

# Intergovernmental Tax Agreements

## Washington State's Experience with Cigarette Tax Compacts

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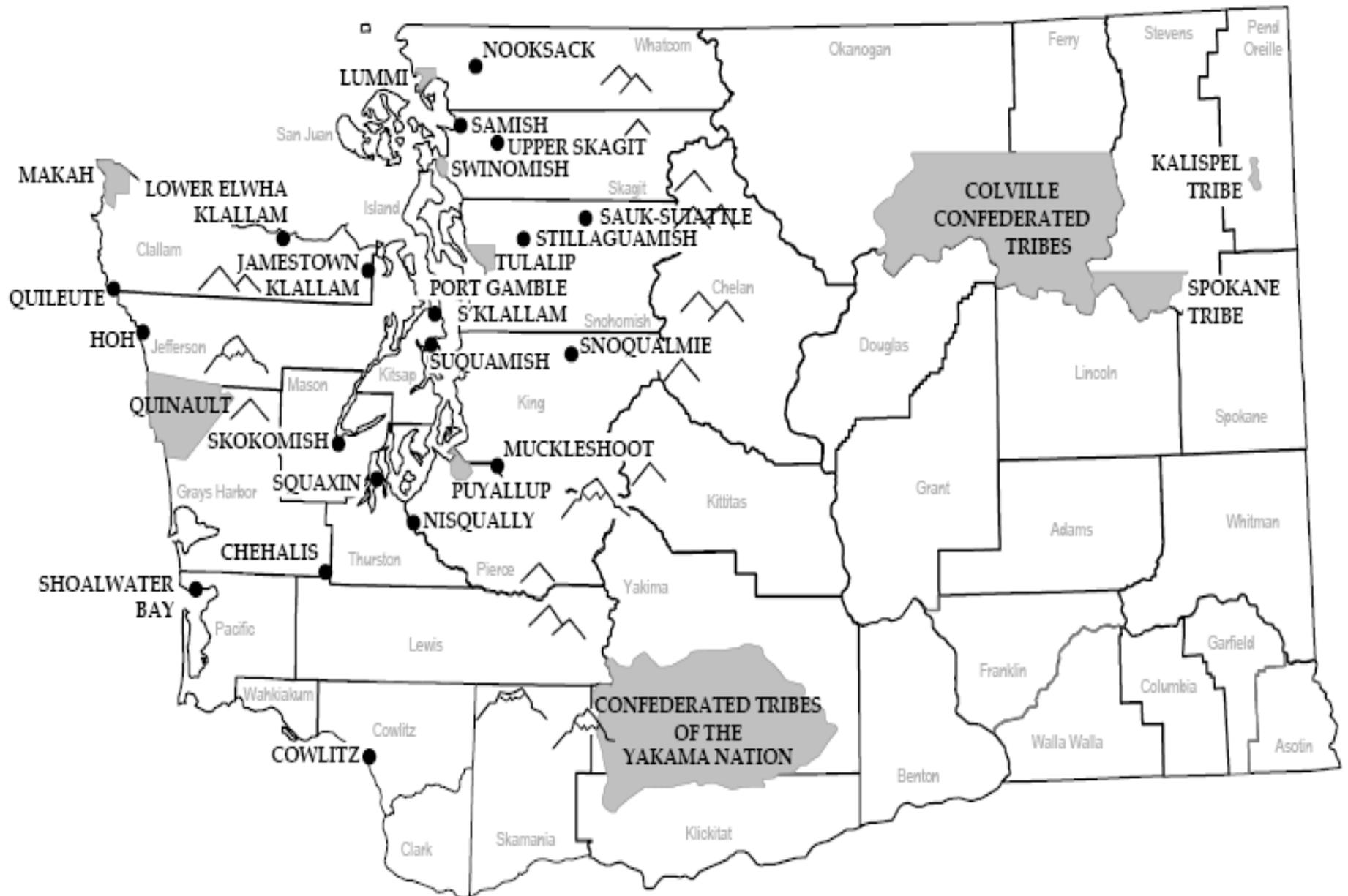
State of Washington

Department of Revenue

# [ Why Am I Here Today? ]

- To share with you the experience of the state of Washington in the area of agreements with tribal governments.
- To highlight strategies and tactics that worked for the state of Washington.

# FEDERALLY RECOGNIZED TRIBES OF WASHINGTON STATE



# [ State and Tribal Interests Overlap ]

- Tribal economic development involves doing business with nonIndians.
- The state has leverage over and access to nonIndians.
- Tribal successes in enterprise activities require certainty in business arrangements.

# Factors that Contribute to Collaborating on Tax Matters

- Court rulings lack clarity.
- Concurrent jurisdiction requires communication.
- Fundamental disagreements do not stop practical discussion of interests.
- Evolving areas highlight mutual interests.
- History of litigation was proven unsuccessful in cigarette regulation.

