

Chapter 82.24 RCW
TAX ON CIGARETTES

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Minors: Chapter 70.155 RCW.

RCW 82.24.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Board" means the liquor and cannabis 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. "Cigarette" includes a roll-your-own cigarette.
- (3) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.
- (4) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.
- (5) "Commercial cigarette-making machine" means a machine that is operated in a retail establishment and that is capable of being loaded with loose tobacco, cigarette paper or tubes, and any other components related to the production of roll-your-own cigarettes, including filters.
- (6) "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.
- (7) "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.
- (8) "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.
- (9) "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.
- (10) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.
- (11) "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.
- (12) "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.

(13) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [2020 c 139 s 29; 2012 2nd sp.s. c 4 s 1; 1997 c 420 s 3; 1995 c 278 s 1; 1961 c 15 s 82.24.010. Prior: 1959 c 270 s 9; 1949 c 228 s 14; 1935 c 180 s 83; Rem. Supp. 1949 s 8370-83.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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 s 17.]

RCW 82.24.020 Tax imposed—Absorption of tax—Possession defined—Exempt tribal members. (1) There is levied and 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 12.125 cents per cigarette.

(2) 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.

(3) For purposes of this chapter, "possession" means 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 is deemed to occur at the location of the cigarettes being so transported or held.

(4) 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 (5) 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.

(5) 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 take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect. [2010 1st sp.s. c 22 s 2; 2009 c 479 s 66. Prior: 2008 c 226 s 3; 2008 c 86 s 301; 2003 c 114 s 1; 1994 sp.s. c 7 s 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 s 307; 1989 c 271 s 504; 1987 c 80 s 1; 1983 2nd ex.s. c 3 s 15; 1982 1st ex.s. c 35 s 8; 1981 c 172 s 6; 1972 ex.s. c 157 s 3; 1971 ex.s. c 299 s 13; 1965 ex.s. c 173 s 23; 1961 ex.s. c 24 s 3; 1961 c 15 s 82.24.020; prior: 1959 c 270 s 2; prior: 1949 c 228 s 13, part; 1943 c 156 s 11, part; 1941 c 178 s 13, part; 1939 c 225 s 23, part; 1935 c 180 s 82, part; Rem. Supp. 1949 s 8370-82, part.]

Application—2010 1st sp.s. c 22 s 2: "Section 2 of this act applies only with respect to tax liability incurred under chapter 82.24 RCW on or after May 1, 2010, for the sale, use, consumption, handling, possession, or distribution of cigarettes." [2010 1st sp.s. c 22 s 9.]

Intent—2010 1st sp.s. c 22: "It is the intent of the legislature to use revenue raised from taxes levied on the sales of cigarettes and other tobacco products to fund basic health care services." [2010 1st sp.s. c 22 s 1.]

Effective date—2010 1st sp.s. c 22: "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 May 1, 2010." [2010 1st sp.s. c 22 s 12.]

Effective date—2009 c 479: See note following RCW 2.56.030.

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 ss 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—Savings—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 s 8.]

RCW 82.24.026 Additional tax imposed—Where deposited. 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.

Beginning July 1, 2010, the revenue collected under this section must be deposited into the general fund. [2011 c 334 s 1; 2010 1st sp.s. c 22 s 3; 2009 c 479 s 67; 2008 c 86 s 302; 2005 c 514 s 1102.]

Effective date—2011 c 334: "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 12, 2011]." [2011 c 334 s 2.]

Intent—Effective date—2010 1st sp.s. c 22: See notes following RCW 82.24.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

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.

RCW 82.24.029 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 s 1714.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

RCW 82.24.030 Stamps. (1) In order to enforce collection of the tax hereby levied, the department of revenue must 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 may 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. However, 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) Except as otherwise provided in this chapter, only wholesalers may purchase or obtain cigarette stamps. Wholesalers may not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, must have a separate serial number, which is legible at the point of sale. The department of revenue must 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, must either be retained for later purchases by the same wholesaler or destroyed.

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

(6) In order to enforce collection of the tax in the case of roll-your-own cigarettes, a retailer must affix a stamp or stamps to each box or similar container provided by the retailer to the consumer. The box or similar container must be used by a consumer to transport roll-your-own cigarettes from the retailer's place of business. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. Stamps must be for an amount equaling the tax due under this chapter. Each cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting taxes under this chapter. Stamps for roll-your-own cigarettes must be issued and affixed in a manner determined by the department but as consistent as practicable with the stamping requirements for wholesalers. [2012 2nd sp.s. c 4 s 2; 2003 c 114 s 2; 1995 c 278 s 2; 1990 c 216 s 1; 1975 1st ex.s. c 278 s 61; 1961 c 15 s 82.24.030. Prior: 1959 c 270 s 3; prior: 1949 c 228 s 13, part; 1943 c 156 s 11, part; 1941 c 178 s 13, part; 1939 c 225 s 23, part; 1935 c 180 s 82, part; Rem. Supp. 1949 s 8370-82, part.]

