

CHAPTER 496

[House Bill No. 209]

CIGARETTE TAX ENFORCEMENT

AN ACT Relating to cigarette tax enforcement; amending RCW 82.24.110, 82.24.130, and 82.24.070; adding new sections to chapter 82.24 RCW; repealing RCW 82.24.140; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 82.24.110, chapter 15, Laws of 1961 as amended by section 63, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.24.110 are each amended to read as follows:

(1) Each of the following acts is a gross misdemeanor and punishable as such:

((1)) (a) To sell, except as a registered wholesaler or retailer engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

((2)) (b) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

((3)) (c) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

((4)) (d) To violate any of the provisions of this chapter;

((5)) (e) To violate any lawful rule or regulation made and published by the department of revenue;

((6)) (f) To use any stamps more than once;

((7)) (g) To refuse to allow the department of revenue or any duly authorized agent thereof, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

((8)) (h) For any retailer, except one permitted to maintain an unstamped stock to engage in interstate business as provided herein, to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

((9)) (i) For any person to make, use, or present or exhibit to the department of revenue or any duly authorized agent thereof, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

((10)) (j) For any wholesaler or retailer or his agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or received in his place of business within five years prior to such demand unless he can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his control;

~~((H))~~ (k) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(1) For any person to possess or transport upon the public highways, roads, or streets of this state a quantity of sixty thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person transporting the cigarettes has in actual possession invoices or delivery tickets therefor which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported and unless the cigarettes are consigned to or purchased by any person in this state who is a purchaser or consignee authorized by this chapter to possess unstamped cigarettes in this state.

(2) It is unlawful for any person knowingly or intentionally to possess or to transport upon the public highways, roads, or streets of this state a quantity in excess of sixty thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes so transported. Violation of this section shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses (~~herein~~) described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating the provisions thereof.

Sec. 2. Section 82.24.130, chapter 15, Laws of 1961 as amended by section 5, chapter 157, Laws of 1972 ex. sess. and RCW 82.24.130 are each amended to read as follows:

~~((Subject to the provisions of RCW 82.24.250, any articles taxed herein found at any point within this state, which articles shall be held, owned or possessed by any person, and not having the stamps affixed to the packages or containers are hereby declared to be contraband goods, and may be seized by the department of revenue, or its duly authorized agent, or by any peace officer of the state, when directed by the department of revenue so to do, without a warrant, and said goods shall be offered by the department of revenue for sale at public auction to the highest bidder after due advertisement, but the department of revenue before delivering any of the goods so seized shall require the person, to whom such articles are sold, to affix the proper amount of stamps. The proceeds of sale of any goods sold hereunder shall be paid to the department of revenue.~~

~~The cost of seizure and sale shall be paid out of the proceeds derived from the sale before making remittance.))~~

(1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine ((and any vehicle, not a common carrier, which may be)) used for the purpose of violating the provisions of this chapter ((shall likewise be subject to seizure and sale in the same manner)).

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed ((herein)) in this chapter which are in the possession of a wholesaler or retailer, licensed by the department, pursuant to the provisions of chapter 19.91 RCW for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband.

NEW SECTION. Sec. 3. A new section is added to chapter 82.24 RCW to read as follows:

In all cases of seizure of any property made subject to forfeiture under this chapter the department shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department immediately if the seizure is made by someone other than an agent of the department authorized to collect taxes.

(2) Upon notification or seizure by the department or upon receipt of property subject to forfeiture under this chapter from any other person, the department shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or acting as its agent. Listing and appraisal of the property shall be properly attested by the department and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department to be less than one hundred dollars in value.

(3) The department shall cause notice to be served within five days following the seizure or notification to the department of the seizure on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it shall be by both certified mail with return receipt requested and regular mail. Service by mail shall be deemed complete upon mailing within the five-day period following the seizure or notification of the seizure to the department.

(4) If no person notifies the department in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing before the seizing agency and any appeal therefrom shall be in accordance with chapter 34.04 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department shall promptly return the article or articles to the claimant upon a determination that the claimant is

the present lawful owner or is lawfully entitled to possession thereof of the items seized.

NEW SECTION. Sec. 4. A new section is added to chapter 82.24 RCW to read as follows:

When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

Sec. 5. Section 82.24.070, chapter 15, Laws of 1961 as last amended by section 2, chapter ___ (SB 5139), Laws of 1987 and RCW 82.24.070 are each amended to read as follows:

Wholesalers and retailers subject to the provisions of this chapter shall be allowed compensation for their services in affixing the stamps herein required a sum (~~equal to two percent of the first four mills of the value of the stamps purchased or affixed by them, one percent of the next one mill of the value of the stamps purchased or affixed by them, and one-half of one percent of the next one-half mill of the value of the~~) computed at the rate of four dollars per one thousand stamps purchased or affixed by them.

NEW SECTION. Sec. 6. Section 82.24.140, chapter 15, Laws of 1961, section 65, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.24.140 are each repealed.

Passed the House April 15, 1987.

Passed the Senate April 7, 1987.

Approved by the Governor May 19, 1987.

Filed in Office of Secretary of State May 19, 1987.