



STATE OF WASHINGTON
DEPARTMENT OF REVENUE
OFFICE OF THE DIRECTOR

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December 22, 2020

TO: Brad Hendrickson, Secretary
Washington State Senate

Bernard Dean, Chief Clerk
Washington State House of Representatives

FROM: Vikki Smith, Director *Vikki Smith*

SUBJECT: 2021 Tribal Compacting Report

Section 135(7) of [Engrossed Substitute Senate Bill 6168](#) passed during the 2020 regular session of the Legislature, required the Department of Revenue to notify the fiscal committees of the Legislature of the amount of taxes collected on qualified transactions and paid to each compacting tribe in the prior fiscal year pursuant to [Substitute House Bill 2803](#) (2020).

The 2021 report is available on our website at:

<http://www.dor.wa.gov/Content/AboutUs/StatisticsAndReports/Default.aspx>.

If you have questions, please contact Kathy Oline, Assistant Director, Research and Fiscal Analysis, at (360) 534-1534.

Attachment

cc: Members, Senate Ways and Means Committee
Members, House Finance Committee
Members, House Appropriations Committee
David Schumacher, Director, Office of Financial Management
Drew Shirk, Executive Director, Legislative Affairs, Office of the Governor

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Tribal Compacting Report

2021 Report to the Legislature

Covering Fiscal Year 2020 Activity

Vikki Smith, Director

Washington State Department of Revenue

January 2021



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Executive Summary

[Engrossed Substitute Senate Bill 6168](#) passed during the 2020 regular session of the Legislature, and it requires the Department of Revenue (Department) to notify the fiscal committees of the Legislature the amount of taxes collected on qualified transactions and paid to each compacting tribe in the prior fiscal year pursuant to [Substitute House Bill 2803](#) (2020). Among other provisions, Substitute House Bill 2803 authorized the Governor to enter into a new type of compact which would allow the sharing of state retail sales and use tax and certain B&O tax revenues with a compacting tribe derived from non-member to non-member retail-taxable transactions on certain lands of a compact tribe.

This is an annual report due by January 1, 2021 and by January 1st of each year thereafter.

This report reflects taxes collected and paid to tribes in Fiscal Year 2020. Fiscal Year 2020 spans July 1, 2019, through June 30, 2020. The first compact entered in accordance with Substitute House Bill 2803 was effective July 1, 2020; therefore, there were no taxes paid to tribes during Fiscal Year 2020, which ended June 30, 2020.

Background

In January 2020, a Memorandum of Understanding (MOU) was negotiated with the Tulalip Tribes. The MOU represented a historic step in a federally-mediated settlement of a lawsuit between the governments. It created a blueprint for resolving certain current and future tax disputes between the state and federally-recognized tribes located in Washington. Shortly after the MOU was signed, the Department proposed and advocated passing Substitute House Bill 2803. This legislation, which took effect June 11, 2020, authorized the state to enter into a “retail taxes” compact with each of the federally-recognized tribes located in Washington.

As of the time this report was written, the Department of Revenue has signed compacts with the Tulalip Tribes (signed July 1, 2020) and the Confederated Tribes of the Chehalis Reservation (signed November 30, 2020). The Department is currently in negotiations with multiple tribes and expects other compacts imminently with more to follow in the coming months.

As authorized in Substitute House Bill 2803, the amount of taxes shared with a compacting tribe is designated in each calendar year as follows:

After the effective date of their individual compacts, each compacting tribe will receive the following amounts from qualified transactions:

- The first \$500,000 of the state portion of the retail sales and use taxes; and
- 100% of the associated state retailing B&O tax.

In addition, a compacting tribe will also receive the following amounts from qualified transactions:

For amounts collected from taxpayers that meet the requirements of a “new development”:

- 25% of the state portion of the retail sales and use taxes above \$500,000; or
- 60% of the state portion of the retail sales and use taxes above \$500,000 if the tribe has completed a qualified capital investment.

Beginning January 1 of the fourth calendar year following the signing of the compact, for amounts collected from taxpayers that do not meet the requirements of a “new development”:

- 25% of the state portion of the retail sales and use taxes above \$500,000; or
- 50% of the state portion of the retail sales and use taxes above \$500,000 if the tribe has completed a qualified capital investment.

Definitions

A “compact covered area” consists of: (A) Trust land, regardless of whether the land is located within or outside of the boundaries of the compacting tribe’s reservation; and (B) fee land within the boundaries of the compacting tribe’s reservation and under tribal or tribal member ownership. For these purposes, “tribal or tribal member ownership” means fee land with a greater than fifty percent ownership interest being held by any combination of the compacting tribe or tribal members.

