



# POLICY BRIEF

## **State Gives Away Gas Taxes to Indian Tribes**

*Washington state Indian tribes use governor's gas tax deal to undercut competition*

by Michael Ennis

Director, Center for Transportation

with support from WPC research assistants Ben Shelton, Caitlin Kincaid and Laura Fitzgibbon

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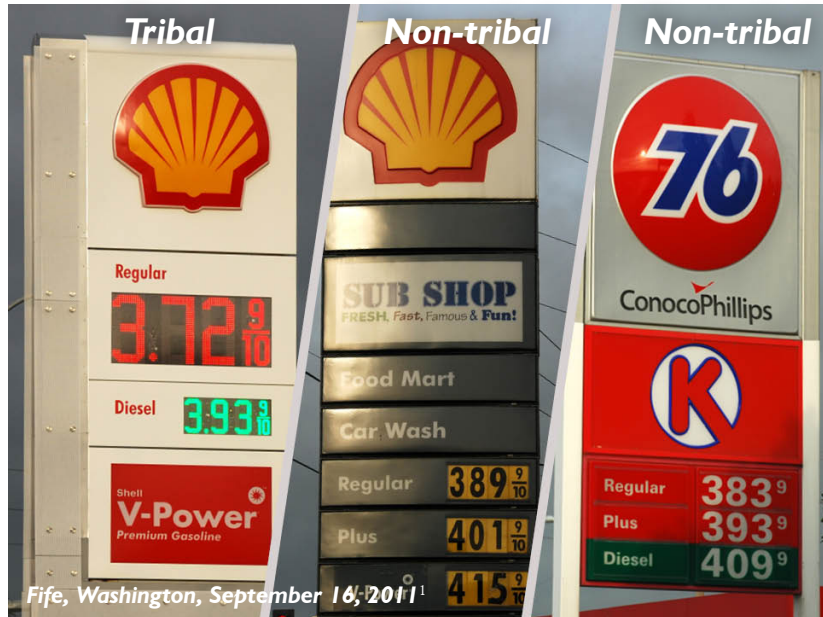
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# POLICY BRIEF

## Key Findings

1. New tribal gas tax compacts negotiated by the governor require tribal fuel station operators to collect the state's full gas tax rate, but then state officials give back 75%, or 28 cents per gallon, to tribes.
2. Since 2000, the number of tribal gas stations with agreements has more than tripled from an estimated 14 to 51.
3. Under the new agreements, the amount of gas taxes given to tribes has grown exponentially, from \$5.31 million in 2005 to more than \$28.14 million in 2010.
4. Since 2005, motorists lost more than \$90.55 million in gas tax revenue to Indian tribes.
5. Tribal fuel station operators are consistently underselling regional non-tribal competitors by an average of 7 to 12 cents per gallon for unleaded fuel and 15 to 26 cents per gallon for diesel in most areas of the state.
6. Tribal station operators charge up to 11.5% less for fuel than their non-tribal competitors.
7. In one example, a tribal station is estimated to have sold fuel at a loss of 2.5 cents per gallon.
8. The compacts allow state gas taxes to be used for non-highway purposes, subsidizing general tribal services.
9. Under the compacts, details of the tribal audits that are required to ensure compliance are kept secret from the public and state DOL officials.
10. The compacts allow tribes to undercut private fuel station operators, give away needed revenue for roads, harm taxpayers by allowing gas tax revenue to be spent on non-highway purposes, and hurt non-tribal businesses by creating an unfair playing field among fuel station operators.



## State Gives Away Gas Taxes to Indian Tribes

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by Michael Ennis  
Director, Center for Transportation

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### Introduction

Washington state motorists would welcome lower fuel prices in today's tough economy. The average price of fuel is near \$4 per gallon. So when stations in Yakima, Spokane or Tacoma sell gas for less than their nearest competitors, consumers will notice and start filling up at the cheaper stations.

But what if those cheaper stations had an unfair advantage? What if they were able to undercut their competitors because the governor gave them back 75% of the gas taxes they collected? In Washington, motorists must pay 37.5 cents per gallon in state gas taxes. These gas taxes are collected at the pump and remitted to the state.

In 2007, the legislature passed Senate Bill 5272, which authorized the governor to enter into new fuel tax compacts with federally recognized Indian tribes who operated fuel stations in Washington state.<sup>2</sup> The governor settled tax

<sup>1</sup> These photos were taken by WPC in Fife, Wash., on September 16, 2011. The two non-tribal stations are within one-half mile of the tribal station.

<sup>2</sup> "2007 Senate Bill 5272: Modifying the administration of fuel taxes," WashingtonVotes, 2007, at [www.washingtonvotes.org/Legislation.aspx?SessionID=20&ChamberLegislationTypeID=14&Number=5272&op=View](http://www.washingtonvotes.org/Legislation.aspx?SessionID=20&ChamberLegislationTypeID=14&Number=5272&op=View).

agreements with 23 Indian tribes.<sup>3</sup> The new agreements require tribally owned fuel stations to collect the state's full gas tax rate from motorists at the pump, but then state officials give back 75%, or 28 cents per gallon, to Indian tribes. Since 2005, motorists lost more than \$90.55 million in gas tax revenue to Indian tribes.<sup>4</sup>

Non-tribal station owners say the tribes use the public money to unfairly undercut competition by charging less for fuel. Indeed, most people know that tribal fuel stations are generally cheaper.

The tribal fuel compacts pose significant risks to private, non-tribal fuel sellers who must pay the full gas tax and charge their customers more for fuel. Non-tribal fuel station owners are forced to operate at a competitive disadvantage because of special tax treatment given to Indian tribes, and they ultimately risk being run out of business.

