

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2011 MAY 31 A 11: 33
BY RONALD R. CARPENTER

NO. 85067-4

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ROBERT COMENOUT and ROBERT COMENOUT, SR.,

Appellants.

**BRIEF OF AMICI STATE OF WASHINGTON, DEPARTMENT OF
REVENUE, AND LIQUOR CONTROL BOARD**

ROBERT M. MCKENNA
Attorney General

David M. Hankins, WSBA No. 19194
Senior Counsel
Heidi A. Irvin, WSBA No. 17500
Assistant Attorney General
Revenue Division
P.O. Box 40123
Olympia, WA 98504-0123

FILED
SUPREME COURT
STATE OF WASHINGTON
2011 JUN -8 A 10:41
BY RONALD R. CARPENTER
CLERK

ORIGINAL

TABLE OF CONTENTS

I. IDENTITY AND INTERESTS OF AMICI.....1

II. ISSUE ADDRESSED BY AMICI.....1

III. ARGUMENT1

 A. Cigarettes May Not Be Sold In Washington At Retail
 Without An Approved Tax Or Tax-Exempt Stamp.....2

 B. The Tribal Cigarette Taxes Authorized In Lieu Of The
 State Taxes Under A Tribal-State Cigarette Compact
 Also Require Cigarettes To Be Taxed And Stamped.7

 C. The Comenouts' Interpretation Of RCW 82.24.295 Is
 Unreasonable And Contrary To The Statutory Scheme
 And Legislative Intent.....11

 1. Under RCW 43.06.455, the State retroceded from its
 taxes with respect to the Quinault Nation and
 Quinault member trust land only to the extent
 provided in the contract with the Tribe.13

 2. The Comenouts' interpretation is unreasonable in
 light of the statutory scheme as a whole.....16

 3. The Comenouts' interpretation is contrary to the
 policies behind the cigarette tax contract statute.....18

IV. CONCLUSION20

APPENDIX:

RCW 82.24 (2008)

RCW 43.06.450-.466 (2008)

TABLE OF AUTHORITIES

Cases

<i>Confederated Tribes of Colville Indian Reservation v. Washington</i> , 446 F. Supp. 1339 (E.D. Wash. 1978), <i>aff'd in part and rev'd in part</i> , 447 U.S. 134 (1980).....	4
<i>Dep't of Ecology v. Campbell & Gwinn, L.L.C.</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	11, 12
<i>Dep't of Taxation & Finance of New York v. Milhelm Attea & Bros.</i> , 512 U.S. 61, 114 S. Ct. 2028, 129 L. Ed. 2d 52 (1994).....	5
<i>Lake v. Woodcreek Homeowners Ass'n</i> , 169 Wn.2d 516, 229 P.3d 791 (2010).....	11
<i>Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation</i> , 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976).....	3
<i>Nisqually Indian Tribe v. Gregoire</i> , 623 F.3d 923 (9th Cir. 2010).....	14, 19
<i>Peninsula Neighborhood Ass'n v. Dep't of Transp.</i> , 142 Wn.2d 328, 12 P.3d 134 (2000).....	12
<i>Tonasket v. State of Washington</i> , 84 Wn.2d 164, 525 P.2d 744 (1974).....	4
<i>United States v. Funds from First Nat'l Bank Account #XXXXXX1859 Held in Name of RK Company, Inc.</i> , 639 F. Supp. 2d 1203 (W.D. Wash. 2009).....	15
<i>Washington v. Confederated Tribes of Colville Indian Reservation</i> , 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10 (1980).....	3, 4, 5
<i>Weyerhaeuser Co. v. Dep't of Ecology</i> , 86 Wn.2d 310, 545 P.2d 5 (1976).....	12

Statutes

Contraband Cigarette Trafficking Act, 18 U.S.C. §§ 2341-2346	15
Laws of 1935, ch. 180, § 82.....	3
Laws of 2005, ch. 11, § 1	19
RCW 43.06	passim
RCW 43.06.450	18
RCW 43.06.450-.460	7, 8, 10
RCW 43.06.450-.465	1
RCW 43.06.455	9, 12, 13
RCW 43.06.455(2).....	7
RCW 43.06.455(4).....	8
RCW 43.06.455(5)(b)	8
RCW 43.06.455(7).....	8
RCW 43.06.455(8).....	8
RCW 43.06.455(12).....	9
RCW 43.06.455(14)(a)	8
RCW 43.06.455(14)(b)	10, 11, 13
RCW 43.06.460	9, 13
RCW 43.06.465	18
RCW 82.08.0316	10
RCW 82.24	passim

RCW 82.24.010(4).....	2
RCW 82.24.010(7).....	6
RCW 82.24.020	2
RCW 82.24.020(6).....	5
RCW 82.24.020(7).....	9, 14
RCW 82.24.030	6
RCW 82.24.030(5).....	9, 17
RCW 82.24.040(5).....	5
RCW 82.24.040(6).....	9, 17
RCW 82.24.080(1).....	2
RCW 82.24.080(2).....	2
RCW 82.24.080(4).....	2, 10, 17
RCW 82.24.110(1).....	7
RCW 82.24.110(2).....	7
RCW 82.24.250(8).....	9, 17
RCW 82.24.260(1).....	2
RCW 82.24.295	passim
RCW 82.24.295(1).....	10, 11, 16

Regulations

WAC 458-20-192 (1980).....	5
WAC 458-20-192(9)(a)(ii).....	6

I. IDENTITY AND INTERESTS OF AMICI

Amici curiae are the Washington State Department of Revenue and the Washington State Liquor Control Board. The Department and the Board are responsible for administering and enforcing the cigarette tax under RCW 82.24 and the cigarette tax contracting statutes, RCW 43.06.450-.465, which authorize the Governor to enter into cigarette tax contracts (compacts) with Indian tribes. The Department and the Board offer this brief to address the overall scheme of the two sets of statutes, how they work together, and the Legislature's purpose in allowing tribes to substitute a tribal cigarette tax in lieu of the state tax on cigarettes.

II. ISSUE ADDRESSED BY AMICI

Under RCW 82.24.295, are the Comenouts exempt from collecting state taxes on the retail sale of cigarettes to customers, when the Comenouts are not authorized tribal retailers under the Quinault Nation's compact with the State of Washington and do not collect any tribal taxes under that compact?

III. ARGUMENT

The Comenouts offer an interpretation of RCW 82.24.295 that would allow any Indian with an allotment of trust land to possess and make retail sales of cigarettes without a state or tribal cigarette stamp affixed, and without charging either the state cigarette tax under RCW

82.24 or the tribal tax under a cigarette tax contract authorized under RCW 43.06. The Comenouts' interpretation is contrary to the ordinary meaning of the language in RCW 82.24.295, contrary to the statutory scheme set forth in RCW 82.24 and the cigarette contract statutes, RCW 43.06.450-.460, and contrary to explicit statements of legislative intent and the policies supporting the concept of tribal-state cigarette tax contracts.

A. Cigarettes May Not Be Sold In Washington At Retail Without An Approved Tax Or Tax-Exempt Stamp.

Washington imposes a tax “upon the sale, use, consumption, handling, possession, or distribution of all cigarettes.” RCW 82.24.020.¹ The tax is imposed “at the time and place of the first taxable event and upon the first taxable person” within the state. RCW 82.24.080(1), (2). If a retail sale is the “first event,” but the seller is exempt, the seller must collect the tax instead from its purchasers. RCW 82.24.010(4), .080(2); *see also* RCW 82.24.260(1) (obligations on sellers when cigarettes are unstamped); RCW 82.24.080(4) (intent that tribal retailers collect the tax from all purchasers who are not tribal members).

¹ Unless otherwise indicated, statutory citations in this brief are to the 2008 version of the Revised Code of Washington, which was in effect when the events at issue in this case took place. *See* Appendix. Although some subsection references would be different today, the substantive language has not changed.

Just as the statute provides today, collection of the cigarette tax from the earliest days was accomplished primarily through the use of tax stamps affixed to every package of cigarettes. Laws of 1935, ch. 180, § 82(a)-(f); *see* RCW 82.24.030. Stamps on cigarette packages made it possible “to readily ascertain by inspection, whether or not such tax has been paid” Laws of 1935, ch. 180, § 82(a).

In the 1970s, federal litigation arose concerning the ability of States to collect cigarette taxes and sales taxes on the sale of cigarettes by tribal retailers in Indian country. The United States Supreme Court first addressed the issue in *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 (1976). The tribes argued that the State could not impose its cigarette tax on sales by Indians to non-Indians. *Id.* at 481. The Court rejected the tribes’ argument, stating:

The State’s requirement that the Indian tribal seller collect a tax validly imposed on non-Indians is a minimal burden designed to avoid the likelihood that in its absence non-Indians purchasing from the tribal seller will avoid payment of a concededly lawful tax.

Id. at 483.

Four years later, the United States Supreme Court addressed the issue again in *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10 (1980).

Several tribes challenged Washington's taxing scheme as it related to sales tax and cigarette tax imposed on non-Indians and Indians who were not members of the tribe on whose reservation the sale took place.

The Supreme Court reaffirmed *Moe* and approved Washington's cigarette tax scheme as a permissible, minor burden on Indians. *Id.* at 150. The Court held that the State could require tribal retailers to collect the tax from both non-Indian and non-member Indian purchasers. *Id.* at 159, 161.² The Court rejected federal preemption claims, including those based on tribal sovereignty. *Id.* at 161. The Court held the State could also require smokeshop operators to keep detailed records of both taxable and nontaxable transactions. *Id.* at 159-60. Additionally, the Court upheld the State's authority to seize cigarettes when the tribe has refused to fulfill its collection and remittance obligations. *Id.* at 161-62.

