

SENATE BILL REPORT

SB 6193

As Reported by Senate Committee On:
Transportation, February 2, 2016

Title: An act relating to clarifying the collection of fuel taxes within tribal jurisdictions.

Brief Description: Clarifying the collection of fuel taxes within tribal jurisdictions.

Sponsors: Senator King.

Brief History:

Committee Activity: Transportation: 1/14/16, 2/02/16 [DPS, w/oRec].

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 6193 be substituted therefor, and the substitute bill do pass.

Signed by Senators King, Chair; Benton, Vice Chair; Fain, Vice Chair, Budget; Baumgartner, Ericksen, Litzow, Miloscia, Rivers and Sheldon.

Minority Report: That it be referred without recommendation.

Signed by Senators Hobbs, Ranking Minority Member; Liias, Assistant Ranking Minority Member; Carlyle, Cleveland, Jayapal and Takko.

Staff: Kim Johnson (786-7472)

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 which 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. The Governor has delegated this authority to the DOL. There are currently 29 federally recognized Indian tribes in Washington, 23 of which currently have a fuel tax agreement with DOL.

There are currently two types of fuel tax agreements:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

75 Percent Refund/25 (75/25) Percent State Tax Agreement - 18 tribes. 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.

Per Capita Agreement - Five tribes. 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.

Summary of Bill (Recommended Substitute): A person is not exempt from gasoline and diesel fuel taxes when: (1) the person purchases fuel from a business licensed by an Indian tribal organization 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 within whose jurisdiction the sale takes place; and, (3) the fuel tax has not already been paid.

Indian tribal organization means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under a tribal license or similar tribal approval within Indian country.

DOL and the Washington State Patrol must develop rules to develop enforcement mechanisms for the collection of fuel taxes owed by: (1) a person that purchases fuel from a business licensed by an Indian tribal organization 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 within whose jurisdiction the sale takes place; and (3) the fuel taxes have not already been paid.

EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (Recommended Substitute): That the a person owes the fuel taxes when the fuel taxes have not already been paid is clarified.

An intent section is provided stating that the it is the intent of the legislature to honor the treaty rights of the Yakama Nation, while protecting the state's interest in collecting and enforcing its fuel taxes.

The DOL and the Washington State Patrol are directed to develop by rule, enforcement methods related to the collection of fuel taxes owed by: (1) a person that purchases fuel from a business licensed by an Indian tribal organization 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 within whose jurisdiction the sale takes place; and (3) the fuel taxes have not already been paid.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: We support this bill. Do you know what is going on in the Yakima Valley in the business of buying and retailing fuel products? There is tribally licensed fuel distributor, Cougar Den Inc., that is purchasing fuel, tax free in Oregon, and selling it to tribal fuel stations on the Yakama reservation. Cougar Den Inc. is not remitting any fuel taxes to Washington which is worth \$18 million dollars per year. We believe that Cougar Den is trying to expand their supply of fuel to other entities beyond the Yakama reservation. We used to own a convenience store that sold fuel in Toppenish. We could not compete against the stations on the reservation as they have a nearly \$.45 cent price advantage on fuel. There is a law suit going on right now between the Department of Licensing and Cougar Den Inc. regarding the fuel taxes that are owed to the State of Washington.

This is a hard deal for me. I was born and raised in Toppenish. I still have two service stations. They are taking all of my traffic volume and I am going out of business. 70 years I have been there and they are putting me out of business. I really don't think that the entire Yakama Nation really supports essentially three people getting all the money in this deal. The Tribe is missing out on revenue that could be helping their members and meeting their transportation needs.

Persons Testifying on Original Bill: PRO: Michael Chandler, Chandler Enterprises. Inc./ President; Rod Smith, WOMA/RH Smith Dist./VP; Dave Ducharme, WA Oil Marketers Assn.

Persons Signed In To Testify But Not Testifying on Original Bill: No one.