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**HOUSE BILL 3128**

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**State of Washington****56th Legislature****2000 Regular Session**

**By** Representatives Thomas, Dunshee and Santos; by request of Department of Revenue

Read first time 02/07/2000. Referred to Committee on Finance.

1       AN ACT Relating to cooperative agreements between the governor in  
2 regard to taxation of cigarettes sold within Indian country; adding new  
3 sections to chapter 43.06 RCW; adding a new section to chapter 82.08  
4 RCW; adding a new section to chapter 82.12 RCW; adding a new section to  
5 chapter 82.24 RCW; and creating a new section.

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

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

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

1       (1) The governor may enter into cooperative agreements concerning  
2 the sales of cigarettes with any Indian tribe or with a self-governing  
3 dependent Indian community. All cooperative agreements shall meet the  
4 requirements for cooperative agreements under this section and section  
5 3 of this act.

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

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

18      (b) In addition to the other requirements of this section, a  
19 cooperative agreement with a self-governing dependent Indian community  
20 is conditioned on (i) dedication of an amount equivalent to the state  
21 cigarette and state retail sales and use taxes to support education,  
22 and (ii) a means for the department of revenue to determine eligibility  
23 for the exemption from tax under sections 4, 5, and 6 of this act.

24      (4) Cooperative agreements shall provide that all cigarettes  
25 possessed or sold by the tribal retailer shall bear a tribal cigarette  
26 tax stamp obtained by wholesalers from a bank or other suitable stamp  
27 vendor and applied to the cigarettes to implement and institute a  
28 compliance program.

29      (5) Cooperative agreements shall provide that the tribal retailers  
30 shall purchase cigarettes only from:

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

33       (b) Out-of-state wholesalers or manufacturers who, although not  
34 licensed to do business in the state of Washington, agree to comply  
35 with the terms of the cooperative agreement, are certified by the tribe  
36 or self-governing dependent Indian community to the state as having so  
37 agreed, and who do in fact so comply. However, the state may in its  
38 sole discretion exercise its administrative and enforcement powers over  
39 such wholesalers or manufacturers to the extent permitted by law;

1       (c) A tribal wholesaler that purchases only from a wholesaler or  
2 manufacturer described in (a), (b), or (d) of this subsection; and  
3       (d) A tribal manufacturer.

4       (6) Cooperative agreements shall be for renewable terms of no more  
5 than eight years.

6       (7) Cooperative agreements may provide for the payment by the tribe  
7 or self-governing dependent Indian community to the state of Washington  
8 of a portion of the tribal cigarette tax collected under the agreement.  
9 All proceeds received by the state under section 3 of this act must be  
10 deposited in the county development account, hereby created in the  
11 custody of the state treasurer. Expenditures from the account may be  
12 used only for public facility expenditures in the county in which the  
13 cigarettes are sold. The proceeds shall be earmarked in the account  
14 and distributed back to the specific county under procedures  
15 established by the department of community, trade, and economic  
16 development. The county is eligible for money in the account if the  
17 money will be used for a public facility as defined in RCW 82.14.370.  
18 Only the director of the department of community, trade, and economic  
19 development or the director's designee may authorize expenditures from  
20 the account. Moneys in the account are not subject to appropriation.

21       (8) Cooperative agreements may permit the submission of disputes  
22 regarding the interpretation and administration of their provisions for  
23 judicial resolution, and, if such submissions are agreed, shall include  
24 provision for a limited waiver of sovereign immunity and consent by the  
25 state for the resolution conditioned upon a similar limited waiver of  
26 sovereign immunity by the Indian tribe or self-governing dependent  
27 Indian community, which waiver shall be approved or otherwise confirmed  
28 by the United States as may be required by law.

29       (9) The governor may delegate the power to negotiate cooperative  
30 agreements to the department of revenue.

31       (10) For purposes of this section and section 3 of this act:

32           (a) "Essential government services" means fire, police, public  
33 health, education, job services, sewer, water, transportation, utility  
34 services, and economic development;

35           (b) "Indian lands" means all land within the exterior boundaries of  
36 a reservation and land held in trust for a tribe or tribal member by  
37 the United States;

38           (c) "Tribal retailer" means (i)(A) a retailer wholly owned and  
39 operated by an Indian tribe or (B) a business wholly owned and operated

1 by a tribal member and licensed by the tribe; or (ii) in the case of a  
2 business located on trust land of a self-governing dependent Indian  
3 community, a business owned and operated by the Indian person or  
4 persons in whose name the land is held in trust;

5 (d) "Indian tribe" or "tribe" means a federally recognized Indian  
6 tribe; and

7 (e) "Self-governing dependent Indian community" means a self-  
8 governing dependent Indian community identified as such by an act of  
9 Congress.

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

12       (1) The tribal cigarette tax, which is in lieu of the state  
13 cigarette and state sales and use taxes, as provided in section 2(3) of  
14 this act, shall be negotiated according to rates, revenue sharing, and  
15 disposition of proceeds as follows:

16       (a) An Indian tribe that agrees to impose one hundred percent of  
17 the state taxes shall retain one hundred percent of the tax proceeds,  
18 with the tax proceeds exclusively dedicated to essential government  
19 services.

20       (b) An Indian tribe that agrees to impose under one hundred percent  
21 but at least ninety percent of the state taxes shall retain eighty  
22 percent of the tax proceeds, with the tax proceeds exclusively  
23 dedicated to essential government services. Twenty percent of the  
24 proceeds shall be transmitted to the state treasurer for deposit in the  
25 rural county development account.

26       (c) An Indian tribe that agrees to impose under ninety percent but  
27 at least eighty percent of the state taxes shall retain seventy percent  
28 of the tax proceeds, with the tax proceeds exclusively dedicated to  
29 essential government services. Thirty percent of the proceeds shall be  
30 transmitted to the state treasurer for deposit in the rural county  
31 development account.

32       (2) This section does not authorize agreements in which a tribe  
33 imposes less than eighty percent of the state taxes under section 2(3)  
34 of this act.

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

1       The tax levied by RCW 82.08.020 does not apply to sales of  
2 cigarettes made by an Indian tribe or a tribal retailer during the  
3 effective period of a cooperative agreement under section 2 of this act  
4 entered into between the state and the Indian tribe or the tribal  
5 retailer. Cigarettes sold by a tribal retailer as defined in section  
6 2(10)(c)(ii) of this act are eligible for the exemption under this  
7 section only if the tribal retailer has met the requirements of section  
8 2(3)(b) of this act.

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

11       The provisions of this chapter shall not apply in respect to the  
12 use of cigarettes sold by an Indian tribe or tribal retailer during the  
13 effective period of a cooperative agreement under section 2 of this act  
14 entered into between the state and the Indian tribe or the tribal  
15 retailer. Cigarettes sold by a tribal retailer as defined in section  
16 2(10)(c)(ii) of this act are eligible for the exemption under this  
17 section only if the tribal retailer has met the requirements of section  
18 2(3)(b) of this act.

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

21       This chapter does not apply to the sale, use, consumption,  
22 handling, possession, or distribution of cigarettes by an Indian tribe  
23 or a tribal retailer during the effective period of a cooperative  
24 agreement under section 2 of this act entered into between the state  
25 and the Indian tribe or the tribal retailer. Cigarettes sold by a  
26 tribal retailer as defined in section 2(10)(c)(ii) of this act are  
27 eligible for the exemption under this section only if the tribal  
28 retailer has met the requirements of section 2(3)(b) of this act.

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