RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:
Permanent Rules
☒ 31 days after filing.
☐ Other (specify) **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose: See attached.

Citation of existing rules affected by this order:
Amended: **WAC 458-20-185, *Tax on Tobacco Products*; WAC 458-20-186, *Tax on Cigarettes***

Statutory authority for adoption: RCW 82.32.300, 82.01.060(2), 82.24.550(2), 82.26.220(2)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)
Adopted under notice filed as WSR **14-20-020**on September 19, 2014.
Describe any changes other than editing from proposed to adopted version:

WAC 458-20-185. In subsection (101)(x)(ii), a part of a definition of "taxable sales price" mistakenly deleted in the proposed rule is reinserted in the rule. In effect, there is no change to the current rule.

WAC 458-20-186. A new subsection (806) is added to reference WAC 458-20-192.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: **A cost-benefit analysis was not prepared.**
Name: phone ( )
Address: e-mail

Date adopted: December 18, 2014

NAME
Dylan Waits

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2014
TIME: 9:05 AM

WSR 15-01-107

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	2	Repealed

The number of sections adopted at the request of a nongovernmental entity:

New	Amended	Repealed

The number of sections adopted in the agency's own initiative:

New	Amended	2	Repealed

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	Amended	Repealed

The number of sections adopted using:

Negotiated rule making:	New	Amended	Repealed
Pilot rule making:	New	Amended	Repealed
Other alternative rule making:	New	Amended	Repealed

STATE OF WASHINGTON

DEPARTMENT OF REVENUE

Attachment for CR-103P filing for
WAC 458-20-185 and -186

Engrossed Substitute House Bill 2493 ("ESHB 2493") provided a change in the tax rates for cigarette and tobacco products and became effective on May 1, 2010 (except for rates on moist snuff which became effective on October 1, 2010). Third Engrossed Second Substitute House Bill 2565 ("3ESSHB 2565") amended the cigarette tax provisions in chapter 82.24 RCW to address roll-your-own cigarettes and became effective on July 1, 2012. The Department is amending WAC 458-20-185 and WAC 458-20-186 to reflect those legislative changes.

In addition to changes to WAC 458-20-185 reflecting the statutory amendments to chapter 82.26 RCW in ESHB 2493, the Department is amending WAC 458-20-185 to:

- Provide language throughout the rule that is more consistent with chapter 82.26 RCW;
- Add a section on wholesale and retail tobacco products vendor licensing requirements and responsibilities;
- Provide guidance on transactions involving Indian distributors, Indian retailers, and Indian tribal organizations; and
- Clarify the reporting requirements for retailers and distributors of tobacco products and credits available to distributors.

In addition to changes to WAC 458-20-186 reflecting the statutory amendments to chapter 82.24 RCW in ESHB 2493 and 3ESSHB 2565, the Department is amending WAC 458-20-186 to:

- Provide language throughout the rule that is more consistent with chapter 82.24 RCW;
- Format the rule in the same manner as WAC 458-20-185;
- Delete provisions that appear redundant or are no longer required by law;
- Add a section on wholesale and retail cigarette vendor licensing requirements and responsibilities;
- Add a section explaining the requirements and responsibilities related to making sales or purchases of cigarettes in Indian country;
- Provide additional guidance on the manner in which the cigarette stamp must be affixed;
- Clarify the refund procedure;
- Provide guidance on how long a person may possess cigarettes in this state as a purchaser or consignee of unstamped cigarettes;
- Update the information on current reports and returns required by law.

Interpretations and Technical Advice Division
P O Box 47453 ♦ Olympia, Washington 98504-7453 ♦ Phone (360) 534-1570

This rule was adopted December 18, 2014 and becomes effective January 18, 2015. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

AMENDATORY SECTION (Amending WSR 10-10-032, filed 4/26/10, effective 5/27/10)

WAC 458-20-185 Tax on tobacco products. (1) **Introduction.** This rule explains the tax liabilities of persons engaged in business as retailers or distributors of tobacco products other than cigarettes. The tax on tobacco products (also called "other tobacco products tax," "tobacco tax," or "OTP tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, sales tax, and litter tax. See WAC 458-20-186 for tax liabilities associated with taxes that apply exclusively to cigarettes.

(2) ((~~**Licensing requirements and responsibilities.** The Washington state liquor control board assumed the licensing responsibilities for cigarettes on July 1, 2009. Please see chapters 314-33 and 314-34 WAC.~~

~~(3)~~)) **Organization of rule.** The information provided in this rule is divided into five parts:

(a) Part I provides definitions and explains the tax liabilities of persons engaged in the business of selling or distributing tobacco products (excluding cigarettes) in this state.

(b) Part II explains wholesale and retail tobacco products vendor licensing requirements and responsibilities.

(c) Part ((~~II~~)) III explains the requirements and responsibilities for persons transporting tobacco products in Washington.

((~~(c)~~)) (d) Part ((~~III~~)) IV explains the recordkeeping requirements and enforcement of the tobacco tax.

((~~(d)~~)) (e) Part ((~~IV~~)) V describes the credits for tax paid and the procedures that must be followed to qualify for credit.

Part I - Tax on Tobacco Products (excluding Cigarettes)

(101) ((~~**In general.** The Washington state tobacco products tax is due and payable by the first distributor who possesses tobacco products in this state. The measure of the tax in most instances is based on the actual price paid by the distributor for the tobacco product, unless the distributor is affiliated with the seller.~~

~~(102)~~)) **Definitions.** For the purposes of this rule, the following definitions apply:

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

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

(c) **"Board"** means the liquor control board.

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

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

(f) **"Cigarette"** has the same meaning as in RCW 82.24.010.

(g) **"Department"** means the department of revenue.

