

107TH CONGRESS
1ST SESSION

H. R. 2726

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Resources

A BILL

To provide for the payment of State taxes and local taxes collected by the State on the sale of cigarettes and motor fuel by a tribal retail enterprise 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 2001”.

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 or local excise, sales, or trans-
4 action tax that is collected by the State, levied or
5 imposed on purchases, by nonmembers of a tribe, of
6 tobacco products or motor fuels from a tribal retail
7 enterprise.

8 (2) INDIAN COUNTRY.—The term “Indian coun-
9 try” means any land where an Indian tribe may le-
10 gally assert sovereignty over a tribal retail enter-
11 prise.

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

16 (4) PERSON.—The term “person” includes indi-
17 viduals, corporations, partnerships, associations of
18 persons, State or local governments, non-Indian re-
19 tailers affiliated with one or more Indian tribes, In-
20 dian tribes, or Indian tribal governments.

21 (5) PETITION FOR ENFORCEMENT.—The term
22 “petition for enforcement” means a petition sub-
23 mitted to the Secretary by a Governor of a State
24 which requires action by the Secretary under section
25 4(a).

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of the Interior or a designee of the
3 Secretary.

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

8 (8) TRIBAL RETAIL ENTERPRISE.—The term
9 “tribal retail enterprise” means a person that has
10 conducted business in Indian country and at the
11 time that such business was conducted, was owned
12 or operated (in whole or in part) by one or more of
13 the following:

14 (A) An Indian tribe.

15 (B) A member of an Indian tribe.

16 (C) A person who is not a member of an
17 Indian tribe under a management contract with
18 an Indian tribe or a member of an Indian tribe.

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

1 of this Act. If there is more than 1 such agreement
2 or compact, the term “tribal-State agreement”
3 means the agreement or compact that was most re-
4 cently in effect.

5 **SEC. 3. APPLICABILITY.**

6 (a) IN GENERAL.—Except to the extent that a tribal-
7 State agreement provides otherwise, this Act shall not
8 apply to—

9 (1) that part of any covered State tax for which
10 a State law specifically exempts, either in whole or
11 in part, the collection or remittance of such taxes; or

12 (2) any covered State tax for which, under
13 State or local law which requires the collection or re-
14 mittance tax, the legal incidence of the otherwise ap-
15 plicable State tax falls on a tribe or its members,
16 thereby subjecting the purchase by a tribal member
17 from a tribal retail enterprise to a State excise,
18 sales, or transaction tax.

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

1 **SEC. 4. COLLECTION OF COVERED STATE TAXES PURSU-**
2 **ANT TO AN ENFORCEMENT PETITION.**

3 (a) ENFORCEMENT PETITION BY THE GOVERNOR;
4 DETERMINATION OF VALIDITY BY THE SECRETARY.—Not
5 later than 60 days after receiving a petition from the Gov-
6 ernor of a State within the exterior borders of which a
7 tribal retail enterprise is located alleging the non-collec-
8 tion, non-remittance, or both, of a covered State tax by
9 the tribal retail enterprise and requesting action under
10 this Act by the Secretary, the Secretary shall determine,
11 through an investigation, audit or other method, whether
12 or not the tribal retail enterprise is collecting and remit-
13 ting the appropriate amount of covered State tax.

14 (b) NOTICE UPON FINDING OF VALIDITY OF EN-
15 FORCEMENT PETITION; REMITTANCE.—

16 (1) NOTICE.—Not later than 60 days after a
17 determination of the validity of the allegations in an
18 Enforcement Petition, the Secretary shall notify the
19 tribal retail enterprise that is the subject of the En-
20 forcement Petition of this determination and direct
21 the tribal retail enterprise to collect the covered
22 State tax and remit it to the Secretary pursuant to
23 subsection (c).

24 (2) REMITTANCE.—A tribal retail enterprise
25 shall begin remitting funds to the Secretary on the

1 schedule established in subsection (c) not later than
2 60 days after the later of the following:

3 (A) The date that the Secretary notifies
4 the tribal retail enterprise under paragraph (1).

