

CONFEDERATED TRIBES of the CHEHALIS RESERVATION

December 18, 2020

To: Contractors, Vendors and Consultants

From: Chairman Harry Pickernell, Sr

And

Harry Chesnin, Lead Counsel for the Tribe

Re: Tax Exemption for the Confederated Tribes of the Chehalis Reservation and Restover Truck Stop, LLC

To Whom It May Concern:

The Confederated Tribes of the Chehalis Reservation is a federally recognized Indian tribe. Restover Truck Stop, LLC is a Tribal Enterprise owned 99% by the Tribe. The Restover Truck Stop project to be identified as a Flying J Travel Center is located on trust land on the Chehalis Reservation at Exit 99 off of I-5.

As a result of the above set forth facts, the products, including without limitation construction products, food and beverage products and any other product (with the exception of gas and diesel sold to the operation and discussed below) sold and delivered to the project on the Reservation are tax exempt. Furthermore, services and contracts performed on the Reservation, such as construction contracts and subcontracts are also tax exempt. Attached hereto are a Tax Exemption for Sales to Tribes form, the Washington State Excise Tax Advisory from the Department of Revenue with respect to tax exemption, and WAC 458-20-192 identifying tax exemption treatment for your commercial activities and sales discussed herein.

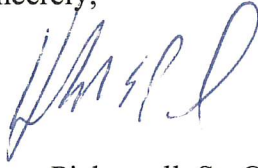
Please note that, after opening, fuel, gas and diesel, which are taxed at the rack will remain taxable under the Chehalis / State Fuel Tax Compact.

If you have any questions, please feel free to contact Harry Chesnin, Lead Counsel for the Confederated Tribes of the Chehalis Reservation, hchesnin@chehalis-tribe.org, 360-529-7465.

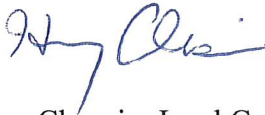
**P.O. BOX 536 • OAKVILLE, WA. 98568
AC 360-273-5911 • FAX 360-273-5914**



Sincerely,

A handwritten signature in blue ink, appearing to read 'H. Pickernell, Sr.', written in a cursive style.

Harry Pickernell, Sr, Chariman

A handwritten signature in blue ink, appearing to read 'Harry Chesnin', written in a cursive style.

Harry Chesnin, Lead Counsel

Tax exemption for sales to tribes

Fill out this form if you sell tangible personal property or services to tribal members, tribes, tribal enterprises, or a spouse of a tribal member with delivery in their Indian country.

In this form, a buyer is a tribal member, tribe, tribal enterprise, or a spouse of a tribal member who buys tangible personal property or services from you. If a buyer meets the criteria in Section 2 below, the buyer doesn't have to pay tax. A contractor for a tribe is also tax exempt on purchases that a seller/marketplace facilitator delivers to the worksite in that tribe's Indian country. The contractor also needs to use this form.

The buyer must show you proof that they meet the exemption criteria below. You must keep this form as proof that they meet the exemption criteria below.

Please note: Not all tax exemptions for sales to tribes are on this form. See the back side of this page for additional forms.

1

Seller's/Marketplace facilitator's name: _____ **UBI:** _____

Buyer's name: Restover Truck Stop LLC

Delivery address in Indian country: 2725 93rd Avenue SW Tumwater, WA 98512

Check one of the following. The buyer is:

- A member of the _____ Tribe.
- A spouse of a member of the _____ Tribe.
- A representative of the Chehalis Tribe or Tribal enterprise.
- You are hired by a buyer from the _____ Tribe or Tribal enterprise.

2

The buyer must show you one of the criteria below. Check which criteria the buyer showed you.

- Proof of tribal membership - tribal member card, certificate of membership, or treaty fishing identification card.
- Proof of spousal relationship to a tribal member and proof of their spouse's tribal membership.
- Documents that show the tribe is the buyer. Such as:
 - letter from tribal representative.
 - payment from the tribe or tribal enterprise (such as a copied check).
 - receipt or other proof of a buyer using a tribal credit card.
- Proof of the contractor relationship to the buyer and proof that the buyer is a tribal member, or they meet the definition of a buyer (see top of form for definition).
- Other documents that show the buyer's exempt status. Please explain here: _____

3

Check the box that applies to the correct tax exemption and fill in the appropriate section below:

- Retail sales/use tax:** If you are a seller/marketplace facilitator, you are not required to collect sales and use tax from a buyer when you deliver to their Indian country.

