

106TH CONGRESS
2D SESSION

H. R. 5244

To provide for the payment of State taxes on the sale of cigarettes and motor fuel by tribal retail enterprises to persons that are not members of the tribe, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2000

Mr. PETERSON of Pennsylvania (for himself, Mr. TANCREDO, Mr. SIMPSON, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for the payment of State taxes on the sale of cigarettes and motor fuel by tribal retail enterprises to persons that are not members of the tribe, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal-State Tax Fair-
5 ness Act of 2000”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act:

1 (1) COVERED STATE TAX.—The term “covered
2 State tax” means a lawfully imposed and non-
3 discriminatory State excise, sales, or transaction tax
4 levied or imposed on purchases, by nonmembers of
5 a tribe, of tobacco products or motor fuels from a
6 tribal retail enterprise, including a non-Indian re-
7 tailer affiliated with an Indian tribe.

8 (2) INDIAN COUNTRY.—The term “Indian coun-
9 try” means—

10 (A) all lands within the limits of any In-
11 dian reservation; and

12 (B) all lands title to which is either held in
13 trust by the United States for the benefit of
14 any Federally recognized Indian tribe or indi-
15 vidual Indian or held by any Indian tribe or in-
16 dividual Indian subject to restriction by the
17 United States against alienation and over which
18 an Indian tribe exercises governmental power.

19 (3) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning given that term in section 4(e) of
21 the Indian Self-Determination and Education Assist-
22 ance Act (25 U.S.C. 450b(e)).

23 (4) PERSON.—The term “person” means indi-
24 viduals, corporations, partnerships, associations of

1 persons, State or local governments, or Indian tribal
2 governments.

3 (5) SECRETARY.—The term “Secretary” means
4 the Secretary of the Interior or his or her designee.

5 (6) SERVICE.—The term “Service” means the
6 Federal Mediation and Conciliation Service estab-
7 lished under section 202 of the National Labor Rela-
8 tions Act (29 U.S.C. 172).

9 (7) TRIBAL RETAIL ENTERPRISE.—The term
10 “tribal retail enterprise” means a retail store car-
11 rying on business in Indian country that sells to-
12 bacco products or motor fuels and is owned or oper-
13 ated by a person or an Indian tribe or a member of
14 an Indian tribe, or is owned or operated by a person
15 who is not a member of an Indian tribe under a
16 management contract with an Indian tribe or a
17 member of an Indian tribe.

18 (8) TRIBAL-STATE AGREEMENT.—The term
19 “tribal-State agreement” means an agreement or
20 compact between a State and an Indian tribe con-
21 cerning State taxes on tobacco products or motor
22 fuels that is in effect on the date of enactment of
23 this Act, or was in effect at any time between Janu-
24 ary 1, 1990, and the date of enactment of this Act.

1 **SEC. 3. APPLICABILITY.**

2 (a) IN GENERAL.—Except to the extent that a tribal-
3 State agreement provides otherwise, this Act shall not
4 apply to any covered State tax for which—

5 (1) a State law specifically exempts, either in
6 whole or in part, the collection or remittance of such
7 taxes;

8 (2) the legal incidence of the otherwise applica-
9 ble State tax falls on a tribe or its members, thereby
10 subjecting the purchase by a tribal member from a
11 tribal retail enterprise to a State excise, sales, or
12 transaction tax; or

13 (3) the State tax is preempted by the operation
14 of Federal law.

15 (b) PROSPECTIVE APPLICABILITY.—This Act shall
16 apply only to covered State taxes due, or amounts due
17 under tribal-State agreements, with respect to purchases
18 completed on or after the date of the enactment of this
19 Act.

20 **SEC. 4. COLLECTION OF COVERED STATE TAXES PURSU-**
21 **ANT TO STATE PETITIONS.**

22 (a) COLLECTION AND REMITTANCE OF TAXES.—Not
23 later than 60 days after receiving a petition from the Gov-
24 ernor of a State within the borders of which a tribal retail
25 enterprise is located alleging the non-collection of a cov-
26 ered State tax by the tribal retail enterprise, the Secretary

1 shall determine whether or not the tribal retail enterprise
2 is collecting and remitting the appropriate amount of cov-
3 ered State tax according to the laws of such State) (if
4 no tribal-State agreement exists) or the terms of a tribal-
5 State agreement (if a tribal-State agreement exists). Upon
6 a determination of non-collection and non-remittance, the
7 Secretary shall notify and direct the tribal retail enterprise
8 to collect the covered State tax and remit it to the Sec-
9 retary pursuant to subsection (b).

