

This rule was adopted on February 7, 2007 and becomes effective March 10, 2007. 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 05-02-035, filed 12/30/04, effective 1/30/05)

WAC 458-20-186 Tax on cigarettes. (1) **Introduction.** This rule addresses those taxes and licensing activities that apply exclusively to cigarettes as defined by RCW 82.24.010. See WAC 458-20-185 for tax liabilities and registration requirements associated with 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) **Organization of rule.** The information provided in this rule is divided into seven 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 the licensing requirements and responsibilities for persons making wholesale or retail sales of cigarettes in this state.

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

(d) Part IV describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

(e) Part V explains the requirements and responsibilities for persons transporting cigarettes in Washington.

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

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

Part I - Tax on Cigarettes

(101) **In general.** 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.

(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 IV 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 (702) of this rule.

(102) Possession of cigarettes in Washington state.

(a) Every person who is (i) in possession of unstamped cigarettes in this state, and (ii) is 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 (702) 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 (702) 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.** Active duty or retired military personnel, and their dependants, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part IV). 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.

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

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

(201) **License required.** No person, other than a government instrumentality or an Indian retailer as set forth in Part IV of this rule, may engage in the retail or wholesale distribution of cigarettes in this state without a license. No person may engage in the business of sampling within this state unless that person has first obtained a sampler's license. Failure to obtain the required license prior to sampling or selling cigarettes at wholesale or retail is a criminal act. RCW 70.155.050.

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

(a) **"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 vehicle, truck, vessel, or the like at which sales are made.

(b) **"Retailer"** means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes, regardless of quantity or amount, or the number of

sales, and all persons operating under a retailer's registration certificate.

(c) **"Retail selling price"** means the ordinary, customary, or usual price paid by the consumer for each package of cigarettes, less the tax levied by the state.

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

(e) **"Wholesaler"** means every person who purchases, sells, or distributes cigarettes, as defined in chapter 82.24 RCW, to retailers for the purpose of resale only.

(203) **Wholesale license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a wholesale cigarette license from the department of licensing.

(a) **Background check.** Each wholesaler must undergo a criminal background check before a license will be issued. RCW 82.24.510. The background check must be completed to the satisfaction of the liquor control board and the department. Failure to provide information sufficient to complete the background check may, in the department's discretion, result in denial of the license.

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

(c) **Multiple locations.** If the wholesaler sells, 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 \$5,000.00. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department of licensing and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the wholesaler's license.

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

(a) **Stamps.** 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 are prohibited from possessing stamps other than those specifically issued to them.

(c) **Sales restricted.** Wholesalers selling cigarettes in this state may sell cigarettes only to Washington retailers who

have a current retail cigarette license, to other licensed wholesalers, or to Indian tribal entities authorized to possess cigarettes that are not taxed by the state.

(d) **Unstamped cigarettes.** Except as explained in Part IV of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. (For the purpose of this rule, the term "unstamped cigarette" means any cigarette that does not bear a Washington state cigarette stamp as described in Part III of this rule.) Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to 72 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 72 hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers who have furnished a surety bond in an amount determined by the department 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. 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.

(205) **Retail license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a retail cigarette license from the department of licensing. 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) **Application.** Applications for license or renewal of license are made on forms supplied by the department of licensing 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.

(b) **Vending machines.** Retailers operating cigarette vending machines are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(206) **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.

(207) **Additional requirements for manufacturers, wholesalers, retailers, and samplers.** Persons making wholesale

or retail sales or engaged in the business of sampling of cigarettes in this state must comply with all the provisions of chapters 70.155 and 70.158 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.

(208) Suspension or revocation of wholesale or retail cigarette licenses.

(a) The department has full power and authority to revoke or suspend the license of any wholesale or retail cigarette dealer in the state upon sufficient showing that the license holder has violated the provisions of chapter 82.24 RCW or this rule. See RCW 82.24.550 and WAC 458-20-10001 for information on the procedures pertaining to suspension or revocation of cigarette licenses.

(b) Any person possessing both a cigarette license and a tobacco products license is subject to suspension and revocation of both licenses for violation of either chapter 82.24 or 82.26 RCW. For example, if a person has both a cigarette license and a tobacco license, revocation of the cigarette license will also result in revocation of the tobacco license.

(c) A person whose license has been suspended or revoked must not sell or permit the sale of cigarettes or tobacco products on premises occupied or controlled by that person during the period of the suspension or revocation.

(d) For the purposes of this rule, "tobacco products" has the same meaning as in RCW 82.26.010.

(e) Any person whose license has been revoked must wait one year following the date of revocation before requesting a hearing for reinstatement. Reinstatement hearings are held pursuant to WAC 458-20-10001.

Part III - Stamping and Rates

(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 IV of this rule. The stamp must be applied to the smallest container or package, 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.

(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 30 days following purchase. Licensed wholesalers are ~~((allowed a discount))~~ compensated for affixing the stamps at the rate of \$6.00 per thousand stamps affixed ("stamping allowance")~~((, which amount is offset against the purchase price))~~. (The stamping allowance is subject to business and occupation tax under the service and other business activities classification.)

(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.

(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.

(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 ~~((will include the stamping allowance and))~~ in the full value of the stamps affixed will be approved by an agent of the department.

(b) Refunds for stamped cigarettes will not include the stamping allowance 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.

Part IV - Exemptions

(401) **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.

(402) **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.

(403) 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.

(404) Interstate commerce. The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette distributors 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 V - Transporting Cigarettes in Washington

(501) 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. 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.

(502) Notice required. Persons other than licensed

wholesalers intending to transport unstamped cigarettes in this state must first give notice to the liquor control board of their intent to do so.

(503) **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.

(504) **Consignment.** If the cigarettes transported pursuant to subsection (501), (502), or (503) 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.

(505) **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 (702) of this rule.

(506) **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 VI - Delivery Sales of Cigarettes

(601) **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.

(602) **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.

(603) **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 VII - Enforcement and Administration

(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.

(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 15th 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 nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the 25th day of the calendar month and must include all transactions occurring in the previous month.

(d) Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer 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). This report is due no later than the 10th day of each calendar month and must include all transactions occurring in the previous 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 15th 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 first possess them in this state. The tax is paid with a "Tax Declaration for Cigarettes," which may be obtained from the department.

(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 or possession of 60,000 or fewer cigarettes.** Transportation or possession of 60,000 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)(m).

(b) **Transportation or possession of more than 60,000 cigarettes.** Transportation or possession of more than 60,000 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.

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

(704) **Search, seizure, and forfeiture.** The department or the liquor control board 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.

(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.