

# Initiative Measure No. 1088

# FILED

APR 13 2010

SECRETARY OF STATE  
STATE OF WASHINGTON

1 AN ACT Relating to eliminating the recent tobacco tax increase;  
2 amending RCW 82.24.020, 82.24.026, 82.26.010, 82.26.020, and 82.26.030;  
3 adding new sections to chapter 82.24 RCW; creating new sections; and  
4 repealing RCW 82.26.---

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

6 **INTENT**

7 NEW SECTION. **Sec. 1.** Tobacco is already excessively taxed and  
8 should not be subjected to even higher taxes, especially during these  
9 tough economic times. This measure would eliminate the recent tobacco  
10 tax increase imposed by the 2010 legislature.

11 **PROTECTING TAXPAYERS BY ELIMINATING THE RECENT TOBACCO TAX INCREASE**

12 **Sec. 2.** RCW 82.24.020 and 2010 1st sp.s. c ... (ESHB 2493) s 2 are  
13 each amended to read as follows:

14 (1) There is levied and collected as provided in this chapter, a  
15 tax upon the sale, use, consumption, handling, possession, or

1 distribution of all cigarettes, in an amount equal to ~~((12.125))~~ one  
2 and fifteen one-hundredths cents per cigarette.

3 (2) An additional tax is imposed upon the sale, use, consumption,  
4 handling, possession, or distribution of all cigarettes, in an amount  
5 equal to five hundred twenty-five one-thousandths of a cent per  
6 cigarette. All revenues collected during any month from this  
7 additional tax shall be deposited in the state general fund by the  
8 twenty-fifth day of the following month.

9 (3) An additional tax is imposed upon the sale, use, consumption,  
10 handling, possession, or distribution of all cigarettes, in an amount  
11 equal to two and five one-hundredths cents per cigarette. All revenues  
12 collected during any month from this additional tax shall be deposited  
13 in the state general fund by the twenty-fifth day of the following  
14 month.

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

19 ~~((3))~~ (5) For purposes of this chapter, "possession" means both  
20 (a) physical possession by the purchaser and, (b) when cigarettes are  
21 being transported to or held for the purchaser or his or her designee  
22 by a person other than the purchaser, constructive possession by the  
23 purchaser or his or her designee, which constructive possession is  
24 deemed to occur at the location of the cigarettes being so transported  
25 or held.

26 ~~((4))~~ (6) In accordance with federal law and rules prescribed by  
27 the department, an enrolled member of a federally recognized Indian  
28 tribe may purchase cigarettes from an Indian tribal organization under  
29 the jurisdiction of the member's tribe for the member's own use exempt  
30 from the applicable taxes imposed by this chapter. Except as provided  
31 in subsection ~~((5))~~ (7) of this section, any person, who purchases  
32 cigarettes from an Indian tribal organization and who is not an  
33 enrolled member of the federally recognized Indian tribe within whose  
34 jurisdiction the sale takes place, is not exempt from the applicable  
35 taxes imposed by this chapter.

36 ~~((5))~~ (7) If the state enters into a cigarette tax contract or  
37 agreement with a federally recognized Indian tribe under chapter 43.06

1 RCW, the terms of the contract or agreement take precedence over any  
2 conflicting provisions of this chapter while the contract or agreement  
3 is in effect.

4 **Sec. 3.** RCW 82.24.026 and 2010 1st sp.s. c ... (ESHB 2493) s 3 are  
5 each amended to read as follows:

6 (1) In addition to the tax imposed upon the sale, use, consumption,  
7 handling, possession, or distribution of cigarettes set forth in RCW  
8 82.24.020, there is imposed a tax in an amount equal to three cents per  
9 cigarette.

10 (2) The revenue collected under this section must be deposited as  
11 follows:

12 (a) ~~((14))~~ 28.5 percent must be deposited into the general fund.

13 (b) The remainder must be deposited into the education legacy trust  
14 account.

15 **Sec. 4.** RCW 82.26.010 and 2010 1st sp.s. c ... (ESHB 2493) s 4 are  
16 each amended to read as follows:

17 The definitions in this section apply throughout this chapter  
18 unless the context clearly requires otherwise.

19 (1) "Tobacco products" means cigars, cheroots, stogies, periques,  
20 granulated, plug cut, crimp cut, ready rubbed, and other smoking  
21 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-  
22 cut and other chewing tobaccos, shorts, refuse scraps, clippings,  
23 cuttings and sweepings of tobacco, and other kinds and forms of  
24 tobacco, prepared in such manner as to be suitable for chewing or  
25 smoking in a pipe or otherwise, or both for chewing and smoking, ~~((and~~  
26 ~~any other product, regardless of form, that contains tobacco and is~~  
27 ~~intended for human consumption or placement in the oral or nasal cavity~~  
28 ~~or absorption into the human body by any other means,))~~ but does not  
29 include cigarettes as defined in RCW 82.24.010.