Date of sale: _____ Sales invoice # (optional): _____

Amount of sale: _____

- Refuse tax:** If you are a seller/marketplace facilitator, you are not required to collect refuse tax for services you provide to a buyer in their Indian country.

- Public utility tax:** If you are a seller/marketplace facilitator, you are not required to pay a public utility tax (PUT) for services you provide to a buyer in their Indian country.

- Telephone tax:** If you are a seller/marketplace facilitator, you are not required to collect telephone or enhanced 911 tax for telephone services you provide to a buyer in their Indian country.

- Other taxes the buyer owes such as lodging, car rental, etc.: _____

More Information

You can figure out if the delivery address is in Indian Country by following these steps:

1. Go to dor.wa.gov.
2. Click "Find a sales and use tax rate."
3. Type in the delivery address. If the address is located in Indian country, you will see "Indian Country" and the name of the Tribe at the bottom of the page.

To document other tax exemptions for buyers, please use the appropriate form below:

- **Vehicles sold by dealers:** [Declaration for a dealer selling a motor vehicle to tribes](#)
- **Vehicles sold by private parties:** [Private party selling a motor vehicle to tribes](#)
- **Treaty fishing related purchases:** [Treaty fishery exemption form](#).
- Wholesale purchases by businesses owned by tribal members, tribes, tribal enterprises, or a spouse of tribal member that only operates in their Indian country may use a state or tribal reseller permit or the [streamlined sales and use tax agreement "Certificate of Exemption"](#). (See [ETA 3203.2017 "Use of a tribal resale exemption certificate"](#)).

See exemptions—Nontaxable sales [RCW 82.08.0254](#) and Indians—Indian country WAC [458-20-192](#).

The state cannot tax Indians or Indian tribes in Indian country. In this rule, the term Indian includes only people enrolled with the tribe in the territory the activity takes place. This does not include Indians who are members of other tribes. In this rule, an enrolled member's spouse is considered an Indian if the term does not conflict with tribal law (See WAC [458-20-192\(5\)](#) for more information).

An *Indian* is a person on the tribal rolls of an Indian tribe. Other terms for Indian include: enrolled member, enrolled person, enrollee, or tribal citizen.

In some cases, you may also be eligible for a tax exemption (See WAC [458-20-192\(7\)\(b\)](#) for more information).

Questions?

- Call our phone center at 360-705-6705
- For tax assistance or to request this document in an alternate format, please call 360-705-6705. Teletype (TTY) users may use the Washington Relay Service by calling 711.



Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

ETA 3203.2017

Issue Date: June 26, 2017

Use of a Tribal Resale Exemption Certificate

Purpose

This Excise Tax Advisory (ETA) explains when tribes and tribal businesses may use and sellers may accept a tribal resale exemption certificate to document the retail sales tax-exempt nature of a purchase/sale for resale.

NOTE: Unless noted otherwise, the definitions in WAC [458-20-192](#) apply.

Tribal resale exemption certificate

A federally recognized Indian tribe with trust land located in Washington or a tribal business of that tribe may use, and a seller may accept, a tribal resale exemption certificate issued by that tribe, *provided* the certificate contains all of the data elements required under the Streamlined Sales and Use Tax Agreement (SSUTA) to document a wholesale transaction. RCW [82.04.470](#)(4).

Required data elements under SSUTA

A seller may document a wholesale sale by capturing from the buyer *all of the relevant data elements required* under SSUTA. RCW 82.04.470.

Under WAC [458-20-102](#)(7)(f), the Washington [Streamlined Uniform Exemption Certificate](#) requires the following data elements:

- Buyer's name
 - Buyer's business address
 - Buyer's tax identification number
 - State and country issuing Buyer's tax identification number
 - Buyer's business type
 - Reason for the exemption
-

To request this document in an alternate format, visit <http://dor.wa.gov> and click on "contact us" or call 1-800-647-7706. Teletype (TTY) users may use the Washington Relay Service by calling 711.