Although the decision in *Colville* focused on the State's ability to tax sales to non-members, the Supreme Court also addressed the need for some state regulation of sales to tribal members. The Court recognized

² The Supreme Court also accepted the district court's conclusion regarding legal incidence: where the wholesaler or retailer is an Indian on whom the tax could not be imposed, the first taxable event under RCW 82.24 is the use, consumption, or possession by the non-Indian purchaser. *Colville*, 447 U.S. at 142 n.9; see *Confederated Tribes of Colville Indian Reservation v. Washington*, 446 F. Supp. 1339, 1355 (E.D. Wash. 1978), *aff'd in part and rev'd in part*, 447 U.S. 134 (1980); see also *Tonasket v. State of Washington*, 84 Wn.2d 164, 181, 525 P.2d 744 (1974) (concluding first taxable event concerning a tribal retailer who obtained cigarettes from Oregon would be resale to a non-Indian, requiring tribal retailer to collect from that customer), *cited in Colville*, 446 F. Supp. at 1355.

that States have a right to have some control over tax-exempt sales to tribal members, in order to ensure that the state tax is collected on the other taxable sales. At that time, Washington's approach was to require tribal retailers to keep detailed records of every sale, to both members and nonmembers. The Supreme Court expressly approved that approach as "valid *in toto*." 447 U.S. at 160. The Court also emphasized that it is a tribe's burden of proof, not the State's, to demonstrate that a State's method for handling tax exempt sales is "not reasonably necessary as a means of preventing fraudulent transactions." *Id.*

Shortly after *Colville* was issued, the State began using an allocation procedure instead of requiring retailers to produce records of every sale, exempt or taxable. WAC 458-20-192 (1980); *see* RCW 82.24.020(6) (tribal members may purchase tax-exempt cigarettes for personal use from authorized tribal retailer); RCW 82.24.040(5) (requiring wholesalers to comply with rules relating to sales to Indian tribal organizations for untaxed cigarettes). The Supreme Court in a later case expressly approved a similar allocation or "quota" scheme for handling exempt cigarettes in New York. *Dep't of Taxation & Finance of New York v. Milhelm Attea & Bros.*, 512 U.S. 61, 75-76, 114 S. Ct. 2028, 129 L. Ed. 2d 52 (1994).

Under the Department's current procedure, the Department annually allocates a specified number of cigarettes to a tribe for tax-exempt sales to members. Those tax-exempt cigarettes must be identified with a special stamp showing they are tax exempt. WAC 458-20-192(9)(a)(ii). The Legislature expressly incorporated the concept of these tax-exempt stamps into RCW 82.24.030 in 1995. Every pack of cigarettes sold, used, or distributed in Washington must bear some stamp, either establishing the cigarettes have been taxed or identifying them as tax exempt.

Today, only a wholesaler may purchase state tax stamps or tax-exempt stamps, but the purpose of using them remains the same as decades ago – “to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.” RCW 82.24.030(1); *see also* RCW 82.24.010(7) (definition of “stamp”). The statutory scheme is clear: cigarette retailers, whether Indian or non-Indian, should never be in possession of, and may not lawfully sell, unstamped cigarettes. Cigarettes for sale to persons who are taxable should bear the tax stamp, and cigarettes for sale to tribal members by tribal retailers under the jurisdiction of the members' tribes should bear a tax-exempt stamp. Sales of unstamped cigarettes, on the other hand, are

unlawful and subject to civil or criminal penalties.³

Contrary to the Comenouts' arguments, nothing about the cigarette tax contract statutes changes this conclusion.

B. The Tribal Cigarette Taxes Authorized In Lieu Of The State Taxes Under A Tribal-State Cigarette Compact Also Require Cigarettes To Be Taxed And Stamped.

Despite the United States Supreme Court's holdings in *Moe* and *Colville*, Washington and other States continued to encounter difficulties collecting and enforcing taxes on sales of cigarettes to non-members in Indian country. In 2001, the Legislature tried a different approach. It authorized the Governor to enter into cigarette tax contracts with eligible tribes, under which a tribe could impose its own cigarette tax in lieu of the State's taxes, using the resulting tribal tax revenue for essential government services. Laws of 2001, ch. 235, §§ 1-3 (codified as RCW 43.06.450-.460).

The authorizing legislation expressly limited the Governor's authority to contract "in regard to retail sales in which Indian retailers make delivery and physical transfer of possession of the cigarettes from the seller to the buyer within Indian country, . . ." RCW 43.06.455(2). Under such contracts, Indian retailers may purchase cigarettes only from

³ Under this scheme, it is not surprising that many of the criminal offenses related to evasion of the cigarette tax expressly focus on possession or sale of unstamped cigarettes. See RCW 82.24.110(1)(a), (j), (m), (n), (o) (acts punishable as criminal misdemeanors), and RCW 82.24.110(2) (acts punishable as class C felonies).

certain sources, including wholesalers licensed in Washington or out-of-state wholesalers who “agree to comply with the terms of the cigarette tax contract” and “are certified to the state as having so agreed” RCW 43.06.455(5)(b). Rather than bearing a state cigarette tax stamp, cigarettes sold under the terms of a compact must bear a tribal stamp. RCW 43.06.455(4).

The legislation also required compacts to include provisions for compliance, including transport and notice requirements, inspection procedures, stamping requirements, recordkeeping, and audit requirements. RCW 43.06.455(7). Tribal tax revenue under a cigarette tax contract must be used for “essential government services,” and tribes may not use the revenue to subsidize cigarette retailers. RCW 43.06.455(8); 43.06.455(14)(a).

The Legislature indicated in RCW 43.06.450-.460 and RCW 82.24 that the two statutes function as lawful alternatives for sales to non-members in Indian country: Either the state taxes must be collected through the use of the state tax stamp or, if the Governor enters into a contract with an authorized tribe, the tribal tax must be substituted, using an authorized tribal tax stamp. As the Legislature emphasized, the tribal tax under a cigarette tax contract is “in lieu of” the state taxes. A contract is not an agreement by the State to allow unregulated or untaxed sales of

cigarettes by any Indian retailer in Indian country. RCW 43.06.455(3); RCW 43.06.460(1).

The Legislature indicated its intent that RCW 82.24 be read in harmony with the cigarette tax contract statutes in other ways. Under RCW 43.06.455(12), it addressed the enforcement authorities retained by the Liquor Control Board under RCW 82.24. The Legislature also expressly addressed the possibility of conflicts between a compact and RCW 82.24. It stated that the terms of a compact under RCW 43.06 would take precedence over any conflicting provisions of RCW 82.24 while the contract is in effect. RCW 82.24.020(7). In three other sections, the Legislature indicated that “lawful activity” under a compact would not be subject to regulatory requirements that might otherwise apply:

“[n]othing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.” RCW 82.24.030(5) (stamping requirements); RCW 82.24.040(6) (duties of wholesalers); RCW 82.24.250(8) (requirements for transporting unstamped cigarettes).

Consistent with the provisions in RCW 43.06.455 and .460 stating that tribal taxes under a cigarette tax contract are in lieu of the state taxes, the Legislature also created an express exception in RCW 82.24.295 from the cigarette tax for sales covered by a compact:

The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455.

RCW 82.24.295(1); *see* RCW 82.08.0316 (same for retail sales taxes); *see also* RCW 43.06.455(14)(b) (definition of “Indian retailer”). However, the Legislature also underscored the requirement that state taxes be collected in Indian country on sales to taxable persons if tribal taxes are not collected under a compact, and the reasons why:

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

RCW 82.24.080(4) (emphasis added).

In summary, under the alternative tax schemes for sales of cigarettes in Indian country in RCW 82.24 and RCW 43.06.450-.460, there is no lawful sale of unstamped cigarettes to consumers. Neither scheme creates a right for a tribal member whose tribe has entered into a compact to sell cigarettes in Indian country outside the authority of his tribe’s compact and without complying with RCW 82.24. The

Comenouts' arguments should be rejected as contrary to the plain language of the statutes and clearly expressed legislative intent.

C. The Comenouts' Interpretation Of RCW 82.24.295 Is Unreasonable And Contrary To The Statutory Scheme And Legislative Intent.

The Comenouts claim they are exempt from collecting state cigarette taxes under RCW 82.24.295(1) because they are "Indian retailers." Amend. Opening Br. of App. at 11-12. As discussed above, RCW 82.24.295(1) excludes from the state cigarette tax sales or possession of cigarettes "by an Indian retailer during the effective period of a cigarette tax contract" under RCW 43.06. In RCW 43.06.455(14)(b), the Legislature defined "Indian retailer" as "(i) a retailer wholly owned and operated by an Indian tribe, (ii) a business wholly owned and operated by a tribal member and licensed by the tribe, or (iii) a business owned and operated by the Indian person or persons in whose name the land is held in trust." The Comenouts' interpretation of the statute is unreasonable and leads to absurd results. Moreover, it is contrary to express statements of legislative intent and public policy.

A court's "fundamental objective in construing a statute is to ascertain and carry out the Legislature's intent." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 229 P.3d 791 (2010); *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

The plain meaning of a statute “is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 11. If there are two reasonable interpretations of statutory language, and thus the statute is ambiguous, “the interpretation which better advances the overall legislative purpose should be adopted.”

Weyerhaeuser Co. v. Dep’t of Ecology, 86 Wn.2d 310, 321, 545 P.2d 5 (1976). In a case such as this, where more than one statute is relevant, “[s]tatutes are to be read together, . . . to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.” *Peninsula Neighborhood Ass’n v. Dep’t of Transp.*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000).

The Comenouts’ interpretation of RCW 82.24.295 effectively stops at the definition of “Indian retailer” in RCW 43.06.455 and fails to consider the controlling provisions of the Quinault Nation’s cigarette tax contract, other relevant provisions in RCW 82.24 or RCW 43.06, the statutory scheme as a whole, or the purposes behind the legislation authorizing tribal-State cigarette tax contracts. Accordingly, it should be rejected.

1. **Under RCW 43.06.455, the State retroceded from its taxes with respect to the Quinault Nation and Quinault member trust land only to the extent provided in the contract with the Tribe.**

The Department and the Liquor Control Board agree with the Prosecutor that, so long as a cigarette tax contract meets all the requirements of RCW 43.06.455 and .460, the contract may be more restrictive in some respects than what the enabling statute allows. *See* Supp. Brief of Resp. at 13-20. Amici also agree with the Prosecutor that the State retrocedes from its taxes only to the extent provided in the applicable cigarette tax contract. *Id.* If a sale of cigarettes in Indian country does not comply with a cigarette tax contract authorized under RCW 43.06, the sale is unlawful unless it complies with RCW 82.24 and imposes the state cigarette tax on sales to non-members.

Here, the Comenouts assume that any sale by a person meeting the definition of "Indian retailer" in RCW 43.06.455(14)(b) is exempt from the requirements of RCW 82.24. This is a false assumption for the reasons outlined in detail by the Prosecutor. Supp. Brief of Resp. at 13-15. Amici will not repeat that discussion here except to agree with the Prosecutor that the Quinault Nation's cigarette tax contract restricts the retailers authorized to sell tribally taxed cigarettes to a narrower group than the statutory definition of "Indian retailer." *Id.* Amici also agree that

in the event of a conflict between an authorized contract and any provision in RCW 82.24, the specific term in the cigarette tax contract “shall take precedence.” RCW 82.24.020(7).