A “compact covered area” does not include any land that, as of June 11, 2020, was fee land in which one or more nonmembers held a majority ownership, but only with respect to (A) a business that was in operation on that land on June 11, 2020, and continues to be in operation on that same land; or (B) a substantially similar successor business to such a business that is in operation on that same land.

“New development” means, with respect to any specific compact and the compact covered area associated with that compact, a person that:

- Is subject to state sales tax or state use tax collection or payment obligations as a result of business activity within the compact covered area; and,
- Conducts its selling business operations in a structure within the compact covered area, and construction of that structure began on or after the tribe’s compact effective date, but not including any such construction involving the renovation of or addition to a structure existing before the effective date of the compact; and,
- Has not previously been subject to state sales tax or state use tax collection or payment obligations as a result of that same business activity operated within a different structure located elsewhere within the compact covered area, and
- Has been identified by the compacting tribe, with notice provided to the Department.

"Nonmember" means:

- A natural person who is not a tribal member of the compacting tribe;
- A tribe that is not the compacting tribe; or
- Any entity where not more than fifty percent of the ownership interests are held by any combination of the compacting tribe or any tribal members of the compacting tribe.

“Nonmember business” means a business operating within the compact covered area that is a nonmember, and all businesses operating outside of the compacting tribe’s Indian country, regardless of ownership.

“Qualified capital investment” means a contribution to the development and construction of a project agreed to by the governor and the compacting tribe. The qualified capital investment must be determined by the governor to be substantially proportionate to the compacting

tribe's projected tax revenue under the compact as compared to qualified capital investments contained in other compacts.

"Qualified transaction" means:

- A retail sale subject to state sales tax, involving a seller and purchaser who are both nonmembers, and that is sourced to a location within the compact covered area pursuant to RCW 82.32.730; or
- Any use by a nonmember upon which the state use tax is imposed and sourced to a location within the compact covered area pursuant to RCW 82.32.730.

"State sales tax" means the tax imposed in RCW 82.08.020(1).

"State use tax" means the tax imposed in RCW 82.12.020 at the rate set forth in RCW 82.08.020(1).

Implementation

Implementation of Substitute House Bill 2803 has been and continues to be a heavy lift for the Department. A successful implementation will require completing over 350 unique tasks, not including the negotiation of compacts.

Implementation requires configuring the Department's systems to accurately calculate distributions and, for those tribes with whom the state has compacted, then configure our systems specifically to the information that compacting tribe will provide that is necessary to implement a compact. The Department must also be able to accept from or create for a compacting tribe a GIS layer of the compact covered area. This requires the configuration of other systems, such as our GIS system.

To properly calculate distributions, the Department depends on businesses whose sales are sourced to a tribe's compact covered area to use unique location codes. Our 24-7, online GIS look-up tool for retailers will be updated with these codes as tribes compact with the state. Revenues reported under a unique location code for a tribe are eligible for sharing and are included in that month's calculation for distribution. Our efforts not only include accepting tax returns and making distributions, but also reconciling accounts to ensure there is no under or over-distribution of revenues or that revenues were not reported to the wrong location code.

Pursuant to SHB 2803, the Department is developing a secure, online portal to allow a compacting tribe to access data that provides a breakdown for the tribe in any given month. We expect this portal to be live and fully-functioning by the end of January 2021. Access to this portal will be restricted to those authorized by a tribal government and who have agreed in writing and by contract to abide by the same confidentiality restrictions that Revenue employees do under RCW 82.32.330.

At times, the Federal Government might accept receipt of certain land into trust for a tribe. When this is done, that land becomes eligible to be part of the compact covered area. Also, a tribe may opt to include only a portion of its eligible lands initially and desire to expand the boundaries of their compact covered area at a later date. As a result, the Department is also creating a secure portal to expedite changes in boundary information for a tribe. The tribe will be able to upload a new GIS layer which the Department will process or download their current GIS layer.

Both portals are being designed so that one tribe cannot access another tribe's information.

Throughout the process of implementation, the Department is mindful of looking for efficiencies and ways to simplify its processes in order to reduce the long-term costs of maintaining the state's duties and responsibilities under this new type of compact.

The Department thanks the Legislature for not only passing Substitute House Bill 2803 but for funding the expenditures that went along with the legislation. This has helped to ensure implementation is on-time, on-schedule, and within budget.

Revenue Sharing Data

Since the first compact went into effect on July 1, 2020 (the first day of Fiscal Year 2021), no distributions were made to tribes during the Fiscal Year 2020 period.