Washington Policy Center recently conducted a price survey of 18 tribal stations located in five metropolitan areas around the state. These areas are: Tacoma, Olympia, Bremerton, Spokane and Yakima. This research tested the idea that tribally owned fuel stations charge less for gas than their non-tribal counterparts.

During the month of July, WPC researchers compared the price of fuel at the 18 tribal stations with the regional and statewide averages determined by AAA's Daily Fuel Gauge Report.<sup>5</sup> The results show that tribal fuel stations — under the agreements negotiated by the governor — consistently undersell regional non-tribal competitors, with Spokane-area stations as a possible exception.

*The survey results show that tribal fuel stations — under the agreements negotiated by the governor — consistently undersell regional non-tribal competitors, with Spokane-area stations as a possible exception.*

## Tacoma

During July, WPC researchers surveyed five tribal fuel stations in the Tacoma region and found they consistently charged less than non-tribal stations. In fact, there was not a single day in July when tribal stations charged at or above the regional average.

The five tribal stations are owned by the Puyallup Indian tribe:

- Pioneer Food Mart in Tacoma
- Tribal 1-Stop, Portland Avenue in Tacoma
- Tribal 1-Stop, Pacific Avenue in Fife
- Norpoint Shell in Tacoma
- Tahoma Market in Fife

AAA reported the overall average price of regular gas in the Tacoma region was \$3.76 per gallon in July. The average price of regular fuel at the five tribal stations was \$3.67 per gallon, or 9 cents less than the non-tribal stations

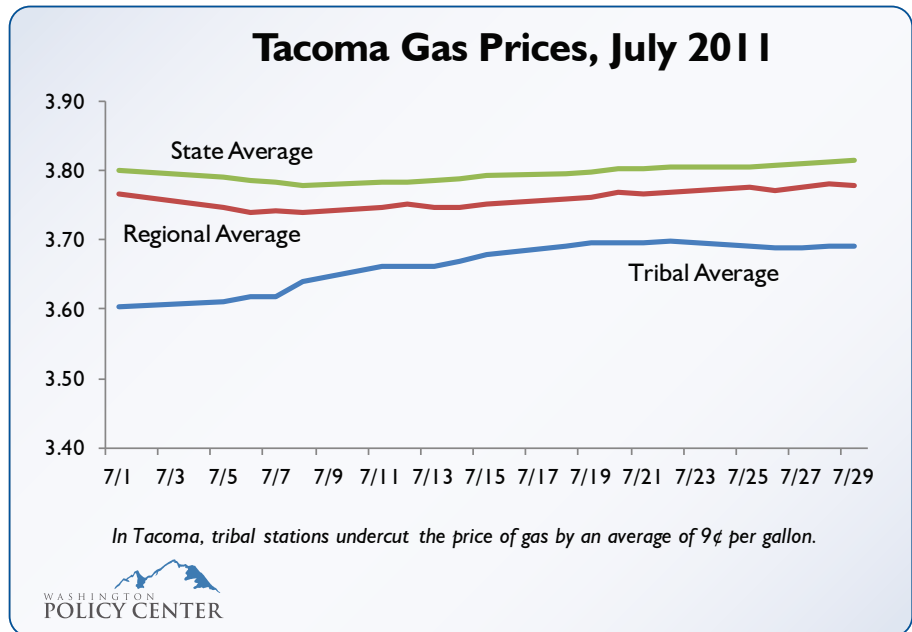
<sup>3</sup> Tribal fuel stations, dates and agreements, Department of Licensing, 2011, at [www.washingtonpolicy.org/sites/default/files/DOT-Status-data.pdf](http://www.washingtonpolicy.org/sites/default/files/DOT-Status-data.pdf).

<sup>4</sup> "Annual Tribal Refunds, 2005–2010," Department of Licensing, 2011, at [www.washingtonpolicy.org/sites/default/files/Annual-Tribal-Refunds-05-to-10.pdf](http://www.washingtonpolicy.org/sites/default/files/Annual-Tribal-Refunds-05-to-10.pdf).

Note: 2010 fourth quarter data is not available in this document. Fourth quarter figures were provided directly from the Department of Licensing: Fourth quarter refunds are \$6.85 million and the 2005–2010 total is \$90.55 million.

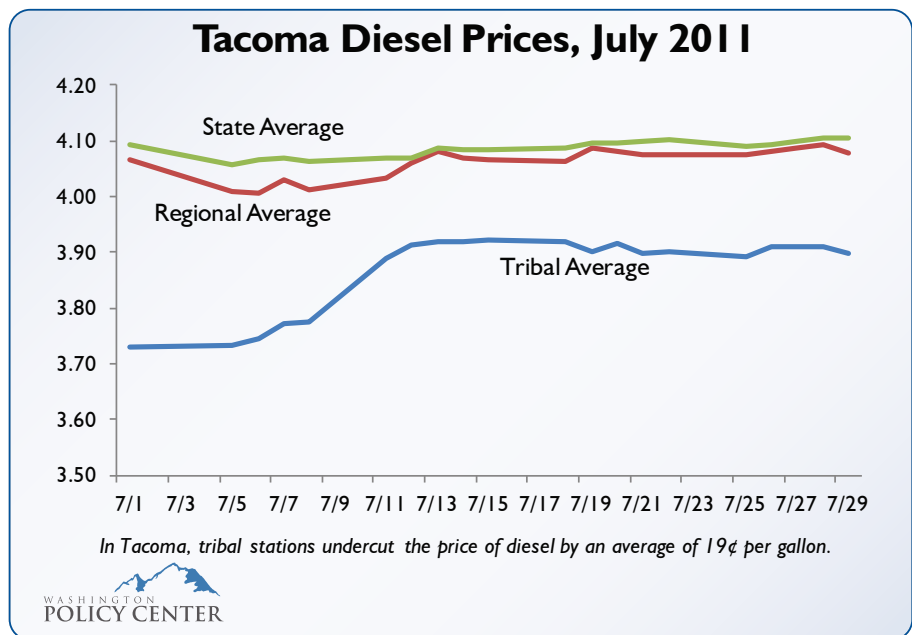
<sup>5</sup> "AAA Daily Fuel Gauge Report, WA Metro Averages," July 2011, at [fuelgauge.report.aaa.com/?redirectto=http://fuelgauge.report.opisnet.com/index.asp](http://fuelgauge.report.aaa.com/?redirectto=http://fuelgauge.report.opisnet.com/index.asp).

