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HOUSE BILL 2144

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Pollet, Cody, Ryu, Robinson, Jenkins, Kagi, and Peterson

1 AN ACT Relating to the taxation of vapor products; reenacting and  
2 amending RCW 82.26.010; adding a new section to chapter 82.26 RCW;  
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the nicotine in  
6 vapor products such as electronic cigarettes, electronic devices, and  
7 vape pens is almost exclusively processed or derived from tobacco and  
8 that the products are intended for human consumption in the oral or  
9 nasal cavity or absorption into the human body. Therefore, the  
10 legislature finds that these vapor products, including electronic  
11 cigarettes and other products are "tobacco products" as defined in  
12 RCW 82.26.010(21). Although these products have been documented as  
13 being interchangeably used by consumers with cigarettes or other  
14 tobacco products, and there is nicotine produced or derived from  
15 tobacco in the products intended for human consumption and absorption  
16 into the human body, the manufacturers, wholesalers, and retailers  
17 have not been paying the tax levied on tobacco products pursuant to  
18 chapter 82.26 RCW on these products. The legislature intends to  
19 clarify that the tax on tobacco products applies to electronic  
20 cigarettes, electronic devices, vape pens, and other vaping products,  
21 despite the fact that no tobacco or cigarette tax has been previously

1 paid on these products to date. Recognition of the application of  
2 this tax going forward will resolve claims of nonpayment of tobacco  
3 product taxes pursuant to chapter 82.26 RCW. The legislature believes  
4 that vapor products containing nicotine have always been subject to  
5 taxation pursuant to chapter 82.26 RCW, and passage of this act may  
6 not be interpreted as any indication otherwise.

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

9 (1) The essential public health services account is created in  
10 the state treasury. As specified in chapter . . . , Laws of 2017  
11 (House Bill No. . . . (H-2267/17)), forty percent of the moneys  
12 collected from the tax imposed by chapter . . . , Laws of 2017 (House  
13 Bill No. . . . (H-2267/17)) must be deposited into the  
14 account. Moneys in the account may be spent only after appropriation  
15 to the department. The department of health must use the moneys in  
16 the account for each of the four following purposes:

- 17 (a) To fund foundational health services;
- 18 (b) To fund tobacco, vapor product, nicotine control and  
19 prevention, and other substance use prevention and education;
- 20 (c) At least ten percent of funds deposited must be used to  
21 support increased access and training of public health professionals  
22 at public health programs at accredited public institutions of higher  
23 education in Washington; and
- 24 (d) To fund enforcement by the state liquor and cannabis board of  
25 the provisions of this chapter to prevent sales of vapor products to  
26 minors and related provisions for control of marketing and product  
27 safety, provided that no more than 12.5 percent of the funds  
28 deposited into the account established by this section may be  
29 utilized and distributed by the department of health to the state  
30 liquor and cannabis board for these enforcement purposes.

31 (2) To determine the funding for foundational health services  
32 pursuant to subsection (1)(a) of this section, the department of  
33 health and representatives of local health jurisdictions must work  
34 together to: (a) Arrive at a mutually acceptable allocation and  
35 distribution of funds from the account; and (b) determine the best  
36 accountability measures to ensure efficient and effective use of  
37 funds, emphasizing use of shared services when appropriate.

1       **Sec. 3.**    RCW 82.26.010 and 2010 1st sp.s. c 22 s 4 are each  
2 reenacted and amended to read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

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

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

12       (3) "Board" means the state liquor ((~~control~~)) and cannabis  
13 board.

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

17       (5) "Cigar" means a roll for smoking that is of any size or shape  
18 and that is made wholly or in part of tobacco, irrespective of  
19 whether the tobacco is pure or flavored, adulterated or mixed with  
20 any other ingredient, if the roll has a wrapper made wholly or in  
21 greater part of tobacco. "Cigar" does not include a cigarette.

22       (6) "Cigarette" has the same meaning as in RCW 82.24.010.

23       (7) "Department" means the department of revenue.

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

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

37       (10) "Little cigar" means a cigar that has a cellulose acetate  
38 integrated filter.

39       (11) "Manufacturer" means a person who manufactures and sells  
40 tobacco products.

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

4 (13) "Moist snuff" means tobacco that is finely cut, ground, or  
5 powdered; is not for smoking; and is intended to be placed in the  
6 oral, but not the nasal, cavity.

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

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

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

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

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

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

32 (19)(a) "Taxable sales price" means:

33 (i) In the case of a taxpayer that is not affiliated with the  
34 manufacturer, distributor, or other person from whom the taxpayer  
35 purchased tobacco products, the actual price for which the taxpayer  
36 purchased the tobacco products;

37 (ii) In the case of a taxpayer that purchases tobacco products  
38 from an affiliated manufacturer, affiliated distributor, or other  
39 affiliated person, and that sells those tobacco products to  
40 unaffiliated distributors, unaffiliated retailers, or ultimate

1 consumers, the actual price for which that taxpayer sells those  
2 tobacco products to unaffiliated distributors, unaffiliated  
3 retailers, or ultimate consumers;

4 (iii) In the case of a taxpayer that sells tobacco products only  
5 to affiliated distributors or affiliated retailers, the price,  
6 determined as nearly as possible according to the actual price, that  
7 other distributors sell similar tobacco products of like quality and  
8 character to unaffiliated distributors, unaffiliated retailers, or  
9 ultimate consumers;

10 (iv) In the case of a taxpayer that is a manufacturer selling  
11 tobacco products directly to ultimate consumers, the actual price for  
12 which the taxpayer sells those tobacco products to ultimate  
13 consumers;

14 (v) In the case of a taxpayer that has acquired tobacco products  
15 under a sale as defined in subsection (18)(b) of this section, the  
16 price, determined as nearly as possible according to the actual  
17 price, that the taxpayer or other distributors sell the same tobacco  
18 products or similar tobacco products of like quality and character to  
19 unaffiliated distributors, unaffiliated retailers, or ultimate  
20 consumers; or

21 (vi) In any case where (a)(i) through (v) of this subsection do  
22 not apply, the price, determined as nearly as possible according to  
23 the actual price, that the taxpayer or other distributors sell the  
24 same tobacco products or similar tobacco products of like quality and  
25 character to unaffiliated distributors, unaffiliated retailers, or  
26 ultimate consumers.

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

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

35 (20) "Taxpayer" means a person liable for the tax imposed by this  
36 chapter.

37 (21) "Tobacco products" means cigars, cheroots, stogies,  
38 periques, granulated, plug cut, crimp cut, ready rubbed, and other  
39 smoking tobacco, snuff, snuff flour, cavendish, plug and twist  
40 tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps,

1 clippings, cuttings and sweepings of tobacco, and other kinds and  
2 forms of tobacco, prepared in such manner as to be suitable for  
3 chewing or smoking in a pipe or otherwise, or both for chewing and  
4 smoking, and any other product, regardless of form, that contains  
5 tobacco or contains nicotine derived from tobacco and is intended for  
6 human consumption or placement in the oral or nasal cavity or  
7 absorption into the human body by any other means, but does not  
8 include cigarettes as defined in RCW 82.24.010. "Tobacco products"  
9 includes any product containing a solution or other consumable  
10 substance that contains tobacco or nicotine derived from tobacco that  
11 employs a mechanical heating element, battery, or electronic circuit  
12 that can be used to produce vapor from the solution or other  
13 substance.

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

17 (23) "Unaffiliated retailer" means a retailer that is not  
18 affiliated with the manufacturer, distributor, or other person from  
19 whom the retailer has purchased tobacco products.

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