Effective date—2012 2nd sp.s. c 4: "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, 2012." [2012 2nd sp.s. c 4 s 13.]

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.

RCW 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.

(3) Subsection (1)(a) of this section does not apply to boxes or similar containers used by a consumer to transport roll-your-own cigarettes. [2012 2nd sp.s. c 4 s 3; 1999 c 193 s 5.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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 s 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 s 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 s 7.]

RCW 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 s 3; 1995 c 278 s 3; 1990 c 216 s 2; 1969 ex.s. c 214 s 1; 1961 c 15 s 82.24.040. Prior: 1959 c 270 s 4; prior: 1949 c 228 s 13, part; 1943 c 156 s 11, part; 1941 c 178 s 13, part; 1939 c 225 s 23, part; 1935 c 180 s 82, part; Rem. Supp. 1949 s 8370-82, part.]

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

RCW 82.24.050 Retailer—Possession of unstamped cigarettes—

Access to commercial cigarette-making machines. (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.

(3) Only a retailer licensed under this chapter may provide consumers with access to a commercial cigarette-making machine to make roll-your-own cigarettes. A retailer is prohibited from allowing the use of a commercial cigarette-making machine by a person unless, contemporaneously to the person's use of the machine, the retailer provides the consumer with a box or similar container to transport

roll-your-own cigarettes and such box is affixed with the appropriate stamp or stamps as required under RCW 82.24.030(6). A consumer must transport roll-your-own cigarettes from a retailer's place of business only in such box or similar container.

(4) A commercial cigarette-making machine must have a secure meter that counts the number of cigarettes made, manufactured, or fabricated by the machine and that cannot be accessed, except for the sole purpose of taking meter readings, altered or reset by the machine operator. [2012 2nd sp.s. c 4 s 4; 2003 c 114 s 4; 1995 c 278 s 4; 1990 c 216 s 3; 1969 ex.s. c 214 s 2; 1961 c 15 s 82.24.050. Prior: 1959 c 270 s 5; prior: 1949 c 228 s 13, part; 1943 c 156 s 11, part; 1941 c 178 s 13, part; 1939 c 225 s 23, part; 1935 c 180 s 82, part; Rem. Supp. 1949 s 8370-82, part.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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

RCW 82.24.060 Stamps—How affixed. (1) Except as otherwise provided in this chapter, stamps must be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed are evidence of the tax imposed.

(2) In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps must be affixed securely on each individual package.

(3) With respect to roll-your-own cigarettes, stamps must be affixed securely on each individual box or similar container provided by the retailer to the consumer. [2012 2nd sp.s. c 4 s 5; 1961 c 15 s 82.24.060. Prior: 1959 c 270 s 6; prior: 1949 c 228 s 13, part; 1943 c 156 s 11, part; 1941 c 178 s 13, part; 1939 c 225 s 23, part; 1935 c 180 s 82, part; Rem. Supp. 1949 s 8370-82, part.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

RCW 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 s 2; 1995 c 278 s 5; 1993 c 492 s 308; 1972 ex.s. c 157 s 4; 1961 c 15 s 82.24.080. Prior: 1959 c 270 s 8; prior: 1949 c 228 s 13, part; 1943 c 156 s 11, part; 1941 c 178 s 13, part; 1939 c 225 s 23, part; 1935 c 180 s 82, part; Rem. Supp. 1949 s 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 s 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—Savings—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.

RCW 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 s 6; 1975 1st ex.s. c 278 s 62; 1961 c 15 s 82.24.090. Prior: 1941 c 178 s 14; 1939 c 225 s 24; 1935 c 180 s 84; Rem. Supp. 1941 s 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.

RCW 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 s 82.24.100. Prior: 1935 c 180 s 85; RRS s 8370-85.]

RCW 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 or any individual stamped box or similar container used to transport roll-your-own cigarettes 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) Except as otherwise provided in this chapter, 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;

(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; and

(q) For a retailer to provide consumers with access to a commercial cigarette-making machine without providing a box or similar container that has a properly affixed stamp or stamps.

(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.

