
Finance Committee

HB 2650

Brief Description: Authorizing a cigarette tax agreement between the state of Washington and the Yakama Nation.

Sponsors: Representatives Santos, Ericks, Hunter and Wood; by request of Department of Revenue.

Brief Summary of Bill

- Authorizes the Governor to make a cigarette tax agreement with the Yakama Nation that provides for a tribal tax on cigarettes that phases up to 87.6 percent of the state cigarette tax rate.

Hearing Date: 1/30/08

Staff: Rick Peterson (786-7150).

Background:

Cigarettes are subject to tax at a rate of \$2.025 per pack of 20 cigarettes (\$20.025 per carton). Revenue from the first 23 cents of the cigarette tax goes to the general fund. The next eight cents are dedicated to water quality improvement programs through June 30, 2021, and to the general fund thereafter. The next \$1.01 goes to the health services account. The next 10.5 cents are dedicated to the violence prevention and drug enforcement account. The remaining 60 cents goes to the education legacy trust account. A portion the revenue to the health services account and the education legacy trust account is used to reimburse the other accounts for losses in revenue due to tax rate increases.

The retail sales tax applies to the selling price of tangible personal property and of certain services purchased at retail. Retail sales and use taxes cover the sales of cigarettes.

The tax is levied at a 6.5 percent rate by the state. Cities and counties may levy a local tax. The state and local combined sales tax ranges from 7.5 percent to 8.9 percent.

The Department of Revenue administers and collects the cigarette tax. Enforcement activities are the responsibility of the Liquor Control Board (LCB).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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.

In the 2001 session, the Governor was authorized to enter into contracts concerning the sale of cigarettes with federally recognized Indian tribes located within Washington. Contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contracts term are subject to a tribal cigarette tax and are exempt from state cigarette and sales and use taxes.

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 revenue 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 a provision for termination of the contract should violations not be resolved.

The Governor is authorized to enter into cooperative agreements with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the Muckleshoot 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 Yakama Nation, the Suquamish Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis Confederated Tribes, the Upper Skagit Tribe, the Snoqualmie Tribe, the Swinomish Tribe, the Samish Indian Nation, the Quileute Tribe, the Kalispel Tribe, the Confederated Tribes of the Colville Reservation, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, the Makah Tribe, the Hoh Tribe, and the Spokane Tribe at 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 State and the Yakama Nation signed a cigarette tax agreement under this provision of law. In 2007 the Department of Revenue notified the Yakama Nation that the agreement was canceled due to noncompliance. The Department of Revenue and the Yakama Nation have since engaged in dispute mediation related to the agreement.

The Governor is also authorized to enter into a cigarette tax agreement with the Puyallup Tribe of Indians. The agreement requires a tribal tax of \$11.75 per carton, in lieu of state cigarette and state and local sales and use taxes. The purchase price to the consumer must be at least as much as the wholesale cost to the retailer, plus the tribal tax amount. If the state cigarette tax rate changes, the tribal tax must increase or decrease by the same dollar amount. The state must receive 30 percent of the tribal tax revenue on a quarterly basis, to be deposited in the General Fund. The remaining tribal revenue must be used for essential government services. The agreement must include provisions regarding tax enforcement and administration similar to other tribal cigarette agreements.

The State has entered into cigarette tax agreements with 20 of the 28 tribes for which authorization is provided.

Summary of Bill:

The Governor may enter into a cigarette tax agreement with the Yakama Nation. Under the eight year renewable agreement the Yakama Nation must impose a tax on the sales of cigarettes by tribal retailers. The tax must be 80 percent of the state cigarette tax rate during the agreement's first 6 years, 84 percent during the seventh year, and 87.6 percent during the eighth year. The rate must increase or decrease with the state cigarette tax rate. During the agreement's term cigarette sales are subject to the tribal cigarette tax and are exempt from state cigarette and sales and use taxes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.