In other words, where a cigarette tax contract authorized under RCW 43.06 exists, the rights and obligations of parties to the contract and other affected persons cannot be determined in all instances merely by reference to the authorizing statute. Contract negotiations can result in differences among the various tribal cigarette tax agreements. *See Nisqually Indian Tribe v. Gregoire*, 623 F.3d 923, 928, 932-33 (9th Cir. 2010) (describing addendum to Squaxin Island Tribe’s contract and definitions of “tribal retailer” and “Indian country” related to breach of contract claim under Nisqually Tribe’s contract). The tax contract statute by itself does not create rights in individuals. It merely “grants the governor discretionary authority to enter into contracts and defines the procedure for doing so.” *Nisqually*, 623 F.3d at 932 (compact statute did not create private right of action for Nisqually Tribe to challenge the Squaxin Island Tribe’s compact). Thus, the mere fact that a Quinault member sells cigarettes at retail on trust land is not a sufficient basis to conclude such sales are exempt from taxes under RCW 82.24.

The federal district court has addressed and rejected arguments similar to those the Comenouts make here. *See United States v. Funds*

from First Nat'l Bank Account #XXXXX1859 Held in Name of RK Company, Inc., 639 F. Supp. 2d 1203 (W.D. Wash. 2009) (*RK Company*). In *RK Company*, a cigarette wholesaler who transported and sold unstamped cigarettes to a smokeshop on the Swinomish Indian Reservation argued that the cigarettes were not “contraband” under the Contraband Cigarette Trafficking Act, 18 U.S.C. §§ 2341-2346 (CCTA). *Id.* at 1206. Whether cigarettes are “contraband” under the CCTA is determined by reference to Washington’s cigarette regulatory scheme. *Id.* The wholesaler argued that Washington retroceded any jurisdiction it had over cigarette sales by Indian vendors when it entered into a cigarette tax contract with the Swinomish Tribe. *Id.* at 1209.

The district court disagreed, stating that “neither the Contract nor its authorizing state statute, [RCW] 43.06.455, support such an argument.” *Id.* Addressing provisions in the Swinomish contract nearly identical to those in the Quinault contract, the court noted that nonconforming transactions may violate the state cigarette laws, and hence the CCTA. *Id.* at 1211. Because the wholesaler sold and shipped cigarettes “without affixing the required tribal stamp, or any other stamp to evidence payment of applicable taxes,” the actions violated both the cigarette tax contract and state law, and the cigarettes were “contraband” under the CCTA. *Id.*

Because the Comenouts and the Indian Country store are not authorized by the Quinault Nation as “tribal retailers” under the Quinault cigarette tax contract, their cigarette sales fall outside the scope of that contract and must comply instead with RCW 82.24. The State has every right to compel them to do so.

2. The Comenouts’ interpretation is unreasonable in light of the statutory scheme as a whole.

Under the Comenouts’ interpretation of RCW 82.24.295, a cigarette retailer is exempt from the requirements of stamping cigarettes and collecting the state cigarette tax, so long as he or she is a member of a tribe with a cigarette tax contract under RCW 43.06 and sells cigarettes in Indian country, regardless of whether the retailer is acting lawfully under applicable tribal law and the terms of the cigarette tax contract. In the Comenouts’ view, RCW 82.24.295(1) apparently would need to be amended to support the State’s enforcement of RCW 82.24 against them. Instead of reading, “by an Indian retailer during the effective period of a cigarette tax contract,” the Comenouts apparently believe only the following would be sufficient (or something like it): “by an Indian retailer acting under the authority of its tribe’s cigarette tax contract during the effective period of that cigarette tax contract.”

Amici agree that, standing alone, the twenty-three word alternative phrase might be clearer than the thirteen-word phrase currently in the statute, but the Legislature's intent is abundantly clear without the extra ten words. First, it is not reasonable to read RCW 82.24.295 as applying to any tribal retailer other than those authorized to sell cigarettes subject to tribal tax under that tribe's cigarette tax contract. Even considered alone, RCW 82.24.295 does not make much sense if interpreted as the Comenouts do, to allow a retailer to sell cigarettes without complying with either tribal or state law.

The Court also should consider related statutory provisions. The Legislature created several exceptions in regulatory requirements in RCW 82.24 for "*lawful activity* under a cigarette tax compact pursuant to chapter 43.06 RCW." RCW 82.24.030(5) (stamping requirements; emphasis added); RCW 82.24.040(6) (duties of wholesalers); RCW 82.24.250(8) (requirements for transporting unstamped cigarettes). In contrast, nothing in RCW 82.24 indicates retailers in Indian country may possess and sell unstamped cigarettes.

The Legislature quite clearly set up a statutory scheme in which either the state cigarette tax or a tribal cigarette tax in lieu of the state taxes would be imposed on sales in Indian country to non-members. In RCW 82.24.080(4), the Legislature characterized sales complying with

neither a cigarette tax contract or the state cigarette tax statutes as “fraudulent transactions.” In light of the statutory scheme and the other references to contracts under RCW 43.06 in RCW 82.24, the Comenouts’ interpretation of RCW 82.24.295 is strained and unreasonable.

3. The Comenouts’ interpretation is contrary to the policies behind the cigarette tax contract statute.

Another reason to reject the Comenouts’ interpretation of RCW 82.24.295 is that it is contrary to the policies underlying the authorization of tribal cigarette tax contracts. The Legislature was explicit about its intent and its reasons for allowing such compacts:

The legislature intends to further the government-to-government relationship between the state of Washington and Indians in the state of Washington by authorizing the governor to enter into contracts concerning the sale of cigarettes. The legislature finds that these cigarette tax contracts will provide a means to promote economic development, provide needed revenues for tribal governments and Indian persons, and enhance enforcement of the state’s cigarette tax law, ultimately saving the state money and reducing conflict.

RCW 43.06.450.

In 2005, the Legislature amended the compact statute to allow a contract with the Puyallup Tribe, with somewhat different provisions. *See* RCW 43.06.465. In the process, the Legislature positively assessed the effects of the 2001 legislation:

The legislature finds that this effort has been effective, as measured by the success of the existing agreements.

The legislature further finds the agreements resolved decades of conflict between the state and tribes over the sale of contraband cigarettes to non-Indians; benefited the tribes through tribal tax revenues; benefited the state because cigarettes are stamped and taxed; enhanced public health because access to low-priced cigarettes is reduced; improved law and order; and reduced the competitive advantage gained through the sale of tax-free cigarettes.

Laws of 2005, ch. 11, § 1.

This Court should not interpret RCW 82.24.295 in a way that undermines these policies. *See Nisqually*, 623 F.3d at 932 (rejecting claim of private right of action under RCW 43.06.450-.460 as “inconsistent with the underlying purpose of the legislation”). Allowing the Comenouts to sell cigarettes at the Indian Country store without collecting either the Quinault tribal tax or the state cigarette tax would be contrary to the purposes behind the cigarette tax contract statutes.

Selling unstamped and untaxed cigarettes provides no tax revenue to either the Quinault Nation or the State. It provides the Quinault Nation no funds for “essential government services.” Allowing sales outside both tribal and state law does nothing to promote the State’s government-to-government relationship with the Quinault Nation. Allowing such sales undermines, rather than enhances, enforcement of the State’s cigarette tax

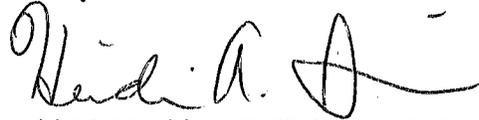
law. The Comenouts seek a huge competitive advantage over lawful retail cigarette operations, including those of Edward Comenout's own tribe, the Quinault Nation. Their interpretation promotes lawlessness, rather than law and order. It should be rejected.

IV. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's denial of the Comenouts' motion to dismiss the information in this case.

RESPECTFULLY SUBMITTED this 27th day of May, 2011.

ROBERT M. MCKENNA
Attorney General



David M. Hankins, WSBA No. 19194
Senior Counsel
Heidi A. Irvin, WSBA No. 17500
Assistant Attorney General
Attorneys for *Amici Curiae*
Washington State Department of Revenue &
Washington State Liquor Control Board

Chapter 82.24 RCW

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars. [2006 c 256 § 2; 2003 1st sp.s. c 13 § 9; 2000 c 69 § 25; 1999 sp.s. c 7 § 1; 1997 c 449 § 2; 1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

Effective dates—Application—Savings—2006 c 256: See notes following RCW 82.32.045.

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

Effective date—1999 sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 7 § 4.]

Effective date—1997 c 449: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 449 § 6.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.030 Exemption. The taxes imposed under this chapter shall only apply to the first receipt of crude oil or petroleum products at a marine terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine terminal in this state or after refining or other processing. [1992 c 73 § 9; 1991 c 200 § 803.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.040 Credit—Crude oil or petroleum exported or sold for export. Credit shall be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine terminal and subsequently exported from or sold for export from the state. [1992 c 73 § 10; 1991 c 200 § 804.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.045 Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item. (1) Any person having paid the tax imposed by this chapter who uses petroleum products as a consumer for a purpose other than as a fuel may claim refund or credit against the tax imposed under this chapter. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190.

(2) Any person having paid the tax imposed by this chapter who uses petroleum products as a component or ingredient in the manufacture of an item which is not a fuel may claim a refund or credit against the tax imposed by this chapter.

(3) The amount of refund or credit claimed under this section may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used. The refund or credit allowed by this section shall be claimed on such forms and subject to such requirements as the department may prescribe by rule. [1992 c 73 § 8.]

Severability—1992 c 73: See RCW 90.56.905.

82.23B.050 Rules. The department shall adopt such rules as may be necessary to enforce and administer the provisions of this chapter. Chapter 82.32 RCW applies to the

administration, collection, and enforcement of the taxes levied under this chapter. [1991 c 200 § 808.]

82.23B.060 Imposition of taxes. The taxes imposed in this chapter shall take effect October 1, 1991. [1991 c 200 § 809.]

82.23B.900 Effective dates—Severability—1991 c 200. See RCW 90.56.901 and 90.56.904.

