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SENATE BILL 5372

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State of Washington

57th Legislature

2001 Regular Session

By Senators Prentice, Swecker, Honeyford, Gardner, T. Sheldon and Oke;  
by request of Department of Revenue

Read first time 01/19/2001. Referred to Committee on Labor, Commerce  
& Financial Institutions.

1 AN ACT Relating to cooperative agreements concerning the taxation  
2 of cigarettes sold on Indian lands; adding new sections to chapter  
3 43.06 RCW; adding a new section to chapter 82.08 RCW; adding a new  
4 section to chapter 82.12 RCW; adding a new section to chapter 82.24  
5 RCW; creating a new section; repealing RCW 82.24.070; and providing an  
6 effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature intends to further the  
9 government-to-government relationship between the state of Washington  
10 and Indians in the state of Washington by authorizing the governor to  
11 enter into cooperative agreements concerning the sale of cigarettes.  
12 The legislature finds that these agreements will provide a means to  
13 promote economic development, provide needed revenues for tribal  
14 governments and Indian persons, and enhance enforcement of the state's  
15 cigarette tax law, ultimately saving the state money and reducing  
16 conflict.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.06 RCW  
18 to read as follows:

19 (1) The governor may enter into cooperative agreements concerning  
20 the sale of cigarettes. All cooperative agreements shall meet the

1 requirements for cooperative agreements under this section. Except for  
2 cooperative agreements under section 3 of this act, the rates, revenue  
3 sharing, and exemption terms of a cooperative agreement are not  
4 effective unless authorized in a bill enacted by the legislature.

5 (2) Cooperative agreements shall be in regard to retail sales in  
6 which Indian retailers make delivery and physical transfer of  
7 possession of the cigarettes from the seller to the buyer within the  
8 Indian lands. In addition, cooperative agreements shall provide that  
9 retailers shall not sell or give, or permit to be sold or given,  
10 cigarettes to any person under the age of eighteen years.

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

16 (4) Cooperative agreements shall provide that all cigarettes  
17 possessed or sold by a retailer shall bear a cigarette stamp obtained  
18 by wholesalers from a bank or other suitable stamp vendor and applied  
19 to the cigarettes.

20 (5) Cooperative agreements shall provide that retailers shall  
21 purchase cigarettes only from:

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

24 (b) Out-of-state wholesalers or manufacturers who, although not  
25 licensed to do business in the state of Washington, agree to comply  
26 with the terms of the cooperative agreement, are certified to the state  
27 as having so agreed, and who do in fact so comply. However, the state  
28 may in its sole discretion exercise its administrative and enforcement  
29 powers over such wholesalers or manufacturers to the extent permitted  
30 by law;

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

33 (d) A tribal manufacturer.

34 (6) Cooperative agreements shall be for renewable periods of no  
35 more than eight years. A renewal may not include a renewal of the  
36 phase-in period.

37 (7) Cooperative agreements shall include provisions for compliance.

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

4 (9) Cooperative agreements may provide for the submission of  
5 disputes regarding the interpretation and administration of their  
6 provisions for judicial resolution, and, if such submissions are  
7 agreed, shall include provision for a limited waiver of sovereign  
8 immunity and consent by the state for the resolution conditioned upon  
9 a similar limited waiver of sovereign immunity by the other parties to  
10 the agreement.

11 (10) The governor may delegate the power to negotiate cooperative  
12 agreements to the department of revenue.

13 (11) Information received by the state or open to state review  
14 under the terms of an agreement is subject to the provisions of RCW  
15 82.32.330.

16 (12) For purposes of this section and sections 3 through 6 of this  
17 act:

18 (a) "Essential government services" means services such as tribal  
19 administration, public facilities, fire, police, public health,  
20 education, job services, sewer, water, environmental and land use,  
21 transportation, utility services, and economic development;

22 (b) "Indian lands" means all land within the exterior boundaries of  
23 a reservation and land held in trust for a tribe or Indian person by  
24 the United States;

25 (c) "Indian retailer" or "retailer" means (i) a retailer wholly  
26 owned and operated by an Indian tribe, (ii) a business wholly owned and  
27 operated by a tribal member and licensed by the tribe, or (iii) a  
28 business owned and operated by the Indian person or persons in whose  
29 name the land is held in trust; and

30 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
31 tribe located within the geographical boundaries of the state of  
32 Washington.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.06 RCW  
34 to read as follows:

35 (1) The governor is authorized to enter into cooperative agreements  
36 with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip Tribes, the  
37 Muckleshoot Indian Tribe, the Quinault Nation, the Jamestown S'Klallam  
38 Indian Tribe, the Port Gamble S'Klallam Tribe, the Stillaguamish Tribe,

1 and the Sauk-Suiattle Tribe. Each agreement adopted under this section  
2 shall provide that the tribal cigarette tax rate be one hundred percent  
3 of the state cigarette and state and local sales and use taxes within  
4 three years of enacting the tribal tax and shall be set no lower than  
5 eighty percent of the state cigarette and state and local sales and use  
6 taxes during the three-year phase-in period. The three-year phase-in  
7 period shall be shortened by three months each quarter the number of  
8 cartons of nontribal manufactured cigarettes is at least ten percent or  
9 more than the quarterly average number of cartons of nontribal  
10 manufactured cigarettes from the six-month period preceding the  
11 imposition of the tribal tax under the agreement. Sales at a retailer  
12 operation not in existence as of the date a tribal tax under this  
13 section is imposed are subject to the full rate of the tribal tax under  
14 the agreement. The tribal cigarette tax is in lieu of the state  
15 cigarette and state and local sales and use taxes, as provided in  
16 section 2(3) of this act.

17 (2) A cooperative agreement under this section is subject to  
18 section 2 of this act.

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.08 RCW  
20 to read as follows:

21 The tax levied by RCW 82.08.020 does not apply to sales of  
22 cigarettes by an Indian retailer during the effective period of a  
23 cooperative agreement subject to section 2 of this act.

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.12 RCW  
25 to read as follows:

26 The provisions of this chapter shall not apply in respect to the  
27 use of cigarettes sold by an Indian retailer during the effective  
28 period of a cooperative agreement subject to section 2 of this act.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 82.24 RCW  
30 to read as follows:

31 (1) This chapter does not apply to the sale, use, consumption,  
32 handling, possession, or distribution of cigarettes by an Indian  
33 retailer during the effective period of a cooperative agreement subject  
34 to section 2 of this act.

35 (2) Effective July 1, 2002, wholesalers and retailers subject to  
36 the provisions of this chapter shall be allowed compensation for their

1 services in affixing the stamps required under this chapter a sum  
2 computed at the rate of six dollars per one thousand stamps purchased  
3 or affixed by them.

4 NEW SECTION. **Sec. 7.** RCW 82.24.070 (Compensation of dealers), as  
5 now or hereafter amended, and 1987 c 496 s 5, 1987 c 80 s 2, 1971 ex.s.  
6 c 299 s 14, 1965 ex.s. c 173 s 24, 1961 ex.s. c 24 s 4, & 1961 c 15 s  
7 82.24.070 are each repealed.

8 NEW SECTION. **Sec. 8.** Section 7 of this act takes effect July 1,  
9 2002.

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