General tax information is available on our website at dor.wa.gov.

Questions? Complete the online form at dor.wa.gov/communications or call 800-647-7706. If you want a binding ruling from the Department, complete the form at dor.wa.gov/rulings.

- Buyer's signature (if paper form)

Regarding the buyer's tax identification number:

- Buyers required to register with the Department must use the reseller permit number that the Department issued to them. RCW 82.04.470(2).
 - Buyers not required to register with the Department would provide the Federal Employer Identification Number (FEIN) issued to their business. RCW 82.04.470(3).
-

Examples

The following examples identify a few facts and then state a conclusion. The examples are for general guidance only. The tax results of other situations require review of all of the facts and circumstances.

Example 1. A Makah tribal business operates a retail store at Neah Bay, which is in the Makah Indian country. When the tribal business purchases goods for resale from a seller, the seller may establish in its records that it made a wholesale sale by taking from the tribal business a resale exemption certificate that the Makah Tribe has issued to the tribal business, provided the certificate has all of the relevant data elements. If the tribal business is not required to register with the Department, it would use its FEIN number for the buyer's tax identification number.

Example 2. Assume the same facts as Example 1, except the tribal business has a retail store located outside of the Makah Tribe's Indian country. A business operating at this location is required to register with the Department. When making purchases for resale, the business may present to a seller the resale exemption certificate that the Makah Tribe has issued to the business, provided the certificate has all of the relevant data elements. The tribal business must use the Department-issued reseller permit number for the buyer's tax identification number.

Example 3. Assume the same facts as Example 1, except the tribal business is making purchases in Port Angeles, for products it will resell at its Neah Bay store. The tribal business may use a resale exemption certificate that the Makah Tribe has issued to it, provided the certificate has all of the relevant data elements as explained in Example 1.

HTML has links - PDF has Authentication**PDF WAC 458-20-192****Indians—Indian country.****(1) Introduction.**

(a) Under federal law the state may not tax Indians or Indian tribes in Indian country. In some instances the state's authority to impose tax on a nonmember doing business in Indian country with an Indian or an Indian tribe is also preempted by federal law. This rule only addresses those taxes administered by the department of revenue (department).

(b) The rules of construction used in analyzing the application of tax laws to Indians and nonmembers doing business with Indians are:

(i) Treaties are to be construed in the sense in which they would naturally have been understood by the Indians; and

(ii) Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.

(c) This rule reflects the harmonizing of federal law, Washington state tax law, and the policies and objectives of the Centennial Accord and the Millennium Agreement. It is consistent with the mission of the department of revenue, which is to achieve equity and fairness in the application of the law.

(d) It is the department's policy and practice to work with individual tribes on a government-to-government basis to discuss and resolve areas of mutual concern.

(2) Definitions. The following definitions apply throughout this rule:

(a) "Indian" means a person on the tribal rolls of an Indian tribe. A person on the tribal rolls is also known as an "enrolled member" or a "member" or an "enrolled person" or an "enrollee" or a "tribal member."

(b) "Indian country" has the same meaning as given in 18 U.S.C. 1151 and means:

(i) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(ii) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

(c) "Indian tribe" means an Indian nation, tribe, band, community, or other entity recognized as an "Indian tribe" by the United States Department of the Interior. The phrase "federally recognized Indian tribe" and the term "tribe" have the same meaning as "Indian tribe."

(d) "Indian reservation" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries of areas set aside by the United States for the use and occupancy of Indian tribes by treaty, law, or executive order and that are areas currently recognized as "Indian reservations" by the United States Department of the Interior. The term includes lands within the exterior boundaries of the reservation owned by non-Indians as well as land owned by Indians and Indian tribes and it includes any land that has been designated "reservation" by federal act.

(e) "Nonmember" means a person not on the tribal rolls of the Indian tribe.

(f) "State sales and use tax" includes local sales and use tax.

(3) Federally recognized Indian tribes. As of the effective date of this rule there are twenty-eight federally recognized Indian tribes in the state of Washington. You may contact the governor's office of Indian affairs for an up-to-date list of federally recognized Indian tribes in the state of Washington at its website, www.goia.wa.gov or at:

Governor's Office of Indian Affairs
531 15th Ave. S.E.