(3) Violation of subsection (2) of this section is punished as a class C felony under Title 9A RCW.

(4) 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 are guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter.

(5) 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. [2012 2nd sp.s. c 4 s 6; 2008 c 226 s 4; 2003 c 114 s 5; 1999 c 193 s 2; 1997 c 420 s 4; 1995 c 278 s 7; 1990 c 216 s 4; 1987 c 496 s 1; 1975 1st ex.s. c 278 s 63; 1961 c 15 s 82.24.110. Prior: 1941 c 178 s 15; 1935 c 180 s 86; Rem. Supp. 1941 s 8370-86.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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.

RCW 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 of this section, is found to have failed to affix the stamps required, or to have them affixed as provided in this section, or to pay any tax due under this section, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration of this chapter, there must 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 ten dollars per twenty roll-your-own 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 is 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 is 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. [2012 2nd sp.s. c 4 s 7; 2007 c 111 s 102; 2006 c 14 s 6; 1996 c 149 s 7; 1995 c 278 s 8; 1990 c 267 s 1; 1975 1st ex.s. c 278 s 64; 1961 c 15 s 82.24.120. Prior: 1949 c 228 s 15; 1939 c 225 s 25; 1935 c 180 s 87; Rem. Supp. 1949 s 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.)

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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 s 3.]

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

RCW 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 or commercial cigarette-making 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).

(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, are not considered contraband unless they are manufactured, sold, or possessed in violation of RCW 82.24.570. [2012 2nd sp.s. c 4 s 8. Prior: 2003 c 114 s 7; 2003 c 113 s 4; 2003 c 25 s 9; 1999 c 193 s 3; 1997 c 420 s 5; 1990 c 216 s 5; 1987 c 496 s 2; 1972 ex.s. c 157 s 5; 1961 c 15 s 82.24.130; prior: 1941 c 178 s 16; 1935 c 180 s 88; Rem. Supp. 1941 s 8370-88.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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.

RCW 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 s 103; 1998 c 53 s 1; 1987 c 496 s 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 s 2.]

RCW 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 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 s 10; 1999 c 193 s 4; 1987 c 496 s 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.

RCW 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 ten dollars per twenty roll-your-own 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. [2012 2nd sp.s. c 4 s 9; 1996 c 149 s 8; 1990 c 267 s 2; 1975 1st ex.s. c 278 s 66; 1961 c 15 s 82.24.180. Prior: 1935 c 180 s 90; RRS s 8370-90.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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.

RCW 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 s 6; 1987 c 202 s 244; 1975 1st ex.s. c 278 s 67; 1961 c 15 s 82.24.190. Prior: 1949 c 228 s 16; 1935 c 180 s 91; Rem. Supp. 1949 s 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.

RCW 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 or she has received from the purchaser outside the state a written acknowledgment that he or she 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. [2013 c 23 s 320; 2003 c 25 s 11; 1975 1st ex.s. c 278 s 68; 1961 c 15 s 82.24.210. Prior: 1949 c 228 s 17; 1941 c 178 s 17; 1935 c 180 s 92; Rem. Supp. 1949 s 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.

RCW 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 s 7; 1995 c 278 s 9; 1961 c 15 s 82.24.230. Prior: 1935 c 180 s 95; RRS s 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.

RCW 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 or her 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. [2013 c 23 s 321; 2008 c 226 s 5; 2003 c 114 s 8; 1997 c 420 s 7; 1995 c 278 s 10; 1990 c 216 s 6; 1972 ex.s. c 157 s 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.

RCW 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 s 9; 1995 c 278 s 11; 1987 c 80 s 3; 1986 c 3 s 13. Prior: 1983 c 189 s 3; 1983 c 3 s 217; 1975 1st ex.s. c 22 s 1; 1972 ex.s. c 157 s 7.]

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

Effective dates—1986 c 3: See note following RCW 70A.135.010.

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 s 10.]

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

RCW 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 s 104; 1996 c 149 s 10; 1995 c 278 s 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.

RCW 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 s 14.]

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

RCW 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 are 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.

(3) In addition to the compensation allowed under subsection (2) of this section, retailers purchasing stamps for roll-your-own cigarettes are allowed additional compensation to offset the cost of the tax under chapter 82.26 RCW. The amount equals five cents per cigarette. [2012 2nd sp.s. c 4 s 10; 2001 c 235 s 6.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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

RCW 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 s 5.]

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

RCW 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 s 2.]