reported over the same time period. Daily gas prices from the five tribal stations in the Tacoma area ranged from 4 to 19 cents per gallon below the daily regional gas price reported by AAA in July.



*The Tahoma Market station in Fife, owned by the Puyallup tribe, undersold private operators by as much as 37 cents per gallon of diesel during the study period.*

There were also three tribal stations in the Tacoma area that sold diesel fuel. AAA reported the regional average price for diesel was \$4.06 per gallon in July. The three tribal stations reported their average price of diesel was \$3.87 per gallon, or 19 cents less than the average price at private stations. In fact, the Tahoma Market station in Fife, owned by the Puyallup Indian tribe, undersold private operators by as much as 37 cents per gallon of diesel during the study period.



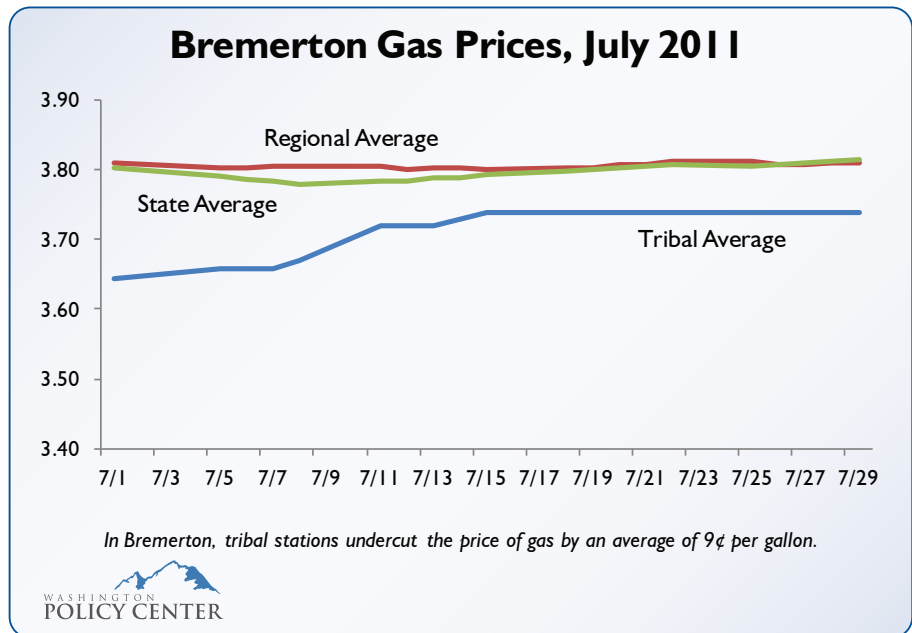
## Bremerton

The same trends occurred in the Bremerton region, where two stations owned by the Suquamish Indian tribe were surveyed.

The two tribal stations were:

- Longhouse Texaco in Poulsbo
- Masi Shop in Suquamish

AAA reported the average price of regular fuel in the Bremerton region was \$3.81 per gallon in July. The tribal stations reported an average price for regular fuel of \$3.72 per gallon in July, or 9 cents less than the regional average. During the first week of July, the Longhouse Texaco in Poulsbo undersold the regional average by as much as 18 cents per gallon.

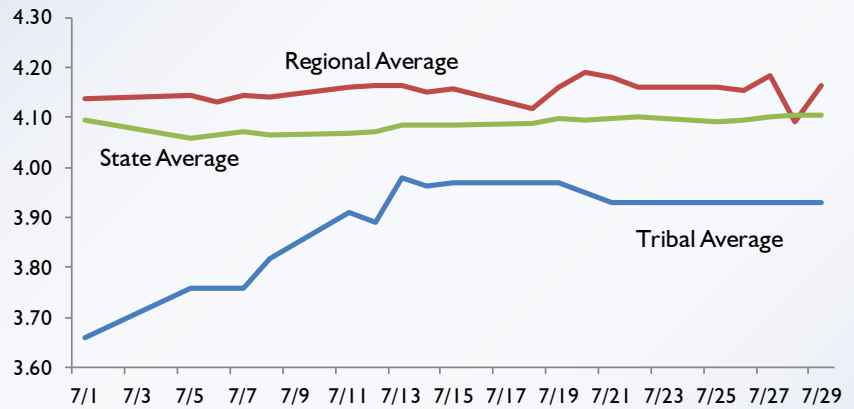


*For a driver of a commercial truck that carries 300 gallons of diesel, the tribal price amounts to a difference of about 11.5%, or \$144 less than local, non-tribal competitors, on a single refueling stop.*

The differences between diesel prices were more dramatic. AAA reported the average price for a gallon of diesel was \$4.15 in the Bremerton area during the month of July. At the tribal stations, the average price for diesel was a whopping 26 cents lower at \$3.89 per gallon in July.