82.23B.901 Savings—1992 c 73. The amendment of RCW 82.23B.010, 82.23B.020, 82.23B.030, and 82.23B.040 by chapter 73, Laws of 1992, shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections or under any rule or order adopted under the sections, nor as affecting any proceeding instituted under the sections. [1992 c 73 § 44.]

82.23B.902 Effective dates—1992 c 73. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1992], except sections 6, 7, 9, and 10 of this act shall take effect October 1, 1992. [1992 c 73 § 46.]

Chapter 82.24 RCW

TAX ON CIGARETTES

Sections

82.24.010	Definitions.
82.24.020	Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.
82.24.026	Additional tax imposed—Deposit into accounts.
82.24.027	Additional tax imposed—Rate—Where deposited.
82.24.028	Additional tax imposed—Rate—Health services account.
82.24.030	Stamps.
82.24.035	Circumstances when no stamp may be affixed—Violation of consumer protection act.
82.24.040	Duty of wholesaler.
82.24.050	Retailer—Possession of unstamped cigarettes.
82.24.060	Stamps—How affixed.
82.24.080	Legislative intent—Taxable event—Tax liability.
82.24.090	Records—Preservation—Reports.
82.24.100	Forgery or counterfeiting of stamps—Penalty.
82.24.110	Other offenses—Penalties.
82.24.120	Violations—Penalties and interest.
82.24.130	Seizure and forfeiture.
82.24.135	Forfeiture procedure.
82.24.140	Forfeiture procedure—Seizures—Notice—Claimant's bond—Court proceedings.
82.24.145	Forfeited property—Retention, sale, or destruction—Use of sale proceeds.
82.24.180	Seized property may be returned—Penalty, interest.
82.24.190	Search and seizure.
82.24.210	Redemption of stamps.
82.24.230	Administration.
82.24.235	Rules.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.260	Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability.
82.24.280	Liability from tax increase—Interest and penalties on unpaid tax—Administration.
82.24.290	Exceptions—Federal instrumentalities and purchasers from federal instrumentalities.
82.24.295	Exceptions—Sales by Indian retailer under cigarette tax contract.
82.24.300	Exceptions—Puyallup Tribe of Indians.
82.24.302	Exceptions—Sales by tribal retailers—Yakama Nation.
82.24.500	Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty.

- 82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.
 82.24.520 Wholesaler's license—Fee—Display of license—Bond.
 82.24.530 Retailer's license—Vending machines.
 82.24.540 Licensee to operate within scope of license—Penalty.
 82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.
 82.24.551 Enforcement—Appointment of officers of liquor control board.
 82.24.552 Enforcement—Administration—Inspection of books and records.
 82.24.560 Fees and penalties credited to general fund.
 82.24.570 Counterfeit cigarette offenses—Penalties.
 82.24.900 Construction—1961 c 15.

Minors: Chapter 70.155 RCW.

82.24.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- (1) "Board" means the liquor control board.
 (2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.
 (3) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.
 (4) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.
 (5) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.
 (6) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state.
 (7) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(8) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

(9) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [1997 c 420 § 3; 1995 c 278 § 1; 1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370-83.]

Effective date—1995 c 278: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 278 § 17.]

82.24.020 Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.

(2008 Ed.)

(1) There is levied and there shall be collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to one and fifteen one-hundredths cents per cigarette.

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

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to two and five one-hundredths cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

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

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

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

(7) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06 RCW, the terms of the contract or agreement shall take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect. [2008 c 226 § 3; 2008 c 86 § 301; 2003 c 114 § 1; 1994 sp.s. c 7 § 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 307; 1989 c 271 § 504; 1987 c 80 § 1; 1983 2nd ex.s. c 3 § 15; 1982 1st ex.s. c 35 § 8; 1981 c 172 § 6; 1972 ex.s. c 157 § 3; 1971 ex.s. c 299 § 13; 1965 ex.s. c 173 § 23; 1961 ex.s. c 24 § 3; 1961 c 15 § 82.24.020. Prior: 1959 c 270 § 2; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Reviser's note: This section was amended by 2008 c 86 § 301 and by 2008 c 226 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—1981 c 172: See note following RCW 82.04.240.

Severability—1972 ex.s. c 157: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1972 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 157 § 8.]

82.24.026 Additional tax imposed—Deposit into accounts. (1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

(2) The revenue collected under this section shall be deposited as follows:

(a) 21.7 percent shall be deposited into the health services account.

(b) 2.8 percent shall be deposited into the general fund.

(c) 2.3 percent shall be deposited into the violence reduction and drug enforcement account under RCW 69.50.520.

(d) 1.7 percent shall be deposited into the water quality account under RCW 70.146.030.

(e) The remainder shall be deposited into the education legacy trust account. [2008 c 86 § 302; 2005 c 514 § 1102.]

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

82.24.027 Additional tax imposed—Rate—Where deposited. (1) There is hereby levied and there shall be collected by the department of revenue from the persons mentioned in and in the manner provided by this chapter, an additional tax upon the sale, use, consumption, handling, possession, or distribution of cigarettes in an amount equal to four-tenths of a cent per cigarette.

(2) The moneys collected under this section shall be deposited as follows:

(a) For the period beginning July 1, 2001, through June 30, 2021, into the water quality account under RCW 70.146.030; and

(b) For the period beginning July 1, 2021, in the general fund. [2008 c 86 § 303; 1999 c 309 § 925; 1986 c 3 § 12.]

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

[Title 82 RCW—page 192]

Effective dates—1986 c 3: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately except sections 12 through 15 of this act shall take effect April 1, 1986." [1986 c 3 § 18.]

Severability—1986 c 3: See RCW 70.146.900.

82.24.028 Additional tax imposed—Rate—Health services account. In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month. [2008 c 86 § 304; 2002 c 2 § 3 (Initiative Measure No. 773, approved November 6, 2001).]

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Intent—2002 c 2 (Initiative Measure No. 773): See RCW 70.47.002.

82.24.030 Stamps. (1) In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, only a wholesaler shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

(3) Only wholesalers may purchase or obtain cigarette stamps. Wholesalers shall not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point of sale. The department of revenue shall keep records of which wholesaler purchases each roll or group of sheets. If the department of revenue permits wholesalers to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one wholesaler. The remainder of the roll or sheet, if any, shall either be retained for later purchases by the same wholesaler or destroyed.

(5) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 2; 1995 c 278 § 2; 1990 c 216 § 1; 1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

(2008 Ed.)

Effective date—1995 c 278: See note following RCW 82.24.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.035 Circumstances when no stamp may be affixed—Violation of consumer protection act. (1) No stamp may be affixed to, or made upon, any container or package of cigarettes if:

(a) The container or package differs in any respect with the requirements of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States;

(b) The container or package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(c) The container or package, including a container of individually stamped containers or packages, is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(d) The container or package has been altered by adding or deleting the wording, labels, or warnings described in (a) or (c) of this subsection.

(2) In addition to the penalty and forfeiture provisions otherwise provided for in this chapter, a violation of this section is a deceptive act or practice under the consumer protection act, chapter 19.86 RCW. [1999 c 193 § 5.]

Intent—Finding—1999 c 193: "(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the policy of the state that manufacturers and importers of cigarettes not make any material misrepresentation of fact regarding the health consequences of using cigarettes, including compliance with applicable federal laws, regulations, and policies.

(4) It is the intent of the legislature to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) and 26 U.S.C. Sec. 5754.

(5) The legislature finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States." [1999 c 193 § 1.]

Severability—1999 c 193: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 193 § 6.]

Effective date—1999 c 193: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1999]." [1999 c 193 § 7.]

82.24.040 Duty of wholesaler. (1) Except as authorized by this chapter, no person other than a licensed wholesaler shall possess in this state unstamped cigarettes.

(2) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

(3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state or to a federal instrumentality, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the department, at Olympia, not later than the fifteenth day of the following calendar month. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed.

(4) Unstamped cigarettes possessed by a wholesaler under subsection (2) of this section that are transferred by the wholesaler to another facility of the wholesaler within the borders of Washington shall be transferred in compliance with RCW 82.24.250.

(5) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department.

(6) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 3; 1995 c 278 § 3; 1990 c 216 § 2; 1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.050 Retailer—Possession of unstamped cigarettes. (1) No retailer in this state may possess unstamped cigarettes within this state unless the person is also a wholesaler in possession of the cigarettes in accordance with RCW 82.24.040.

(2) A retailer may obtain cigarettes only from a wholesaler subject to the provisions of this chapter. [2003 c 114 § 4; 1995 c 278 § 4; 1990 c 216 § 3; 1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.060 Stamps—How affixed. Stamps shall be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed shall be evidence of the tax imposed.

In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps shall be affixed securely on each individual package. [1961 c 15 § 82.24.060. Prior: 1959 c 270 § 6; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

82.24.080 Legislative intent—Taxable event—Tax liability. (1) It is the intent and purpose of this chapter to levy a tax on all of the articles taxed under this chapter, sold, used, consumed, handled, possessed, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, possesses (either physically or constructively, in accordance with RCW 82.24.020) or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles taxed under this chapter is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, possessed, or distributed in this state.

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

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

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

the United States supreme court's decision in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). [2008 c 226 § 2; 1995 c 278 § 5; 1993 c 492 § 308; 1972 ex.s. c 157 § 4; 1961 c 15 § 82.24.080. Prior: 1959 c 270 § 8; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

Finding—Intent—2008 c 226: "The legislature finds that under Article III of the treaty with the Yakamas of 1855, members of the Yakama Nation have the right to travel upon all public highways. It is the legislature's intent to honor the treaty rights of the Yakama Nation, while protecting the state's interest in collecting and enforcing its cigarette taxes." [2008 c 226 § 1.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.090 Records—Preservation—Reports. (1) Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records. These records must show all transactions relating to the purchase and sale of any of the articles taxed under this chapter and show all physical inventories performed on those articles, all invoices, and a record of all stamps purchased. All such records and all stock of taxable articles on hand shall be open to inspection at all reasonable times by the department of revenue or its duly authorized agent.

(2) All wholesalers shall within fifteen days after the first day of each month file with the department of revenue a report of all drop shipment sales made by them to retailers within this state during the preceding month. The report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof. [1995 c 278 § 6; 1975 1st ex.s. c 278 § 62; 1961 c 15 § 82.24.090. Prior: 1941 c 178 § 14; 1939 c 225 § 24; 1935 c 180 § 84; Rem. Supp. 1941 § 8370-84.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.100 Forgery or counterfeiting of stamps—Penalty. To forge or counterfeit any stamp of the kind herein provided is a felony. [1961 c 15 § 82.24.100. Prior: 1935 c 180 § 85; RRS § 8370-85.]

