
Transportation Committee

ESB 5741

Brief Description: Clarifying the collection of fuel taxes on motor vehicle fuel sold by businesses owned or operated by a tribe or member of the tribe.

Sponsors: Senator King.

Brief Summary of Engrossed Bill

- Provides that a person who purchases fuel from a business owned or operated by a federally recognized Indian tribe that does not have a fuel tax agreement with the state, if that person is not an enrolled member of that Indian tribe, is liable for the fuel tax if that tax has not already been paid.

Hearing Date: 4/18/17

Staff: Jennifer Harris (786-7143).

Background:

Under federal law, absent explicit Congressional authorization, states are prohibited from imposing taxes on a tribe or its members for sales made on tribal lands. In 1995, the Legislature authorized the Department of Licensing (DOL) to enter into agreements with federally recognized Indian tribes regarding taxation of fuel on the reservation.

In 2007, legislation was enacted that moved the point of taxation for motor vehicle fuel tax collection to the fuel licensee—fuel supplier, importer, exporter, blender—and again authorized the Governor to enter into a motor vehicle fuel tax agreement with any federally recognized Indian tribe with a reservation in Washington to provide mutually agreeable means to address any tribal immunities or any preemption of the fuel tax. The Governor has delegated this authority to the DOL.

There are 29 federally recognized Indian tribes in Washington, 24 of which currently have a fuel tax agreement with the DOL. There are currently two types of fuel tax agreements in place:

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1. Seventy-five Percent Refund/25 Percent (75/25) State Tax Agreement: Under a 75/25 state tax agreement, tribes agree to purchase the fuel sold at tribally owned retail stations from state-licensed fuel distributors with the state fuel tax included. Tribes report their purchases to the DOL and receive 75 percent of the state fuel tax revenue collected as a refund, and the state retains 25 percent as state tax. There are 21 75/25 fuel tax agreements in place.
2. Per Capita Agreement: A per capita agreement is a computational formula resulting in an estimate of the amount of fuel tax most likely paid by tribal members purchasing fuel on the reservation. This formula provides an annual amount of fuel tax to be refunded to each tribe. All per capita agreements were entered into prior to the 2007 legislation. There are three per capita fuel tax agreements in place.

In a recent decision, *Cougar Den, Inc. v. Washington State Department of Licensing*, the Washington Supreme Court held that the right to travel granted in a treaty with an Indian tribe entitles that Indian tribe to import fuel into the state for transportation to the Indian tribe's reservation without incurring an obligation to pay the state's motor vehicle fuel tax.

Summary of Bill:

It is the intent of the Legislature that applicable motor vehicle fuel taxes be collected on motor vehicle fuel sold by a business owned or operated by a tribe or an enrolled member of the tribe, when such sale is to any person who is not an enrolled member of the tribe, and no tribal fuel tax agreement is in place with that tribe.

A person owes motor vehicle fuel tax when: (1) the person purchases fuel from a business owned or operated by a federally recognized Indian tribe or enrolled member of the tribe that does not have a fuel tax agreement with the state; (2) the person is not an enrolled member of the federally recognized Indian tribe that owns or operates the station; and (3) the fuel tax has not already been paid. The DOL, working in coordination with the Washington State Patrol, must develop rules for the collection of fuel taxes owed by individuals who owe motor vehicle fuel tax on this basis.

Appropriation: None.

Fiscal Note: Requested on April 14, 2017.

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