# 1980 Colville Case – U.S. Supreme Court

- Tribal members are exempt from state taxes on sales within reservation.
- State may require Indian retailer to affix state stamp to cigarettes.
- The state can seize untaxed cigarettes in transit to smokeshop.
- The tribe can tax nonIndians buying cigarettes from tribal smokeshops.
- Silent on methods to enforce collection of state taxes.

## Department Action After Court Success

- Involuntarily registration of tribal smokeshops throughout the state.
- Seizures and interdictions continue.

**HUGE WIN ON ITS FACE**

# [ Hollow Victory ]

- Little value in ending the conflict.
- Collections do not increase.
- Tensions increase.
- Relationships in general worsen.

# The Department of Revenue Reevaluates the State's Interests



# Interests Rather than Positions

## Cigarette Conflict

- Revenue recovery not truly an issue – we hadn't seen the money in years.
- Tax parity rather than price parity – Any government imposing a tax would meet our new interests.
- State and tribal governments as peers in tax administration and business regulation.
- Access to tobacco and pricing get an increased focus.
- Strategic objective regarding all Tribes.

# Cigarette Compact Breakthrough

In 2001 the Washington State Legislature authorized the Governor to enter into cigarette compacts with certain Indian tribes. The Department of Revenue was delegated the responsibility to negotiate and recommend to the Governor (RCW 43.06.450-460).

- In May 2001 we had zero compacts.
- By May 2005 the Governor had signed compacts with 19 of the 29 tribes in the State.

# Two Models of Legislation

## 2001 – Model

- 24 eligible tribes.
- Tribes must tax at 100% of state rates.
  - A 3 year ramp up allowed
  - Includes sales tax
- Tax revenues must be used for essential government services.
  - Tribe retains 100% of tax
- Stamps required.
- Audits required (third party audits).
- Puyallup Tribe didn't fit

# Two Models of Legislation

## Puyallup Model

- One eligible tribe.
- Tribe's rate 80% of state rate
  - Increases dollar for dollar with state rate
  - No sales tax
- Tribe shares 30% of tax with state
- Tax revenues must be used for essential government services.
- Stamps required.
- Must buy from licensed wholesalers.
- Audits required (third party audits).

# Why the State Chose This Route Instead of Another

- Litigation was divisive and the Executive Branch eventually developed policy positions that differed from litigation positions of the Attorney General.
- Federal enforcement activities were creating pressure on smokeshops and bringing tribes to the table, and the state leveraged this activity.

# Whose Buy-In and Support was Required

## NEARLY EVERYONE'S

- Tribes.
- Democrats.
- Retailers.
- Republicans.
- Lung Association.
- Urban.
- Health Departments.
- Rural.
- Media.

# How the Resulting Arrangements Worked from the State's Perspective

- Stamped and taxed cigarettes are being sold from most tribal smokeshops.
  - Contraband now the exception
- Tribes use state licensed wholesalers.
- Prices increased.
- Relationships with the tribes have improved dramatically.

# Department Administrative Processes

- Memorandums of Agreement on Licensing
  - Deemed to be licensed.
- Closing agreements and prospective instructions
- Management of Cigarette Compacts
  - Ongoing communication

## Cigarette tax stamps used in Washington State

Washington State distributes these four stamps:

Regular stamps for packs containing 20 cigarettes



Stamps for wide packs or hand stamping



Stamps for packs containing 25 cigarettes



Indian allocation tax exempt stamps for sale to enrolled tribal members only



Actual sizes of stamps:



**Compact stamps** are used by tribes that have signed a contract with the state to collect cigarette and sales taxes. Cigarettes with compact stamps can be purchased by anyone and are legal on and off the reservation.

Actual size of stamp:



These tribes use the generic compact stamp:

- Lummi
- Jamestown S'Klallam
- Muckleshoot
- Nisqually
- Port Gamble S'Klallam
- Skokomish
- Suquamish
- Quinalt

These compact tribes have designed their own stamps. Cigarettes bearing these stamps can be purchased by anyone and are legal on and off the reservation.

Chehalis



Swinomish



Tulalip



Upper Skagit



Puyallup



Squaxin Island sells cigarettes with two types of stamps:



Yakama Nation sells cigarettes with three types of stamps:



Actual sizes of stamps:



The **Stillaguamish tax stamp** is not recognized by the state. There is no cigarette tax compact between the state of Washington and the Stillaguamish Tribe.

Actual size of stamp:



# Best Practices

- Communicate and share information.
- Be candid and transparent about obligations, interests, and accountability.
- Be open minded about solutions.
- Foster a genuine interest in general well being.
- Take reasonable risks.
- Find someone in the government organization to talk to.

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Thank you!

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