(h) **"Distributor"** means:

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(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products from outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.010 (3)(a) through (d). (For example, Sunshine Tobacco Shop ("Sunshine") buys cigars from an out-of-state manufacturer for resale to consumers in this state. The cigars are shipped to Sunshine via common carrier. In this instance, Sunshine is a distributor, must have both a ((~~retailer's and a distributor's~~)) tobacco distributor license and a tobacco products retailer license, and must pay the tobacco products tax on the products it brings into the state. However, if Sunshine bought its merchandise exclusively from in-state distributors that have paid the tobacco products tax on that merchandise, Sunshine would not be considered a distributor, and would need only a ((~~retailer's~~)) tobacco products retailer license.)

(i) **"Indian," "Indian country,"** and **"Indian tribe"** have the same meaning as defined in chapter 82.24 RCW and WAC 458-20-192.

(j) **"Indian distributor"** means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of distributor under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.26.010.

(k) **"Indian retailer"** means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of retailer under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.26.010.

(l) **"Indian tribal organization"** means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor 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.

(m) **"Little cigar"** means a cigar that has a cellulose acetate integrated filter.

(n) **"Manufacture"** means the production, assembly, or creation of new tobacco products. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

((~~(k)~~)) (o) **"Manufacturer"** means a person who manufactures and sells tobacco products.

((~~(l)~~)) (p) **"Manufacturer's representative"** means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

((~~(m)~~)) (q) **"Moist snuff"** means tobacco that is finely cut, ground, or powdered; is not for smoking; and is intended to be placed in the oral, but not the nasal, cavity.

(r) **"Person"** means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and insti-

tutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

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

((~~(o)~~)) (t) **"Retailer"** means any person engaged in the business of selling tobacco products to ultimate consumers.

((~~(p)~~)) (u) **"Retail outlet"** means each place of business from which tobacco products are sold to consumers.

((~~(q)~~)) (v) **"Sale"** means:

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

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

((~~(r) **"Sample"** and **"sampling"** have the same meaning as in RCW 70.155.010.~~

~~(s)~~)) (w) **"Store," "stores,"** or **"storing"** means the holding of tobacco products for later sale or delivery inside or outside this state. For example:

(i) Wilderness Enterprises ships products from out-of-state to its Kent warehouse. All products are intended for future sale to Alaska. Wilderness Enterprises is a distributor that stores tobacco products in this state. Wilderness Enterprises is liable for tobacco products tax on the products stored in this state. (However, see subsection (501)(a) of this ((~~section~~)) rule for credits that may be available to Wilderness Enterprises for out-of-state sales.)

(ii) Cooper Enterprises brings tobacco products into this state for sale. It rents storage space from a third party, Easy Storage. Cooper Enterprises (the distributor), not Easy Storage, is responsible for the tax and reporting requirements on the stored tobacco products.

((~~(t)~~)) (x) **"Taxable sales price"** means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products. For purposes of this subsection, "person" includes both persons as defined in ((~~(m)~~)) (r) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers. For purposes of this subsection, "person" includes both persons as defined in ((~~(m)~~)) (r) of this subsection and any person immune from state taxation, including the United States or its instrumentali-

ties, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

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

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

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in ((~~(q)~~)) (v)(ii) of this subsection, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where ((~~(t)~~)) (x)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

((~~(u)~~)) (y) **"Taxpayer"** means a person liable for the tax imposed by chapter 82.26 RCW.

((~~(v)~~)) (z) **"Tobacco products"** means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, ((~~including wrapping papers or tubes that contain any amount of tobacco (such as "blunts"),~~)) prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but ((~~shall~~)) does not include cigarettes as defined in RCW 82.24.010.

((~~(w)~~)) (aa) **"Unaffiliated distributor"** means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

((~~(x)~~)) (bb) **"Unaffiliated retailer"** means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

((~~(103)~~)) (102) **Imposition of tax.** ((~~RCW 82.26.030 as amended effective July 1, 2005, states: "It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller."~~)) The tobacco tax is imposed ((~~at the time the first distributor possesses the product in this state for sale. RCW 82.26.020(2)~~)) upon the sale, handling, or distribution of all tobacco products in this state. Taxes are imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale; (b) makes, manufactures,

fabricates, or stores tobacco products in this state for sale in this state; (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers; or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.020(2). The distributor who first possesses the tobacco product for sale in this state is the distributor liable for the tax. RCW 82.26.030.

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the tax is imposed. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) BET ((~~Wholesalers~~)) Distributors sells and ships tobacco products from Kentucky via common carrier to Surprise Enterprises in Washington. The tax is due from Surprise Enterprises, a licensed distributor, because it is the first possessor in Washington that holds the product for sale. However, BET Distributors must give the ((~~liquor control~~)) board ((~~(LCB)~~)) notice of its intent to ship tobacco products into this state.

(b) BET ((~~Wholesalers~~)) Distributors sells and ships tobacco products in its own trucks from Kentucky to Jamie's Enterprises, a licensed distributor in Washington. The tax is due from BET ((~~Wholesalers~~)) Distributors, because it is the first possessor in Washington that holds the product for sale.

(c) Garden State Cigars is located in New Jersey. It ships its products to Washington retailers via ((~~National~~)) common carrier. The retailers must be licensed as distributors and are liable for the tax. However, Garden State Cigars must give the ((~~liquor control~~)) board ((~~(LCB)~~)) notice of its intent to ship tobacco products into this state.

((~~(104)~~)) (d) An Indian retailer located in Indian Country in Washington State sells tobacco products to Washington retailers who pick up the products in Indian Country and take it back to their retail outlets. The Washington retailers must be licensed as distributors and are liable for the tax. The Indian retailer is not required to hold a state tobacco products retailer or distributor license. State-licensed distributors making retail sales to Indian retailers may claim a credit against the tax under RCW 82.26.110.

(103) **Rates.** The rate of the Washington state tobacco tax ((~~is an excise tax levied on the taxable sales price as defined in RCW 82.26.010. The rate is a combination of statutory rates~~)) depends upon the tobacco product sold (cigars, other tobacco products, moist snuff, or little cigars) and is found in RCW 82.26.020.