82.24.110 Other offenses—Penalties. (1) Each of the following acts is a gross misdemeanor and punishable as such:

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

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

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

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

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

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

(g) To violate any lawful rule made and published by the department of revenue or the board;

(h) To use any stamps more than once;

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

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

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

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

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

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

(o) For any person to possess or receive in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with the requirements of this chapter; and

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

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

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

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

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

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

(4) For purposes of this section, "person authorized by this chapter to possess unstamped cigarettes in this state" has the same meaning as in RCW 82.24.250. [2008 c 226 § 4; 2003 c 114 § 5; 1999 c 193 § 2; 1997 c 420 § 4; 1995 c 278 § 7; 1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370-86.]

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Effective date—1995 c 278: See note following RCW 82.24.010.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.120 Violations—Penalties and interest. (1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person or provided electronically as provided in RCW 82.32.135. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate

as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.280. [2007 c 111 § 102; 2006 c 14 § 6; 1996 c 149 § 7; 1995 c 278 § 8; 1990 c 267 § 1; 1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370-87.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

Effective date—1990 c 267: "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.130 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; any container or package of cigarettes possessed or held for sale that does not comply with this chapter; and any container or package of cigarettes that is manufactured, sold, or possessed in violation of RCW 82.24.570.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(d) Any cigarettes that are stamped, sold, imported, or offered or possessed for sale in this state in violation of RCW

70.158.030(3). For the purposes of this subsection (1)(d), "cigarettes" has the meaning as provided in RCW 70.158.020(3).

(e) All cigarettes sold, delivered, or attempted to be delivered in violation of RCW 70.155.105.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband unless they are manufactured, sold, or possessed in violation of RCW 82.24.570. [2003 c 114 § 7; 2003 c 113 § 4; 2003 c 25 § 9; 1999 c 193 § 3; 1997 c 420 § 5; 1990 c 216 § 5; 1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130. Prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370-88.]

Reviser's note: This section was amended by 2003 c 25 § 9, 2003 c 113 § 4, and by 2003 c 114 § 7, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.135 Forfeiture procedure. In all cases of seizure of any property made subject to forfeiture under this chapter the department or the board shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department or the board immediately if the seizure is made by someone other than an agent of the department or the board authorized to collect taxes.

(2) Upon notification or seizure by the department or the board or upon receipt of property subject to forfeiture under this chapter from any other person, the department or the board shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or the board or acting as its agent. Listing and appraisal of the property shall be properly attested by the department or the board and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department or the board to be less than one hundred dollars in value.

(3) The department or the board shall cause notice to be served within five days following the seizure or notification

to the department or the board of the seizure, on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. The department may also furnish notice electronically as provided in RCW 82.32.135. If service is by mail or notice is provided electronically as provided in RCW 82.32.135, the notice shall also be served by certified mail with return receipt requested. Electronic notification or service by mail shall be deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the five-day period following the seizure or notification of the seizure to the department or the board.

(4) If no person notifies the department or the board in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department or the board, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee or the board or the board's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing and any appeal therefrom shall be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department or the board shall promptly return the article or articles to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession thereof of the items seized. [2007 c 111 § 103; 1998 c 53 § 1; 1987 c 496 § 3.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Effective date—1998 c 53: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 1998]." [1998 c 53 § 2.]

82.24.140 Forfeiture procedure—Seizures—Notice—Claimant's bond—Court proceedings.

Reviser's note: RCW 82.24.140 was amended by 1987 c 202 § 243 without reference to its repeal by 1987 c 496 § 6. It has been decodified for publication purposes pursuant to RCW 1.12.025.

82.24.145 Forfeited property—Retention, sale, or destruction—Use of sale proceeds. When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this

(2008 Ed.)

state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of RCW 82.24.035 or 70.158.030(3) shall be destroyed. For the purposes of this subsection (3) "cigarettes" has the same meaning as provided in RCW 70.158.020(3). [2003 c 25 § 10; 1999 c 193 § 4; 1987 c 496 § 4.]

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

Intent—Finding—Severability—Effective date—1999 c 193: See notes following RCW 82.24.035.

82.24.180 Seized property may be returned—Penalty, interest. (1) The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

(2) When any property is returned under this section, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, and interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and in such cases, no advertisement shall be made or notices posted in connection with said seizure. [1996 c 149 § 8; 1990 c 267 § 2; 1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1990 c 267: See note following RCW 82.24.120.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.190 Search and seizure. When the department of revenue or the board has good reason to believe that any of the articles taxed herein are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter or regulations issued under authority hereof, it may make affidavit of such fact, describing the place or thing to be searched, before any judge of any court in this state, and such judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department

of revenue commanding him or her diligently to search any building, room in a building, place or vehicle as may be designated in the affidavit and search warrant, and to seize such tobacco so possessed and to hold the same until disposed of by law, and to arrest the person in possession or control thereof. If upon the return of such warrant, it shall appear that any of the articles taxed herein, unlawfully possessed, were seized, the same shall be sold as provided in this chapter. [1997 c 420 § 6; 1987 c 202 § 244; 1975 1st ex.s. c 278 § 67; 1961 c 15 § 82.24.190. Prior: 1949 c 228 § 16; 1935 c 180 § 91; Rem. Supp. 1949 § 8370-91.]

Intent—1987 c 202: See note following RCW 2.04.190.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.210 Redemption of stamps. The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount, upon condition that the seller in this state makes affidavit that the articles were sold and shipped outside of the state and that he has received from the purchaser outside the state a written acknowledgment that he has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. A distributor or wholesaler that has lawfully affixed stamps to cigarettes, and subsequently is unable to sell those cigarettes lawfully because the cigarettes are removed from the directory created pursuant to RCW 70.158.030(2), may apply to the department for a refund of the cost of the stamps. [2003 c 25 § 11; 1975 1st ex.s. c 278 § 68; 1961 c 15 § 82.24.210. Prior: 1949 c 228 § 17; 1941 c 178 § 17; 1935 c 180 § 92; Rem. Supp. 1949 § 8370-92.]

Conflict of law—Severability—Effective date—2003 c 25: See RCW 70.158.900 and 70.158.901.

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

82.24.230 Administration. All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in RCW 82.24.280. [2006 c 14 § 7; 1995 c 278 § 9; 1961 c 15 § 82.24.230. Prior: 1935 c 180 § 95; RRS § 8370-95.]

Reviser's note: In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

Finding—Intent—2006 c 14: See note following RCW 70.155.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.235 Rules. The department may adopt such rules as are necessary to enforce and administer this chapter. [1995 c 278 § 15.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect. (1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

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

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

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

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

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

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

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

(b) The United States or an agency thereof;

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

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

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

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

(9) Nothing in this section shall be construed as limiting the right to travel upon all public highways under Article III of the treaty with the Yakamas of 1855. [2008 c 226 § 5; 2003 c 114 § 8; 1997 c 420 § 7; 1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

Finding—Intent—2008 c 226: See note following RCW 82.24.080.

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

82.24.260 Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability. (1) Other than:

(a) A wholesaler required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe, a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050. [2003 c 114 § 9; 1995 c 278 § 11; 1987 c 80 § 3; 1986 c 3 § 13. Prior: 1983 c 189 § 3; 1983 c 3 § 217; 1975 1st ex.s. c 22 § 1; 1972 ex.s. c 157 § 7.]

Effective date—1995 c 278: See note following RCW 82.24.010.

Severability—1986 c 3: See RCW 70.146.900.

Effective dates—1986 c 3: See note following RCW 82.24.027.

Severability—1983 c 189: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 189 § 10.]

Severability—1972 ex.s. c 157: See note following RCW 82.24.020.

(2008 Ed.)

82.24.280 Liability from tax increase—Interest and penalties on unpaid tax—Administration. (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [2007 c 111 § 104; 1996 c 149 § 10; 1995 c 278 § 13.]

Part headings not law—2007 c 111: See note following RCW 82.16.120.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.290 Exceptions—Federal instrumentalities and purchasers from federal instrumentalities. The taxes imposed by this chapter do not apply to the sale of cigarettes to:

(1) United States army, navy, air force, marine corps, or coast guard exchanges and commissaries and navy or coast guard ships' stores;

(2) The United States veterans' administration; or

(3) Any authorized purchaser from the federal instrumentalities named in subsection (1) or (2) of this section. [1995 c 278 § 14.]

Effective date—1995 c 278: See note following RCW 82.24.010.

82.24.295 Exceptions—Sales by Indian retailer under cigarette tax contract. (1) The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455.

(2) Effective July 1, 2002, wholesalers and retailers subject to the provisions of this chapter shall be allowed compensation for their services in affixing the stamps required under this chapter a sum computed at the rate of six dollars per one thousand stamps purchased or affixed by them. [2001 c 235 § 6.]

Intent—Finding—2001 c 235: See RCW 43.06.450.

82.24.300 Exceptions—Puyallup Tribe of Indians. The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of

a cigarette tax agreement under RCW 43.06.465. [2005 c 11 § 5.]

Findings—Intent—Explanatory statement—Effective date—2005 c 11: See notes following RCW 43.06.465.

82.24.302 Exceptions—Sales by tribal retailers—Yakama Nation. The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by a tribal retailer during the effective period of a cigarette tax agreement under RCW 43.06.466. [2008 c 228 § 2.]

Authorization for agreement—Effective date—2008 c 228: See notes following RCW 43.06.466.

82.24.500 Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty. No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter. A violation of this section is a class C felony. [2003 c 114 § 10; 1986 c 321 § 4.]

Policy—Intent—1986 c 321: "It is the policy of the legislature to encourage competition by reducing the government's role in price setting. It is the legislature's intent to leave price setting mainly to the forces of the marketplace. In the field of cigarette sales, the legislature finds that the goal of open competition should be balanced against the public policy disallowing use of cigarette sales as loss leaders. To balance these public policies, it is the intent of the legislature to repeal the unfair cigarette sales below cost act and to declare the use of cigarettes as loss leaders as an unfair practice under the consumer protection act." [1986 c 321 § 1.]

Savings—1986 c 321: "A cigarette wholesalers or retailers license issued by the department of licensing under RCW 19.91.130 in good standing on the July 1, 1991, constitutes a license under RCW 82.24.500." [1986 c 321 § 11.]

