
HOUSE BILL 2045

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Taylor, Ross, Shea, Haler, Klippert, Johnson, Kretz, and Schmick

Read first time 04/01/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to providing for fairness, equity, and transparency
2 of tax preferences for federally recognized Indian tribes; amending RCW
3 84.36.010, 82.36.450, 82.38.310, and 43.06.455; and creating new
4 sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 tribal tax oversight act of 2011.

8 NEW SECTION. **Sec. 2.** The legislature finds that Indian tribes do
9 not pay property tax on land held in trust by the federal government
10 nor on nonreservation land used for essential government services.
11 Tribally owned businesses are not subject to sales and excise taxes on
12 transactions conducted by tribal members on tribal land. The state of
13 Washington, through the centennial accord, has agreed to treat Indian
14 tribes on a sovereign-to-sovereign basis. In recent years, special tax
15 treatment has been conferred on federally recognized Indian tribes,
16 including property tax exemptions for nonreservation land, additional
17 cigarette tax contracts, and tribal fuel tax agreements. The
18 legislature reaffirms the need to be vigilant in its oversight of state

1 and local tax dollars. However, these tax agreements and preferences
2 reduce or eliminate the amount of tax dollars the state is entitled to
3 collect and create an inequitable situation. This is money that can be
4 used for education, public safety, health and human services, and
5 transportation. The legislature intends to eliminate special tax
6 preferences given to federally recognized Indian tribes in recent years
7 and provide for additional requirements for the renewal of existing tax
8 agreements.

9 **Sec. 3.** RCW 84.36.010 and 2010 c 281 s 1 are each amended to read
10 as follows:

11 (1) All property belonging exclusively to the United States, the
12 state, or any county or municipal corporation; (~~all property belonging~~
13 ~~exclusively to any federally recognized Indian tribe located in the~~
14 ~~state, if that property is used exclusively for essential government~~
15 ~~services~~) all state route number 16 corridor transportation systems
16 and facilities constructed under chapter 47.46 RCW; all property under
17 a financing contract pursuant to chapter 39.94 RCW or recorded
18 agreement granting immediate possession and use to the public bodies
19 listed in this section or under an order of immediate possession and
20 use pursuant to RCW 8.04.090; and, for a period of forty years from
21 acquisition, all property of a community center; is exempt from
22 taxation. All property belonging exclusively to a foreign national
23 government is exempt from taxation if that property is used exclusively
24 as an office or residence for a consul or other official representative
25 of the foreign national government, and if the consul or other official
26 representative is a citizen of that foreign nation.

27 (2) For the purposes of this section (~~the following definitions~~
28 ~~apply unless the context clearly requires otherwise.~~

29 ~~(a))~~ "community center" means property, including a building or
30 buildings, determined to be surplus to the needs of a district by a
31 local school board, and purchased or acquired by a nonprofit
32 organization for the purposes of converting them into community
33 facilities for the delivery of nonresidential coordinated services for
34 community members. The community center may make space available to
35 businesses, individuals, or other parties through the loan or rental of
36 space in or on the property.

1 (~~(b) "Essential government services" means services such as tribal~~
2 ~~administration, public facilities, fire, police, public health,~~
3 ~~education, sewer, water, environmental and land use, transportation,~~
4 ~~and utility services.))~~

5 **Sec. 4.** RCW 82.36.450 and 2007 c 515 s 19 are each amended to read
6 as follows:

7 (1) (~~The governor may enter into an agreement with any federally~~
8 ~~recognized Indian tribe located on a reservation within this state~~
9 ~~regarding motor vehicle fuel taxes included in the price of fuel~~
10 ~~delivered to a retail station wholly owned and operated by a tribe,~~
11 ~~tribal enterprise, or tribal member licensed by the tribe to operate a~~
12 ~~retail station located on reservation or trust property. The agreement~~
13 ~~may provide mutually agreeable means to address any tribal immunities~~
14 ~~or any preemption of the state motor vehicle fuel tax.~~