P.O. Box 40909
Olympia, WA 98504-0909
360-753-2411

(4) **Recordkeeping.** Taxpayers are required to maintain appropriate records on the tax exempt status of transactions. For example, in the case of the refuse collection tax, the refuse collection company must substantiate the tax-exempt status of its customers. This could be done, for example, one of two ways. The tribe can provide the refuse collection company with a list of all of the tribal members living in Indian country or the individual members can provide exemption certificates to the company. A buyer's retail sales tax exemption certificate that can be used for this purpose is located on the department's website (www.dor.wa.gov/forms/other.htm) or may be obtained by contacting the department. The company must then keep the list or the certificates in its files as proof of the tax exempt status of the tribe and its members. Individual businesses may contact the department to determine how best to keep records for specific situations.

(5) **Enrolled Indians in Indian country. Generally.** The state may not tax Indians or Indian tribes in Indian country. For the purposes of this rule, the term "Indian" includes only those persons who are enrolled with the tribe upon whose territory the activity takes place and does not include Indians who are members of other tribes. An enrolled member's spouse is considered an "Indian" for purposes of this rule if this treatment does not conflict with tribal law. This exclusion from tax includes all taxes (e.g., B&O tax, public utility tax, retail sales tax, use tax, cigarette tax). If the incidence of the tax falls on an Indian or a tribe, the tax is not imposed if the activity takes place in Indian country or the activity is treaty fishing rights related activity (see subsection (6)(b) of this rule). "Incidence" means upon whom the tax falls. For example, the incidence of the retail sales tax is on the buyer.

(a)(i) **Retail sales tax - tangible personal property - delivery threshold.** Retail sales tax is not imposed on sales to Indians if the tangible personal property is delivered to the member or tribe in Indian country or if the sale takes place in Indian country. For example, if the sale to the member takes place at a store located on a reservation, the transaction is automatically exempt from sales tax and there is no reason to establish "delivery."

(ii) **Retail sales tax - services.** The retail sales tax is not imposed if the retail service (e.g., construction services) is performed for the member or tribe in Indian country. In the case of a retail service that is performed both on and off Indian country, only the portion of the contract that relates to work done in Indian country is excluded from tax. The work done for a tribe or Indian outside of Indian country, for example road work that extends outside of Indian country, is subject to retail sales tax.

(b) **Use tax.** Use tax is not imposed when tangible personal property is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

(c) **Tax collection.** Generally, sales to persons other than Indians are subject to the retail sales tax irrespective of where in this state delivery or rendition of services takes place. Sellers are required to collect and remit to the state the retail sales tax upon each taxable sale made by them to nonmembers in Indian country. A tribe and the department may enter into an agreement covering the collection of state tax by tribal members or the tribe. (See also the discussion regarding preemption of tax in subsection (7) of this rule.)

In order to substantiate the tax-exempt status of a retail sale to a person who is a tribal member, unless the purchaser is personally known to the seller as a member, the seller must require presentation of a tribal membership card or other suitable identification of the purchaser as an enrollee of the Indian tribe. A tribe and the department may enter into an agreement covering identification of enrolled members, in which case the terms of the agreement govern.

A person's tax status under the Revenue Act does not change simply because he or she is making a tax-exempt sale to a tribe or tribal member. For example, a person building a home for a nonmember/consumer is entitled to purchase subcontractor services and materials to be incorporated into the home at wholesale. See RCW **82.04.050**. A person building a home for a tribal member/consumer in Indian country is similarly entitled to purchase these services and materials at

wholesale. The fact that the constructing of the home for the tribal member/consumer is exempt from retail sales tax has no impact on the taxability of the purchases of materials, and the materials continue to be purchased for resale.

(d) **Corporations or other entities owned by Indians.** A state chartered corporation comprised solely of Indians is not subject to tax on business conducted in Indian country if all of the owners of the corporation are enrolled members of the tribe except as otherwise provided in this section. The corporation is subject to tax on business conducted outside of Indian country, subject to the exception for treaty fishery activity as explained later in this rule. Similarly, partnerships or other entities comprised solely of enrolled members of a tribe are not subject to tax on business conducted in Indian country. In the event that the composition includes a family member who is not a member of the tribe, for instance a business comprised of a mother who is a member of the Chehalis Tribe and her son who is a member of the Squaxin Island Tribe, together doing business on the Chehalis reservation, the business will be considered as satisfying the "comprised solely" criteria if at least half of the owners are enrolled members of the tribe.