Effective date—1986 c 321: "Sections 1 and 4 through 14 of this act shall take effect on July 1, 1991." [1986 c 321 § 15.]

82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.

(1) The licenses issuable under this chapter are as follows:

- (a) A wholesaler's license.
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department of revenue shall adopt rules regarding the regulation of the licenses. The department of revenue may refrain from the issuance of any license under this chapter if the department has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license and for considering the denial, suspension, or revocation of any such license, the department may consider criminal convictions of the applicant related to the selling of cigarettes within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The department may, in its discretion, grant or refuse the wholesaler's license, subject to the provisions of RCW 82.24.550.

[Title 82 RCW—page 200]

(3) No person may qualify for a wholesaler's license under this section without first undergoing a criminal background check. The background check shall be performed by the liquor control board and must disclose any criminal convictions related to the selling of cigarettes within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's master license expiration, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 RCW, the background check done under the authority of chapter 66.24 RCW satisfies the requirements of this section.

(4) Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department of revenue made pursuant thereto. [2001 c 235 § 8; 1986 c 321 § 5.]

Intent—Finding—2001 c 235: See RCW 43.06.450.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.520 Wholesaler's license—Fee—Display of license—Bond. A fee of six hundred fifty dollars shall accompany each wholesaler's license application or license renewal application. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue requires, shall be exhibited in the place of business for which it is issued and in such manner as is prescribed for the display of a master license. The department of revenue shall require each licensed wholesaler to file with the department a bond in an amount not less than one thousand dollars to guarantee the proper performance of the duties and the discharge of the liabilities under this chapter. The bond shall be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license. [1986 c 321 § 6.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.530 Retailer's license—Vending machines. A fee of ninety-three dollars shall accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates. A fee of thirty additional dollars for each vending machine shall accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. [1993 c 507 § 15; 1986 c 321 § 7.]

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

(2008 Ed.)

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

82.24.540 Licensee to operate within scope of license—Penalty. Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity unless the additional appropriate license or licenses are first secured. A violation of this section is a misdemeanor. [1986 c 321 § 8.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal. (1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The department has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department. The department, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

(6) A person whose license has been suspended or revoked shall not sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(7) Any determination and order by the department, and any order of suspension or revocation by the department of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department and may

(2008 Ed.)

hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department and the board.

(8) For purposes of this section, "tobacco products" has the same meaning as in RCW 82.26.010. [2005 c 180 § 19; 1997 c 420 § 8; 1993 c 507 § 17; 1986 c 321 § 9.]

Effective date—2005 c 180: See note following RCW 82.26.105.

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.551 Enforcement—Appointment of officers of liquor control board. The department shall appoint, as duly authorized agents, enforcement officers of the liquor control board to enforce provisions of this chapter. These officers shall not be considered employees of the department. [1997 c 420 § 10.]

82.24.552 Enforcement—Administration—Inspection of books and records. (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of any person transporting cigarettes for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of cigarettes for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband cigarettes.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 2.]

82.24.560 Fees and penalties credited to general fund. Except as specified in RCW 70.155.120, all fees and penalties received or collected by the department of revenue pursuant to this chapter shall be paid to the state treasurer, to be credited to the general fund. [1993 c 507 § 18; 1986 c 321 § 10.]

Finding—Severability—1993 c 507: See RCW 70.155.005 and 70.155.900.

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

82.24.570 Counterfeit cigarette offenses—Penalties. (1) It is unlawful for any person to knowingly manufacture, sell, or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

(a) The cigarette or its packaging bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted or used by a manufacturer to identify its own cigarettes; and

(b) The cigarette is not manufactured by the owner or holder of that trademark, service mark, trade name, label,

term, design, or work, or by any authorized licensee of that person.

(2) Any person who violates the provisions of this section is guilty of a class C felony which is punishable by up to five years in prison and a fine of up to ten thousand dollars.

(3) Any person who is convicted of a second or subsequent violation of the provisions of this section is guilty of a class B felony which is punishable by up to ten years in prison and a fine of up to twenty thousand dollars. [2003 c 114 § 6.]

82.24.900 Construction—1961 c 15. The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or the laws of the United States. [1961 c 15 § 82.24.900. Prior: 1935 c 180 § 94; RRS § 8370-94.]

Chapter 82.26 RCW

TAX ON TOBACCO PRODUCTS

Sections

82.26.010	Definitions.
82.26.020	Tax imposed—Deposit of tax revenue.
82.26.030	Legislative intent—Purpose.
82.26.040	When tax not applicable under laws of United States.
82.26.060	Books and records to be preserved—Entry and inspection by department.
82.26.070	Preservation of invoices of sales to other than ultimate consumer.
82.26.080	Retailer invoices—Requirements—Inspection.
82.26.090	Records of shipments, deliveries from public warehouse of first destination—Preservation—Inspection.
82.26.100	Reports and returns.
82.26.105	Inspection of books, documents, or records of carriers.
82.26.110	When credit may be obtained for tax paid.
82.26.120	Administration.
82.26.121	Enforcement—Appointment of officers of liquor control board.
82.26.130	Invoices—Nonpayment—Penalties and interest.
82.26.140	Transport of tobacco products—Requirements—Vehicle inspection.
82.26.150	Distributor's license, retailer's license—Application—Approval—Display.
82.26.160	Distributor's license—Application fees.
82.26.170	Retailer's license—Application fee.
82.26.180	Department web site listing distributors and retailers.
82.26.190	Distributors and retailers—Valid license required—Violations—Penalties.
82.26.200	Sales from distributors to retailers—Requirements.
82.26.210	Manufacturer's representatives—Requirements.
82.26.220	Enforcement, administration of chapter—License suspension, revocation.
82.26.230	Enforcement—Unlicensed distributors or retailers—Seizure and forfeiture of property.
82.26.240	Seizure and forfeiture of property—Department and board requirements.
82.26.250	Enforcement—Search warrants.

Minors: Chapter 70.155 RCW.

82.26.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a

pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulter-

RCW 43.06.450-.466

(1) An undergraduate internship program consisting of three-month to six-month positions for students working toward an undergraduate degree. In addition, a public sector employee, whether working toward a degree or not, shall be eligible to participate in the program upon the written recommendation of the head of the employee's agency.

(2) An executive fellows program consisting of one-year to two-year placements for students who have successfully completed at least one year of graduate level work and have demonstrated a substantial interest in public sector management. Positions in this program shall be as assistants or analysts at the midmanagement level or higher. In addition, a public sector employee, whether working toward an advanced degree or not, or who has not successfully completed one year of graduate-level work as required by this subsection, shall be eligible to participate in the program upon the written recommendation of the head of the employee's agency. Participants in the executive fellows program who were not public employees prior to accepting a position in the program shall receive insurance and retirement credit commensurate with other employees of the employing agency. [1985 c 442 § 3.]

Construction—Severability—1985 c 442: See notes following RCW 43.06.410.

43.06.425 Interns—Effect of employment experience—Rights of reversion—Fringe benefits—Sick and vacation leave. The director of personnel shall adopt rules to provide that:

(1) Successful completion of an internship under RCW 43.06.420 shall be considered as employment experience at the level at which the intern was placed;

(2) Persons leaving classified or exempt positions in state government in order to take an internship under RCW 43.06.420: (a) Have the right of reversion to the previous position at any time during the internship or upon completion of the internship; and (b) shall continue to receive all fringe benefits as if they had never left their classified or exempt positions;

(3) Participants in the undergraduate internship program who were not public employees prior to accepting a position in the program receive sick leave allowances commensurate with other state employees;

(4) Participants in the executive fellows program who were not public employees prior to accepting a position in the program receive sick and vacation leave allowances commensurate with other state employees. [2002 c 354 § 229; 1993 c 281 § 48; 1985 c 442 § 4.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Effective date—1993 c 281: See note following RCW 41.06.022.

Construction—Severability—1985 c 442: See notes following RCW 43.06.410.

State internship program—Positions exempt from chapter 41.06, RCW: RCW 41.06.088.

43.06.435 Interns—Effect on full time equivalent staff position limitations. An agency shall not be deemed to exceed any limitation on full time equivalent staff positions on the basis of intern positions established under RCW 43.06.420. [1985 c 442 § 6.]

(2008 Ed.)

Construction—Severability—1985 c 442: See notes following RCW 43.06.410.

43.06.450 Cigarette tax contracts—Intent—Finding—Limitations. The legislature intends to further the government-to-government relationship between the state of Washington and Indians in the state of Washington by authorizing the governor to enter into contracts concerning the sale of cigarettes. The legislature finds that these cigarette tax contracts will provide a means to promote economic development, provide needed revenues for tribal governments and Indian persons, and enhance enforcement of the state's cigarette tax law, ultimately saving the state money and reducing conflict. In addition, it is the intent of the legislature that the negotiations and the ensuing contracts shall have no impact on the state's share of the proceeds under the master settlement agreement entered into on November 23, 1998, by the state. Chapter 235, Laws of 2001 does not constitute a grant of taxing authority to any Indian tribe nor does it provide precedent for the taxation of non-Indians on fee land. [2001 c 235 § 1.]

43.06.455 Cigarette tax contracts—Requirements—Use of revenue—Enforcement—Definitions. (1) The governor may enter into cigarette tax contracts concerning the sale of cigarettes. All cigarette tax contracts shall meet the requirements for cigarette tax contracts under this section. Except for cigarette tax contracts under RCW 43.06.460, the rates, revenue sharing, and exemption terms of a cigarette tax contract are not effective unless authorized in a bill enacted by the legislature.

(2) Cigarette tax contracts shall be in regard to retail sales in which Indian retailers make delivery and physical transfer of possession of the cigarettes from the seller to the buyer within Indian country, and are not in regard to transactions by non-Indian retailers. In addition, contracts shall provide that retailers shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(3) A cigarette tax contract with a tribe shall provide for a tribal cigarette tax in lieu of all state cigarette taxes and state and local sales and use taxes on sales of cigarettes in Indian country by Indian retailers. The tribe may allow an exemption for sales to tribal members.

(4) Cigarette tax contracts shall provide that all cigarettes possessed or sold by a retailer shall bear a cigarette stamp obtained by wholesalers from a bank or other suitable stamp vendor and applied to the cigarettes. The procedures to be used by the tribe in obtaining tax stamps must include a means to assure that the tribal tax will be paid by the wholesaler obtaining such cigarettes. Tribal stamps must have serial numbers or some other discrete identification so that each stamp can be traced to its source.

