

TOBACCO PRODUCTS TAX
Chapter 82.26 RCW

Tax Base The sale, handling, or distribution of cigars, pipe tobacco, chewing tobacco, and other forms of tobacco, except cigarettes, by the first seller of such products in this state for products not previously subject to the Washington tax. The tax is imposed at the time a distributor imports taxable tobacco products, manufactures such products within the state, distributes the products to a retailer, or first handles such products in Washington.

Tax Rate 75 percent of the taxable sales price (RCW 82.26.020(1)). Further, a maximum tax rate of \$0.50 applies to cigars.

Levied by State

Recent Collections (\$000)

<u>Fiscal Year</u>	<u>Collections</u>	<u>% Change</u>	<u>% of All State Taxes</u>
2009	\$30,278	-.-%	0.2%
2008	(8,669)	-.-	-.-
2007	21,011	(21.0)	0.1
2006	26,610	(3.4)	0.2
2005	27,542	0.5	0.2
2004	27,393	15.9	0.2
2003	23,637	(8.4)	0.2
2002	25,791	1.5	0.2
2001	25,420	6.4	0.2
2000	23,894	5.0	0.2

A breakdown of the Fiscal Year 2009 tobacco products tax collections (\$ in thousands) follows:

General Fund	\$11,140
Water Quality Account	3,949
Health Services Account	15,189
 Total FY 2009 Tobacco Products Tax	 \$30,278

Administration Department of Revenue. The tax is reported on the Combined Excise Tax Return by wholesalers or distributors of tobacco products. For cigars, there are two possible lines on the tax return. If 75 percent of wholesale value is

equivalent to less than 50 cents per cigar, then the tobacco products tax on the cigars is reported along with all other tobacco products and the tax rate is 75 percent of the wholesale value. If the wholesale value per cigar is \$0.67 or more (i.e., wholesale value multiplied by the 75 percent tax rate), then the tax on these cigars is reported on a cigar-only line and the tax amounts to 50 cents for each cigar.

Distribution of Receipts

100 percent goes to the state general fund.

Until July 1, 2009, the health services account received one-half of the tax revenues and 13 percent was dedicated to the water quality account.

Exemptions, Deductions and Credits

- Products which may not be taxed under the Constitution or laws of the federal government.
- Credit for taxes paid on products that are subsequently shipped out of state to a retailer.

History

The tax was established in 1959 at a rate of 25 percent of the wholesale price with all proceeds going to the state general fund. The rate was increased to 30 percent in 1965 and to 45 percent in 1971. Surtaxes were applied during 1982 (4 percent on May 1, increased to 7 percent on August 1). An additional tax of 16.75 percent for water quality programs was added in 1986, and a rate of 10 percent for health care was established in 1993. In 1999 the portion of the tax for water quality was diverted for two years (Fiscal Years 2000 and 2001); one-half of the 16.75 percent tax went to the violence reduction/drug education account and the other one-half went to the salmon recovery account.

Initiative 773 was adopted in November 2001. This increased both the cigarette and tobacco products taxes, effective January 1, 2002, with the additional revenues dedicated to health services. The tobacco products tax rate went from 74.9 to 129.42 percent.

A major change in the enforcement of the tax was made in 2002 when the liability for payment of the tax was changed from the first possessor of tobacco products in the state to any seller of the items upon which the tax was not previously paid. This is intended to prevent distributors from acquiring untaxed tobacco products without tax liability.

In 2005, the tobacco products tax rate was reduced from 129.42 to 75 percent. Instead of different portions of the tax rate being levied according to different statutes, the tax was then imposed by a single statute and the proceeds were distributed to the three funds by a specified percent of the total receipts.

Earmarking of receipts to dedicated funds that previously received a portion of the tax receipts was eliminated effective July 1, 2009; since then all of the receipts have gone to the state general fund. Also in 2009, administration of licenses for wholesalers and retailers of tobacco products was transferred from the Department to the Liquor Control Board.

Discussion/Major Issues

Approximately 120 taxpayers report tobacco products tax on the basic “percentage” tax line, and about 90 taxpayers report on the cigar-only line for cigars with a wholesale value in excess of \$0.67 (i.e. tax of 50 cents). Some firms report on both tax lines.

Prior to the 2005 rate reduction, the tax resulted in an increase in the retail price of at least 130 percent above the wholesale price or the wholesaler or retailer would have to absorb some of the tax burden. With the 75 percent tax rate, retailers no longer have to mark up prices so high in order to make some profit on sales of tobacco products.

Retail sales and B&O taxes apply to the amount of the retail price which includes the tobacco products tax. Thus, pyramiding of tax burden occurs as it does for most taxes imposed at the wholesale/distributor level.

New tax enforcement provisions were enacted in 2005. Both distributors and retailers of tobacco products must now be licensed, and distributors may only sell to licensed retailers. Criminal penalties apply to the failure to obtain a license. All sellers must maintain records documenting their transactions of taxable tobacco products.