

HOUSE BILL REPORT

ESSB 5372

As Reported by House Committee On:

Finance

Title: An act relating to cooperative agreements concerning the taxation of cigarettes sold on Indian lands.

Brief Description: Authorizing cooperative agreements concerning the taxation of cigarette sales on Indian lands.

Sponsors: By Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Swecker, Honeyford, Gardner, T. Sheldon and Oke; by request of Department of Revenue).

Brief History:

Committee Activity:

Finance: 3/29/01 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Allows the Governor to make cigarette tax contracts with Indian tribes concerning sales of cigarettes.
- Requires tribal cigarette tax rate equal to 100 percent of state cigarette and sales tax after phase-in period.
- Exempts cigarette sales by Indian retailers within Indian country from state cigarette and sales and use taxes during the time a cigarette tax contract exists.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 9 members: Representatives Cairnes, Republican Co-Chair; Morris, Democratic Co-Chair; Berkey, Democratic Vice Chair; Roach, Republican Vice Chair; Carrell, Conway, Santos, Van Luven and Veloria.

Staff: Rick Peterson (786-7150).

Background:

Cigarette taxes are added directly to the price of these goods before the sales tax is applied. The rate for the cigarette tax is 82.5 cents per pack of 20 cigarettes. Retail sales and use taxes are also imposed on sales of cigarettes. The state sales tax rate is 6.5 percent of the selling price. Local governments may levy additional sales taxes. The total state and local rate varies from 7 percent to 8.8 percent, depending on the location.

Revenue from the first 23 cents of the cigarette tax goes to the general fund. The next 8 cents are dedicated to water quality improvement programs through June 30, 2021, and to the general fund thereafter. The next 41 cents go to the Health Services Account. The remaining 10.5 cents are dedicated to youth violence prevention and drug enforcement.

The cigarette tax is due from the first person who sells, uses, consumes, handles, possesses or distributes the cigarettes in this state. The taxpayer pays the tax by purchasing cigarette tax stamps which are placed on cigarette packs. The taxpayer is allowed compensation for placing the cigarette stamps on the packs at the rate of \$4 per 1,000 stamps.

Under federal law, the cigarette tax does not apply to cigarettes sold on an Indian reservation to an enrolled tribal member for personal consumption. However, sales made by tribal cigarette retailers to non-tribal members are subject to the tax. Enforcement of state cigarette taxes in respect to tribal retail operations has involved considerable difficulty and litigation, with mixed results.

Summary of Amended Bill:

The Governor may enter into cigarette tax contracts concerning the sales of cigarettes with federally recognized Indian tribes located within Washington. Cigarette tax contracts must be for renewable terms of eight years or less. Cigarettes sold by Indian retailers in Indian Country during the contract's term are subject to a tribal cigarette tax and are exempt from cigarette, and sales and use taxes. The bill does not provide a precedent for the taxation of non-Indians on fee land.

In general, cigarette tax contracts must:

- (1) Limit tribal retailing to sales of cigarettes by tribes or Indians in Indian Country;
- (2) prevent sales to any person under the age of 18 years;
- (3) require tribal cigarette tax be used for essential government services;
- (4) require the use of tribal cigarette tax stamps;
- (5) include provisions for compliance;

- (6) require that tribal retailers purchase cigarettes only from approved sources;
- (7) allow resolution of disputes through a non-judicial process, such as mediation; and
- (8) include a procedure for correcting violations of the contract and provision for termination of contract should violations not be resolved.

The Governor is authorized to enter into cigarette tax contracts with the Squaxin Island Tribe, Nisqually Tribe, Tulalip Tribes, the Mukleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, and the Upper Skagit Tribe with a tax rate of 100 percent of the state cigarette and sales tax rate. The 100 percent rate may be phased in over three years but the rate can be no lower than 80 percent of state cigarette and sales tax rate. The phase-in period is shortened if Indian cigarette sales increase by 10 percent. New Indian retail operations must pay the full tribal tax rate rather than the lower tax during the phase-in period.

The tax rates and revenue sharing terms of any other cigarette tax contract must be authorized in a bill enacted by the Legislature.

The compensation allowed for placing cigarette stamps on packs of cigarettes is increased from \$4 per 1,000 stamps to \$6 per 1,000 stamps starting July 1, 2002. A criminal background check is required for persons applying for new or renewal of cigarette wholesaler licenses.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill changes the term cooperative agreements– to "cigarette tax contracts"; states that the cigarette master settlement agreement is not affected by the bill; clarifies that the bill does not extend to taxation of non-Indian retailers; provides specific requirements for compliance, enforcement, and dispute resolution with regard to the cigarette tax contracts; provides that the Department of Revenue and Liquor Control Board will continue to share duties relating to cigarette taxation; and adds the Chehalis Confederated Tribes and the Upper Skagit Tribe to the list of tribes the Governor may negotiate contracts with.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: None.

Testimony Against: None.

Testified: None.