(6) **Indians outside Indian country.**

(a) **Generally.** Except for treaty fishery activity, Indians conducting business outside of Indian country are generally subject to tax (e.g., the B&O, the public utility tax, retail sales tax). Indians or Indian tribes who conduct business outside Indian country must register with the department as required by RCW 82.32.030. (See also WAC 458-20-101 for more registration information.)

(b) **Treaty fishery - preemption.** For the purpose of this rule, "treaty fishery" means the fishing and shellfish rights preserved in a tribe's treaty, a federal executive order, or an act of Congress. It includes activities such as harvesting, processing, transporting, or selling, as well as activities such as management and enforcement.

(i) **Indians - B&O tax.** The gross income directly derived from treaty fishing rights related activity is not subject to state tax. This exclusion from tax is limited to those businesses wholly owned and operated by Indians/tribe who have treaty fishing rights. If a business wholly owned and operated by Indians/tribe deals with both treaty and nontreaty fish, this exclusion from tax is limited to the business attributable to the treaty fish. "Wholly owned and operated" includes entities that meet the qualifications under 26 U.S.C. 7873, which requires that:

(A) Such entity is engaged in a fishing rights-related activity of such tribe;

(B) All of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses;

(C) Except as provided in the code of federal regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, ninety percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least ten percent of the equity interests in the entity; and

(D) Substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

(ii) **Indians - sales and use tax.** The retail sales tax and use tax do not apply to the services or tangible personal property for use in the treaty fishery, regardless of where delivery of the item or performance of the service occurs. Gear, such as boats, motors, nets, and clothing, purchased or used by Indians in the treaty fishery is not subject to sales or use tax. Likewise, retail services in respect to property used in the treaty fishery, such as boat or engine repair, are not subject to sales tax.

(iii) **Sales to nonmembers.** Treaty fish and shellfish sold by members of the tribe are not subject to sales tax or use tax, regardless of where the sale takes place due to the sales and use tax exemption for food products.

(iv) **Government-to-government agreement.** A tribe and the department may enter into an agreement covering the treaty fishery and taxable activities of enrolled members, in which case the terms of the agreement govern.

(7) **Nonmembers in Indian country - preemption of state tax.** Generally, a nonenrolled person doing business in Indian country is subject to tax. Unless specifically described as preempted by this

rule, the department will review transactions on a case-by-case basis to determine whether tax applies. A nonmember who is not taxable on the basis of preemption should refer to WAC **458-20-101** (tax registration) to determine whether the person must register with the department.

(a) **Preemption of tax on nonmembers - gaming.** Gaming by Indian tribes is regulated by the federal Indian Gaming Regulatory Act. Nonmembers who operate or manage gaming operations for Indian tribes are not subject to tax for business conducted in Indian country. This exclusion from tax applies to taxes imposed on income attributable to the business activity (e.g., the B&O tax), and to sales and use tax on the property used in Indian country to conduct the activity. Sales tax will apply if delivery of property is taken outside of Indian country.

Nonmembers who purchase tangible personal property at a gaming facility are subject to retail sales or use tax, unless:

(i) The item is preempted based on the outcome of the balancing test. For example, depending on the relative state, tribal, and federal interests, tax on food at restaurants or lounges owned and operated by the tribe or a tribal member or sales of member arts and crafts at gift shops might be preempted. See the balancing test discussion in subsection (c) below; or

(ii) The item is purchased for use in the gaming activity at the facility, such as bingo cards or daubers.

(b) **Preemption of B&O and public utility tax - sales of tangible personal property or provision of services by nonmembers in Indian country.** As explained in this subsection, income from sales in Indian country of tangible personal property to, and from the performance of services in Indian country for, tribes and tribal members is not subject to B&O (chapter **82.04** RCW) or public utility tax (chapters **82.16** and **54.28** RCW). The taxpayer is responsible for maintaining suitable records so that the taxpayer and the department can distinguish between taxable and nontaxable activities.

