

# Tribal Fishing, Hunting, & Gathering Exemption

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# Today's Agenda

- Current Exemption
- Tribal Fishing, Hunting, and Gathering Consultation Update
- Decisions Through Consultation
- New Deduction on Combined Excise Tax Return
- External Education Plan
- Open Floor Discussion

# Current Exemption

- Currently a tribe, tribal member, or fishing intertribal organization can take an exemption at the point of sale for things relating to treaty fishery items.
- The department provides this list to retailers as a guide as to what might qualify.
  - Boat, boat trailer
  - Gear, net
  - Boat/engine repair
  - Laboratory equipment
  - Smoking equipment
  - Operating supplies
  - Motor
  - Specialized Clothing
  - Hatchery equipment
  - Processing equipment

# Fishing, Hunting, & Gathering Consultation

- Government-to-Government relationship (RCW [43.376.020](#)).
- Fishing, Hunting, and Gathering Consultation
  - What's happened?
  - Central questions
    - ✓ Should the current fishing exemption be expanded to hunting and gathering activities?
    - ✓ Should the department extend the current exemption treatment to all federally-recognized tribes with fishing, hunting, and gathering rights in Washington?
    - ✓ What goods & services should qualify for the exemption?

# Should the current exemption be expanded to hunting and gathering?

- Treaties are an example of how Tribes reserved certain rights such as fishing, hunting, and gathering.
- Caselaw supports extension to hunting and gathering.
  - Washington, Idaho, Montana State Supreme Courts
  - 9<sup>th</sup> Circuit
- Washington law is clear: No distinction between the right to fish and the privilege to hunt and gather.

# List of Qualified Tribes with Fishing, Hunting, and Gathering Rights in WA

- See *Interim Guidance* for list.
- Qualified Intertribal Organizations
- Beginning April 1, 2022, the Department will officially recognize a sales tax exemption for all federally-recognized tribes with fishing, hunting, and gathering rights in Washington State on “qualified goods or services.”

# What goods and services should qualify for the exemption?

- **Who decides what's exempt?**
  - Treaties must be construed “in the sense in which they would naturally be understood by the Indians.”
  - “Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.”
- **The Process**
  - Department asked the Tribes for lists of goods and services directly used in fishing, hunting, and gathering activities.
  - Department merged the list from the Treaty Fisheries form with the lists provided by the Tribes.

# List of Qualified Goods & Services

- List is **not** exclusive.
- List will grow and evolve over time.



# Tribal Fishing, Hunting, and Gathering Form & Safe Harbor

- **What if?**
  - Should a retailer honor the exemption if a qualified purchaser wants to buy something **not** on the list but appears it could arguably be used directly in fishing, hunting, or gathering?
- **Safe Harbor**
  - “A seller accepting a Tribal Fishing, Hunting, and Gathering form in good faith for retail sales of qualified goods or services made to a qualified purchaser will not be held liable for any uncollected sales tax.”
- **Is there anything else the Department can offer?**
  - Request a [binding letter ruling](#).

# Interim Guidance

- Explains the Department’s decisions and includes the “Safe Harbor” language.
- Chosen to expedite the implementation of those decisions.
- The Department plans to replace the Interim Guidance with an Excise Tax Advisory.
- No rulemaking is anticipated.

# New Deduction on Combined Excise Tax Return

- A new deduction code will be added to the Combined Excise Tax Return: *Tribal Fishing, Hunting, and Gathering*.
- Deduction will be under the state's portion of the retail sales tax classification.
- Deduction will be available on the following returns :
  - Monthly Filers: April 2022 Return
  - Quarterly Filers: Quarter 2 2022 Return
  - Annual Filers: Annual 2022 Return

# External Education Plan

- Department has committed to put together an external education plan for retailers.
- Plan will focus on areas where there might be gaps.
- We invite you to share your experiences when the new exemption takes effect.
  - Send to: David Duvall – [davidd@dor.wa.gov](mailto:davidd@dor.wa.gov)
  - Please cc: Steve Ewing – [steve.ewing@dor.wa.gov](mailto:steve.ewing@dor.wa.gov)

# Thank you!

- A **big thank you** to the following individuals and their organizations for meeting with the Department and Tribal Leadership to discuss the relevant issues and providing valuable feedback.
  - **Patrick Connor**, National Federation of Independent Business
  - **Mark Johnson**, Washington Retail Association
  - **Tommy Gantz**, Association of Washington Business

# Open Floor Discussion



## Discussion Question 1:

- Any questions or comments on the materials presented thus far?

## Discussion Question 2:

- What issues do you or your clients experience when doing business w/Tribes, tribal entities, or in Indian Country?



## Discussion Question 3:

- What can the department do to help you or your clients when you do business in Indian Country or with Tribal entities and/or tribal citizens?

Thank you!

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