

# Chapter 4

## Cigarette, Tobacco and Vapor Products

## 43.06.510, 43.06.515 - Vapor products covered by tribal contracts

**Description** RCW 43.06.450 authorizes the governor to enter into contracts with Indian tribes concerning the sale of vapor products. The state vapor products tax does not apply to vapor products sold by an Indian retailer during the effective period of a vapor products tax contract.

**Purpose** To provide a means to promote economic development, provide needed revenues for tribal governments, and enhance enforcement of the state's vapor products tax.

**Taxpayer savings** (\$ in millions):

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	Indeterminate	Indeterminate	Indeterminate	Indeterminate
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption** Repealing this exemption would not increase revenue.

**Potential revenue gains from full repeal**

(\$ in millions):

	FY 2020	FY 2021	FY 2022	FY 2023
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 revenue.

**Data Sources** Department of Revenue

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	2019
<b>Primary Beneficiaries:</b>	Tribal governments
<b>Taxpayer Count:</b>	Not applicable
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

## 82.08.0318, 82.12.0318 - Vapor products, tribal contracts

**Description** RCW 43.06.450 authorizes the governor to enter into contracts with Indian tribes concerning the sale of vapor products. Retail sales and use taxes do not apply to sales of vapor products by an Indian retailer during the effective period of a vapor products tax contract.

**Purpose** To provide a means to promote economic development, provide needed revenues for tribal governments, and enhance enforcement of the state's vapor products tax.

**Taxpayer savings**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	Indeterminate	Indeterminate	Indeterminate	Indeterminate
Local Taxes	Indeterminate	Indeterminate	Indeterminate	Indeterminate

**Repeal of exemption**

Repealing this exemption would not increase revenue.

**Potential revenue gains from full repeal**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
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 revenue.

**Data Sources**

Department of Revenue

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	2019
<b>Primary Beneficiaries:</b>	Tribal governments
<b>Taxpayer Count:</b>	Not applicable
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

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

**Description** The cigarette tax does not apply to cigarettes sold to branches of the U.S. armed forces at exchanges, commissaries or ships stores or to sales by authorized purchasers at these facilities. Also exempt are sales to and by the U.S. Veterans Administration.

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

**Taxpayer savings** (\$ in millions):

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$40.800	\$40.800	\$40.800	\$40.800
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

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

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

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions**

- Annual military consumption of 13.5 million packs of cigarettes.
- Cigarette tax is \$3.025 per pack.

**Data Sources**

- Department of Revenue
- Departments of Defense and Veterans Affairs

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	1940
<b>Primary Beneficiaries:</b>	Military personnel and their dependents
<b>Taxpayer Count:</b>	Unknown
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

## 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 application of cigarette allotments has largely been replaced by contracts between the state and most Indian tribes regarding the regulation and taxation of cigarettes sold in Indian country.

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

**Taxpayer savings**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.400	\$0.400	\$0.400	\$0.400
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption**

Repealing this exemption would not increase revenue.

**Potential revenue gains from full repeal**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions**

Net annual allotment (non-compact) of fewer than 1 million packs of cigarettes.

**Data Sources**

Department of Revenue cigarette tax data

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	1975
<b>Primary Beneficiaries:</b>	Enrolled members of tribes living on reservations
<b>Taxpayer Count:</b>	Unknown
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

## 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 Indian retailers if their tribes have entered into a cigarette tax contract with the state of Washington pursuant to RCW 43.06.455.

**Purpose** To provide consistency in the regulation and taxation of cigarettes in Indian country.

**Taxpayer savings**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$109.500	\$109.500	\$109.500	\$109.500
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption**

Repealing this exemption would not increase revenue.

**Potential revenue gains from full repeal**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions**

- Cigarette tax is \$3.025 per pack.
- About 36 million packs of cigarettes are sold annually by tribal sellers with contracts.

**Data Sources**

Department of Revenue tribal cigarette sales data

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	2001
<b>Primary Beneficiaries:</b>	Tribal governments
<b>Taxpayer Count:</b>	Not applicable
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

## 82.25.025 - Constitutional or Federal prohibition on vapor products

**Description** The vapor products tax does not apply to vapor products sold to branches of the U.S. armed forces at exchanges, commissaries or ships stores or to sales by authorized purchasers at these facilities. Also exempt are sales to and by the U.S. Veterans Administration.