10 (b) REMITTANCE TO SECRETARY.—

11 (1) IN GENERAL.—A tribal retail enterprise
12 shall remit to the Secretary covered State taxes col-
13 lected pursuant to subsection (a) on a monthly basis,
14 by the 15th day following the month in which the
15 taxes were collected.

16 (2) DETERMINATION OF AMOUNT TO BE REMIT-
17 TED TO SECRETARY.—

18 (A) EXISTENCE OF TRIBAL-STATE AGREE-
19 MENT.—In the event a tribal-State agreement
20 exists or existed with respect to the tribal retail
21 enterprise or Indian tribe named in a sub-
22 section (a) petition, then the amount of covered
23 State taxes remitted to the Secretary pursuant
24 to such a petition shall in no event be more
25 than the amount provided for by the terms of

1 such tribal-State agreement, even if such tribal-
2 State agreement is no longer in effect at the
3 time of the subsection (a) petition because the
4 agreement has expired or one of the parties to
5 the agreement has terminated the agreement.

6 (B) ABSENCE OF TRIBAL-STATE AGREE-
7 MENT.—In the event a tribal-State agreement
8 with respect to the tribal retail enterprise or In-
9 dian tribe named in a subsection (a) petition
10 did not or does not exist, then the Secretary
11 shall consult with a State making the petition
12 under subsection (a) to determine the appro-
13 priate amount of covered State taxes that
14 should be remitted to the Secretary under this
15 subsection based upon the volume of motor
16 fuels and tobacco products sold to nontribal
17 members at the tribal retail enterprise.

18 (C) MEDIATION.—If necessary to deter-
19 mine the amount to be remitted under this sub-
20 section, the Secretary shall consult with the
21 Service and establish a mediation between the
22 Indian tribe and the State for the purposes of
23 determining such amount. The Service shall
24 complete such mediation within 180 days of the
25 initial consultation by the Secretary and render

1 its determination on the appropriate amount to
2 be remitted to the Secretary immediately. Once
3 the Secretary has received the Service's deter-
4 mination, that determination shall be used by
5 the Secretary in establishing the appropriate
6 amount to be remitted under subsection (a).

7 (3) EXCLUSION.—Unless otherwise provided by
8 a tribal-State agreement described in subsection
9 (b)(2)(A), a tribal retail enterprise shall not remit to
10 the Secretary any covered State taxes collected from
11 tribal members from purchases of tobacco products
12 and motor fuels.

13 (c) RETURN OF FUNDS TO APPROPRIATE STATE.—
14 Not later than 30 days after receiving a covered State tax
15 payment from a tribal retail enterprise or Indian tribe
16 under subsection (b), the Secretary shall remit the balance
17 of taxes collected under subsection (b) (after subtracting
18 administrative expenses subject to subsection (d)) to the
19 State fund specified by the Governor in the petition sub-
20 mitted under subsection (a).

21 (d) ADMINISTRATIVE EXPENSES.—Prior to the re-
22 turn of funds to the appropriate State under subsection
23 (c), the Secretary shall deduct from the amount remitted
24 from the tribal retail enterprise pursuant to subsection (b)
25 an administrative fee that is equal to the direct cost of

1 administering this Act. The administrative fee deducted
 2 under this subsection shall not exceed one percent of the
 3 amounts remitted pursuant to subsection (b).

4 (e) SATISFACTION OF DUTIES UNDER TRIBAL-
 5 STATE AGREEMENT.—Amounts remitted to the Secretary
 6 under subsection (b) shall be applied by the State to
 7 amounts due under the terms of the tribal-State agree-
 8 ment described in subsection (b)(2)(A).

9 (f) REGULATIONS.—Not later than 180 days after
 10 the date of the enactment of this Act, the Secretary shall
 11 promulgate regulations providing for the implementation
 12 and enforcement of this Act.

13 (g) SPECIFIC PRICES.—No provision of this Act shall
 14 require any tribal retail enterprise to sell motor fuels or
 15 tobacco products at any specific price.

