabis board or other federal, state or local law or tax~~  
26 ~~enforcement agency, as determined by the department of revenue. Tax~~  
27 ~~collections include any cigarette tax, other tobacco product tax, and~~  
28 ~~retail sales and use tax.~~

29 ~~(4))~~ Expenditures ~~(, in the form of matching funds,)~~ from the  
30 account may be made only upon receipt of proof from the program  
31 administrator of nonstate or private contributions to the CARE fund  
32 for the cancer research endowment program. Expenditures, in the form  
33 of matching funds, may ~~((not))~~ exceed the total amount of nonstate or  
34 private contributions.

35 ~~((5))~~ (4) Only the director of the department or the director's  
36 designee may authorize expenditures from the cancer research  
37 endowment fund match transfer account. Such authorization must be  
38 made as soon as practicable following receipt of proof as required  
39 under subsection ~~((4))~~ (3) of this section.

1       (~~(+6)~~) (5) The department must enter into an appropriate  
2 agreement with the program administrator to demonstrate exchange of  
3 consideration for the matching funds.

4       NEW SECTION.   **Sec. 3.** A new section is added to chapter 82.26  
5 RCW to read as follows:

6       (1) By July 1, 2019, and by July 1st of each year thereafter, the  
7 state treasurer must transfer all revenues collected under this act,  
8 except as provided in subsection (2) of this section, to the cancer  
9 research endowment fund match transfer account created in RCW  
10 43.348.080.

11       (2) By July 1, 2019, and by July 1st of each year thereafter, the  
12 state treasurer must transfer five million dollars to the vapor  
13 products safety account hereby created in the state treasury. Moneys  
14 in the account may be spent only after appropriation to the state  
15 liquor and cannabis board. The board must use the moneys in the  
16 account for the prevention of sales of vapor products to minors and  
17 related activities for control of vapor product marketing and vapor  
18 product safety.

19       NEW SECTION.   **Sec. 4.** The department of revenue must create a  
20 unique reporting code for taxes collected under chapter 82.26 RCW on  
21 products containing a solution or other consumable substance that  
22 contains tobacco or nicotine derived from tobacco that employs a  
23 mechanical heating element, battery, or electronic circuit that can  
24 be used to produce vapor from the solution or other substance.

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