

HB 1732

Bill Analysis

March 6, 1997

Brief Description: Exempting cigarettes to be consumed on vessels engaged in commercial fishery in waters of states not contiguous with Washington from retail sales and cigarette taxes.

Bill Sponsors: Representatives Cairnes, Radcliff, Alexander, Mielke, L. Thomas, Chandler, Smith, Zellinsky and Delvin.

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Background: All states levy special excise taxes on cigarettes, but the tax rates vary. Washington levies an 82.5 cent tax on a pack of cigarettes. In contrast, Oregon currently levies a tax of 68 cents, but the Oregon tax will lower to 58 cents when a temporary surtax expires in July of 1997. Alaska levies a cigarette tax of 29 cents per pack, and California levies a tax of 37 cents per pack.

Cigarette taxes are generally collected at the wholesale level. In Washington a licensed wholesaler will affix a special stamp to each cigarette pack to indicate that state tax has been paid.

Federal law prohibits the state from taxing cigarettes sold to the following groups:

- Military exchanges or commissaries;
- United States Veterans' Administration; and
- Indian tribal organizations or tribally-licensed retailers for resale to enrolled tribal members.

Federal law also prevents a state from taxing cigarettes sold to a vessel, if the cigarettes are intended for the crew's consumption at sea more than three miles off the U.S. coast.. The amount of tax-exempt cigarettes loaded onto a vessel as supplies for the crew must be reasonable. A U.S. Customs directive dated November 1, 1996, indicates that six cartons of cigarettes per crew member per month at sea is the maximum allowable amount.

In addition to cigarette excise taxes, retail sales and use tax also applies to sales of cigarettes in Washington. The sales tax is imposed on retail sales of most items of tangible personal property and some services. Use tax is imposed on the use of an item in this state, when the acquisition of the item or service has not been subject to sales tax. Services subject to sales and use tax include the installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property. The combined state and local sales and use tax rate is between 7 and 8.6 percent, depending on location.

Summary of Bill: New cigarette tax and retail sales tax exemptions are created for cigarettes sold directly to a fishing vessel or to an agent for the fishing vessel, if the cigarettes are for the crew's consumption in the coastal waters of a state not contiguous to Washington. In other words, the cigarette tax and retail sales tax exemptions apply to cigarettes sold for consumption by a crew fishing off the coast of Alaska or California, but the exemptions do not apply to cigarettes sold to a crew who intends to fish off the coast of Oregon.

Cigarette sales only qualify for the new exemptions, if the following conditions are met:

- 1 Fishing vessel is engaged in a fishery in the waters of a noncontiguous state;
- 2) Fishing vessel holds a valid commercial fishing license from the noncontiguous state;
- 3) Tax on cigarettes sold to the fishing vessel, or an agent for the vessel, will be paid to the noncontiguous state at the noncontiguous state's appropriate tax rates;
- 4 Exempt cigarettes will be delivered directly to the fishing vessel or to a location in Washington from which the cigarettes will be transported to the noncontiguous state;
- 5) Purchaser of the exempt cigarettes provides the seller with an exemption certificate; and
- 6) Information is provided by the Department of Revenue to the noncontiguous state that identifies the owners and operators of fishing vessels buying tax-exempt cigarettes in Washington for consumption in the noncontiguous state.

The owner or operator of a fishing vessel or an agent who supplies vessels engaged in fisheries in other states may be assessed Washington cigarette taxes and retail sales taxes on any sales, if the owner, operator, or agent is unable to prove that appropriate cigarette taxes were paid to the noncontiguous state.

Fiscal Note: Requested.

Effective Date: If enacted, this bill applies retroactively to December 31, 1996.