

Chapter 5

Cigarette, Tobacco, and Vapor Products Tax

43.06.510; 43.06.515 - Vapor products covered by tribal contracts

Description The vapor product tax and state and local sales and use taxes do not apply to Indian tribes with vapor product tax contracts with the state of Washington. This is because each contract adopted must have a tribal vapor product tax equal to the state vapor product tax and state and local sales and use taxes.

Purpose To prevent redundant taxation of vapor products in Indian country.

Taxpayer savings

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption

Repealing this exemption would not increase revenues, as that would violate the contractual agreement.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions

The state will not impose its vapor products tax and sales and use taxes on these products, as the tribes already impose equivalent taxes under the contracts.

Data Sources

None

Additional Information

Additional Information	
Category:	Government
Year Enacted:	2019
Primary Beneficiaries:	State, local, and tribal governments
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed

82.24.260(1)(b); 82.24.290 - Cigarettes for military personnel

Description The cigarette tax does not apply to cigarettes sold to the U.S. Veterans' Administration, to branches of the U.S. armed forces at exchanges, commissaries, or ships' stores; or to authorized purchasers from these federal instrumentalities. Also, a federal instrumentality selling unstamped cigarettes to authorized military personnel is exempt from cigarette tax.

Purpose Federal legislation, the Buck Act (4 U.S.C. § 107), implicitly prohibits states from imposing a cigarette tax upon military members and their dependents.

Taxpayer savings (\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.900	\$0.900	\$0.900	\$0.900
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption Repealing this exemption would not increase revenues because federal law prohibits states from taxing tobacco products purchased by military members and their dependents.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions Repeal causes no revenue impact because federal law prohibits states from taxing tobacco products purchased by military members and their dependents.

Data Sources Department of Revenue, Excise tax data

Additional Information

Additional Information	
Category:	Government
Year Enacted:	1940
Primary Beneficiaries:	Military personnel and their dependents
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed

82.24.260(1)(c) - Cigarette allotment for Tribes

Description Certain quantities of untaxed cigarettes are allowed tax-free for consumption by tribal members on the reservations in Washington. The number of untaxed cigarettes is based on the number of enrolled tribal members living on the reservation and the national average per capita consumption rate.

Note: The use of cigarette allotments has largely been replaced by contracts between Washington and many Indian tribes regarding the regulation and taxation of cigarettes in Indian country.

An Indian tribal organization selling unstamped cigarettes to enrolled members of that same tribe is exempt from cigarette tax.

Purpose The U.S. Supreme Court has ruled that states do not have the authority to impose a cigarette tax on enrolled tribal members living on their reservations.

Taxpayer savings

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$1.435	\$1.435	\$1.435	\$1.435
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption

Repealing this exemption would not increase revenues.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions

Repealing this exemption would not increase revenues, as that would violate the U.S. Supreme Court ruling.

Data Sources

Department of Revenue, Tribal allotment data

Additional Information

Additional Information	
Category:	Government
Year Enacted:	1975
Primary Beneficiaries:	Enrolled members of tribes living on reservations
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed

82.24.295(1) - Cigarettes covered by tribal contracts

Description The cigarette tax does not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer if its tribe has a cigarette tax contract with the state of Washington.

Purpose To provide consistency in the regulation and taxation of cigarettes in Indian country. Also, it promotes economic development, provides needed revenues for tribal governments, and enhances enforcement of the state's cigarette tax, ultimately saving the state money and reducing conflict.

Taxpayer savings

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$66.600	\$66.600	\$66.600	\$66.600
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption

Repealing this exemption would not increase revenues, as that would violate the contractual agreement.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions

The state will not impose its vapor products tax and sales and use taxes on these products, as the tribes already impose equivalent taxes under the contracts.

Data Sources

Department of Revenue, Excise tax data

Additional Information

Additional Information	
Category:	Government
Year Enacted:	2001
Primary Beneficiaries:	State, local, and tribal governments
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	Full review completed in 2020

82.25.025 - Constitutional or Federal prohibition on vapor products

Description Vapor products tax does not apply to any vapor products which, under the U.S. Constitution and laws, may not be made the subject of taxation by the state of Washington.

The vapor products tax is based on the volume of the solution, as listed by the manufacturer. The tax rates are as follows:

- Any accessible container of solution, regardless of nicotine content, that is greater than five milliliters (mL) is taxed at 9 cents per mL.
- All other vapor products are taxed at 27 cents per mL.