((~~(105)~~)) (104) **Promotions.** ((~~(a)~~)) Tobacco products sold, provided at a reduced cost, or given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state. RCW 82.26.010 ((~~(5)~~)) (18)(b). ((~~The taxable sales price for the tobacco products is the actual price for which the taxpayer or other distributors sell the same tobacco products, or a maximum of 67 cents each for cigars. RCW 82.26.010(18).~~

~~For example, Etta's (an out-of-state manufacturer) gives Joe's Distributing 500 cigars and 200 cans of snuff as a promotion. Etta's and Joe's Distributing are unaffiliated. Joe's Distributing normally sells this brand of cigars for $1.00 each and the snuff for $2.50 each to unaffiliated distributors and/or retailers. Joe's Distributing owes tobacco products tax on this merchandise. Because Joe's Distributing~~

~~normally sells each cigar for more than 67 cents, the tobacco products tax is calculated on the cigars at 50 cents each (500 x 0.50 = $250). The tobacco products tax on the snuff is calculated at 75% of Joe's normal selling price to unaffiliated buyers (200 x $2.50 = $500 x 75% = $375) for a total tobacco products tax of $625.~~

~~(b) If a product is purchased or sold at a discount in a promotion characterized as a "2 for 1" or similar sale, the tax is calculated on the actual prorated consideration the buyer paid to the unaffiliated distributor, or a maximum of 67 cents a cigar.~~

~~For example:~~

~~(i) Duke Distributing (an out-of-state wholesaler) ships tobacco products via common carrier to Lem's Tobacco Shop (an unaffiliated Washington retailer). Duke invoices Lem's for $1,500. The sale includes 200 cigars priced "buy one for $2 and get one free"; the balance of the sale is chewing tobacco priced at $1,300. Lem's Tobacco Shop is liable for the tax. The tax on the chewing tobacco is $975 ($1,300 x 75%). Each cigar costs Lem's Tobacco Shop $1 ($200/200 cigars = $1 per cigar). Because each cigar costs more than 67 cents, the tax on the cigars is capped at $0.50 each. The tax on the cigars is $100 (200 cigars x $0.50 = $100). Total tobacco tax due on the invoice is $1,075.~~

~~(ii) Shasta Distributing (an out-of-state wholesaler) ships OTP in its own trucks to Lem's Tobacco Shop (an unaffiliated Washington retailer). Shasta invoices Lem's for $1,500. The sale includes 200 cigars priced "buy one for $2 and get one free"; the balance of the sale is chewing tobacco priced at $1,300. Shasta Distributing owes the tax. Shasta originally purchased the products from an unaffiliated manufacturer for $300 ($100 for the cigars and $200 for the chewing tobacco). The tax on the chewing tobacco is $150 ($200 x 75%). The tax on the cigars is $75 ($100 x 75% = $75), because the cigars cost less than 67 cents each ($100/200 cigars = 50 cents per cigar). Total tobacco tax due on the invoice is $225.~~

~~(iii) Wind Blown Distributing (an out-of-state wholesaler) ships tobacco products in its own trucks to Lem's Tobacco Shop (an unaffiliated retailer located in this state). Wind Blown invoices Lem's for $1,500. The sale includes 200 cigars priced "buy one for $2 and get one free"; the balance of the sale is chewing tobacco priced at $1,300. Wind Blown Distributing owes the tax. Wind Blown originally purchased the products from an affiliated manufacturer for $100 ($25 for the cigars and $75 for the chewing tobacco). The measure of the tax is the actual price for which Wind Blown sells these products to unaffiliated buyers, i.e., Lem's. The tax due on the chewing tobacco is $975 ($1,300 x 75%). The tax on the cigars is $100 (200 cigars x 50 cents). The tax on the cigars is capped at $0.50 each, because each cigar costs more than 67 cents ($200/200 cigars = $1 per cigar). Total tobacco tax due on the invoice is $1,075.~~))

Part II - Wholesale and Retail Tobacco Products Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person may engage in the retail or wholesale distribution of tobacco products in this state without a license, except for any person immune from state taxation, including federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country, and the United States or its instrumentalities.

(202) **Tobacco distributor license.** Prior to selling or distributing tobacco products from a stock of goods in Washington or to retail-

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ers in Washington, each distributor must first obtain a tobacco distributor license from the department through its business licensing service.

(a) Background check. Each distributor must undergo a criminal background check by the board before a license will be issued. RCW 82.26.150(3). See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license.

(b) Application. Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A tobacco distributor license is valid for one year from the date it is issued. The annual license fee is waived if the licensee has applied for or already has a cigarette wholesaler license.

(c) Multiple locations. If the distributor sells, intends to sell, or stores tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(203) **Duties and responsibilities of licensed distributors.**

(a) Sales restricted. Distributors selling tobacco products in this state may sell tobacco products only to Washington retailers or distributors who have a current tobacco license, to other licensed distributors, the federal government or its instrumentalities, or to Indian tribal organizations.

(b) Manufacturer's representatives. Manufacturers selling tobacco products through manufacturer's representatives must provide the board a current list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. RCW 82.26.210.

(204) **Tobacco products retailer license.** Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a tobacco products retailer license from the department through its business licensing service.

(a) Background check. Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.26.150(3). See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license.

(b) Application. Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A tobacco products retailer license is valid for one year from the date it is issued. The annual license fee is waived if the licensee has already applied for or already has a cigarette retailer license at the same business location.

(c) Multiple locations. If the retailer sells tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(205) **Duties and responsibilities of retailers.** A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from

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the unlicensed person that are held for sale, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian retailer or an out-of-state wholesaler who does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due. An Indian retailer in Indian country is not required to hold a state tobacco products retailer or distributor license.

(206) **Licensing enforcement.** The board assumed the licensing enforcement responsibilities for tobacco products on July 1, 2009. See chapters 314-33 and 314-34 WAC for the board's enforcement provisions on tobacco products.