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

RCW 82.24.500 Business of cigarette purchase, sale, consignment, distribution, or providing access to cigarette-making machines—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, or providing consumers with access to a commercial cigarette-making machine without a license under this chapter. A violation of this section is a class C felony. [2012 2nd sp.s. c 4 s 11; 2003 c 114 s 10; 1986 c 321 s 4.]

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

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 s 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 s 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 s 15.]

RCW 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 must be made through the business licensing system under chapter 19.02 RCW. The board must adopt rules regarding the regulation of the licenses. The board may refrain from the issuance of any license under this chapter if the board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the board 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 or retailer's license and for considering the denial, suspension, or revocation of any such license, the board may consider any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check 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 do not apply to such cases. The board may, in its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check must be performed by the board and must disclose any criminal conduct 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 business license expiration under chapter 19.02 RCW, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24, 82.26, or 70.345 RCW, the background check done under the authority of chapter 66.24, 82.26, or 70.345 RCW satisfies the requirements of this section.

(4) Each such license expires on the business license expiration date, and each such license must 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 board made pursuant thereto.

(5) Each license and any other evidence of the license that the board requires must be exhibited in each place of business for which it is issued and in the manner required for the display of a business license. [2019 c 445 s 203; 2013 c 144 s 50; 2009 c 154 s 1; 2001 c 235 s 8; 1986 c 321 s 5.]

Conflict with federal requirements—Effective date—2019 c 445:
See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

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.

RCW 82.24.520 Wholesaler's license—Fee—Display of license—Bond. A fee of six hundred fifty dollars must 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 is required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue requires, must be exhibited in the place of business for which it is

issued and in such manner as is prescribed for the display of a business license issued under chapter 19.02 RCW. The board must require each licensed wholesaler to file with the department of revenue 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 must 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 must run concurrently with the wholesaler's license. [2013 c 144 s 51; 1986 c 321 s 6.]

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

RCW 82.24.530 Retailer's license—Vending machines—Cigarette-making machines. (1) A fee of one hundred seventy-five dollars must 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 must accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. An additional fee of ninety-three dollars must accompany each application or renewal for a license issued to a retail dealer operating a cigarette-making machine.

(2) A retailer applying for, or renewing, both a retailer's license under RCW 82.24.510 and a vapor products retailer's license under RCW 70.345.020 may pay a combined application fee of two hundred fifty dollars for both licenses. [2016 sp.s. c 38 s 9; 2012 2nd sp.s. c 4 s 12; 1993 c 507 s 15; 1986 c 321 s 7.]

Contingent effective date—2016 sp.s. c 38 ss 5-10 and 28: See note following RCW 70.345.020.

Effective date—2012 2nd sp.s. c 4: See note following RCW 82.24.030.

Finding—1993 c 507: See RCW 70.155.005.

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

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

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 s 8.]

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

RCW 82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal. (1) The board must 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 board may 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 may not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the board. The board, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, must, 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, must 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 board 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 or 70.345 RCW to a person whose license or licenses have been suspended or revoked under this section must 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 reapply to the board at the expiration of one year from the date of revocation of the license or licenses. The license or licenses may be approved by the board if it appears to the satisfaction of the board 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 may not sell cigarettes, vapor products, or tobacco products or permit cigarettes, vapor products, 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 board, and any order of suspension or revocation by the board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW.

(9) For purposes of this section:

(a) "Tobacco products" has the same meaning as provided in RCW 82.26.010; and

(b) "Vapor products" has the same meaning as provided in RCW 82.25.005. [2019 c 445 s 204; 2015 c 86 s 307; 2009 c 154 s 2; 2005 c 180 s 19; 1997 c 420 s 8; 1993 c 507 s 17; 1986 c 321 s 9.]

Conflict with federal requirements—Effective date—2019 c 445: See RCW 82.25.900 and 82.25.901.

Automatic expiration date and tax preference performance statement exemption—2019 c 445: See note following RCW 82.08.0318.

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

Finding—1993 c 507: See RCW 70.155.005.

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

RCW 82.24.551 Enforcement—Appointment of officers of liquor and cannabis board. The department must appoint, as duly authorized agents, enforcement officers of the liquor and cannabis board to enforce provisions of this chapter. These officers are not considered employees of the department. [2020 c 139 s 30; 1997 c 420 s 10.]

RCW 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 s 2.]

RCW 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 s 18; 1986 c 321 s 10.]

Finding—1993 c 507: See RCW 70.155.005.

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

RCW 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 s 6.]

RCW 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 s 82.24.900. Prior: 1935 c 180 s 94; RRS s 8370-94.]