"Vapor product" is any non-combustible product containing a solution or other consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to produce vapor from the solution or other substance, including an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term also includes any cartridge or other container of liquid nicotine, solution, or other consumable substance, regardless of whether it contains nicotine, that is intended to be used with or in a device that can be used to deliver aerosolized or vaporized nicotine to a person inhaling from the device and is sold for such purpose.

"Accessible container" is a container that is intended to be opened. The term does not mean a closed cartridge or closed container that is not intended to be opened, such as a disposable e-cigarette.

Purpose To recognize that applying vapor products tax to such sales is prohibited.

Taxpayer savings (\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption Repealing this exemption would not increase revenues, as the U.S. Constitution prohibits taxing certain vapor products.

Potential revenue gains from full repeal (\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions No revenues are realized if the state law is repealed; these sales are constitutionally exempt at the federal level.

82.25.025 - Constitutional or Federal prohibition on vapor products

Data Sources Department of Revenue, Excise tax data

Additional Information

Additional Information	
Category:	Government
Year Enacted:	2019
Primary Beneficiaries:	Federal personnel
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed

82.25.105 - Vapor products sold out of state or to Indian Tribes

Description A tax credit is allowed for vapor products tax paid on products that are:

- Shipped or transported outside Washington to a person in the business of selling vapor products.
- Returned to the manufacturer or destroyed by the distributor.
- Sold to the federal government or any of its agencies or instrumentalities.
- Sold to Indian tribal organizations.

Purpose To provide for situations where exceptions to the vapor products tax are required.

Taxpayer savings (\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$4.500	\$4.500	\$4.500	\$4.500
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption Repealing this credit would not increase revenues, as this would violate federal laws and contractual agreements.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions No revenues are realized if the state law is repealed due to the tax violating federal laws and contractual agreements on certain activities.

Data Sources Department of Revenue, Excise tax data

Additional Information

Additional Information	
Category:	Other
Year Enacted:	2019
Primary Beneficiaries:	None
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed

82.26.040 - Constitutional or Federal prohibition on tobacco products

Description The tobacco products tax does not apply to any tobacco products (cigars, pipe tobacco, etc.), which the U.S. Constitution or federal law provides the state may not tax. The Buck Act (4 U.S.C. § 107) prohibits state taxation of tobacco products sold to branches of the U.S. armed forces at exchanges, commissaries, or ship's stores or sales to authorized purchasers at these facilities. Also exempt are sales to and by the U.S. Veterans Administration. Washington has codified its acceptance of the provisions of the Buck Act.

Purpose Federal legislation prohibits states from taxing tobacco products sold to authorized purchasers.

Taxpayer savings

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.243	\$0.243	\$0.243	\$0.243
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption

Repealing this exemption would not increase revenues as that would violate the U.S. Constitution or federal laws.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions

No revenues are realized if the state law is repealed as these sales are exempt by the U.S. Constitution or federal law.

Data Sources

Department of Revenue, Excise tax data

Additional Information

Additional Information	
Category:	Government
Year Enacted:	1959
Primary Beneficiaries:	None
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed

82.26.110 - Tobacco products sold out of state or to Indian Tribes

Description In-state wholesalers of tobacco products can obtain a tax credit for sales to tribal and federal organizations.

Purpose Historically, the department has not required wholesalers to collect and remit other tobacco products tax on sales to tribal and federal organizations. Still, the treatment of these sales was not straightforward. This statute codified existing practice in response to statutory changes and previously settled lawsuits.

Taxpayer savings

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$85.300	\$85.300	\$85.300	\$85.300
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Repeal of exemption

Repealing this credit would not increase revenues as that would violate federal laws or contractual agreements.

Potential revenue gains from full repeal

(\$ in millions):

	FY 2024	FY 2025	FY 2026	FY 2027
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

Assumptions

No revenues are realized if the state law is repealed. These sales are exempt at the federal level or through contractual agreements.

Data Sources

Department of Revenue, Excise tax data

Additional Information

Additional Information	
Category:	Government
Year Enacted:	1959
Primary Beneficiaries:	None
Taxpayer Count:	Unknown
Program Inconsistency:	None evident
JLARC Review:	No review completed