

CHAPTER 216

[Senate Bill No. 6451]

UNSTAMPED CIGARETTES

AN ACT Relating to unstamped cigarettes; amending RCW 82.24.030, 82.24.040, 82.24.050, 82.24.110, 82.24.130, and 82.24.250; and declaring an emergency.

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

Sec. 1. Section 82.24.030, chapter 15, Laws of 1961 as amended by section 61, chapter 278, Laws of 1975 1st ex. sess. and RCW 82.24.030 are each amended to read as follows:

In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department, such stamps to be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid. Except as otherwise provided in this chapter, every person shall cause to be affixed on every package of cigarettes ((on which a tax is due)), stamps of an amount equaling the tax due thereon before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

The department may authorize the use of meter stamping machines for imprinting stamps, which imprinted stamps shall be in lieu of those otherwise provided for under this chapter, and if such use is authorized, shall provide reasonable rules and regulations with respect thereto.

Sec. 2. Section 82.24.040, chapter 15, Laws of 1961 as amended by section 1, chapter 214, Laws of 1969 ex. sess. and RCW 82.24.040 are each amended to read as follows:

~~((Every wholesaler in this state shall, within a reasonable time after receipt of any of the articles taxed herein, cause the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein. PROVIDED, That))~~ No wholesaler in this state may possess within this state unstamped cigarettes except that:

(1) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(2) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required

by this chapter, such part of his stock as may be necessary for the conduct of his business in making sales to persons in another state or foreign country, to instrumentalities of the federal government, or to the established governing bodies of any Indian tribe, recognized as such by the United States Department of the Interior. Such unstamped stock shall be kept separate and apart from stamped stock(~~(-PROVIDED FURTHER, That)~~).

(3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state, or to a federal instrumentality, or to an Indian tribal organization, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the main office of the department, at Olympia, not later than the fifteenth day of the following calendar month, and for failure to comply with the requirements of this section the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed. The department may also revoke this permission to maintain a stock of unstamped goods for sale to a specific Indian tribal organization when it appears that sales of unstamped cigarettes to persons who are not enrolled members of a recognized Indian tribe are taking place, or have taken place, within the exterior boundaries of the reservation occupied by that tribe.

Sec. 3. Section 82.24.050, chapter 15, Laws of 1961 as amended by section 2, chapter 214, Laws of 1969 ex. sess. and RCW 82.24.050 are each amended to read as follows:

~~(Every retailer shall)~~ No retailer in this state may possess unstamped cigarettes within this state unless the retailer is licensed under Washington state law and, within a ((reasonable)) period of time after receipt of any of the articles taxed herein as is reasonably necessary for the purpose, causes the same to have the requisite denomination and amount of stamps affixed to represent the tax imposed herein: PROVIDED, That those articles to which stamps have been properly affixed by a wholesaler or another retailer, licensed under Washington state law, may be retained by any retailer, and that those articles intended for sale to qualified purchasers may, under rules adopted by the department of revenue, be retained by federal instrumentalities and Indian tribal organizations, without affixing the stamps required by this chapter.

Sec. 4. Section 82.24.110, chapter 15, Laws of 1961 as last amended by section 1, chapter 496, Laws of 1987 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:

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

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

(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;

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

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

(f) To use any stamps more than once;

(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;

(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;

(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;

(j) For any wholesaler or retailer or his or her 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 her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his control;

(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;

(l) 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 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. 5. Section 82.24.130, chapter 15, Laws of 1961 as last amended by section 2, chapter 496, Laws of 1987 and RCW 82.24.130 are each amended to read as follows:

(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 used for the purpose of violating the provisions of this chapter.

(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 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))~~ under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband.

Sec. 6. Section 6, chapter 157, Laws of 1972 ex. sess. and RCW 82-.24.250 are each amended to read as follows:

~~((Every))~~ No person ~~((who))~~ other than (1) a licensed wholesaler in its own vehicle, or (2) a person who has given notice to the department in advance of the commencement of transportation shall transport or cause to be transported cigarettes not having the stamps affixed to the packages or containers, upon the public highways, roads or streets of this state. In the case of transportation of unstamped cigarettes such persons shall have in ~~((his))~~ their actual possession invoices or delivery tickets for such cigarettes, which shall 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. If the cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. In the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not authorized by chapter 82.24 RCW to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

For purposes of this section, the term "person authorized by chapter 82.24 RCW to possess unstamped cigarettes" shall mean a wholesaler or retailer, licensed (~~(pursuant to the provisions of chapter 19.91 RCW)~~ under Washington state law, the United States or an agency thereof, and any Indian tribal organization authorized under rules adopted by the department of revenue to possess unstamped cigarettes.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 10, 1990.

Passed the House March 2, 1990.

Approved by the Governor March 27, 1990.

Filed in Office of Secretary of State March 27, 1990.

CHAPTER 217

[House Bill No. 2716]

OVERWEIGHT VEHICLES—TRAFFIC INFRACTION TO DIRECT LOADING

AN ACT Relating to codefendants in cases of vehicle weight restrictions; and amending RCW 46.44.105.

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

Sec. 1. Section 23, chapter 64, Laws of 1975-'76 2nd ex. sess. as last amended by section 6, chapter 351, Laws of 1985 and RCW 46.44.105 are each amended to read as follows:

(1) Violation of any of the provisions of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, and 46.44.095, (~~and 46.44.041;~~) or failure to obtain a permit as provided by RCW 46.44.090 and 46.44.095, or misrepresentation of the size or weight of any load or failure to follow the requirements and conditions of a permit issued hereunder is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 (~~or 46.44.041~~) shall be assessed three cents for each pound of excess weight. Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section be suspended.