15 (2) ~~The provisions of this section do not repeal existing~~
16 ~~state/tribal fuel tax agreements or consent decrees in existence on May~~
17 ~~15, 2007. The state and the tribe may agree to substitute an agreement~~
18 ~~negotiated under this section for an existing agreement or consent~~
19 ~~decree, or to enter into an agreement using a methodology similar to~~
20 ~~the state/tribal fuel tax agreements in effect on May 15, 2007.~~

21 (3) ~~If a new agreement is negotiated, the agreement must:~~

22 (a) ~~Require that the tribe or the tribal retailer acquire all motor~~
23 ~~vehicle fuel only from persons or companies operating lawfully in~~
24 ~~accordance with this chapter as a motor vehicle fuel distributor,~~
25 ~~supplier, importer, or blender, or from a tribal distributor, supplier,~~
26 ~~importer, or blender lawfully doing business according to all~~
27 ~~applicable laws;~~

28 (b) ~~Provide that the tribe will expend fuel tax proceeds or~~
29 ~~equivalent amounts on: Planning, construction, and maintenance of~~
30 ~~roads, bridges, and boat ramps; transit services and facilities;~~
31 ~~transportation planning; police services; and other highway-related~~
32 ~~purposes;~~

33 (c) ~~Include provisions for audits or other means of ensuring~~
34 ~~compliance to certify the number of gallons of motor vehicle fuel~~
35 ~~purchased by the tribe for resale at tribal retail stations, and the~~
36 ~~use of fuel tax proceeds or their equivalent for the purposes~~

1 identified in (b) of this subsection. Compliance reports must be
2 delivered to the director of the department of licensing.

3 (4) Information from the tribe or tribal retailers received by the
4 state or open to state review under the terms of an agreement shall be
5 deemed to be personal information under RCW 42.56.230(3)(b) and exempt
6 from public inspection and copying.

7 (5) The governor may delegate the power to negotiate fuel tax
8 agreements to the department of licensing.

9 (6)) The department of licensing may enter into an agreement with
10 any federally recognized Indian tribe located on a reservation within
11 this state regarding the imposition, collection, and use of this
12 state's motor vehicle fuel tax, or the budgeting or use of moneys in
13 lieu thereof, upon terms substantially the same as those in the consent
14 decree entered by the federal district court (Eastern District of
15 Washington) in *Confederated Tribes of the Colville Reservation v. DOL,*
16 *et al. District Court No. CY-92-248-JLO.*

17 (2) The department of licensing ((shall)) must prepare and submit
18 an annual report to the legislature on the status of existing
19 agreements and any ongoing negotiations with tribes.

20 **Sec. 5.** RCW 82.38.310 and 2007 c 515 s 31 are each amended to read
21 as follows:

22 (1) ((The governor may enter into an agreement with any federally
23 recognized Indian tribe located on a reservation within this state
24 regarding special fuel taxes included in the price of fuel delivered to
25 a retail station wholly owned and operated by a tribe, tribal
26 enterprise, or tribal member licensed by the tribe to operate a retail
27 station located on reservation or trust property. The agreement may
28 provide mutually agreeable means to address any tribal immunities or
29 any preemption of the state special fuel tax.

30 (2) The provisions of this section do not repeal existing
31 state/tribal fuel tax agreements or consent decrees in existence on May
32 15, 2007. The state and the tribe may agree to substitute an agreement
33 negotiated under this section for an existing agreement or consent
34 decree, or to enter into an agreement using a methodology similar to
35 the state/tribal fuel tax agreements in effect on May 15, 2007.