In fact, the largest price disparity of all the metropolitan areas occurred at these two tribal stations. On a single day in July, the Longhouse Texaco and the Masi Shop both sold diesel for 48 cents less than the regional average. This means for a driver of a commercial truck that carries 300 gallons of diesel, the tribal price amounts to a difference of about 11.5%, or \$144 less than local, non-tribal competitors, on a single refueling stop.

## Bremerton Diesel Prices, July 2011



In Bremerton, tribal stations undercut the price of diesel by an average of 26¢ per gallon.

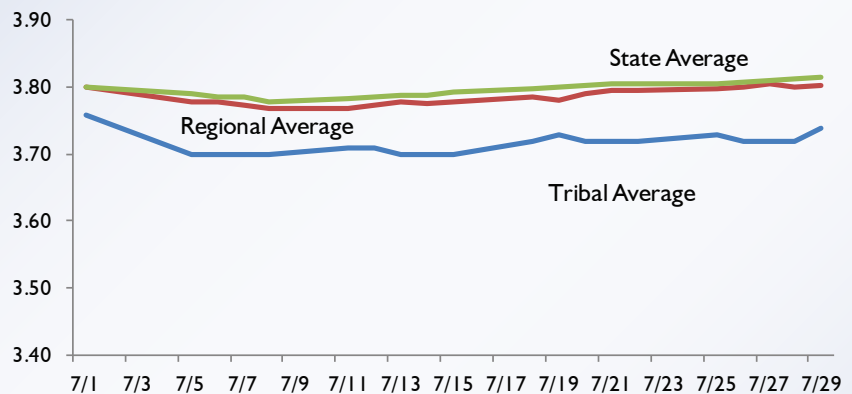


## Olympia

The Res Mart is the only tribal station in Olympia that was surveyed. It is owned by the Nisqually Indian tribe.

In July, AAA reported the average price of regular fuel was \$3.79 per gallon in the Olympia region. The price for regular gas at the tribally owned station in July was \$3.72 per gallon, 7 cents less than the regional average.

## Olympia Gas Prices, July 2011



In Olympia, tribal stations undercut the price of gas by an average of 7¢ per gallon.



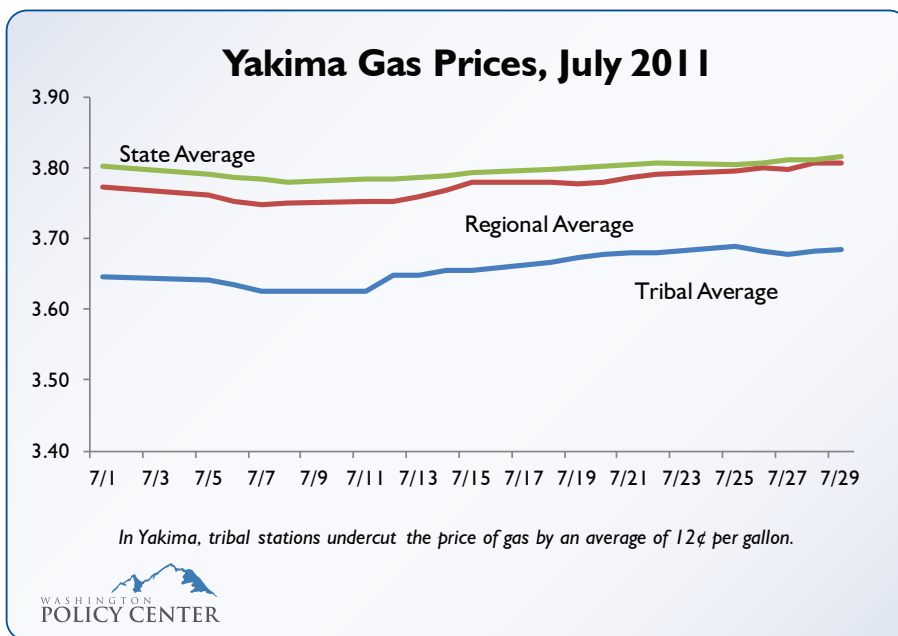
The tribal station did not sell diesel.

## Yakima

The Yakama Indian tribe has seven stations that were surveyed during the month of July. They include:

- Kiles Korner in Wapato
- Lillies Corner in Wapato
- Topp Stop in Harrah
- White Swan Trading Post in White Swan
- Wolf Den Texaco in Wapato
- Cougar Den Shell in White Swan
- Mountain Inn in Glenwood

AAA reported the average price of regular fuel in the Yakima region was \$3.78 per gallon in July. The seven tribal stations in the Yakima region reported an average price of \$3.66 per gallon of regular fuel, 12 cents less than the Yakima regional average over the same time period.