(i) **Sales of tangible personal property.** Income from sales of tangible personal property to the tribe or to tribal members is not subject to B&O tax if the tangible personal property is delivered to the buyer in Indian country and if:

(A) The property is located in Indian country at the time of sale; or

(B) The seller has a branch office, outlet, or place of business in Indian country that is used to receive the order or distribute the property; or

(C) The sale of the property is solicited by the seller while the seller is in Indian country.

(ii) **Provision of services.** Income from the performance of services in Indian country for the tribe or for tribal members is not subject to the B&O or public utility tax. Services performed outside of Indian country are subject to tax. In those instances where services are performed both on and off of Indian country, the activity is subject to state tax to the extent that services are substantially performed outside of Indian country.

(A) It will be presumed that a professional service (e.g., accounting, legal, or dental) is substantially performed outside of Indian country if twenty-five percent or more of the time taken to perform the service occurs outside of Indian country. The portion of income subject to state tax is determined by multiplying the gross receipts from the activity by the quotient of time spent outside of Indian country performing the service divided by total time spent performing the service.

For example, an accountant with an office outside of Indian country provides accounting services to a tribal member. The accountant performs some of the work at the office and some work at the business of the tribal member in Indian country. If at least twenty-five percent of the time performing the work is spent outside of Indian country, the services are substantially performed outside of Indian country and therefore a portion is subject to state tax. As explained above, the accountant must maintain suitable records to distinguish between taxable and nontaxable income in order to provide for a reasonable approximation of the amount of gross income subject to B&O tax. In this case, suitable records could be a log of the time and location of the services performed for the tribal matter by the accountant, his or her employees, and any contractors hired by the accountant.

(B) For services subject to the retailing (B) and/or wholesaling B&O tax (e.g., building, installing, improving, or repairing structures or tangible personal property), the portion of income relative to

services actually performed outside of Indian country is subject to state tax.

For example, a contractor enters into a contract with a tribe to install a sewer line that extends off reservation. Only the income attributable to the installation of the portion of the sewer line off reservation is subject to state tax.

(C) For public utility services under chapters **82.16** and **54.28** RCW it will be presumed that the service is provided where the customer receives the service.

(c) **Preemption of tax on nonmembers - balancing test - value generated on the reservation.** In certain instances state sales and use tax may be preempted on nonmembers who purchase goods or services from a tribe or tribal members in Indian country. The U.S. supreme court has identified a number of factors to be considered when determining whether a state tax borne by non-Indians is preempted, including: The degree of federal regulation involved, the respective governmental interests of the tribes and states (both regulatory and revenue raising), and the provision of tribal or state services to the party the state seeks to tax. See *Salt River Pima-Maricopa Indian Community v. Waddell*, 50 F.3d 734, (1995). This analysis is known as the "balancing test." This preemption analysis does not extend to subsequent transactions, for example if the purchaser buys for resale the tax imposed on the consumer in the subsequent sale is not preempted. However, because these balancing test determinations are so fact-based, the department will rule on these issues on a case-by-case basis. For such a ruling please contact the department at:

Department of Revenue
Executive
P.O. Box 47454
Olympia, WA 98504-7454

(d) **Federal contractors.** The preemption analysis does not extend to persons who are doing work for the federal government in Indian country. For example, a nonmember doing road construction for the Bureau of Indian Affairs within an Indian reservation is subject to state tax jurisdiction.

(e) **Indian housing authorities.** RCW **35.82.210** provides that the property of housing authorities and the housing authorities themselves are exempt from taxes, such as state and local sales and use taxes, state and local excise taxes, state and local property taxes, and special assessments. This covers tribal housing authorities and intertribal housing authorities both on and off of Indian land. Please note that tribal housing authorities, like all other housing authorities, are exempt from tax anywhere in the state, and the delivery requirement and other geographic thresholds are not applicable.

Not all assessments are exempted under RCW **35.82.210**. See *Housing Authority of Sunnyside v. Sunnyside Valley Irrigation District*, 112 Wn2d 262 (1989).