36 (3) If a new agreement is negotiated, the agreement must:

1 ~~(a) Require that the tribe or the tribal retailer acquire all~~
2 ~~special fuel only from persons or companies operating lawfully in~~
3 ~~accordance with this chapter as a special fuel distributor, supplier,~~
4 ~~importer, or blender, or from a tribal distributor, supplier, importer,~~
5 ~~or blender lawfully doing business according to all applicable laws;~~

6 ~~(b) Provide that the tribe will expend fuel tax proceeds or~~
7 ~~equivalent amounts on: Planning, construction, and maintenance of~~
8 ~~roads, bridges, and boat ramps; transit services and facilities;~~
9 ~~transportation planning; police services; and other highway-related~~
10 ~~purposes;~~

11 ~~(c) Include provisions for audits or other means of ensuring~~
12 ~~compliance to certify the number of gallons of special fuel purchased~~
13 ~~by the tribe for resale at tribal retail stations, and the use of fuel~~
14 ~~tax proceeds or their equivalent for the purposes identified in (b) of~~
15 ~~this subsection. Compliance reports must be delivered to the director~~
16 ~~of the department of licensing.~~

17 ~~(4) Information from the tribe or tribal retailers received by the~~
18 ~~state or open to state review under the terms of an agreement shall be~~
19 ~~deemed personal information under RCW 42.56.230(3)(b) and exempt from~~
20 ~~public inspection and copying.~~

21 ~~(5) The governor may delegate the power to negotiate fuel tax~~
22 ~~agreements to the department of licensing.~~

23 ~~(6)) The department of licensing may enter into an agreement with~~
24 ~~any federally recognized Indian tribe located on a reservation within~~
25 ~~this state regarding the imposition, collection, and use of this~~
26 ~~state's special fuel tax, or the budgeting or use of moneys in lieu~~
27 ~~thereof, upon terms substantially the same as those in the consent~~
28 ~~decree entered by the federal district court (Eastern District of~~
29 ~~Washington) in *Confederated Tribes of the Colville Reservation v. DOL,*~~
30 ~~et al. District Court No. CY-92-248-JLO.~~

31 ~~(2) The department of licensing ((shall)) must prepare and submit~~
32 ~~an annual report to the legislature on the status of existing~~
33 ~~agreements and any ongoing negotiations with tribes.~~

34 **Sec. 6.** RCW 43.06.455 and 2001 c 235 s 2 are each amended to read
35 as follows:

36 (1) The governor may enter into cigarette tax contracts concerning
37 the sale of cigarettes. All cigarette tax contracts ((shall)) must

1 meet the requirements for cigarette tax contracts under this section.
2 Except for cigarette tax contracts under RCW 43.06.460, the rates,
3 revenue sharing, and exemption terms of a cigarette tax contract are
4 not effective unless authorized in a bill enacted by the legislature.

5 (2) Cigarette tax contracts (~~((shall be))~~) are in regard to retail
6 sales in which Indian retailers make delivery and physical transfer of
7 possession of the cigarettes from the seller to the buyer within Indian
8 country, and are not in regard to transactions by non-Indian retailers.
9 In addition, contracts (~~((shall))~~) must provide that retailers (~~((shall))~~)
10 do not sell or give, or permit to be sold or given, cigarettes to any
11 person under the age of eighteen years.

12 (3) A cigarette tax contract with a tribe (~~((shall))~~) must provide
13 for a tribal cigarette tax in lieu of all state cigarette taxes and
14 state and local sales and use taxes on sales of cigarettes in Indian
15 country by Indian retailers. The tribe may allow an exemption for
16 sales to tribal members.

17 (4) Cigarette tax contracts (~~((shall))~~) must provide that all
18 cigarettes possessed or sold by a retailer (~~((shall))~~) bear a cigarette
19 stamp obtained by wholesalers from a bank or other suitable stamp
20 vendor and applied to the cigarettes. The procedures to be used by the
21 tribe in obtaining tax stamps must include a means to assure that the
22 tribal tax will be paid by the wholesaler obtaining such cigarettes.
23 Tribal stamps must have serial numbers or some other discrete
24 identification so that each stamp can be traced to its source.