Part III - Transporting Tobacco Products in Washington

((~~(201)~~)) (301) **Transportation of tobacco products restricted.**

(a) Other than as provided in (b) of this subsection, only licensed distributors or retailers in their own vehicles, or manufacturer's representatives authorized to sell or distribute tobacco products in this state, can transport tobacco products in this state. Individuals transporting the product must have a copy of a valid retailer's or distributor's license in their possession and evidence that they are representatives of the licensees. Individuals transporting tobacco products for sale must also have in their possession invoices or delivery tickets for the tobacco products that show the name and address of the consignor or seller, the name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported. It is the duty of the distributor, retailer, or manufacturer responsible for the delivery or transportation of the tobacco products to ensure that all drivers, agents, representatives, or employees have the delivery tickets or invoices in their possession for all such shipments.

(b) All other persons must give notice to the board in advance of transporting or causing tobacco products to be transported in this state for sale. This includes those transporting tobacco products in this state via common carrier. For example: Peg's Primo Cigars (PPC), a small out-of-state distributor, sells tobacco products to retailers in Washington. PPC ships the products via ((~~National~~)) common carrier. Before placing the product in shipment to Washington, PPC must give notice to the board of the pending shipment. The notice must include the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products being transported, and the shipment date.

Part ((~~III~~)) IV - Recordkeeping and Enforcement

((~~(301)~~)) (401) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) **Distributors.** Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date

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of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers.** Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

((~~(302)~~)) (402) **Reports and returns.** The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, shipments, and other data required by the department to maintain control over trade in tobacco.

(a) **Tax returns.** The tax is reported on the combined excise tax return that must be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be obtained from the department.

(b) **Reports.**

(i) Retailers and distributors of tobacco products may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products (e.g., "roll your own tobacco") from certain manufacturers. ((~~Please~~)) See WAC 458-20-264 and chapter 70.157 RCW.

(ii) A person who sells, transfers, or ships for profit smokeless tobacco (as such term is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such smokeless tobacco is shipped into Washington, or who advertises or offers such smokeless tobacco for sale, transfer, or shipment in this state, must file a report as required under 15 U.S.C. Sec. 376. This report is due no later than the tenth day of each calendar month and must include a memorandum or invoice covering all transactions and shipments of smokeless tobacco made into Washington during the previous calendar month.

(c) **Access to premises and records.** Retailers and distributors must allow department personnel free access to their premises to inspect the tobacco products on the premises and to examine the books and records for the business. For further details, ((~~please~~)) see subsection ((~~(305)~~)) (405) of this section.

((~~(303)~~)) (403) **Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

((~~(304)~~)) (404) **Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. In addition, all conveyances, including aircraft, vehicles, or vessels used to transport the illegal tobacco product may be seized and forfeited.

((~~(305)~~)) (405) **Enforcement.** Pursuant to RCW 82.26.121 and 66.44.010, enforcement officers of the ((~~liquor control~~)) board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the ((~~liquor control~~)) board free access to their premises to inspect the tobacco products on the premises and to examine the books and records of the business. If a retailer fails to allow free access, or hinders, or interferes with department per-

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sonnel and/or enforcement officers of the ((~~liquor control~~)) board, that retailer's registration certificate issued under RCW 82.32.030 is subject to revocation. Additionally, any licenses issued under chapter 82.26 or 82.24 RCW are subject to suspension or revocation by the department or board.

((~~(306)~~)) (406) **Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

Part ((~~IV~~)) V - Credits

((~~(401)~~)) (501) **Credits.**

(a) **Interstate and foreign sales.** A credit is available to distributors for tobacco products sold to retailers and wholesalers outside the state for resale. This credit may be taken only for the amount of tobacco products tax reported and previously paid on such products. RCW 82.26.110. No credit may be taken for a sale of tobacco products from a stock of goods in this state to a consumer outside the state.

(b) **Returned or destroyed goods.** A credit may be taken for tax previously paid when tobacco products are destroyed or returned to the manufacturer. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation.

(c) **Sales to the United States.** A credit is available to distributors for tobacco products sold to the United States or any of its agencies or instrumentalities.

(d) **Sales to Indian tribal organizations.** A credit is available to distributors for tobacco products sold to any Indian tribal organization.

(e) **Documentation.** Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation. ((~~Affidavits or certificates are required, and must substantially conform to those illustrated below. The affidavits or certificates must be completed by the taxpayer prior to claiming the credit, and must be retained with the taxpayer's records as set forth in Part VI of this rule~~)) The department provides two documents to assist taxpayers in determining the amount of credits available – The Tobacco Products Tax Credit Worksheet and Claim for Credit of Tobacco Product Tax. See the department's web site (dor.wa.gov) for more information.

((~~**Claim for Credit on Tobacco Products Sold for Resale Outside Washington**~~

~~The undersigned distributor under penalty of perjury under the laws of the state of Washington certifies that the following is true and correct to the best of his/her knowledge:~~

~~(Business name), (tax reporting number), purchased the tobacco products specified below for resale outside this state. Tobacco products tax has been paid on such tobacco products as set forth below.~~

~~Products were purchased from: (name of business)~~

~~.....~~
~~Date~~

~~Products were sold to: (name of out-of-state buyer)~~

~~.....~~
~~Address~~

~~.....~~
~~Date~~

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~~Product~~	~~Taxable sales price~~	~~Quantity~~	~~Tax paid~~
~~Cigars exceeding $0.67 per cigar~~	~~N/A~~		
~~Cigars not exceeding $0.67 per cigar~~		~~N/A~~	
~~All tobacco products that are not cigars~~		~~N/A~~	

~~Signature of Taxpayer or Authorized Representative: . . . . . .~~

~~Name . . . . . .~~

~~Title: . . . . . .~~

~~Claim for Credit on Tobacco Products Destroyed Merchandise~~

~~(i) Certificate of taxpayer.~~

~~Product~~	~~Taxable sales price~~	~~Quantity~~	~~Tax paid~~
~~Cigars exceeding $0.67 per cigar~~	~~N/A~~		
~~Cigars not exceeding $0.67 per cigar~~		~~N/A~~	
~~All tobacco products that are not cigars~~		~~N/A~~	

