

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5372**

Chapter 235, Laws of 2001

57th Legislature  
2001 Regular Session

**CIGARETTE TAX CONTRACTS**

EFFECTIVE DATE: 7/22/01 - Except section 7, which becomes effective 7/1/02.

Passed by the Senate April 16, 2001  
YEAS 45 NAYS 0

BRAD OWEN  
**President of the Senate**

Passed by the House April 5, 2001  
YEAS 93 NAYS 3

FRANK CHOPP  
**Speaker of the  
House of Representatives**

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

Approved May 9, 2001

GARY F. LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5372** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
**Secretary**

FILED

May 9, 2001 - 2:30 p.m.

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5372**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Prentice, Swecker, Honeyford, Gardner, T. Sheldon and Oke; by request of Department of Revenue)

READ FIRST TIME 02/22/01.

1        AN ACT Relating to cooperative agreements concerning the taxation  
2 of cigarettes sold on Indian lands; amending RCW 82.24.510; 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; creating a new section; repealing RCW 82.24.070; and  
6 providing an 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 contracts concerning the sale of cigarettes.    The  
12 legislature finds that these cigarette tax contracts will provide a  
13 means to promote economic development, provide needed revenues for  
14 tribal governments and Indian persons, and enhance enforcement of the  
15 state's cigarette tax law, ultimately saving the state money and  
16 reducing conflict.    In addition, it is the intent of the legislature  
17 that the negotiations and the ensuing contracts shall have no impact on  
18 the state's share of the proceeds under the master settlement agreement  
19 entered into on November 23, 1998, by the state.    This act does not

1 constitute a grant of taxing authority to any Indian tribe nor does it  
2 provide precedent for the taxation of non-Indians on fee land.

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

5 (1) The governor may enter into cigarette tax contracts concerning  
6 the sale of cigarettes. All cigarette tax contracts shall meet the  
7 requirements for cigarette tax contracts under this section. Except  
8 for cigarette tax contracts under section 3 of this act, the rates,  
9 revenue sharing, and exemption terms of a cigarette tax contract are  
10 not effective unless authorized in a bill enacted by the legislature.

11 (2) Cigarette tax contracts shall be in regard to retail sales in  
12 which Indian retailers make delivery and physical transfer of  
13 possession of the cigarettes from the seller to the buyer within Indian  
14 Country, and are not in regard to transactions by non-Indian retailers.  
15 In addition, contracts shall provide that retailers shall not sell or  
16 give, or permit to be sold or given, cigarettes to any person under the  
17 age of eighteen years.

18 (3) A cigarette tax contract with a tribe shall provide for a  
19 tribal cigarette tax in lieu of all state cigarette taxes and state and  
20 local sales and use taxes on sales of cigarettes in Indian Country by  
21 Indian retailers. The tribe may allow an exemption for sales to tribal  
22 members.

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

31 (5) Cigarette tax contracts shall provide that retailers shall  
32 purchase cigarettes only from:

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

35 (b) Out-of-state wholesalers or manufacturers who, although not  
36 licensed to do business in the state of Washington, agree to comply  
37 with the terms of the cigarette tax contract, are certified to the  
38 state as having so agreed, and who do in fact so comply. However, the

1 state may in its sole discretion exercise its administrative and  
2 enforcement powers over such wholesalers or manufacturers to the extent  
3 permitted by law;

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

6 (d) A tribal manufacturer.

7 (6) Cigarette tax contracts shall be for renewable periods of no  
8 more than eight years. A renewal may not include a renewal of the  
9 phase-in period.

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

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

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

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

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

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

30 (13) Each cigarette tax contract shall include a procedure for  
31 notifying the other party that a violation has occurred, a procedure  
32 for establishing whether a violation has in fact occurred, an  
33 opportunity to correct such violation, and a provision providing for  
34 termination of the contract should the violation fail to be resolved  
35 through this process, such termination subject to mediation should the  
36 terms of the contract so allow. A contract shall provide for  
37 termination of the contract if resolution of a dispute does not occur  
38 within twenty-four months from the time notification of a violation has  
39 occurred. Intervening violations do not extend this time period. In

1 addition, the contract shall include provisions delineating the  
2 respective roles and responsibilities of the tribe, the department of  
3 revenue, and the liquor control board.

4 (14) For purposes of this section and sections 3 through 6 of this  
5 act:

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

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

15 (c) "Indian tribe" or "tribe" means a federally recognized Indian  
16 tribe located within the geographical boundaries of the state of  
17 Washington.

