
HOUSE BILL 2288

State of Washington 60th Legislature 2007 Regular Session

By Representatives Hasegawa, Santos, Buri, Cody, Condotta and Schual-Berke

Read first time 02/19/2007. Referred to Committee on Finance.

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; (~~(or)~~)

27 (b) One dollar and eighty-eight 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; or

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

36 (2) Taxes under this section shall be imposed at the time the
37 distributor (a) brings, or causes to be brought, into this state from

1 without the state tobacco products for sale, (b) makes, manufactures,
2 fabricates, or stores tobacco products in this state for sale in this
3 state, (c) ships or transports tobacco products to retailers in this
4 state, to be sold by those retailers, or (d) handles for sale any
5 tobacco products that are within this state but upon which tax has not
6 been imposed.

7 (3) The moneys collected under this section shall be deposited as
8 follows:

- 9 (a) (~~Thirty-seven~~) Twenty-eight percent in the general fund;
- 10 (b) (~~Fifty~~) Sixty-two percent in the health services account
11 created under RCW 43.72.900; and
- 12 (c) (~~Thirteen~~) Ten percent in the water quality account under RCW
13 70.146.030 for the period beginning July 1, 2005, through June 30,
14 2021, and in the general fund for the period beginning July 1, 2021.

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

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

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

33 The legislature recognizes that the trade and commerce in tobacco
34 products continues to evolve, and thus the tax administration issues
35 likewise will by necessity evolve. The legislature directs the
36 department of revenue to work with manufacturers and wholesalers to

1 continue to improve the tax assessment and collection methods in regard
2 to other tobacco products, including consideration of product
3 identification. The department shall periodically advise the
4 legislature on the state of tax administration under this chapter.

--- END ---