~~The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:~~

~~(Business name), (tax reporting number), a dealer in tobacco products, has destroyed tobacco products unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above. The tobacco products were destroyed in the manner set forth below. The destruction occurred either:~~
~~(A) In the presence of an authorized agent of the department of revenue; or~~
~~(B) With prior authorization from the department to destroy the product without an agent of the department present.~~

~~Date, manner, and place of destruction: . . . . . .~~

~~Signature of Taxpayer or Authorized Representative: . . . . . .~~

~~Name: . . . . . .~~

~~Title: . . . . . .~~

~~Witnessed or approved: . . . . . .~~

~~Authorized Agent, Department of Revenue~~

~~Claim for Credit on Tobacco Products Returned Merchandise~~

~~(ii) Certificate of manufacturer.~~

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~~Product~~	~~Taxable sales price~~	~~Quantity~~	~~Tax paid~~
~~Cigars exceeding $0.67 per cigar~~	~~N/A~~		
~~Cigars not exceeding $0.67 per cigar~~		~~N/A~~	
~~All tobacco products that are not cigars~~		~~N/A~~	

~~The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:~~

~~(Business name), (tax reporting number), a dealer in tobacco products, has returned merchandise unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above.~~

~~Returned to: . . . . . .~~

~~Date: . . . . . .~~

~~Method of transport: . . . . . .~~

~~Manufacturer's credit issued on: . . . . . .~~

~~Credit memo number: . . . . . .~~

~~Signature of Taxpayer or Authorized Representative: . . . . . .~~

~~Name: . . . . . .~~

~~Title: . . . . . .~~))

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AMENDATORY SECTION (Amending WSR 10-10-033, filed 4/26/10, effective 5/27/10)

WAC 458-20-186 Tax on cigarettes. (1) **Introduction.** This rule ((~~addresses those taxes activities that apply exclusively to~~)) explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes ((~~as defined by RCW 82.24.010~~)) in Washington. The tax on cigarettes (also called the "cigarette tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, retail sales tax, use tax, and litter tax. See WAC 458-20-185 for tax liabilities associated with taxes that apply to tobacco products other than cigarettes. ((~~The tax on cigarettes is in addition to all other taxes owed. For example, retailers and wholesalers are liable for business and occupation tax on their retailing or wholesaling activities, and must collect and remit sales tax on retail sales of cigarettes. Consumers pay the cigarette tax in addition to sales or use tax on purchases of cigarettes for consumption within this state. (Wholesalers not licensed in the state of Washington who are making sales of cigarettes to Indians in accordance with a cigarette tax contract authorized by RCW 43.06.455 must comply with the specific terms of their individual contracts. See also WAC 458-20-192 regarding sales in Indian country.)~~))

(2) ((~~**Licensing requirements and responsibilities.** The Washington state liquor control board assumed the licensing responsibilities for cigarettes on July 1, 2009. Please see chapters 314-33 and 314-34 WAC.~~

~~(3)~~)) **Organization of rule.** The information provided in this rule is divided into ((~~six~~)) eight parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

(b) Part II explains wholesale and retail cigarette vendor licensing requirements and responsibilities.

(c) Part III explains ((~~the~~)) stamping requirements ((~~and how the cigarette tax rates are calculated~~)), cigarette tax rates, and refunds.

((~~(c)~~)) (d) Part IV describes the roll-your-own cigarette provisions.

(e) Part ((~~III~~)) V describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

((~~(d)~~)) (f) Part ((~~IV~~)) VI explains the requirements and responsibilities for persons transporting cigarettes in Washington.

((~~(e) Part V explains the requirements and responsibilities for persons engaged in making delivery sales of cigarettes into this state.~~

~~(f)~~)) (g) Part ((~~VI~~)) VII explains the enforcement and administration of the cigarette tax.

(h) Part VIII explains requirements and responsibilities related to making sales or purchases of cigarettes in Indian country.

Part I - Tax on Cigarettes

(101) **In general.** Except as otherwise provided in chapter 82.24 RCW and this rule, the Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

((~~(a) **Possession.** For the purpose of this rule, a "possessor" of cigarettes is anyone who personally or through an agent, employee, or designee, has possession of cigarettes in this state.~~

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~~(b) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department of revenue (department) to sell the stamps. Only licensed wholesalers may purchase or obtain cigarette stamps. Except as specifically provided in Part III of this rule, it is unlawful for any person other than a licensed wholesaler to possess unstamped cigarettes in this state. However, as explained in subsection (102)(b) of this rule, certain consumers may possess unstamped cigarettes for personal consumption if they pay the tax as provided in this rule.~~

~~(c) **Imposition of tax.** Ordinarily, the tax obligation is imposed on and collected from the first possessor of unstamped cigarettes. However, failure of an exempt entity with an obligation to collect and remit the tax does not relieve a subsequent nonexempt possessor of unstamped cigarettes from liability for the tax.~~

~~(d) **Promotions.** Cigarettes given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state, but are not required to have the stamp affixed. Instead, the manufacturer of the cigarettes must pay the tax on a monthly return filed with the department. See subsection (602) of this rule.~~))

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

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

(b) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, including any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing cigarettes in this state.

(c) "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.

(d) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.

(e) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(f) "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.

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

(h) "Governmental entity" means:

(i) The United States;

(ii) The state of Washington (state) including, its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(iii) Any municipal corporation or political subdivision of the state of Washington.

(i) "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 rule, the terms "Indian,"

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"Indian country," and "Indian tribe" have the same meaning as defined in WAC 458-20-192.

(j) "Manufacture" means the production, assembly, or creation of new cigarettes. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) "Manufacturer" means a person who manufactures and sells cigarettes.

(l) "Municipal corporation or political subdivision of the state of Washington" means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(n) "Place of business" means any location where business is transacted with, or sales are made to, customers. The term includes, but is not limited to, any vending machine and any vehicle, truck, vessel or the like at which sales are made.