For the purposes of the exemption:

(i) "Intertribal housing authority" means a housing authority created by a consortium of tribal governments to operate and administer housing programs for persons of low income or senior citizens for and on behalf of such tribes.

(ii) "Tribal government" means the governing body of a federally recognized Indian tribe.

(iii) "Tribal housing authority" means the tribal government or an agency or branch of the tribal government that operates and administers housing programs for persons of low income or senior citizens.

(8) **Motor vehicles, trailers, snowmobiles, etc., sold to Indians or Indian tribes.** Sales tax is not imposed when a motor vehicle, trailer, snowmobile, off-road vehicle, or other such property is delivered to an Indian or the tribe in Indian country or if the sale is made in Indian country. Similarly, use tax is not imposed when such an item is acquired in Indian country by an Indian or the tribe for at least partial use in Indian country. For purposes of this rule, acquisition in Indian country creates a presumption that the property is acquired for partial use in Indian country.

(a) **Registration of vehicle, trailer, etc.** County auditors, subagencies appointed under RCW **46.01.140**, and department of licensing vehicle licensing offices must collect use tax when Indians or Indian tribes apply for an original title transaction or transfer of title issued on a vehicle or vessel under

chapters **46.09**, 46.10, 46.12, or **88.02** RCW unless the tribe/Indian shows that they are not subject to tax. To substantiate that they are not subject to tax the Indian/tribe must show that they previously paid retail sales or use tax on their acquisition or use of the property, or that the property was acquired on or delivered to Indian country. The person claiming the exclusion from tax must sign a declaration of delivery to or acquisition in Indian country. A statement in substantially the following form will be sufficient to establish eligibility for the exclusion from sales and use tax.

(b) **Declaration.**

DECLARATION OF DELIVERY OR ACQUISITION IN INDIAN COUNTRY

The undersigned is (circle one) an enrolled member of the tribe/authorized representative of the tribe or tribal enterprise, and the property was delivered/acquired within Indian country, for at least partial use in Indian country.

name of buyer

date of delivery/acquisition

address of delivery/acquisition

(9) **Miscellaneous taxes.** The state imposes a number of excise taxes in addition to the most common excise taxes administered by the department (e.g., B&O, public utility, retail sales, and use taxes). The following is a brief discussion of some of these taxes.

(a) **Cigarette tax.** The statutory duties applicable to administration and enforcement of the cigarette tax are divided between the department and the liquor control board. Enforcement of nonvoluntary compliance is the responsibility of the liquor control board. Voluntary compliance is the responsibility of the department of revenue. See chapter **82.24** RCW for specific statutory requirements regarding purchase of cigarettes by Indians and Indian tribes. For a specific ruling regarding the taxability of and stamping requirements for cigarettes manufactured by Indians or Indian tribes in Indian country, please contact the department at:

Department of Revenue

Executive

P.O. Box 47454

Olympia, WA 98504-7454

Where sales of cigarettes are the subject of a government-to-government cooperative agreement, the provisions of that agreement supersede conflicting provisions of this subsection.

(i) Sales of cigarettes to nonmembers by Indians or Indian tribes are subject to the cigarette tax. The wholesaler is obligated to make precollection of the tax. Therefore, Indian or tribal sellers making sales to non-Indian customers must (A) purchase a stock of cigarettes with Washington state cigarette tax stamps affixed for the purpose of making such sales or (B) they may make purchases of cigarettes from licensed cigarette distributors for resale to qualified purchasers or (C) may purchase a stock of untaxed unstamped cigarettes for resale to qualified purchasers if the tribal seller gives advance notice under RCW **82.24.250** and Rule 186.

For purposes of this rule, "qualified purchaser" means an Indian purchasing for resale within Indian country to other Indians or an Indian purchasing solely for his or her use other than for resale.