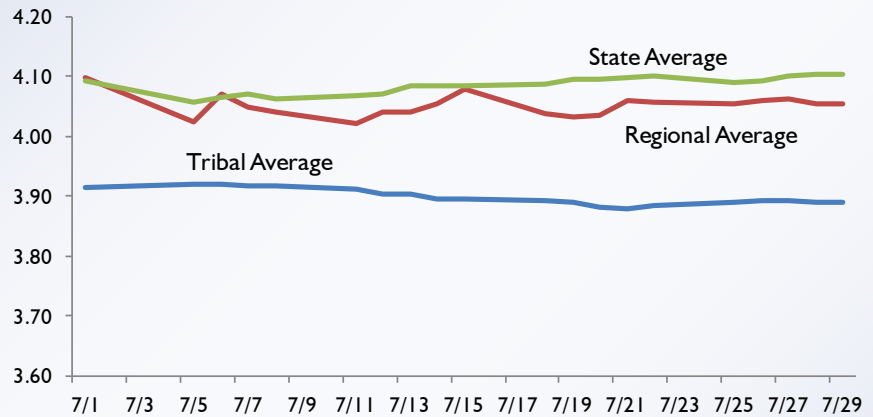


*The Wolf Den Texaco in Wapato undersold Yakima's regional average diesel price by as much as 21 cents per gallon in July.*

The Yakama tribal stations continued to undercut private operators with diesel prices as well. AAA reported the average price of diesel in the Yakima region was \$4.05 per gallon in July. The average price of diesel at the tribal stations was 15 cents less than non-tribal stations, or \$3.90 per gallon. The Wolf Den Texaco in Wapato undersold Yakima's regional average diesel price by as much as 21 cents per gallon in July.



## Yakima Diesel Prices, July 2011



In Yakima, tribal stations undercut the price of diesel by an average of 15¢ per gallon.



## Spokane

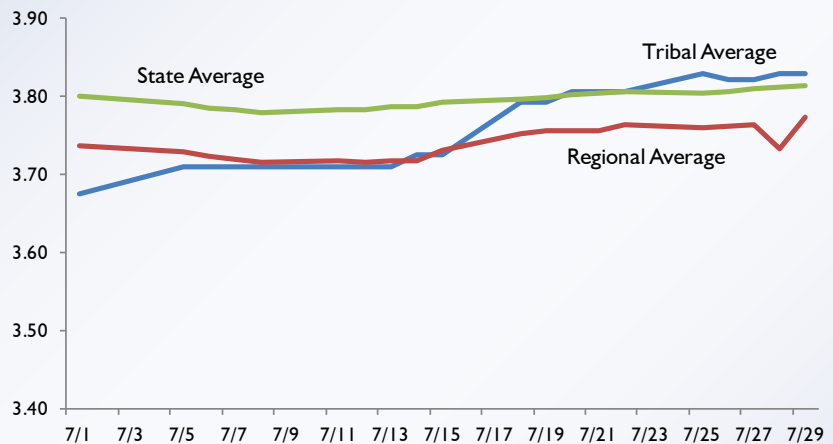
Prices for regular unleaded fuel in the Spokane area appear to be a possible exception to the pattern of tribal stations underselling non-tribal operators.

Three tribal stations were monitored. They include:

- Two Rivers Texaco in Davenport
- Legacy Landing Chevron in Airway Heights
- Spoko Fuel in Chewelah

In July, AAA reported the average price of regular fuel in the Spokane area was \$3.74 per gallon. The average price of regular fuel at the three tribal stations in the Spokane area was slightly higher at \$3.76 per gallon.

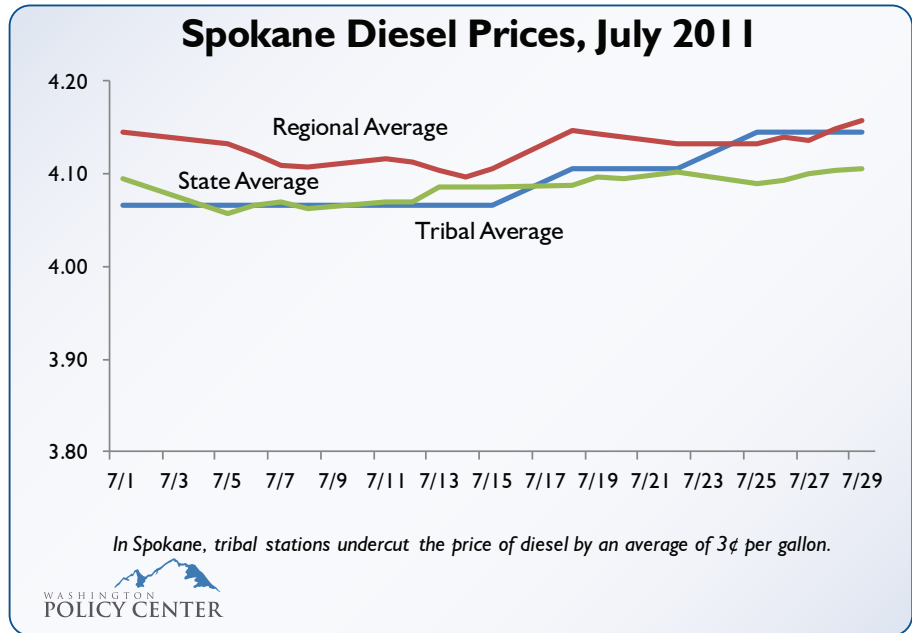
## Spokane Gas Prices, July 2011



In Spokane, tribal stations slightly oversold the price of gas by an average of 2¢ per gallon.



Likewise, diesel prices in Spokane seemed to be more competitive between tribal and non-tribal fuel stations. AAA reported the average price of diesel in the Spokane area was \$4.13 per gallon in July. The three tribal stations in the Spokane region also sell diesel and the average price in July was \$4.10 per gallon, or 3 cents less than the regional average.



## Conclusion

Comparing fuel prices at tribal gas stations shows that tribal operators charge less than their non-tribal competitors. Selling gas is a highly competitive market, where even a few pennies make a big difference in sales and revenue. It is significant to see tribal stations charge up to 11.5% less than their non-tribal competitors.

Tribal officials say they charge the same as some discount centers, like Safeway and Costco fuel stations, and they are able to charge less because as sovereign nations, they are under fewer government regulations.<sup>6</sup>

It is true that tribal gas stations in Washington are not subject to state rules like private operators are, but tribes are under federal jurisdiction and face comparable regulations with comparable costs.