(o) "Possession" means both:

(i) Physical possession by the purchaser; and

(ii) 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.

(p) "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.

(q) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.

(r) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration.

(s) "Stamp" means any stamp authorized by the state of Washington, including the stamp or stamps by use of which the cigarette tax is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(t) "United States" means:

(i) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

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(ii) "United States" does not include entities associated with, but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(u) "Wholesaler" means every person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(103) **Imposition of tax.** The cigarette tax is imposed on the first person to sell, use, consume, handle, possess, or distribute cigarettes in Washington. Please refer to subsection (302) of this rule for an explanation of the measure and rate of the tax.

(a) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department to sell the stamps. Please refer to subsection (301) of this rule for an explanation of stamping requirements.

(b) **Possession of cigarettes in Washington state.**

((~~(a)~~)) (i) Every person ((~~who is (i)~~)) (A) in possession of unstamped cigarettes in this state, and ((~~(ii) is~~)) (B) not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

((~~(b) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the cigarette tax as provided in subsection (602) of this rule when they first bring the cigarettes into this state or first possess them in this state. This requirement includes, but is not limited to, delivery sales as described in Part VI of this rule.~~

~~(c) **Cigarettes purchased from Indian retailers.** Special rules apply to cigarettes purchased from Indian retailers.~~

~~(i) Indians purchasing cigarettes in Indian country are exempt from the state cigarette tax; however, these sales must comply with WAC 458-20-192.~~

~~Other consumers may purchase cigarettes for their personal consumption from "qualified Indian retailers" without incurring liability for state cigarette tax. A "qualified Indian retailer" is one who is subject to the terms of a valid cigarette tax contract with the state pursuant to RCW 43.06.455.~~

~~(ii) Consumers who purchase cigarettes from Indian retailers who are not subject to a cigarette tax contract with the state must comply with the reporting requirements and remit the cigarette tax as explained in subsection (602) of this rule. These consumers are also liable for the use tax on their purchases. See WAC 458-20-178.~~

~~(iii) It is the duty of the consumer in each instance to ascertain his or her responsibilities with respect to such purchases.~~

~~(d) **Cigarettes purchased on military reservations.**~~)) (ii) Active duty or retired military personnel, and their ((~~dependants~~)) dependents, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part ((~~III~~)) V). However, such persons are not permitted to give or resell those cigarettes to others.

((~~(e) **Counterfeit cigarettes.** It is unlawful for any person to manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if (i) it or its packaging bears any logo or marking used by a manufacturer to identify its own cigarettes, and (ii) the cigarette was not manufactured by the owner of that logo or trademark or by any authorized licensee of the manufacturer. RCW 82.24.570.~~

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~~(f)~~)) (iii) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part ((~~VI~~)) VII.

Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person, other than a governmental entity or an Indian tribal organization, may engage in the retail or wholesale distribution of cigarettes in this state without a license. Failure to obtain the required license prior to selling cigarettes at wholesale or retail is a criminal act. RCW 82.24.500.

(202) **Cigarette wholesaler license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a cigarette wholesaler license from the department through its business licensing service.

(a) Background check. Each wholesaler must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) Application. Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A cigarette wholesaler license is valid for one year from the date it is issued.

(c) Multiple locations. If the wholesaler sells, stores, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) Bond required. Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than five thousand dollars. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the cigarette wholesaler license.

(203) **Duties and responsibilities of licensed wholesalers.**

(a) Stamps. Except as provided in Parts IV and VIII of this rule, only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) Numbering. Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers and retailers of roll-your-own cigarettes are prohibited from possessing stamps other than those specifically issued to them.

(c) Sales restricted. Wholesalers selling cigarettes in this state may sell:

(i) Stamped or unstamped cigarettes to other Washington licensed cigarette wholesalers;

(ii) State tax stamped cigarettes only to Washington retailers who have a current cigarette retailer license or to an Indian tribal organization;

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(iii) Tribal tax stamped cigarettes to Indian tribal organizations if the Indian tribal organization is subject to a cigarette compact between the state of Washington and the Indian tribe; or

(iv) Tax-exempt stamped cigarettes to an Indian tribal organization if the Indian tribe does not have a cigarette compact and is subject to the cigarette allocation per WAC 458-20-192.

(d) Unstamped cigarettes. Except as provided in Parts IV, V, and VIII of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. Cigarettes are "unstamped" if they do not have a "stamp" as the term is defined in subsection (102)(s). Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to seventy-two hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than seventy-two hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government, so long as the licensed wholesalers have furnished a surety bond in a sum equal to eighty percent of the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing the stamps. All unstamped stock must be kept separate and apart from stamped stock.

(e) Transfers. Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(204) **Cigarette retailer license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a cigarette retailer license from the department through its business licensing service. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) Background check. Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) Application. Applications for a license or renewal of a license are made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(c) Multiple locations. A separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business at which the retailer operates. Each license must be exhibited in the place of business for which it is issued.

(d) **Cigarette vending machine license.** Retailers who have received a cigarette retailer license and operate cigarette vending machines must obtain a cigarette vending machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(e) **Commercial cigarette making machine license.** Retailers who have received a cigarette retailer license and tobacco products re-

tailer license (see WAC 458-20-185) and operate commercial cigarette making machines must obtain a commercial cigarette making machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each location with a machine. Each license must be exhibited in the place of business for which it is issued.

Persons operating a commercial cigarette making machine are also subject to federal licensing requirements as a cigarette manufacturer. Please contact the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

(205) **Duties and responsibilities of retailers.**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(206) **Additional requirements for manufacturers, wholesalers, and retailers.** Persons making wholesale or retail sales of cigarettes or manufacturing cigarettes must comply with all the provisions of chapters 70.155 and 70.158 RCW.

(207) **Licensing enforcement.** The board has the licensing enforcement responsibilities for cigarettes. See chapters 314-33 and 314-34 WAC for rules related to the board's enforcement of cigarette licensing.