**Purpose** To be consistent with the federal legislation, the Buck Act (4 U.S.C. § 107), which prohibits states from imposing a cigarette tax upon members of the military and their dependents.

**Taxpayer savings** (\$ in millions):

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.308	\$0.578	\$0.703	\$0.838
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption** Repealing this exemption would not increase revenue. Federal law prohibits states from taxing tobacco products bought by military members and their dependents. It is likely that such law will apply to vapor products.

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

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions** Military consumption of vapor products is about 5% of the state's total.

**Data Sources**

- Department of Revenue
- Departments of Defense and Veterans Affairs

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	2019
<b>Primary Beneficiaries:</b>	Military personnel and their dependents
<b>Taxpayer Count:</b>	Unknown
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

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

**Description** In-state wholesalers of vapor products can obtain a tax credit for sales out of state or to Indian tribes.

**Purpose** To be consistent with the tax treatment of other tobacco products. Historically, the Department has not required wholesalers to collect and remit other tobacco products tax on sales to out of state or to Indian tribes, but the treatment of these sales was not clear. An exemption codified existing practice in response to statutory changes and recently settled lawsuits.

**Taxpayer savings**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.418	\$0.786	\$0.956	\$1.138
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption**

Repealing this exemption would not increase revenue.

**Potential revenue gains from full repeal**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions**

Sale of vapor products to out-of-state and tribes is equivalent to 7% of total taxable activity.

**Data Sources**

None

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	2019
<b>Primary Beneficiaries:</b>	Wholesalers of vapor products
<b>Taxpayer Count:</b>	Unknown
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC



## 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 under the Constitution and laws of the U. S. the state may not tax. This has been interpreted under the Buck Act (4 U.S.C. § 107) to prohibit taxing tobacco products sold to branches of the U.S. armed forces at exchanges, commissaries or ships stores or to sales by authorized purchasers at these facilities. Also exempt are sales to and by the U.S. Veterans Administration.

**Purpose** Federal legislation prohibits states from imposing a tax on tobacco products purchased by members of the military and their dependents.

**Taxpayer savings**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$2.900	\$2.900	\$2.900	\$2.900
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption**

Repealing this exemption would not increase revenue because federal law prohibits states from taxing tobacco products bought by members of the military and their dependents.

**Potential revenue gains from full repeal**

*(\$ in millions):*

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions**

- Military personnel and their dependents make up 5.2 percent of the state population.
- Other tobacco products tax revenue averages \$57 million annually.

**Data Sources**

- Department of Revenue
- Departments of Defense and Veterans Affairs

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	1959
<b>Primary Beneficiaries:</b>	Military personnel and dependents
<b>Taxpayer Count:</b>	Unknown
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC

## 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 entities.

**Purpose** Historically, the Department has not required wholesalers to collect and remit other tobacco products tax on sales to tribal and federal entities, but the treatment of these sales was not clear. This exemption codified existing practice in response to statutory changes and recently settled lawsuits.

**Taxpayer savings** (\$ in millions):

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$84.000	\$84.000	\$84.000	\$84.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Repeal of exemption** Repealing this exemption would not increase revenue. Federal and tribal entities are exempt from the tax and they could acquire their own storage facilities and easily buy from out-of-state wholesalers.

**Potential revenue gains from full repeal**

(\$ in millions):

	FY 2020	FY 2021	FY 2022	FY 2023
State Taxes	\$0.000	\$0.000	\$0.000	\$0.000
Local Taxes	\$0.000	\$0.000	\$0.000	\$0.000

**Assumptions** Average credit will be \$84 million a year.

**Data Sources** Department of Revenue excise tax data

**Additional Information**

Additional Information	
<b>Category:</b>	Government
<b>Year Enacted:</b>	1959
<b>Primary Beneficiaries:</b>	Wholesalers of tobacco products
<b>Taxpayer Count:</b>	22
<b>Program Inconsistency:</b>	None evident
<b>JLARC Review:</b>	Not reviewed by JLARC