While fuel prices are more competitive with wholesale discount centers like Costco and Safeway, tribal stations are still cheaper (WPC checked). Furthermore, discount centers are able to charge less for fuel for two reasons.

Every fuel station operator purchases fuel from a distributor. That fuel is either branded or unbranded. Wholesale discount centers like Safeway and Costco purchase unbranded fuel, which is generally cheaper than purchasing

<sup>6</sup> “Tribes’ gas-tax compacts ripe for review,” Bruce Ramsey, *The Seattle Times*, September 13, 2011, at [www.seattletimes.nwsourc.com/html/opinion/2016196615\\_bruce14.html](http://www.seattletimes.nwsourc.com/html/opinion/2016196615_bruce14.html); and “Respondent State of Washington’s Answer to Amici Briefs,” Rene Tomisser and Todd Bowers, Senior Counsel Washington State Attorney General’s Office, September 2011.

*It is significant to see tribal stations charge up to 11.5% less than their non-tribal competitors.*

***It is ironic that tribal officials claim their fuel stations sell fuel at prices that are comparable to wholesale discount centers because they virtually admit that tribes enjoy their own subsidy.***

gas from major brands like Shell, Texaco or Chevron. Most tribal stations are affiliated with a major brand and pay a premium for fuel at the distribution level. This means tribal fuel station operators should be pricing similar to other branded station operators, who have to pass on the premium that comes with a branded offering, rather than pricing below the wholesale discount centers offering cheaper unbranded fuels.

Second, Costco and Safeway are able to charge less because their members pay for it in other ways. In other words, fuel prices are subsidized by members who pay monthly or annual dues or higher prices for other goods. It is ironic that tribal officials claim their fuel stations sell fuel at prices that are comparable to wholesale discount centers like Safeway and Costco, because they virtually admit that tribes enjoy their own subsidy.

WPC's price surveys show that tribal fuel stations consistently charge less for gas than private operators. With a few additional variables, it is reasonably easy to calculate the approximate retail margin of a tribal fuel station to determine whether they are selling fuel at a loss. This would further suggest that tribal fuel stations are receiving a subsidy in order to stay in business.

These variables are common among all fuel stations and they make up the retail price of a gallon of gas.

- Distributor acquisition price (DAP) is the price that a fuel distributor pays for gas from an oil company. These prices are published daily.
- Distributor margin (DM) is the profit that a distributor makes on selling gas to fuel stations. The margin is rolled into the acquisition price. Distributor margins are confidential, but they typically range between 1 to 2 cents per gallon.<sup>7</sup>
- State and federal taxes. These are: Federal Oil Spill Recovery Fee, Federal Liquid Underground Storage Tank Tax, Washington State Oil Spill Tax, Washington State Hazardous Substance Tax, federal excise taxes, state excise taxes and the Ethanol tax credit.<sup>8</sup>
- Transportation (T) costs to deliver fuel to stations; costs vary based on distance traveled. For fuel stations in the central Puget Sound region, most of which are close to fuel distribution centers, transportation costs are about 2 cents per gallon.<sup>9</sup>
- Incentive rebates (IR) are given to fuel stations in exchange for branding or other station improvements. Most fuel stations negotiate and receive these rebates. While the exact amounts are confidential, the industry standard is usually between 2 and 3 cents per gallon.<sup>10</sup> During a meeting of the State Public Records Exemptions Accountability Committee, or "Sunshine Committee," a Puyallup Tribal Attorney said their rebates are similarly between 2 and 4 cents per gallon.<sup>11</sup>

<sup>7</sup> Automotive United Trades Organization, A Nonprofit Trade Association of Motor Fuel Retailers and Suppliers Doing Business in Washington State, September 2011, at [www.autowa.org/index.html](http://www.autowa.org/index.html).

<sup>8</sup> "Fuel Taxes and Fees," General Administration State of Washington, September 2011, at [www.fortress.wa.gov/ga/apps/priceinfo/FuelTax.aspx](http://www.fortress.wa.gov/ga/apps/priceinfo/FuelTax.aspx).

<sup>9</sup> Automotive United Trades Organization, A Nonprofit Trade Association of Motor Fuel Retailers and Suppliers Doing Business in Washington State, September 2011, at [www.autowa.org/index.html](http://www.autowa.org/index.html).

<sup>10</sup> Ibid.

<sup>11</sup> "Public Records Exemptions Accountability Committee," quarterly meeting, September 2011, at [www.tvw.org/media/mediaplayer.cfm?evid=2011091011&TYPE=V&CFID=5045743&CFTOKEN=79575844&bhcp=1](http://www.tvw.org/media/mediaplayer.cfm?evid=2011091011&TYPE=V&CFID=5045743&CFTOKEN=79575844&bhcp=1).

- Fuel station acquisition price (FSAP) is the price a fuel station pays a distributor for gas. It is calculated by adding the distributor acquisition price, distributor margin, state and federal taxes, and transportation costs and applying any incentive rebates.
- Typical credit card processing fees (CCPF) for fuel stations in the central Puget Sound region at the time of the comparisons were about 2.5% of the pump price.<sup>12</sup> Credit card processing fees do not apply to cash transactions. The share of transactions that require a credit card processing fee is typically about 80% of total fuel sales.<sup>13</sup>

These variables can be used to create the following model:

**Pump Price** = Distributor acquisition price from the oil company + Distributor margin + State and federal taxes + Transportation costs to deliver gas from the distributor to the fuel station - Incentive rebates = (Fuel station acquisition price from the distributor) + Credit card processing fee + Fuel station margin.