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

32 (3) "Distributor" means (a) any person engaged in the business of  
33 selling tobacco products in this state who brings, or causes to be  
34 brought, into this state from without the state any tobacco products  
35 for sale, (b) any person who makes, manufactures, fabricates, or stores  
36 tobacco products in this state for sale in this state, (c) any person

1 engaged in the business of selling tobacco products without this state  
2 who ships or transports tobacco products to retailers in this state, to  
3 be sold by those retailers, (d) any person engaged in the business of  
4 selling tobacco products in this state who handles for sale any tobacco  
5 products that are within this state but upon which tax has not been  
6 imposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (i) In the case of a taxpayer that is not affiliated with the  
20 manufacturer, distributor, or other person from whom the taxpayer  
21 purchased tobacco products, the actual price for which the taxpayer  
22 purchased the tobacco products;

23 (ii) In the case of a taxpayer that purchases tobacco products from  
24 an affiliated manufacturer, affiliated distributor, or other affiliated  
25 person, and that sells those tobacco products to unaffiliated  
26 distributors, unaffiliated retailers, or ultimate consumers, the actual  
27 price for which that taxpayer sells those tobacco products to  
28 unaffiliated distributors, unaffiliated retailers, or ultimate  
29 consumers;

30 (iii) In the case of a taxpayer that sells tobacco products only to  
31 affiliated distributors or affiliated retailers, the price, determined  
32 as nearly as possible according to the actual price, that other  
33 distributors sell similar tobacco products of like quality and  
34 character to unaffiliated distributors, unaffiliated retailers, or  
35 ultimate consumers;

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

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

8 (vi) In any case where (a)(i) through (v) of this subsection do not  
9 apply, the price, determined as nearly as possible according to the  
10 actual price, that the taxpayer or other distributors sell the same  
11 tobacco products or similar tobacco products of like quality and  
12 character to unaffiliated distributors, unaffiliated retailers, or  
13 ultimate consumers.

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

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

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

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

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

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

32 ~~(23) "Little cigar" means a cigar that has a cellulose acetate  
33 integrated filter.))~~

34 **Sec. 5.** RCW 82.26.020 and 2010 1st sp.s. c ... (ESHB 2493) s 5 are  
35 each amended to read as follows:

36 (1) There is levied and collected a tax upon the sale, handling, or

1 distribution of all tobacco products in this state at the following  
2 rate:

3 (a) (~~For cigars except little cigars, ninety-five~~) Seventy-five  
4 percent of the taxable sales price of cigars, not to exceed (~~sixty-~~  
5 ~~five~~) fifty cents per cigar; or

6 (b) (~~For all tobacco products except those covered under separate~~  
7 ~~provisions of this subsection, ninety five~~) Seventy-five percent of  
8 the taxable sales price(~~;~~

9 ~~(c) For moist snuff, as established in this subsection (1) (c) and~~  
10 ~~computed on the net weight listed by the manufacturer:~~

11 ~~(i) On each single unit consumer-sized can or package whose net~~  
12 ~~weight is one and two tenths ounces or less, a rate per single unit~~  
13 ~~that is equal to the greater of 2.526 dollars or eighty-three and one-~~  
14 ~~half percent of the cigarette tax under chapter 82.24 RCW multiplied by~~  
15 ~~twenty; or~~

16 ~~(ii) On each single unit consumer-sized can or package whose net~~  
17 ~~weight is more than one and two tenths ounces, a proportionate tax at~~  
18 ~~the rate established in (c) (i) of this subsection (1) on each ounce or~~  
19 ~~fractional part of an ounce; and~~

20 ~~(d) For little cigars, an amount per cigar equal to the cigarette~~  
21 ~~tax under chapter 82.24 RCW) of all tobacco products that are not~~  
22 ~~cigars.~~

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

31 (3) The moneys collected under this section must be deposited into  
32 the state general fund.

33 **Sec. 6.** RCW 82.26.030 and 2010 1st sp.s. c ... (ESHB 2493) s 7 are  
34 each amended to read as follows:

35 It is the intent and purpose of this chapter to levy a tax on all  
36 tobacco products sold, used, consumed, handled, or distributed within  
37 this state and to collect the tax from the distributor as defined in

1 RCW 82.26.010. It is the further intent and purpose of this chapter to  
2 impose the tax once, and only once, on all tobacco products for sale in  
3 this state, but nothing in this chapter may be construed to exempt any  
4 person taxable under any other law or under any other tax imposed under  
5 Title 82 RCW. It is the further intent and purpose of this chapter  
6 that the distributor who first possesses the tobacco product in this  
7 state is the distributor liable for the tax and that ~~((1) for moist~~  
8 ~~snuff the tax will be based on the net weight listed by the~~  
9 ~~manufacturer and (2))~~ in most ~~((other))~~ instances the tax will be  
10 based on the actual price that the distributor paid for the tobacco  
11 product, unless the distributor is affiliated with the seller.

12 NEW SECTION. **Sec. 7.** A new section is added to chapter 82.24 RCW  
13 to read as follows:

14 (1) There is levied and collected by the department of revenue from  
15 the persons mentioned in and in the manner provided by this chapter, an  
16 additional tax upon the sale, use, consumption, handling, possession,  
17 or distribution of cigarettes in an amount equal to four-tenths of a  
18 cent per cigarette.

19 (2) The moneys collected under this section must be deposited in  
20 the general fund.

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.24 RCW  
22 to read as follows:

23 In addition to the tax imposed upon the sale, use, consumption,  
24 handling, possession, or distribution of cigarettes set forth in RCW  
25 82.24.020, there is imposed a tax in an amount equal to three cents per  
26 cigarette. All revenues collected during any month from this  
27 additional tax must be deposited in the state general fund by the  
28 twenty-fifth day of the following month.

29 NEW SECTION. **Sec. 9.** RCW 82.26.--- and 2010 1st sp.s. c ... (ESHB  
30 2493) s 6 are each repealed.

31 **CONSTRUCTION CLAUSE**

32 NEW SECTION. **Sec. 10.** The provisions of this act are to be



1 liberally construed to effectuate the intent, policies, and purposes of  
2 this act.

3 **SEVERABILITY CLAUSE**

4 NEW SECTION. **Sec. 11.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 **STOP THE TOBACCO TAX INCREASE ACT**

9 NEW SECTION. **Sec. 12.** This act shall be known and cited as the  
10 stop the tobacco tax increase act of 2010.

--- END ---