Initiative Measure No. 1088

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SECRETARY OF STATE
STATE OF WASHINGTON

1 AN ACT Relating to eliminating the recent tobacco tax increase;
2 amending RCW 82.24.020, 82.24.026, 82.26.010, 82.26.020, and 82.26.030;
3 adding new sections to chapter 82.24 RCW; creating new sections; and
4 repealing RCW 82.26.---.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

6 **INTENT**

7 NEW SECTION. **Sec. 1.** Tobacco is already excessively taxed and
8 should not be subjected to even higher taxes, especially during these
9 tough economic times. This measure would eliminate the recent tobacco
10 tax increase imposed by the 2010 legislature.

11 **PROTECTING TAXPAYERS BY ELIMINATING THE RECENT TOBACCO TAX INCREASE**

12 **Sec. 2.** RCW 82.24.020 and 2010 1st sp.s. c ... (ESHB 2493) s 2 are
13 each amended to read as follows:
14 (1) There is levied and collected as provided in this chapter, a
15 tax upon the sale, use, consumption, handling, possession, or

distribution of all cigarettes, in an amount equal to ((~~12.125~~)) one and fifteen one-hundredths cents per cigarette.

(2) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to five hundred twenty-five one-thousandths of a cent per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to two and five one-hundredths cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty-fifth day of the following month.

(4) Wholesalers subject to the payment of this tax may, if they wish, absorb five one-hundredths cents per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

((~~(3)~~)) (5) For purposes of this chapter, "possession" means both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession is deemed to occur at the location of the cigarettes being so transported or held.

((~~(4)~~)) (6) In accordance with federal law and rules prescribed by the department, an enrolled member of a federally recognized Indian tribe may purchase cigarettes from an Indian tribal organization under the jurisdiction of the member's tribe for the member's own use exempt from the applicable taxes imposed by this chapter. Except as provided in subsection ((~~(5)~~)) (7) of this section, any person, who purchases cigarettes from an Indian tribal organization and who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place, is not exempt from the applicable taxes imposed by this chapter.

((~~(5)~~)) (7) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06

RCW, the terms of the contract or agreement take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect.

Sec. 3. RCW 82.24.026 and 2010 1st sp.s. c ... (ESHB 2493) s 3 are each amended to read as follows:

(1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

(2) The revenue collected under this section must be deposited as follows:

(a) ((~~14~~)) 28.5 percent must be deposited into the general fund.

(b) The remainder must be deposited into the education legacy trust account.

Sec. 4. RCW 82.26.010 and 2010 1st sp.s. c ... (ESHB 2493) s 4 are each amended to read as follows:

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

(1) "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, 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 does not include cigarettes as defined in RCW 82.24.010.

(2) "Manufacturer" means a person who manufactures and sells tobacco products.

(3) "Distributor" means (a) 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, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person

engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) 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.

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

(5)(a) "Sale" means 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.

(b) 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.

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

(7) "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.

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

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

(10) "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 institutions, 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.

(11) "Indian country" means the same as defined in chapter 82.24 RCW.

(12) "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.

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

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

(15) "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.

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

(17) "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.

(18)(a) "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;

(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;

(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, that 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 subsection (5)(b) of this section, the price, determined as nearly as possible according to the actual price, that 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 (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that 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.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (10) of this section 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.

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

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

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

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

((~~(22) "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.~~

~~(23) "Little cigar" means a cigar that has a cellulose acetate integrated filter.~~))

Sec. 5. RCW 82.26.020 and 2010 1st sp.s. c ... (ESHB 2493) s 5 are each amended to read as follows:

(1) There is levied and collected a tax upon the sale, handling, or

distribution of all tobacco products in this state at the following rate:

(a) ((~~For cigars except little cigars, ninety five~~)) Seventy-five percent of the taxable sales price of cigars, not to exceed ((~~sixty-five~~)) fifty cents per cigar; or

(b) ((~~For all tobacco products except those covered under separate provisions of this subsection, ninety five~~)) Seventy-five percent of the taxable sales price((~~,~~

~~(c) For moist snuff, as established in this subsection (1)(c) and computed on the net weight listed by the manufacturer:~~

~~(i) On each single unit consumer-sized can or package whose net weight is one and two tenths ounces or less, a rate per single unit that is equal to the greater of 2.526 dollars or eighty-three and one-half percent of the cigarette tax under chapter 82.24 RCW multiplied by twenty; or~~

~~(ii) On each single unit consumer-sized can or package whose net weight is more than one and two tenths ounces, a proportionate tax at the rate established in (c)(i) of this subsection (1) on each ounce or fractional part of an ounce; and~~

~~(d) For little cigars, an amount per cigar equal to the cigarette tax under chapter 82.24 RCW~~)) of all tobacco products that are not cigars.

(2) Taxes under this section must be 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.

(3) The moneys collected under this section must be deposited into the state general fund.

Sec. 6. RCW 82.26.030 and 2010 1st sp.s. c ... (ESHB 2493) s 7 are each amended to read as follows:

It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in

RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter may be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state is the distributor liable for the tax and that ((~~(1) for moist snuff the tax will be based on the net weight listed by the manufacturer and (2)~~)) in most ((~~other~~)) 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.

NEW SECTION. **Sec. 7.** A new section is added to chapter 82.24 RCW to read as follows:

(1) There is levied and collected by the department of revenue from the persons mentioned in and in the manner provided by this chapter, an additional tax upon the sale, use, consumption, handling, possession, or distribution of cigarettes in an amount equal to four-tenths of a cent per cigarette.

(2) The moneys collected under this section must be deposited in the general fund.

NEW SECTION. **Sec. 8.** A new section is added to chapter 82.24 RCW to read as follows:

In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette. All revenues collected during any month from this additional tax must be deposited in the state general fund by the twenty-fifth day of the following month.

NEW SECTION. **Sec. 9.** RCW 82.26.--- and 2010 1st sp.s. c ... (ESHB 2493) s 6 are each repealed.

CONSTRUCTION CLAUSE

NEW SECTION. **Sec. 10.** The provisions of this act are to be

1 liberally construed to effectuate the intent, policies, and purposes of
2 this act.

3 **SEVERABILITY CLAUSE**

4 NEW SECTION. **Sec. 11.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 **STOP THE TOBACCO TAX INCREASE ACT**

9 NEW SECTION. **Sec. 12.** This act shall be known and cited as the
10 stop the tobacco tax increase act of 2010.

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