

RCW 43.06.466 Cigarette tax agreement—Yakama Nation. (1) The legislature finds that entering into a cigarette tax agreement with the Yakama Nation is a positive step and that such an agreement will support a stable and orderly environment on the Yakima Reservation for regulation of cigarette sales. The legislature further finds that the very special circumstances of the Yakama Nation pursuant to the Treaty with the Yakamas of 1855 (12 Stat. 951) support a cigarette tax agreement that reflects those circumstances. The legislature also finds that the provisions of the agreement with the Yakama Nation authorized by chapter 228, Laws of 2008 are reasonably necessary to prevent fraudulent transactions and place a minimal burden on the Yakama Nation, pursuant to the United States supreme court's decision in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980).

It is the intent of the legislature that the cigarette tax agreement with the Yakama Nation reflects the uniqueness of the Yakama Nation's Treaty through specific terms that govern pricing of cigarettes, tribal cigarette tax revenue, information sharing, and administration of the agreement.

(2) For purposes of this section:

(a) "Cigarette" has the same meaning as in chapter 82.24 RCW; and
(b) "Tribal retailer" means a cigarette retailer as that term is defined in RCW 82.24.010 that is licensed by and located within the jurisdiction of the Yakama Nation and is wholly owned by the Yakama Nation or any of its enrolled members.

(3) The governor may enter into a cigarette tax agreement with the Yakama Nation, a federally recognized Indian tribe located within the geographical boundaries of the state of Washington, concerning the sale of cigarettes, subject to the provisions of this section. The governor may delegate the authority to negotiate the agreement to the department of revenue.

(4) The agreement must be for a renewable period of no more than eight years.

(5) All cigarettes possessed or sold by tribal retailers must be subject to the agreement, except cigarettes manufactured within the jurisdiction of the Yakama Nation by the Yakama Nation or its enrolled members.

(6) The agreement must allow the Yakama Nation to exempt its enrolled members from the tribal cigarette tax imposed under subsection (7) of this section.

(a) Sales of cigarettes exempt under this subsection must be subject to the requirements of subsection (9) of this section.

(b) The exemption must be provided only at the point of sale and reimbursement provided to the tribal retailer by the Yakama Nation.

(7) The agreement must require the Yakama Nation to impose and maintain in effect on the sale of cigarettes by tribal retailers a tax as provided in this subsection.

(a) The rate of tax will be expressed in dollars and cents and must be the percentage of tax imposed by the state under chapter 82.24 RCW for the period of the agreement as stated here:

(i) Eighty percent during the first six years;

(ii) Eighty-four percent during the seventh year; and

(iii) Eighty-seven and six-tenths percent during the eighth year.

(b) The tax must be imposed on each carton, or portion of a carton, of cigarettes, with ten packs per carton and twenty cigarettes

per pack being the industry standard, and prorated for cartons and packs that are not standard.

(c) The tax must be in lieu of the combined state and local sales and use taxes, and state cigarette taxes, and, as provided in RCW 82.24.302, 82.08.0316, and 82.12.0316, the taxes imposed by chapters 82.08, 82.12, and 82.24 RCW do not apply during the term of the agreement on any transaction governed by the agreement.

(d) Throughout the term of the agreement and any renewal of the agreement, the tax must increase or decrease in correspondence with the state cigarette tax by applying the percentages in (a) of this subsection.

(8) The revenue generated by the tax imposed under subsection (7) of this section must be used by the Yakama Nation for essential government services, as that term is defined in RCW 43.06.455.

(9) All cigarettes possessed or sold by a tribal retailer must bear a tribal cigarette tax stamp as provided in this subsection.

(a) The Yakama Nation may act as its own stamp vendor, subject to meeting reasonable requirements for internal controls.

(b) The stamps must have serial numbers or other discrete identification that allow stamps to be traced to their source.

(10) The price paid by the tribal retailer to the wholesaler must not be less than the total of the price paid by the Yakama Nation or other wholesaler and the tax imposed under subsection (7) of this section.

(11) The retail selling price of cigarettes sold by tribal retailers must not be less than the price paid by them under subsection (10) of this section.

(12) Tribal retailers must not sell or give, or permit to be sold or given, cigarettes to any person under the age of eighteen years.

(13) The authority and the individual and joint responsibility of the Yakama Nation, the department of revenue, and the *liquor control board for administration and enforcement must be specified in the agreement including, but not limited to, requirements regarding transport of cigarettes, keeping of records, reporting, notice, inspection, audit, and mutual exchange of information.

(a) Requirements must provide for sharing of information regarding transport of cigarettes in the state of Washington by the Yakama Nation or its enrolled members, reporting of information on sales to customers located outside the jurisdiction of the Yakama Nation, and authority for unannounced inspection by the state of tribal retailers to verify compliance with stamping and pricing provisions.

(b) Information received by the state or open to state review under the terms of the agreement is subject to RCW 82.32.330.

(14) The agreement must provide for resolution of disputes using a nonjudicial process, such as mediation, and establish a dispute resolution protocol that includes the following elements:

(a) A procedure for notifying the other party that a violation has occurred;

(b) A procedure for establishing whether a violation has in fact occurred;

(c) An opportunity to correct the violation;

(d) A procedure for terminating the agreement in the event of a failure to correct the violation, such termination subject to mediation should the terms of the agreement so allow; and

(e) Termination of the agreement for cause.

(15) The agreement may not include any provisions that impact the state's share of the master settlement agreement or concern redistribution of the state's proceeds under the master settlement agreement.

(16) The department of revenue may share with the Yakama Nation tax information under RCW 82.32.330 that is necessary for the Yakama Nation's compliance with the agreement. [2008 c 228 § 1.]

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Authorization for agreement—2008 c 228: "In December 2007 it was announced that a cigarette tax agreement between the state of Washington and the Yakama Nation had been reached in principle. The legislature must provide authorization to the governor to sign such an agreement. Because the parties have reached an agreement in principle, time for implementation is of the essence." [2008 c 228 § 5.]

Effective date—2008 c 228: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2008]." [2008 c 228 § 6.]