Most of these variables are available and easy to obtain. Other data is confidential and not shared but this information can be estimated with a high degree of accuracy using comparable fuel contracts that share similar locations, brands and time frames. The two stations compared are the same brand and they are located within a half mile of each other in the central Puget Sound region.

On September 16, 2011, a tribal Shell station in the central Puget Sound region sold regular unleaded fuel for \$3.729 per gallon. This was 17 cents less (\$3.899) than a private, not-tribal Shell station located just a half mile away.<sup>14</sup>

The retail prices were recorded at about 9:00 a.m. so they were set by the fuel supply that was purchased from the distributor the night before. That price was \$3.116 per gallon.<sup>15</sup> State and federal taxes and credits amount to 54 cents per gallon.<sup>16</sup> The credit card processing fees are 9.32 cents per gallon for the tribal Shell station and 9.74 cents per gallon for the private Shell station.<sup>17</sup>

For the remaining three variables (distributor margin, transportation costs and incentive rebates) assume 1.5 cents per gallon distributor margin and 2 cents per gallon transportation costs. Since tribal officials say they are able to obtain incentive rebates between 2 and 4 cents per gallon, assume 2 cents per gallon in incentive rebates for the non-tribal station and a slightly higher rate, 3 cents per gallon for the tribal station.

<sup>12</sup> Automotive United Trades Organization, A Nonprofit Trade Association of Motor Fuel Retailers and Suppliers Doing Business in Washington State, September 2011, at [www.autowa.org/index.html](http://www.autowa.org/index.html).

<sup>13</sup> Ibid.

<sup>14</sup> Prices were recorded by WPC on September 16th, 2011 at about 9 am. The tribal Shell station and the non-tribal Shell station are located within one-half mile of each other.

<sup>15</sup> Automotive United Trades Organization, A Nonprofit Trade Association of Motor Fuel Retailers and Suppliers Doing Business in Washington State, September 2011, at [www.autowa.org/index.html](http://www.autowa.org/index.html).

<sup>16</sup> 54 cents per gallon in state and federal taxes was calculated from the following rates: Federal Oil Spill Recovery Fee: 17 cents per gallon, Federal Liquid Underground Storage Tank Tax: 1 cent per gallon, Washington State Oil Spill Tax: 1 cent per gallon, Washington State Hazardous Substance Tax: 0.7% of whole sale price (\$3.116), Federal Excise Taxes: 18.4 cents per gallon, State excise taxes: 37.5 cents per gallon, and Ethanol tax credit: 4.5 cents per gallon.

<sup>17</sup> The credit card processing fee was calculated based on the rate times the pump price: Tribal Shell:  $0.025 \times 3.729 = 0.0932$  Private Shell:  $0.025 \times 3.899 = 0.0974$ .

$\$3.729$  (Pump Price) = [ $\$3.116$  (DAP) +  $0.015$  (DM) +  $0.54$  (Tax) +  $0.02$  (T) -  $0.03$  (IR) =  $\$3.661$  (FSAP)] +  $0.0932$  (CCPF) + Tribal Retail Margin.

$\$3.899$  (Pump Price) = [ $\$3.116$  (DAP) +  $0.015$  (DM) +  $0.54$  (Tax) +  $0.02$  (T) -  $0.02$  (IR) =  $\$3.671$  (FSAP)] +  $0.0974$  (CCPF) + Private Retail Margin.

For fuel sales that require a credit card processing fee, the tribal Shell station had an estimated retail margin of -2.5 cents per gallon. This means the tribal station lost 2.5 cents for every gallon of regular unleaded fuel it sold. For fuel sales that require a credit card processing fee, the private, non-tribal Shell station had an estimated retail margin of 13.1 cents per gallon. This means the private station earned 13 cents for every gallon of regular unleaded fuel it sold.

Even if the tribal station was able to negotiate a higher incentive rebate from its fuel distributor, at 4 cents per gallon (rebate amounts are typically between 2 and 3 cents per gallon), the tribal Shell station would still have an estimated retail margin of -1.5 cents per gallon. In fact, it is possible to add another full-cent increase to their incentive rebate, and the tribal station would still have a negative estimated retail margin.

*A retail margin below zero means a fuel station is selling gas at a loss.*

A retail margin below zero means a fuel station is selling gas at a loss. Such an aggressive pricing strategy is meant to increase volume by attracting customers away from nearby competitors. For tribal gas stations, higher volumes translate to higher gas tax refunds from the state. For most businesses, negative margins are unsustainable. But under the tribal compacts agreed to by the governor, as long as the gas tax revenues received from the state are more than the retail losses, the tribes will continue to undercut their non-tribal competition.

Consider that since the legislature passed SB 5272 in 2007, which allowed the governor to negotiate new gas tax agreements with tribes, the number of tribal fuel stations with agreements has more than tripled, growing from an estimated 14 in 2000 to 51 today.<sup>18</sup> Tribal officials continue to add more fuel stations, and they have plans to enter the commercial truck stop market. Indian tribes would make large profits if they are able to undercut private sellers and obtain fuel station monopolies along major freight corridors like I-90 and I-5.

Under the new agreements that exempt tribes from paying 75% of state gas taxes, the amount of gas taxes refunded to tribes has grown exponentially, from \$5.31 million in 2005 to more than \$28.14 million in 2010.<sup>19</sup>

Survey results show that tribes are profiting from the new gas tax agreements they negotiated with the governor, and they continue to take advantage of the special arrangement by opening new fuel stations. State officials estimate that the cost to motorists will climb to about \$700 million in lost gas taxes over the next 20 years.<sup>20</sup>

<sup>18</sup> Tribal fuel stations, dates and agreements, Department of Licensing, 2011, at [www.washingtonpolicy.org/sites/default/files/DOT-Status-data.pdf](http://www.washingtonpolicy.org/sites/default/files/DOT-Status-data.pdf).