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

20 (1) The governor is authorized to enter into cigarette tax  
21 contracts with the Squaxin Island Tribe, the Nisqually Tribe, Tulalip  
22 Tribes, the Muckleshoot Indian Tribe, the Quinault Nation, the  
23 Jamestown S'Klallam Indian Tribe, the Port Gamble S'Klallam Tribe, the  
24 Stillaguamish Tribe, the Sauk-Suiattle Tribe, the Skokomish Indian  
25 Tribe, the Nooksack Indian Tribe, the Lummi Nation, the Chehalis  
26 Confederated Tribes, and the Upper Skagit Tribe. Each contract adopted  
27 under this section shall provide that the tribal cigarette tax rate be  
28 one hundred percent of the state cigarette and state and local sales  
29 and use taxes within three years of enacting the tribal tax and shall  
30 be set no lower than eighty percent of the state cigarette and state  
31 and local sales and use taxes during the three-year phase-in period.  
32 The three-year phase-in period shall be shortened by three months each  
33 quarter the number of cartons of nontribal manufactured cigarettes is  
34 at least ten percent or more than the quarterly average number of  
35 cartons of nontribal manufactured cigarettes from the six-month period  
36 preceding the imposition of the tribal tax under the contract. Sales  
37 at a retailer operation not in existence as of the date a tribal tax  
38 under this section is imposed are subject to the full rate of the

1 tribal tax under the contract. The tribal cigarette tax is in lieu of  
2 the state cigarette and state and local sales and use taxes, as  
3 provided in section 2(3) of this act.

4 (2) A cigarette tax contract under this section is subject to  
5 section 2 of this act.

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

8 The tax levied by RCW 82.08.020 does not apply to sales of  
9 cigarettes by an Indian retailer during the effective period of a  
10 cigarette tax contract subject to section 2 of this act.

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

13 The provisions of this chapter shall not apply in respect to the  
14 use of cigarettes sold by an Indian retailer during the effective  
15 period of a cigarette tax contract subject to section 2 of this act.

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

18 (1) The taxes imposed by this chapter do not apply to the sale,  
19 use, consumption, handling, possession, or distribution of cigarettes  
20 by an Indian retailer during the effective period of a cigarette tax  
21 contract subject to section 2 of this act.

22 (2) Effective July 1, 2002, wholesalers and retailers subject to  
23 the provisions of this chapter shall be allowed compensation for their  
24 services in affixing the stamps required under this chapter a sum  
25 computed at the rate of six dollars per one thousand stamps purchased  
26 or affixed by them.

27 NEW SECTION. **Sec. 7.** RCW 82.24.070 (Compensation of dealers), as  
28 now or hereafter amended, and 1987 c 496 s 5, 1987 c 80 s 2, 1971 ex.s.  
29 c 299 s 14, 1965 ex.s. c 173 s 24, 1961 ex.s. c 24 s 4, & 1961 c 15 s  
30 82.24.070 are each repealed.

31 **Sec. 8.** RCW 82.24.510 and 1986 c 321 s 5 are each amended to read  
32 as follows:

33 (1) The licenses issuable under this chapter are as follows:

34 (a) A wholesaler's license.

1 (b) A retailer's license.

2 (2) Application for the licenses shall be made through the master  
3 license system under chapter 19.02 RCW. The department of revenue  
4 shall adopt rules regarding the regulation of the licenses. The  
5 department of revenue may refrain from the issuance of any license  
6 under this chapter if the department has reasonable cause to believe  
7 that the applicant has wilfully withheld information requested for the  
8 purpose of determining the eligibility of the applicant to receive a  
9 license, or if the department has reasonable cause to believe that  
10 information submitted in the application is false or misleading or is  
11 not made in good faith. In addition, for the purpose of reviewing an  
12 application for a wholesaler's license and for considering the denial,  
13 suspension, or revocation of any such license, the department may  
14 consider criminal convictions of the applicant related to the selling  
15 of cigarettes within the previous five years in any state, tribal, or  
16 federal jurisdiction in the United States, its territories, or  
17 possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW  
18 shall not apply to such cases. The department may, in its discretion,  
19 grant or refuse the wholesaler's license, subject to the provisions of  
20 RCW 82.24.550.

21 (3) No person may qualify for a wholesaler's license under this  
22 section without first undergoing a criminal background check. The  
23 background check shall be performed by the liquor control board and  
24 must disclose any criminal convictions related to the selling of  
25 cigarettes within the previous five years in any state, tribal, or  
26 federal jurisdiction in the United States, its territories, or  
27 possessions. A person who possesses a valid license on the effective  
28 date of this section is subject to this subsection and subsection (2)  
29 of this section beginning on the date of the person's master license  
30 expiration, and thereafter. If the applicant or licensee also has a  
31 license issued under chapter 66.24 RCW, the background check done under  
32 the authority of chapter 66.24 RCW satisfies the requirements of this  
33 section.

34 (4) Each such license shall expire on the master license expiration  
35 date, and each such license shall be continued annually if the licensee  
36 has paid the required fee and complied with all the provisions of this  
37 chapter and the rules of the department of revenue made pursuant  
38 thereto.

1        NEW SECTION.    **Sec. 9.**    Section 7 of this act takes effect July 1,  
2 2002.

Passed the Senate April 16, 2001.

Passed the House April 5, 2001.

Approved by the Governor May 9, 2001.

Filed in Office of Secretary of State May 9, 2001.