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**SUBSTITUTE HOUSE BILL 2288**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Finance (originally sponsored by Representatives Hasegawa, Santos, Buri, Cody, Condotta and Schual-Berke)

READ FIRST TIME 03/12/07.

1            AN ACT Relating to improving the administration of taxes by  
2 implementing weight-based taxation for moist snuff; amending RCW  
3 82.26.010, 82.26.020, and 82.26.030; adding a new section to chapter  
4 82.26 RCW; and creating a new section.

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

6            NEW SECTION.    **Sec. 1.** It is the intent of the legislature to  
7 address the ongoing challenges posed by the current ad valorem method  
8 of taxing moist snuff. Since 1996, the department of revenue, as  
9 administrator of the tax, has been in disputes with taxpayers on the  
10 measure of the tax on moist snuff. In 2005, the legislature sought to  
11 solve the problem through tightening language regarding transfers to  
12 affiliates. Current activity in the marketplace indicates that the  
13 2005 legislation, while advancing the issue, did not altogether solve  
14 the problem. Furthermore, the recent settlement between the department  
15 of revenue and a major manufacturer of moist snuff points to the need  
16 for a lasting resolution. The legislature finds that reforming how  
17 this product is taxed will provide more certainty to taxpayers, provide  
18 stability to the revenue stream, maintain pricing levels to address  
19 access to youth, and simplify administration by the department of

1 revenue. It is the intent of the legislature that any new money  
2 attributable to this act shall be dedicated to the health services  
3 account, while keeping other accounts whole.

4 **Sec. 2.** 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, but  
15 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  
20 brought, into this state from without the state any tobacco products  
21 for sale, (b) any person who makes, manufactures, fabricates, or stores  
22 tobacco products in this state for sale in this state, (c) any person  
23 engaged in the business of selling tobacco products without this state  
24 who ships or transports tobacco products to retailers in this state, to  
25 be sold by those retailers, (d) any person engaged in the business of  
26 selling tobacco products in this state who handles for sale any tobacco  
27 products that are within this state but upon which tax has not been  
28 imposed.

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

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

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

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

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

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

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

11 (10) "Person" means any individual, receiver, administrator,  
12 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
13 copartnership, joint venture, club, company, joint stock company,  
14 business trust, municipal corporation, the state and its departments  
15 and institutions, political subdivision of the state of Washington,  
16 corporation, limited liability company, association, society, any group  
17 of individuals acting as a unit, whether mutual, cooperative,  
18 fraternal, nonprofit, or otherwise. The term excludes any person  
19 immune from state taxation, including the United States or its  
20 instrumentalities, and federally recognized Indian tribes and enrolled  
21 tribal members, conducting business within Indian country.

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

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

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

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

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

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

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

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

5 (i) In the case of a taxpayer that is not affiliated with the  
6 manufacturer, distributor, or other person from whom the taxpayer  
7 purchased tobacco products, the actual price for which the taxpayer  
8 purchased the tobacco products;

9 (ii) In the case of a taxpayer that purchases tobacco products from  
10 an affiliated manufacturer, affiliated distributor, or other affiliated  
11 person, and that sells those tobacco products to unaffiliated  
12 distributors, unaffiliated retailers, or ultimate consumers, the actual  
13 price for which that taxpayer sells those tobacco products to  
14 unaffiliated distributors, unaffiliated retailers, or ultimate  
15 consumers;

16 (iii) In the case of a taxpayer that sells tobacco products only to  
17 affiliated distributors or affiliated retailers, the price, determined  
18 as nearly as possible according to the actual price, that other  
19 distributors sell similar tobacco products of like quality and  
20 character to unaffiliated distributors, unaffiliated retailers, or  
21 ultimate consumers;

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

25 (v) In the case of a taxpayer that has acquired tobacco products  
26 under a sale as defined in subsection (5)(b) of this section, the  
27 price, determined as nearly as possible according to the actual price,  
28 that the taxpayer or other distributors sell the same tobacco products  
29 or similar tobacco products of like quality and character to  
30 unaffiliated distributors, unaffiliated retailers, or ultimate  
31 consumers; or

32 (vi) In any case where (a)(i) through (v) of this subsection do not  
33 apply, the price, determined as nearly as possible according to the  
34 actual price, that the taxpayer or other distributors sell the same  
35 tobacco products or similar tobacco products of like quality and  
36 character to unaffiliated distributors, unaffiliated retailers, or  
37 ultimate consumers.