Part III - Stamping ((~~and~~)), Rates, and Refunds

((~~(201)~~)) (301) **Cigarette stamps.**

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part ((~~III~~)) V of this rule. The stamp must be ((~~applied~~)) affixed securely and applied one time (not to be reused) to the smallest container or package (such as a pack of cigarettes rather than a carton of cigarettes), unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed. Further, the stamps must be affixed in such manner as to permit the department to readily ascertain by inspection whether or not such tax has been paid. RCW 82.24.030(1). To that end, any package that is missing more than fifty percent of the stamp will be considered unstamped and untaxed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within thirty days following purchase. Licensed wholesalers are compensated for affixing the stamps at the rate of $6.00 per thousand stamps affixed (the "stamping allowance").

((~~(202)~~)) (302) **Rates.**

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in ((~~RCW 82.24.020, 82.24.027, and 82.24.028~~)) chapter 82.24 RCW.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

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((~~(203)~~)) (303) **Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. ((~~Documentation supporting the claim must be provided at the time the claim for refund is made.~~

~~(a) Refunds for stamped untaxed cigarettes sold to Indian tribal members or tribal entities in the full value of the stamps affixed will be approved by an agent of the department.~~)) (a) Forms. The claim for refund must be filed on a form provided by the department. Documentation supporting the claim must be provided at the time the claim for refund is made as specified on the form. The department has the following forms for cigarette tax refund claims:

(i) Cigarette Tax Claim for Refund form. The form is for wholesalers who have returned stamped cigarettes to the manufacturer or are returning damaged or unused stamps to the department. An affidavit or certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

(ii) Tribal Member Claim for Refund form. This refund form is for Indian tribal members who purchase state stamped cigarettes as consumers within their own Indian country.

(b) Refunds ((~~for stamped cigarettes will not include the stamping allowance~~)) may be claimed for stamped cigarettes if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

((~~(c) The claim for refund must be filed on a form provided by the department. An affidavit or a certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.~~)) Refunds for stamped cigarettes will not include the stamping allowance.

Part ((~~III~~)) IV - Roll-Your-Own Cigarettes

(401) **Retailers.**

(a) Licenses required. Only retailers licensed to sell cigarettes in Washington may provide consumers with access to a commercial cigarette making machine to make roll-your-own cigarettes. Retailers must also be licensed to sell tobacco products in Washington in order to sell the tobacco to make roll-your-own cigarettes.

(b) Stamped containers. A retailer may not allow consumers to use a commercial cigarette making machine unless the retailer provides the consumer with a box or similar container to transport the roll-your-own cigarettes affixed with cigarette stamps, and the consumer transports the cigarettes from the retailer only in such box or similar container. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. For purposes of this rule, a "similar container" to a box is any package used to transport roll-your-own cigarettes.

(402) **Stamps.** Retailers of roll-your-own cigarettes must purchase and affix roll-your-own cigarette tax stamps for the cigarettes produced through the cigarette making machine. Retailers must contact the department's special programs division to purchase the stamps. Stamps affixed must be for an amount equaling the cigarette tax due. Each

cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting the cigarette tax. Stamps must be of the type authorized by the department and affixed in the manner provided for wholesalers in subsection (301)(a) of this rule. Retailers purchasing stamps for roll-your-own cigarettes are compensated for affixing the stamps with the stamping allowance provided under subsection (301)(b) of this rule, as well as an additional amount of five cents per cigarette to offset the cost of the tobacco products tax under chapter 82.26 RCW and WAC 458-20-185. See RCW 82.24.030(6) for additional rules relating to the affixing of stamps for roll-your-own cigarettes.

Part V - Exemptions

((~~(301)~~)) (501) **In general.** There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption for certain government sales and sales in interstate commerce. For exemptions for sales in Indian country, please see Part VIII of this rule.

((~~(302)~~)) (502) **Government sales.** The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

((~~(303) **Sales in Indian country.**~~

~~(a) The definitions of "Indian," "Indian country," and "Indian tribe," in WAC 458-20-192 apply to this rule. "Cigarette contract" means an agreement under RCW 43.06.450 through 43.06.460.~~

~~(b) The cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette contract under RCW 43.06.450 through 43.06.460.~~

~~(c) The cigarette tax does not apply to cigarettes sold to an Indian in Indian country for personal consumption; however, those sales must comply with the allocation provisions of WAC 458-20-192. Sales made by an Indian cigarette outlet to nontribal members are subject to the tax, except as provided in (b) above.~~

~~(d) See WAC 458-20-192 for information on making wholesale sales of cigarettes to Indians and Indian tribes.~~

~~(304)~~)) (503) **Interstate commerce.** The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette ((~~distributors~~)) wholesalers in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state. ((~~Any person engaged in making sales to licensed distributors in other states or making export sales or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette stamps. The unstamped stock must be kept separate and apart from any stamped stock.~~))

Part ((~~IV~~)) VI - Transporting Cigarettes in Washington

This rule was adopted December 18, 2014 and becomes effective January 18, 2015. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

((~~(401)~~)) (601) **Transportation of cigarettes restricted.** No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette ((~~tax contract subject to the provisions of RCW 43.06.455~~)) compact under RCW 43.06.450 through 43.06.466. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the ((~~liquor control~~)) board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

((~~(402)~~)) (602) **Notice required.** Persons other than licensed wholesalers using their own vehicles intending to transport unstamped cigarettes in this state must first give notice to the ((~~liquor control~~)) board of their intent to do so, except as provided under RCW 82.24.250(5), or other applicable law.