5 (B) The date that a determination is made
6 as a result of a mediation under subsection
7 (c)(2)(D).

8 (c) TIMING AND AMOUNT OF REMITTANCE TO SEC-
9 RETARY.—

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

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

17 (A) EXISTENCE OF TRIBAL-STATE AGREE-
18 MENT.—In the event a tribal-State agreement
19 exists or existed with respect to the tribal retail
20 enterprise or Indian tribe named in a Enforce-
21 ment Petition, then the amount of covered
22 State taxes collected and remitted to the Sec-
23 retary pursuant to such a Enforcement Petition
24 shall in no event be more than the amount pro-
25 vided for by the terms of such tribal-State

1 agreement, even if such tribal-State agreement
2 is no longer in effect at the time that the En-
3 forcement Petition was submitted 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 Enforcement Petition did
10 not or does not exist, then the Secretary shall
11 consult with the Governor of the State that sub-
12 mitted the Enforcement Petition to determine
13 the appropriate amount of covered State taxes
14 that should be remitted to the Secretary under
15 this subsection based upon relevant State law.

16 (C) CALCULATION OF AMOUNTS TO BE RE-
17 MITTED.—The Secretary shall collect from the
18 tribal retail enterprise or Indian tribe named in
19 an Enforcement Petition all covered State taxes
20 that the Secretary determines should have been
21 remitted to the appropriate State since the date
22 of enactment of this Act, unless the Enforce-
23 ment Petition specifies a alternative date after
24 the enactment of this Act.

25 (D) MEDIATION.—

1 (i) IN GENERAL.—If the parties can-
2 not agree on the amount required to be re-
3 mitted under this subsection, the Secretary
4 shall contact the Service and request the
5 establishment of a mediation between the
6 tribal retail enterprise or the Indian tribe
7 and the Governor of the State for the pur-
8 poses of determining such amount.

9 (ii) DEADLINE FOR COMPLETION.—
10 Not later than 180 days after the initial
11 contact by the Secretary regarding the me-
12 diation, the Service shall complete such
13 mediation and render its determination on
14 the appropriate amount to be remitted to
15 the Secretary.

16 (iii) USE OF DETERMINATION.—The
17 determination of the Service shall be used
18 by the Secretary in establishing the appro-
19 priate amount to be remitted.

20 (iv) REFUSAL TO COOPERATE WITH
21 MEDIATION.—If a tribal retail enterprise,
22 Indian tribe, or Governor of a State (or
23 the designee of the Governor) fails to par-
24 ticipate in the mediation under this sub-
25 paragraph or fails to cooperate with the

1 Service regarding the mediation, the Serv-
2 ice may make its determination based upon
3 information available to the Service.

4 (d) TERMINATION OF REMITTANCES TO SEC-
5 RETARY.—Remittances of covered State taxes to the Sec-
6 retary required under this subsection shall continue until
7 one of the following occurs:

8 (1) The Governor of the State submitting the
9 Enforcement Petition certifies in writing to the Sec-
10 retary that the Secretary’s involvement is no longer
11 required.

12 (2) The Governor of the State submitting the
13 Enforcement Petition and the appropriate Indian
14 tribe enter into a binding tribal-State agreement
15 covering the collection and remittance of covered
16 State taxes.

17 (e) RETURN OF FUNDS TO APPROPRIATE STATE.—
18 Not later than 30 days after receiving a covered State tax
19 payment from a tribal retail enterprise or Indian tribe
20 under subsection (c), the Secretary shall remit the balance
21 of taxes collected under subsection (c) (after subtracting
22 administrative expenses subject to subsection (f)) to the
23 State fund specified to the Secretary by the Governor.

24 (f) ADMINISTRATIVE EXPENSES.—Prior to remitting
25 funds to the appropriate State fund under subsection (e),

1 the Secretary shall deduct from the amount remitted from
2 the tribal retail enterprise pursuant to subsection (c) an
3 administrative fee that is equal to the lesser of the fol-
4 lowing:

5 (1) The direct cost of administering this Act.