16 **SEC. 5. MEDIATION OF DISPUTES BETWEEN TRIBES AND**
 17 **STATES UNDER TRIBAL-STATE AGREEMENTS.**

18 (a) IN GENERAL.—A State or an Indian tribe may
 19 petition the Secretary to mediate disputes between a State
 20 and an Indian tribe regarding compliance with the terms
 21 of a tribal-State agreement in effect on the date of such
 22 petition.

23 (b) MEDIATION.—Within 60 days of receiving a peti-
 24 tion under subsection (a), the Secretary shall either con-
 25 vene a mediation of the State and the Indian tribe to re-

1 solve the dispute or consult with the Service and establish
2 a mediation between the Indian tribe and the State for
3 the purposes of determining such amount. The Service
4 shall report its conclusions regarding the dispute con-
5 tained in a subsection (a) within 180 days of the initial
6 consultation by the Secretary. Once the Secretary or the
7 Service has made a determination regarding the issue in
8 dispute, the Secretary shall notify the parties to the sub-
9 section (a) petition of the determination and urge the
10 adoption of the determination by such parties.

11 **SEC. 6. ENFORCEMENT.**

12 (a) NOTICE OF VIOLATION.—If a tribal retail enter-
13 prise fails to comply within 60 days with section 4(a) once
14 the Secretary has made a determination under section
15 4(b), the Secretary shall notify the tribal retail enterprise
16 of this violation and demand immediate compliance with
17 the determination.

18 (b) REFERRAL OF VIOLATION TO DEPARTMENT OF
19 JUSTICE.—If a tribal retail enterprise is not in compliance
20 with section 4 within 30 days of the notification under
21 subsection (a), the Secretary shall refer the matter within
22 15 days to the Department of Justice.

23 (c) COMMENCEMENT OF CIVIL ENFORCEMENT AC-
24 TION.—

1 (1) IN GENERAL.—Not later than 60 days after
2 a referral under subsection (b), the Department of
3 Justice shall initiate a civil enforcement action in
4 Federal district court against the tribal retail enter-
5 prise.

6 (2) TRIBAL-OWNED RETAIL ENTERPRISE.—If
7 the tribal retail enterprise named in such a civil en-
8 forcement action is owned or operated by an Indian
9 tribe, then the civil action shall include requests for
10 injunctive relief against the tribal retail enterprise
11 and the appropriate Indian tribal government and
12 for the payment to the Secretary of all covered State
13 taxes, as determined under section 4(b), owed by the
14 tribal retail enterprise from the date of the enact-
15 ment of this Act.

16 (3) TRIBAL MEMBER-OWNED RETAIL ENTER-
17 PRISE.—If the tribal retail enterprise named in such
18 a civil enforcement action is owned or operated by
19 a member of an Indian tribe, then the civil action
20 shall include requests for injunctive relief and civil
21 penalties in the amount of 3 times the covered State
22 taxes, as determined under section 4(b), owed by the
23 tribal retail enterprise from the date of enactment of
24 this Act.

25 (d) CHALLENGE TO COMPLIANCE.—

1 (1) INFORMATION.—

2 (A) IN GENERAL.—Any person, including
3 but not limited to a State, that has information
4 indicating that a tribe is not remitting the ap-
5 propriate covered State tax to the Secretary
6 under section 4(b), may submit such informa-
7 tion to the Secretary. Not later than 30 days
8 after receipt of such information, the Secretary
9 shall commence an administrative action to de-
10 termine the validity of this information. Such
11 administrative action shall be concluded within
12 60 days. If, after this administrative action, the
13 Secretary concludes that the tribal retail enter-
14 prise is in violation of this Act, then the Sec-
15 retary shall issue a notice of violation under
16 subsection (a).

17 (B) LIMITATION.—The Secretary shall
18 commence an administrative action under sub-
19 paragraph (A) only if the information sub-
20 mitted by a person under subparagraph (A) di-
21 rectly relates to covered State tax amounts due
22 as a result of the Secretary's action on a peti-
23 tion submitted under section 4(a).

24 (2) JUDICIAL REVIEW.—A person may chal-
25 lenge the Secretary's conclusions under this sub-

1 section by commencing an action in Federal district
2 court; provided, that if the challenge is not sustained
3 by the court, the challenging person shall be liable
4 to the Secretary for attorney's fees and court costs.

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