(ii) Delivery or sale and delivery by any person of stamped exempt cigarettes to Indians or tribal sellers for sale to qualified purchasers may be made only in such quantity as is approved in advance by the department. Approval for delivery will be based upon evidence of a valid purchase order of a quantity reasonably related to the probable demand of qualified purchasers in the trade territory of the seller. Evidence submitted may also consist of verified record of previous sales to qualified purchasers, the probable demand as indicated by average cigarette consumption for the number of qualified purchasers within a reasonable distance of the seller's place of business, records indicating the percentage of such trade that has historically been realized by the seller, or such other statistical evidence submitted in support of the proposed transaction. In the absence of such evidence the department may restrict total deliveries of stamped exempt cigarettes to Indian country or to any Indian or tribal seller thereon to a quantity reasonably equal to the national average cigarette consumption per capita, as compiled for the

most recently completed calendar or fiscal year, multiplied by the resident enrolled membership of the affected tribe.

(iii) Any delivery, or attempted delivery, of unstamped cigarettes to an Indian or tribal seller without advance notice to the department will result in the treatment of those cigarettes as contraband and subject to seizure. In addition, the person making or attempting such delivery will be held liable for payment of the cigarette tax and penalties. See chapter **82.24** RCW.

Approval for sale or delivery to Indian or tribal sellers of stamped exempt cigarettes will be denied where the department finds that such Indian or tribal sellers are or have been making sales in violation of this rule.

(iv) Delivery of stamped exempt cigarettes by a licensed distributor to Indians or Indian tribes must be by bonded carrier or the distributor's own vehicle to Indian country. Delivery of stamped exempt cigarettes outside of Indian country at the distributor's dock or place of business or any other location outside of Indian country is prohibited unless the cigarettes are accompanied by an invoice.

(b) **Refuse collection tax.** Indians and Indian tribes are not subject to the refuse collection tax for service provided in Indian country, regardless of whether the refuse collection company hauls the refuse off of Indian country.

(c) **Leasehold excise tax.** Indians and Indian tribes in Indian country are not subject to the leasehold excise tax. Leasehold interests held by nonenrolled persons are subject to tax.

(d) **Fish tax.** Chapter **82.27** RCW imposes a tax on the commercial possession of enhanced food fish, which includes shellfish. The tax is imposed on the fish buyer. The measure of the tax is the value of the enhanced food fish at the point of landing. A credit is allowed against the amount of tax owed for any tax previously paid on the same food fish to any legally established taxing authority, which includes Indian tribes. Transactions involving treaty fish are not subject to the fish tax, regardless of where the transaction takes place.

(e) **Tobacco tax.** The tobacco tax is imposed on "distributors" as that term is defined in RCW **82.26.010**. Tobacco tax is not imposed on Indian persons or tribes who take delivery of the tobacco in Indian country. Effective July 1, 2002, persons who handle for sale any tobacco products that are within this state but upon which tax has not been imposed are subject to the tobacco tax. Chapter 325, Laws of 2002. Thus, persons purchasing tobacco products for resale from Indians who are exempt from the tobacco tax are subject to tobacco tax on the product. See WAC **458-20-185**, Tax on tobacco products.

(f) **Real estate excise tax.** The real estate excise tax is imposed on the seller. A sale of land located in Indian country by a tribe or a tribal member is not subject to real estate excise tax. A sale of land located within Indian country by a nonmember to the tribe or to a tribal member is subject to real estate excise tax.

(g) **Timber excise tax.** Payment of the timber excise tax is the obligation of the harvester. The tribe or tribal members are not subject to the timber excise tax in Indian country. Generally, timber excise tax is due from a nonmember who harvests timber on fee land within Indian country. Timber excise tax is not due if the timber being harvested is on trust land or is owned by the tribe and located in Indian country, regardless of the identity of the harvester. There are some instances in which the timber excise tax might be preempted on non-Indians harvesting timber on fee land in Indian country due to tribal regulatory authority. For such a ruling please contact the department at:

Department of Revenue
Executive
P.O. Box 47454
Olympia, WA 98504-7454

[Statutory Authority: RCW **82.32.300**. WSR 02-14-133, § 458-20-192, filed 7/2/02, effective 8/2/02; WSR 00-24-050A, § 458-20-192, filed 11/30/00, effective 1/1/01; WSR 80-17-026 (Order ET 80-3), § 458-20-192, filed 11/14/80; Order ET 76-4, § 458-20-192, filed 11/12/76; Order ET 74-5, § 458-20-192, filed 12/16/74; Order ET 70-3, § 458-20-192 (Rule 192), filed 5/29/70, effective 7/1/70.]