

SENATE BILL REPORT

SCR 8417

As Passed Senate, May 23, 1995

Brief Description: Creating the cigarette tax and revenue loss advisory committee.

Sponsors: Senators Snyder and McDonald.

Brief History:

Passed Senate, 5/23/95, 45-0.

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Background: The state of Washington imposes a tax on the sale, use, consumption, handling, possession, or distribution of cigarettes equal to 56½ cents per pack. On July 1, 1995, the rate will increase to 81½ cents, and on July 1, 1996, to 82½ cents. In addition, state and local sales and use taxes and business and occupation taxes apply to the sale of cigarettes equal to approximately 18 cents per pack, depending on price. Because price differentials exist between Washington and its neighboring states, an incentive for tax evasion exists.

According to estimates from the Department of Revenue, the state is losing \$24.0 million per year from illegal sales of untaxed cigarettes. These losses occur from casual smuggling from other lower-tax states and the purchase of cigarettes from tax-free outlets such as military post exchanges and Indian smoke shops. The federal supremacy clause and the doctrine of intergovernmental immunity prevent the state from taxing the federal government directly. Therefore, the state is prohibited from taxing sales made by military post exchanges. Federal law also prevents the state from taxing cigarettes sold at an outlet on an enrolled Indian tribal member's tribal reservation to an enrolled tribal member for personal consumption. However, sales made to nontribal members are subject to the tax.

Summary of Bill: A joint select committee to be known as the Cigarette Tax and Revenue Loss Advisory Committee is established to study current state law on the unlawful possession, purchase, sale, and use of unstamped and untaxed cigarettes on Indian reservations by nontribal members. The study must include:

- (1) A review and analysis of all lost cigarette tax revenue for 1992 through 1995 and analyzing, among other factors, revenue losses that might be attributable to cigarette tax increases that took effect during that time;
- (2) An analysis on the feasibility of negotiating cooperative agreements between the state and Indian tribes;
- (3) An assessment of the effect of tax rates on cigarette compliance to identify the state's best opportunity to ensure compliance and reduce conflict.

The committee consists of:

- (1) Four members of the Senate, appointed by the President of the Senate;
- (2) Four members of the House of Representatives, appointed by the Speaker of the House of Representatives;
- (3) Two members from the convenience store industry, appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate;
- (4) One wholesaler or distributor of tobacco products, appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate;
- (5) Three members representing federally recognized Indian tribes, one appointed by the tribes contained within eastern Washington and two appointed by the tribes contained within western Washington;
- (6) The director of Revenue or the director's designee; and
- (7) The Governor or the Governor's designee.

Members are reimbursed for travel expenses.

The advisory committee may enlist the assistance of representatives of local government and tax policy experts from the academic, legal, tribal, and business communities and may use the staff of the Governor's Office on Indian Affairs, the House of Representatives' Office of Program Research, Senate Committee Services, and research services provided to the Legislature by the Department of Revenue.

The advisory committee must report its findings to the Legislature by December 31, 1995.