(5) Cigarette tax contracts shall provide that retailers shall purchase cigarettes only from:

(a) Wholesalers or manufacturers licensed to do business in the state of Washington;

(b) Out-of-state wholesalers or manufacturers who, although not licensed to do business in the state of Washington, agree to comply with the terms of the cigarette tax contract, are certified to the state as having so agreed, and who do

[Title 43 RCW—page 31]

in fact so comply. However, the state may in its sole discretion exercise its administrative and enforcement powers over such wholesalers or manufacturers to the extent permitted by law;

(c) A tribal wholesaler that purchases only from a wholesaler or manufacturer described in (a), (b), or (d) of this subsection; and

(d) A tribal manufacturer.

(6) Cigarette tax contracts shall be for renewable periods of no more than eight years. A renewal may not include a renewal of the phase-in period.

(7) Cigarette tax contracts shall include provisions for compliance, such as transport and notice requirements, inspection procedures, stamping requirements, recordkeeping, and audit requirements.

(8) Tax revenue retained by a tribe must be used for essential government services. Use of tax revenue for subsidization of cigarette and food retailers is prohibited.

(9) The cigarette tax contract may include provisions to resolve disputes using a nonjudicial process, such as mediation.

(10) The governor may delegate the power to negotiate cigarette tax contracts to the department of revenue. The department of revenue shall consult with the liquor control board during the negotiations.

(11) Information received by the state or open to state review under the terms of a contract is subject to the provisions of RCW 82.32.330.

(12) It is the intent of the legislature that the liquor control board and the department of revenue continue the division of duties and shared authority under chapter 82.24 RCW and therefore the liquor control board is responsible for enforcement activities that come under the terms of chapter 82.24 RCW.

(13) Each cigarette tax contract shall include a procedure for notifying the other party that a violation has occurred, a procedure for establishing whether a violation has in fact occurred, an opportunity to correct such violation, and a provision providing for termination of the contract should the violation fail to be resolved through this process, such termination subject to mediation should the terms of the contract so allow. A contract shall provide for termination of the contract if resolution of a dispute does not occur within twenty-four months from the time notification of a violation has occurred. Intervening violations do not extend this time period. In addition, the contract shall include provisions delineating the respective roles and responsibilities of the tribe, the department of revenue, and the liquor control board.

(14) For purposes of this section and RCW 43.06.460, 82.08.0316, 82.12.0316, and 82.24.295:

(a) "Essential government services" means services such as tribal administration, public facilities, fire, police, public health, education, job services, sewer, water, environmental and land use, transportation, utility services, and economic development;

(b) "Indian retailer" or "retailer" means (i) a retailer wholly owned and operated by an Indian tribe, (ii) a business wholly owned and operated by a tribal member and licensed by the tribe, or (iii) a business owned and operated by the Indian person or persons in whose name the land is held in trust; and

(c) "Indian tribe" or "tribe" means a federally recognized Indian tribe located within the geographical boundaries of the state of Washington. [2001 c 235 § 2.]

43.06.460 Cigarette tax contracts—Eligible tribes—

Tax rate. (1) The governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, the Kalispel Tribe, the Confederated Tribes of the Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, the Makah Tribe, the Hoh Tribe, the Spokane Tribe, and the Shoalwater Bay Tribe. Each contract adopted under this section shall provide that the tribal cigarette tax rate be one hundred percent of the state cigarette and state and local sales and use taxes within three years of enacting the tribal tax and shall be set no lower than eighty percent of the state cigarette and state and local sales and use taxes during the three-year phase-in period. The three-year phase-in period shall be shortened by three months each quarter the number of cartons of nontribal manufactured cigarettes is at least ten percent or more than the quarterly average number of cartons of nontribal manufactured cigarettes from the six-month period preceding the imposition of the tribal tax under the contract. Sales at a retailer operation not in existence as of the date a tribal tax under this section is imposed are subject to the full rate of the tribal tax under the contract. The tribal cigarette tax is in lieu of the state cigarette and state and local sales and use taxes, as provided in RCW 43.06.455(3).

(2) A cigarette tax contract under this section is subject to RCW 43.06.455. [2008 c 241 § 1; 2007 c 320 § 1; 2005 c 208 § 1; 2003 c 236 § 1; 2002 c 87 § 1; 2001 2nd sp.s. c 21 § 1; 2001 c 235 § 3.]

Effective date—2007 c 320: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 320 § 2.]

43.06.465 Cigarette tax agreement with Puyallup

Tribe of Indians. (1) The governor may enter into a cigarette tax agreement with the Puyallup Tribe of Indians concerning the sale of cigarettes, subject to the limitations in this section. The legislature intends to address the uniqueness of the Puyallup Indian reservation and its selling environment through pricing and compliance strategies, rather than through the imposition of equivalent taxes. It is the legislature's intent (a) that an increase in prices through a flat tax will reduce much of the competitive advantage that has historically existed due to the discrepancy in the difference between state and tribal taxes, and (b) that the tribal retailers can remain in business under the changed circumstances. The governor may delegate the authority to negotiate a cigarette tax agreement with the Puyallup Tribe to the department of revenue. The department of revenue shall consult with the liquor control board during the negotiations.

(2) Any agreement must require the tribe to impose a tax of eleven dollars and seventy-five cents on each carton of cigarettes, with ten packs a carton and twenty cigarettes per pack being the industry standard. This tax shall be prorated for cartons and packs that are nonstandard. This tribal tax is in lieu of the combined state and local sales and use taxes, and state cigarette taxes, and as such these state taxes are not imposed during the term of the agreement on any transaction governed by the agreement. The tribal tax shall increase or decrease by the same dollar amount as any increase or decrease in the state cigarette tax.

(3) The agreement must include a provision requiring the tribe to transmit thirty percent of the tribal tax revenue on all cigarette sales to the state. The funds shall be transmitted to the state treasurer on a quarterly basis for deposit by the state treasurer into the general fund. The remaining tribal tax revenue must be used for essential government services, as that term is defined in RCW 43.06.455.

(4) The agreement is limited to retail sales in which Indian retailers make delivery and physical transfer of possession of the cigarettes from the seller to the buyer within Indian country, and are not in regard to transactions by non-Indian retailers. In addition, agreements shall provide that retailers shall not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(5)(a) The agreement must include a provision to price and sell the cigarettes so that the retail selling price is not less than the price paid by the retailer for the cigarettes.

(b) The tribal tax is in addition to the retail selling price.

(c) The agreement must include a provision to assure the price paid to the retailer includes the tribal tax, as evidenced by the tribe's cigarette stamp.

(d) If the tribe is acting as a wholesaler to tribal retailers, the retail selling price must not be less than the price the tribe paid for such cigarettes plus the tribal tax, as evidenced by the tribe's cigarette stamp.

(6)(a) The agreement must include provisions regarding enforcement and compliance by the tribe in regard to enrolled tribal members who sell cigarettes and shall describe the individual and joint responsibilities of the tribe, the department of revenue, and the liquor control board.

(b) The agreement must include provisions for tax administration and compliance, such as transport and notice requirements, inspection procedures, stamping requirements, recordkeeping, and audit requirements.

(c) The agreement must include provisions for sharing of information among the tribe, the department of revenue, and the liquor control board.

(7) The agreement must provide that all cigarettes possessed or sold by a tribal retailer shall bear a tribal cigarette stamp obtained by wholesalers from a bank or other suitable stamp vendor and applied to the cigarettes. Tribal stamps must have serial numbers or some other discrete identification so that each stamp can be traced to its source.

(8) The agreement must provide that retailers shall purchase cigarettes only from wholesalers or manufacturers licensed to do business in the state of Washington.

(9) The agreement must be for a renewable period of no more than eight years.

(10) The agreement must include provisions to resolve disputes using a nonjudicial process, such as mediation, and

(2008 Ed.)

shall include a dispute resolution protocol. The protocol shall include a procedure for notifying the other party that a violation has occurred, a procedure for establishing whether a violation has in fact occurred, an opportunity to correct such violation, and a provision providing for termination of the agreement should the violation fail to be resolved through this process, such termination subject to mediation should the terms of the agreement so allow. An agreement must provide for termination of the agreement if resolution of a dispute does not occur within twenty-four months from the time notification of a violation has occurred. Intervening violations do not extend this time period.

(11) The agreement may not include any provisions that impact the state's share of the master settlement agreement, and as such this agreement does not authorize negotiation regarding a redistribution of the state's proceeds under the master settlement agreement.

(12) Information received by the state or open to state review under the terms of an agreement is subject to RCW 82.32.330.

(13) It is the intent of the legislature that the liquor control board and the department of revenue continue the division of duties and shared authority under chapter 82.24 RCW.

(14) For purposes of this section:

(a) "Indian country" has the same meaning as in chapter 82.24 RCW.

(b) "Indian retailer" or "retailer" means (i) a retailer wholly owned and operated by an Indian tribe or (ii) a business wholly owned and operated by an enrolled tribal member and licensed by the tribe.

(c) "Indian tribe" or "tribe" means the Puyallup Tribe of Indians, which is a federally recognized Indian tribe located within the geographical boundaries of the state of Washington. [2005 c 11 § 2.]

Findings—Intent—2005 c 11: "In 2001, the legislature enacted Engrossed Substitute Senate Bill No. 5372, which authorized the governor to enter into cigarette contracts with fourteen Indian tribes. In subsequent sessions, the legislature increased to twenty-one the number of tribes with whom the governor may negotiate under the terms of RCW 43.06.460. The legislature finds that this effort has been effective, as measured by the success of the existing agreements.

The legislature further finds the agreements resolved decades of conflict between the state and tribes over the sale of contraband cigarettes to non-Indians; benefited the tribes through tribal tax revenues; benefited the state because cigarettes are stamped and taxed; enhanced public health because access to low-priced cigarettes is reduced; improved law and order; and reduced the competitive advantage gained through the sale of tax-free cigarettes.

The 2001 legislation and its later amendments did not encompass the Puyallup Tribe of Indians within its scope due to the very different nature of the cigarette trade on the Puyallup Indian reservation. The legislature therefore intends to address the special circumstances on the Puyallup Indian reservation by recognizing the substantial distinctions and enacting legislation authorizing a cigarette tax agreement with the tribe that differs from the contracts entered into under RCW 43.06.460. Section 2 of this act provides the governor authority to enter into an agreement and sets forth the general framework for the agreement." [2005 c 11 § 1.]