6 (2) One percent of the amounts remitted pursu-
7 ant to subsection (c).

8 (g) SATISFACTION OF OBLIGATIONS.—Amounts re-
9 mitted to the Secretary under subsection (c) or paid pur-
10 suant to a judgment under section 6 shall be applied by
11 the State to amounts due under the terms of the tribal-
12 State agreement or the covered State tax obligation of the
13 relevant tribal retail enterprise.

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

16 (a) IN GENERAL.—Not later than 60 days after re-
17 ceiving a request from the Governor of a State or an In-
18 dian tribe for the Secretary to mediate a dispute between
19 a the Governor of the State and an Indian tribe regarding
20 compliance with the terms of a tribal-State agreement in
21 effect on the date of an Enforcement Petition, the Sec-
22 retary shall initiate a mediation, or direct the Service to
23 initiate a mediation, for the Governor of the State and
24 the Indian tribe to resolve the dispute.

1 (b) COMPLETION OF MEDIATION.—Not later than
2 210 days after a request for mediation is received by the
3 Secretary under subsection (a), the Secretary shall ensure
4 that the mediation is concluded and notify the parties to
5 the mediation of the resulting determination by the Sec-
6 retary or the Service and urge the adoption of the deter-
7 mination by such parties.

8 **SEC. 6. ENFORCEMENT.**

9 (a) NOTICE OF VIOLATION.—If a tribal retail enter-
10 prise fails to comply with section 4(b)(2), the Secretary
11 shall notify the tribal retail enterprise of this violation and
12 demand immediate compliance.

13 (b) REFERRAL OF VIOLATION TO DEPARTMENT OF
14 JUSTICE.—If a tribal retail enterprise is not in compliance
15 with section 4(b)(2) within 30 days of the notification
16 under subsection (a), the Secretary shall refer the matter
17 within 15 days to the Department of Justice.

18 (c) COMMENCEMENT OF CIVIL ENFORCEMENT AC-
19 TION.—

20 (1) IN GENERAL.—Not later than 60 days after
21 a referral under subsection (b), the Department of
22 Justice shall initiate a civil enforcement action in
23 Federal district court against the tribal retail enter-
24 prise that is the subject of the referral.

1 (2) TRIBAL-OWNED RETAIL ENTERPRISE.—If
2 the tribal retail enterprise named in such a civil en-
3 forcement action is owned or operated by an Indian
4 tribe, then the civil action shall include requests for
5 injunctive relief against the tribal retail enterprise
6 and for the payment to the Secretary of all covered
7 State taxes, as determined under section 4 (and in-
8 terest as permitted by the State law of State regard-
9 ing which the Enforcement Petition was submitted)
10 owed by the tribal retail enterprise from the date of
11 the enactment of this Act.

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

23 (d) POSTING OF BOND DURING APPEAL.—If the
24 tribal retail enterprise appeals the decision of the Federal
25 district court in an action pursuant to subsection (c), then

1 the tribal retail enterprise shall post a bond for the
2 amount of the covered State taxes and interest that was
3 the subject of the action until a final determination has
4 been made in the action.

5 **SEC. 7. JUDICIAL REVIEW.**

6 The Governor of a State that has filed an enforce-
7 ment petition, or a tribal retail enterprise that has been
8 named in such an enforcement petition, may challenge the
9 Secretary's conclusions under Section 4 by commencing
10 an action in Federal district court. If the challenge is not
11 sustained by the court, the challenging State or tribal re-
12 tail enterprise shall be liable to the Secretary for attor-
13 ney's fees and court costs.

14 **SEC. 8. REGULATIONS.**

15 Not later than 180 days after the date of the enact-
16 ment of this Act, the Secretary shall promulgate regula-
17 tions providing for the implementation and enforcement
18 of this Act.

19 **SEC. 9. EFFECTIVE DATE.**

20 This Act shall take effect 180 days after the date of
21 the enactment of this Act, regardless of whether regula-
22 tions have been issued under section 7.

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