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

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

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

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

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

16 (22) "Moist snuff" means any finely cut, ground, or powdered  
17 tobacco that is not intended to be smoked but does not include any  
18 finely cut, ground, or powdered tobacco that is intended to be placed  
19 in the nasal cavity.

20 **Sec. 3.** RCW 82.26.020 and 2005 c 180 s 3 are each amended to read  
21 as follows:

22 (1) There is levied and there shall be collected a tax upon the  
23 sale, handling, or distribution of all tobacco products in this state  
24 at the following rate:

25 (a) Seventy-five percent of the taxable sales price of cigars, not  
26 to exceed fifty cents per cigar; (~~(e)~~)

27 (b) Two dollars and thirty-five cents per ounce of moist snuff with  
28 a proportionate tax at the like rate on all fractional parts of an  
29 ounce thereof, provided that cans or packages of moist snuff with a net  
30 weight of less than one and two-tenths ounces shall be taxed at the  
31 equivalent rate of packages or cans weighing one and two-tenths ounces.  
32 Such tax on moist snuff shall be computed based on the net weight as  
33 listed by the manufacturer. The amounts levied under this subsection  
34 (1)(b) are to be annually adjusted by the department by an amount equal  
35 to the percentage change in the consumer price index for all urban  
36 consumers within the Seattle-Tacoma-Bremerton consolidated metropolitan

1 statistical area, or a successor index, as published by the United  
2 States department of labor; or

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

5 (2) Taxes under this section shall be imposed at the time the  
6 distributor (a) brings, or causes to be brought, into this state from  
7 without the state tobacco products for sale, (b) makes, manufactures,  
8 fabricates, or stores tobacco products in this state for sale in this  
9 state, (c) ships or transports tobacco products to retailers in this  
10 state, to be sold by those retailers, or (d) handles for sale any  
11 tobacco products that are within this state but upon which tax has not  
12 been imposed.

13 (3) The moneys collected under this section shall be deposited as  
14 follows:

- 15 (a) (~~Thirty-seven~~) Twenty-eight percent in the general fund;
- 16 (b) (~~Fifty~~) Sixty-two percent in the health services account  
17 created under RCW 43.72.900; and
- 18 (c) (~~Thirteen~~) Ten percent in the water quality account under RCW  
19 70.146.030 for the period beginning July 1, 2005, through June 30,  
20 2021, and in the general fund for the period beginning July 1, 2021.

21 **Sec. 4.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to read  
22 as follows:

23 It is the intent and purpose of this chapter to levy a tax on all  
24 tobacco products sold, used, consumed, handled, or distributed within  
25 this state and to collect the tax from the distributor as defined in  
26 RCW 82.26.010. It is the further intent and purpose of this chapter to  
27 impose the tax once, and only once, on all tobacco products for sale in  
28 this state, but nothing in this chapter shall be construed to exempt  
29 any person taxable under any other law or under any other tax imposed  
30 under Title 82 RCW. It is the further intent and purpose of this  
31 chapter that the distributor who first possesses the tobacco product in  
32 this state shall be the distributor liable for the tax and that (1) for  
33 moist snuff the tax will be based on the net weight as listed by the  
34 manufacturer and (2) in most other instances the tax will be based on  
35 the actual price that the distributor paid for the tobacco product,  
36 unless the distributor is affiliated with the seller.

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

3        The legislature recognizes that the trade and commerce in tobacco  
4   products continues to evolve, and thus the tax administration issues  
5   likewise will by necessity evolve.   The legislature directs the  
6   department of revenue to work with manufacturers and wholesalers to  
7   continue to improve the tax assessment and collection methods in regard  
8   to other tobacco products, including consideration of product  
9   identification.   The department shall periodically advise the  
10   legislature on the state of tax administration under this chapter.

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