25 (5) Cigarette tax contracts (~~((shall))~~) must provide that retailers
26 (~~((shall))~~) purchase cigarettes only from:

27 (a) Wholesalers or manufacturers licensed to do business in the
28 state of Washington;

29 (b) Out-of-state wholesalers or manufacturers who, although not
30 licensed to do business in the state of Washington, agree to comply
31 with the terms of the cigarette tax contract, are certified to the
32 state as having so agreed, and who do in fact so comply. However, the
33 state may in its sole discretion exercise its administrative and
34 enforcement powers over such wholesalers or manufacturers to the extent
35 permitted by law;

36 (c) A tribal wholesaler that purchases only from a wholesaler or
37 manufacturer described in (a), (b), or (d) of this subsection; and

38 (d) A tribal manufacturer.

1 (6) Cigarette tax contracts (~~shall~~) must be for renewable periods
2 of no more than eight years. A renewal may not include a renewal of
3 the phase-in period. For renewals occurring after the effective date
4 of this section, any agreement must include a provision requiring the
5 tribe to transmit thirty percent of the tribal tax revenue on all
6 cigarette sales to the state. The funds must be transmitted to the
7 state treasurer on a quarterly basis for deposit by the state treasurer
8 into the general fund. The remaining tribal tax revenue must be used
9 for essential government services, as that term is defined in this
10 section.

11 (7) Cigarette tax contracts (~~shall~~) must include provisions for
12 compliance, such as transport and notice requirements, inspection
13 procedures, stamping requirements, recordkeeping, and audit
14 requirements.

15 (8) Tax revenue retained by a tribe must be used for essential
16 government services. Use of tax revenue for subsidization of cigarette
17 and food retailers is prohibited.

18 (9) The cigarette tax contract may include provisions to resolve
19 disputes using a nonjudicial process, such as mediation.

20 (10) The governor may delegate the power to negotiate cigarette tax
21 contracts to the department of revenue. The department of revenue
22 (~~shall~~) must consult with the liquor control board during the
23 negotiations.

24 (11) Information received by the state or open to state review
25 under the terms of a contract is subject to the provisions of RCW
26 82.32.330.

27 (12) It is the intent of the legislature that the liquor control
28 board and the department of revenue continue the division of duties and
29 shared authority under chapter 82.24 RCW and therefore the liquor
30 control board is responsible for enforcement activities that come under
31 the terms of chapter 82.24 RCW.

32 (13) Each cigarette tax contract (~~shall~~) must include a procedure
33 for notifying the other party that a violation has occurred, a
34 procedure for establishing whether a violation has in fact occurred, an
35 opportunity to correct such violation, and a provision providing for
36 termination of the contract should the violation fail to be resolved
37 through this process, such termination subject to mediation should the
38 terms of the contract so allow. A contract (~~shall~~) must provide for

1 termination of the contract if resolution of a dispute does not occur
2 within twenty-four months from the time notification of a violation has
3 occurred. Intervening violations do not extend this time period. In
4 addition, the contract (~~shall~~) must include provisions delineating
5 the respective roles and responsibilities of the tribe, the department
6 of revenue, and the liquor control board.

7 (14) For purposes of this section and RCW 43.06.460, 82.08.0316,
8 82.12.0316, and 82.24.295:

9 (a) "Essential government services" means services such as tribal
10 administration, public facilities, fire, police, public health,
11 education, job services, sewer, water, environmental and land use,
12 transportation, utility services, and economic development;

13 (b) "Indian retailer" or "retailer" means (i) a retailer wholly
14 owned and operated by an Indian tribe, (ii) a business wholly owned and
15 operated by a tribal member and licensed by the tribe, or (iii) a
16 business owned and operated by the Indian person or persons in whose
17 name the land is held in trust; and

18 (c) "Indian tribe" or "tribe" means a federally recognized Indian
19 tribe located within the geographical boundaries of the state of
20 Washington.

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