<sup>19</sup> "Annual Tribal Refunds, 2005-2010," Department of Licensing, 2011, at [www.washingtonpolicy.org/sites/default/files/Annual-Tribal-Refunds-05-to-10.pdf](http://www.washingtonpolicy.org/sites/default/files/Annual-Tribal-Refunds-05-to-10.pdf). Note: 2010 fourth quarter data is not available in this document. Fourth quarter figures were provided directly from the Department of Licensing: Fourth quarter refunds is \$6.85 million and the 2010 total is \$28.14 million.

<sup>20</sup> "Transportation Revenue Forecast Council, September 2011 Transportation Economic and Revenue Forecasts, Vol. II: Detailed Forecasts Tables," Office of Financial Management, September 2011, at [www.ofm.wa.gov/budget/info/Sept11transpovol2.pdf](http://www.ofm.wa.gov/budget/info/Sept11transpovol2.pdf).

State forecast officials, however, significantly underestimate the cost. For example, in the most recent transportation revenue forecast, officials show the amount of gas tax revenue given to Indian tribes in 2010 was about \$19.8 million.<sup>21</sup> In reality, the amount of gas tax revenues given to Indian tribes was \$28.1 million, or about 30% more than what was forecasted.<sup>22</sup> If the number of stations continues to expand at the rate it has over the last four years, it is more likely that the cost to taxpayers will be closer to \$1 billion in lost gas tax revenues.

Tribal officials say the gas tax proceeds are used for road purposes to benefit drivers, just as they would be if the taxes were spent at the state level.

This is not true per the agreements signed by the governor and the tribes.

The 18<sup>th</sup> Amendment of the Washington State Constitution protects motorists by limiting gas tax revenue to highway purposes only; those who pay the tax receive the benefit from the tax. Yet the tribal agreements permit tribal officials to spend gas tax revenue more broadly than the Constitution allows. The tribal agreements allow spending in the following areas:<sup>23</sup>

1. Planning, construction and maintenance of roads, bridges, and boat ramps
2. Transit services and facilities
3. Transportation planning
4. Police services
5. Other highway related purposes

Washington drivers pay 100% of state gas taxes at tribal fuel stations, yet under the governor's tribal gas tax agreements, the public does not get back 100% of the benefits. State gas taxes are now being used for non-highway purposes as defined by the 18<sup>th</sup> Amendment, subsidizing general tribal services like police and transit.

Worse, state officials and the public do not know if the tribes are spending the gas tax proceeds as the compacts require. Officials from the State Department of Licensing (DOL) are supposed to monitor the tribes' compliance through independent audits, which are required by law. However, the audit firms are chosen and paid by the tribes and the audit details are exempt from public disclosure. In fact, in a stunning admission in front of the Public Records Exemptions Accountability Committee, DOL officials recently admitted the audit details are even kept secret from them.<sup>24</sup> All DOL officials see is a letter from the audit firm that simply states the tribe is in compliance or not, and even those letters are kept secret from public view.<sup>25</sup>

Washington officials are planning to propose a transportation tax package in 2012, which will likely include a gas tax increase. Washington officials are

<sup>21</sup> Ibid.

<sup>22</sup> "Annual Tribal Refunds, 2005-2010," Department of Licensing, 2011, at [www.washingtonpolicy.org/sites/default/files/Annual-Tribal-Refunds-05-to-10.pdf](http://www.washingtonpolicy.org/sites/default/files/Annual-Tribal-Refunds-05-to-10.pdf). Note: 2010 Fourth quarter data is not available in this document. Fourth quarter figures were provided directly from the Department of Licensing: Fourth quarter refunds is \$6.85 million and the 2010 total is \$28.14 million.

<sup>23</sup> "Senate Bill 5272, Session Law," Washington State Legislature, 2007, 20, at [www.apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202007/5272.SL.pdf](http://www.apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202007/5272.SL.pdf).

<sup>24</sup> Public Records Exemptions Accountability Committee, "quarterly meeting, September 2011, at [www.tvw.org/media/mediaplayer.cfm?evid=2011091011&TYPE=V&CFID=5045743&CFTOKEN=79575844&bhcp=1](http://www.tvw.org/media/mediaplayer.cfm?evid=2011091011&TYPE=V&CFID=5045743&CFTOKEN=79575844&bhcp=1).

<sup>25</sup> Ibid.

***In a stunning admission in front of the Public Records Exemptions Accountability Committee, DOL officials recently admitted the audit details are even kept secret from them.***

quick to say they need more money to fund worthy transportation projects, improve road safety and preserve the current highway system.

Yet under the tribal compacts, state officials give away more than \$28 million per year to Indian tribes in current gas taxes, which are then spent on non-highway purposes.

The governor's tribal agreements allow Indian tribes to undercut private fuel station operators, give away revenue needed for roads, harm taxpayers by allowing gas tax revenue to be spent on non-highway purposes, and hurt non-tribal businesses by creating an unfair playing field among fuel station operators.

## About the Author

**Michael Ennis** is Director of the Center for Transportation at Washington Policy Center. He is the author of numerous studies on transportation policy issues, including WPC's *Five Principles of Responsible Transportation Policy*. He appears regularly in print and broadcast media across Washington and policymakers on both sides of the aisle in Olympia seek his input and legislative testimony.



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