Explanatory statement—Effective date—2005 c 11: "(1) On January 5, 2005, it was announced that a cigarette tax agreement had been reached between the state of Washington and the Puyallup Indian Tribe. Before being signed by the governor, the legislature must provide authorization to the governor to sign such an agreement. Because the state and the Puyallup Indian Tribe have reached an agreement in principle, time for implementation is of the essence.

(2) This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing

public institutions, and takes effect immediately [April 5, 2005]." [2005 c 11 § 6.]

43.06.466 Cigarette tax agreement—Yakama Nation. (1) The legislature finds that entering into a cigarette tax agreement with the Yakama Nation is a positive step and that such an agreement will support a stable and orderly environment on the Yakima Reservation for regulation of cigarette sales. The legislature further finds that the very special circumstances of the Yakama Nation pursuant to the Treaty with the Yakamas of 1855 (12 Stat. 951) support a cigarette tax agreement that reflects those circumstances. The legislature also finds that the provisions of the agreement with the Yakama Nation authorized by chapter 228, Laws of 2008 are reasonably necessary to prevent fraudulent transactions and place a minimal burden on the Yakama Nation, pursuant to the United States supreme court's decision in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980).

It is the intent of the legislature that the cigarette tax agreement with the Yakama Nation reflects the uniqueness of the Yakama Nation's Treaty through specific terms that govern pricing of cigarettes, tribal cigarette tax revenue, information sharing, and administration of the agreement.

(2) For purposes of this section:

(a) "Cigarette" has the same meaning as in chapter 82.24 RCW; and

(b) "Tribal retailer" means a cigarette retailer as that term is defined in RCW 82.24.010 that is licensed by and located within the jurisdiction of the Yakama Nation and is wholly owned by the Yakama Nation or any of its enrolled members.

(3) The governor may enter into a cigarette tax agreement with the Yakama Nation, a federally recognized Indian tribe located within the geographical boundaries of the state of Washington, concerning the sale of cigarettes, subject to the provisions of this section. The governor may delegate the authority to negotiate the agreement to the department of revenue.

(4) The agreement must be for a renewable period of no more than eight years.

(5) All cigarettes possessed or sold by tribal retailers must be subject to the agreement, except cigarettes manufactured within the jurisdiction of the Yakama Nation by the Yakama Nation or its enrolled members.

(6) The agreement must allow the Yakama Nation to exempt its enrolled members from the tribal cigarette tax imposed under subsection (7) of this section.

(a) Sales of cigarettes exempt under this subsection must be subject to the requirements of subsection (9) of this section.

(b) The exemption must be provided only at the point of sale and reimbursement provided to the tribal retailer by the Yakama Nation.

(7) The agreement must require the Yakama Nation to impose and maintain in effect on the sale of cigarettes by tribal retailers a tax as provided in this subsection.

(a) The rate of tax will be expressed in dollars and cents and must be the percentage of tax imposed by the state under chapter 82.24 RCW for the period of the agreement as stated here:

(i) Eighty percent during the first six years;

(ii) Eighty-four percent during the seventh year; and

(iii) Eighty-seven and six-tenths percent during the eighth year.

(b) The tax must be imposed on each carton, or portion of a carton, of cigarettes, with ten packs per carton and twenty cigarettes per pack being the industry standard, and prorated for cartons and packs that are not standard.

(c) The tax must be in lieu of the combined state and local sales and use taxes, and state cigarette taxes, and, as provided in RCW 82.24.302, 82.08.0316, and 82.12.0316, the taxes imposed by chapters 82.08, 82.12, and 82.24 RCW do not apply during the term of the agreement on any transaction governed by the agreement.

(d) Throughout the term of the agreement and any renewal of the agreement, the tax must increase or decrease in correspondence with the state cigarette tax by applying the percentages in (a) of this subsection.

(8) The revenue generated by the tax imposed under subsection (7) of this section must be used by the Yakama Nation for essential government services, as that term is defined in RCW 43.06.455.

(9) All cigarettes possessed or sold by a tribal retailer must bear a tribal cigarette tax stamp as provided in this subsection.

(a) The Yakama Nation may act as its own stamp vendor, subject to meeting reasonable requirements for internal controls.

(b) The stamps must have serial numbers or other discrete identification that allow stamps to be traced to their source.

(10) The price paid by the tribal retailer to the wholesaler must not be less than the total of the price paid by the Yakama Nation or other wholesaler and the tax imposed under subsection (7) of this section.

(11) The retail selling price of cigarettes sold by tribal retailers must not be less than the price paid by them under subsection (10) of this section.

(12) Tribal retailers must not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(13) The authority and the individual and joint responsibility of the Yakama Nation, the department of revenue, and the liquor control board for administration and enforcement must be specified in the agreement including, but not limited to, requirements regarding transport of cigarettes, keeping of records, reporting, notice, inspection, audit, and mutual exchange of information.

(a) Requirements must provide for sharing of information regarding transport of cigarettes in the state of Washington by the Yakama Nation or its enrolled members, reporting of information on sales to customers located outside the jurisdiction of the Yakama Nation, and authority for unannounced inspection by the state of tribal retailers to verify compliance with stamping and pricing provisions.

(b) Information received by the state or open to state review under the terms of the agreement is subject to RCW 82.32.330.

(14) The agreement must provide for resolution of disputes using a nonjudicial process, such as mediation, and establish a dispute resolution protocol that includes the following elements:

(a) A procedure for notifying the other party that a violation has occurred;

(b) A procedure for establishing whether a violation has in fact occurred;

(c) An opportunity to correct the violation;

(d) A procedure for terminating the agreement in the event of a failure to correct the violation, such termination subject to mediation should the terms of the agreement so allow; and

(e) Termination of the agreement for cause.

(15) The agreement may not include any provisions that impact the state's share of the master settlement agreement or concern redistribution of the state's proceeds under the master settlement agreement.

(16) The department of revenue may share with the Yakama Nation tax information under RCW 82.32.330 that is necessary for the Yakama Nation's compliance with the agreement. [2008 c 228 § 1.]

Authorization for agreement—2008 c 228: "In December 2007 it was announced that a cigarette tax agreement between the state of Washington and the Yakama Nation had been reached in principle. The legislature must provide authorization to the governor to sign such an agreement. Because the parties have reached an agreement in principle, time for implementation is of the essence." [2008 c 228 § 5.]

Effective date—2008 c 228: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2008]." [2008 c 228 § 6.]

43.06.475 Timber harvest excise tax agreements. (1)

The governor may enter into timber harvest excise tax agreements concerning the harvest of timber. All timber harvest excise tax agreements must meet the requirements for timber harvest excise tax agreements under this section. The terms of a timber harvest excise tax agreement are not effective unless the agreement is authorized in RCW 43.06.480.

(2) Timber harvest excise tax agreements shall be in regard to timber harvests on fee land within the exterior boundaries of the reservation of the Indian tribe and are not in regard to timber harvests on trust land or land owned by the tribe within the exterior boundaries of the reservation.

(3) The agreement must provide that the tribal tax shall be credited against the state and county taxes imposed under RCW 84.33.041 and 84.33.051.

(4) Tribal ordinances for timber harvest excise taxation, or other authorizing tribal laws, which implement the timber harvest excise tax agreement with the state, must incorporate or contain provisions identical to chapter 84.33 RCW that relate to the tax rates and measures, such as stumpage values.

(5) Timber harvest excise tax agreements must be for renewable periods of no more than eight years.

(6) Timber harvest excise tax agreements must include provisions for compliance, such as inspection procedures, recordkeeping, and audit requirements.

(7) Tax revenue retained by the tribe must be used for essential government services. Use of tax revenue for subsidization of timber harvesters is prohibited.

(8) The timber harvest excise tax agreement may include provisions to resolve disputes using a nonjudicial process, such as mediation.

(2008 Ed.)

(9) The governor may delegate the power to negotiate the timber harvest excise tax agreements to the department of revenue.

(10) Information received by the state or open to state review under the terms of a timber harvest excise tax agreement is subject to the provisions of RCW 82.32.330. The department of revenue may enter into an information sharing agreement with the tribe to facilitate sharing information to improve tax collection.

(11) The timber harvest excise tax agreement must include dispute resolution procedures, contract termination procedures, and provisions delineating the respective roles and responsibilities of the tribe and the department of revenue.

(12) The timber harvest excise tax agreement must include provisions to require taxpayers to submit information that may be required by the department of revenue or tribe.

(13) For the purposes of this section:

(a) "Essential government services" means services such as forest land management; protection, enhancement, regulation, and stewardship of forested land; land consolidation; tribal administration; public facilities; fire; police; public health; education; job services; sewer; water; environmental and land use; transportation; utility services; and public facilities serving economic development purposes as those terms are defined in RCW 82.14.370(3)(c);

(b) "Forest land" has the same meaning as in RCW 84.33.035;

(c) "Harvester" has the same meaning as in RCW 84.33.035;

(d) "Indian tribe" or "tribe" means a federally recognized Indian tribe located within the geographical boundaries of the state of Washington; and

(e) "Timber" has the same meaning as in RCW 84.33.035. [2007 c 69 § 2.]

Findings—Intent—2007 c 69: "The legislature finds that in certain areas of taxation, where both a tribe and the state have jurisdiction and where there are challenges to administering a tax, tax agreements between the state and a tribe are a sound approach to resolving issues and simplifying processes. The legislature specifically recognizes that in the area of the timber excise tax, within the boundaries of the Quinault Reservation, the state faces challenges due to access to land and access to taxpayers. The activity being taxed takes place entirely within the reservation and is regulated by the tribe and by the state. The legislature therefore finds that shifting from a state administered tax, to a tribal tax credited against the state tax, will bring benefits such as consistent taxation, improved forest practices and water quality, improved fisheries, and sustainability. The legislature intends to further the government-to-government relationship between the state of Washington and the Quinault Nation by authorizing the governor to enter into an agreement related to timber harvest excise taxes." [2007 c 69 § 1.]

43.06.480 Timber harvest excise tax agreements—Quinault Nation. (1) The governor is authorized to enter into a timber harvest excise tax agreement with the Quinault Nation. Agreements adopted under this section must provide that the tribal timber harvest excise tax rate be one hundred percent of the state timber harvest excise tax.

(2) A timber harvest excise tax agreement under this section is subject to RCW 43.06.475. [2007 c 69 § 3.]

Findings—Intent—2007 c 69: See note following RCW 43.06.475.