((~~(403)~~)) (603) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must 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 transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

((~~(404)~~)) (604) **Purchase or consignment**. If the unstamped cigarettes transported pursuant to subsection ((~~(401), (402), or (403)~~)) (601), (602), or (603) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. As provided in RCW 82.24.250, the following persons are "authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state":

(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 subsection (602) of this rule, brings or causes to be brought in the state unstamped cigarettes, if within seventy-two hours after receipt of the cigarettes the person has caused stamps to be affixed in accordance with subsection (301) of this rule;

(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 seventy-two hours after receipt of the cigarettes has caused the stamps to be affixed in accordance with subsection (301) of this rule.

((~~(405) **Out-of-state shipments.** Licensed wholesalers shipping cigarettes to a point outside Washington or to a federal instrumentality must, at the time of shipping or delivery, report the transaction to the department. The report must show both (a) complete details of the sale or delivery, and (b) whether stamps have been affixed to the cigarettes.~~

~~The report may be made either by submitting a duplicate invoice or by completing a form provided by the department, and must be filed with the department as set forth in subsection (602) of this rule.~~

This rule was adopted December 18, 2014 and becomes effective January 18, 2015. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

~~(406)~~)) (605) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

((~~**Part V - Delivery Sales of Cigarettes**~~

~~(501) **Definitions.** The definitions in this subsection apply throughout this rule.~~

~~(a) **"Delivery sale"** means any sale of cigarettes to a consumer in the state where either: (i) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other online service; or (ii) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes made in this manner is a delivery sale regardless of whether the seller is located within or outside the state. (For example, "Royal Tax-free Smokes," located in the state of Vermont, offers sales via the internet and a toll-free telephone number, and ships its products to consumers in this state. These transactions are delivery sales.) A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed under chapter 82.24 RCW or a retailer licensed under chapter 82.24 RCW is not a delivery sale.~~

~~(b) **"Delivery service"** means any private carrier engaged in the commercial delivery of letters, packages, or other containers, that requires the recipient of that letter, package, or container to sign to accept delivery.~~

~~(502) **Tax liability.** Cigarettes delivered in this state pursuant to a delivery sale are subject to tax as provided in Part I of this rule. Persons making delivery sales in this state are required to provide prospective consumers with notice that the sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to such sales.~~

~~(503) **Additional requirements.** Persons making delivery sales of cigarettes in this state must comply with all the provisions of chapter 70.155 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.~~))

Part ((~~VI~~)) VII - Enforcement and Administration

((~~(601)~~)) (701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

((~~(602)~~)) (702) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the

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fifteenth day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the special programs division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by non-participating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the twenty-fifth day of the calendar month and must include all transactions occurring in the previous month. See WAC 458-20-264, National Uniform Tobacco Settlement, for more details on this report.

(d) ((~~Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer~~)) A person who sells, transfers, or ships for profit cigarettes (as such term is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such cigarettes are shipped into Washington, or who advertises or offers such cigarettes for sale, transfer, or shipment in this state, must file a report as required under ((~~Title 15, Chapter 10A, section 376 of the U.S. Code (commonly referred to as the "Jenkins Act" report)~~)) 15 U.S.C. Sec. 376. This report is due no later than the 10th day of each calendar month and must include a memorandum or invoice covering all ((~~transactions occurring in~~)) shipments of cigarettes made into Washington during the previous calendar month.

(e) ((~~Persons shipping or delivering any cigarettes to a point outside of this state must submit a report showing full and complete details of the interstate sale or delivery as set forth in Part V of this rule. This report is due no later than the fifteenth day of the calendar month immediately following the shipment or delivery.~~

~~(f) Persons giving away unstamped cigarettes for advertising, promotional, or any other purpose, must report and pay the tax on the number of cigarettes distributed in this state.~~

~~(g) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the tax when they first bring the cigarettes into this state or~~)) Washington consumers who purchase cigarettes outside Washington state, or from some other source without paying Washington taxes, must pay both the cigarette tax and the use tax directly to the department of revenue within seventy-two hours of first ((~~possess~~)) possessing them in this state((~~. The tax is paid with~~)) using a "Tax Declaration for Cigarettes((~~,~~))" form, which may be obtained from the department.

((~~(603)~~)) (703) **Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation, possession, or receiving 10,000 or fewer cigarettes.** Transportation, possession or receiving 10,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(n) and (o).

(b) **Transportation, possession, or receiving more than 10,000 cigarettes.** Transportation, possession, or receiving more than 10,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110(2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

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(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

((~~(604)~~)) (704) **Search, seizure, and forfeiture.** Any collection agent of the department ((~~or~~)), enforcement officer of the ((~~liquor control~~)) board, or law enforcement officer of this state may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

((~~(605)~~)) (705) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of $10.00 per package of unstamped cigarettes or $250.00 will be assessed. Interest is also assessed 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. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

Part VIII – Sales in Indian Country

(801) **Definitions.** The definitions of "Indian," "Indian country," and "Indian tribe" in WAC 458-20-192 apply to this rule.

(802) **Cigarette compacts.** The state cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette compact under RCW 43.06.450 through 43.06.466. Cigarette wholesalers making sales in conformance with such compact will be required to obtain and affix a unique tribal stamp prior to sale. For additional information, wholesalers should contact the Indian tribe in question and the department.

(803) **Sales to Indians in Indian country.** The state cigarette tax does not apply to cigarettes sold in Indian country to tribal members of the particular tribe where the cigarettes are purchased for personal consumption. Sales of cigarettes to nonmembers are subject to the tax. Licensed wholesalers may sell exempt stamped cigarettes to tribal retailers in accordance with the requirements of WAC 458-20-192 and the instructions of the department. For reporting such sales, see subsection (702)(b) of this rule.

(804) **Refunds.** Indians who purchase, in their own Indian country, cigarettes to which state stamps have been affixed may apply for a refund under subsection (303) of this rule.

(805) **Licenses.** Indians and Indian tribes engaged in business in Indian country are not required to obtain a cigarette wholesaler or state-issued retailer license in order to purchase cigarettes from state-licensed wholesalers.

(806) **Preemption.** Application of the state cigarette tax may be preempted by tribal, federal, or state law, depending on the circumstance. For additional information, please consult WAC 458-20-192.