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HOUSE BILL 1560

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State of Washington

54th Legislature

1995 Regular Session

By Representatives K. Schmidt and Blanton; by request of Attorney General

Read first time 01/31/95. Referred to Committee on Transportation.

1 AN ACT Relating to evasion of fuel tax; amending RCW 82.36.010,  
2 82.36.380, 82.38.020, 82.38.270, and 9A.04.080; and prescribing  
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.36.010 and 1993 c 54 s 1 are each amended to read  
6 as follows:

7 For the purposes of this chapter:

8 (1) "Motor vehicle" means every vehicle that is in itself a self-  
9 propelled unit, equipped with solid rubber, hollow-cushion rubber, or  
10 pneumatic rubber tires and capable of being moved or operated upon a  
11 public highway, except motor vehicles used as motive power for or in  
12 conjunction with farm implements and machines or implements of  
13 husbandry;

14 (2) "Motor vehicle fuel" means gasoline or any other inflammable  
15 gas or liquid, by whatsoever name such gasoline, gas, or liquid may be  
16 known or sold, the chief use of which is as fuel for the propulsion of  
17 motor vehicles or motorboats;

18 (3) "Distributor" means every person who refines, manufactures,  
19 produces, or compounds motor vehicle fuel and sells, distributes, or in

1 any manner uses it in this state; also every person engaged in business  
2 as a bona fide wholesale merchant dealing in motor vehicle fuel who  
3 either acquires it within the state from any person refining it within  
4 or importing it into the state, on which the tax has not been paid, or  
5 imports it into this state and sells, distributes, or in any manner  
6 uses it in this state; also every person who acquires motor vehicle  
7 fuel, on which the tax has not been paid, and exports it by commercial  
8 motor vehicle as defined in RCW 82.37.020 to a location outside the  
9 state. For the purposes of liability for a county fuel tax,  
10 "distributor" has that meaning defined in the county ordinance imposing  
11 the tax;

12 (4) "Service station" means a place operated for the purpose of  
13 delivering motor vehicle fuel into the fuel tanks of motor vehicles;

14 (5) "Department" means the department of licensing;

15 (6) "Director" means the director of licensing;

16 (7) "Dealer" means any person engaged in the retail sale of liquid  
17 motor vehicle fuels;

18 (8) "Person" means every natural person, firm, partnership,  
19 association, or private or public corporation;

20 (9) "Highway" means every way or place open to the use of the  
21 public, as a matter of right, for purposes of vehicular travel;

22 (10) "Broker" means every person, other than a distributor, engaged  
23 in business as a broker, jobber, or wholesale merchant dealing in motor  
24 vehicle fuel or other petroleum products used or usable in propelling  
25 motor vehicles, or in other petroleum products which may be used in  
26 blending, compounding, or manufacturing of motor vehicle fuel;

27 (11) "Producer" means every person, other than a distributor,  
28 engaged in the business of producing motor vehicle fuel or other  
29 petroleum products used in, or which may be used in, the blending,  
30 compounding, or manufacturing of motor vehicle fuel;

31 (12) "Distribution" means all withdrawals of motor vehicle fuel for  
32 delivery to others, to retail service stations, or to unlicensed bulk  
33 storage plants;

34 (13) "Bulk storage plant" means, pursuant to the licensing  
35 provisions of RCW 82.36.070, any plant, under the control of the  
36 distributor, used for the storage of motor vehicle fuel to which no  
37 retail outlets are directly connected by pipe lines;

1 (14) "Marine fuel dealer" means any person engaged in the retail  
2 sale of liquid motor vehicle fuel whose place of business and or sale  
3 outlet is located upon a navigable waterway;

4 (15) "Alcohol" means alcohol that is produced from renewable  
5 resources;

6 (16) "Electronic funds transfer" means any transfer of funds, other  
7 than a transaction originated by check, draft, or similar paper  
8 instrument, which is initiated through an electronic terminal,  
9 telephonic instrument, or computer or magnetic tape so as to order,  
10 instruct, or authorize a financial institution to debit or credit an  
11 account;

12 (17) "Evasion" or "evade" means to diminish or avoid the  
13 computation, assessment, or payment of authorized taxes or fees  
14 through:

15 (a) A knowing false statement, misrepresentation of fact, or other  
16 act of deception; or

17 (b) An intentional omission, failure to file a return or report, or  
18 other act of deception.

19 **Sec. 2.** RCW 82.36.380 and 1961 c 15 s 82.36.380 are each amended  
20 to read as follows:

21 ~~((Any person failing to pay the tax as herein provided, or~~  
22 ~~violating any of the other provisions of this chapter, or making any~~  
23 ~~false statement, or concealing any material fact in any report, record,~~  
24 ~~affidavit, or claim provided for herein, shall be guilty of a gross~~  
25 ~~misdemeanor, and upon conviction thereof shall be punished by a fine of~~  
26 ~~not less than five hundred dollars nor more than five thousand dollars~~  
27 ~~or by imprisonment in the county jail not exceeding one year, or by~~  
28 ~~both such fine and imprisonment.))~~

29 (1) It is unlawful for a person or corporation to evade a tax or  
30 fee imposed under this chapter.

31 (2) Evasion of taxes or fees under this chapter is a class C felony  
32 under chapter 9A.20 RCW. In addition to other penalties and remedies  
33 provided by law, the court shall order a person or corporation found  
34 guilty of violating subsection (1) of this section to:

35 (a) Pay the tax or fee evaded plus interest, commencing at the date  
36 the tax or fee was first due, at the rate of twelve percent per year,  
37 compounded monthly; and

1       (b) Pay a penalty of one hundred percent of the tax evaded, to the  
2 general fund of the state.

3       **Sec. 3.** RCW 82.38.020 and 1994 c 262 s 22 are each amended to read  
4 as follows:

5       As (~~hereinafter~~) used in this chapter:

6       (1) "Person" means every natural person, fiduciary, association, or  
7 corporation. The term "person" as applied to an association means and  
8 includes the partners or members thereof, and as applied to  
9 corporations, the officers thereof.

10       (2) "Department" means the department of licensing.

11       (3) "Highway" means every way or place open to the use of the  
12 public, as a matter of right, for the purpose of vehicular travel.

13       (4) "Motor vehicle" means every self-propelled vehicle designed for  
14 operation upon land utilizing special fuel as the means of propulsion.

15       (5) "Special fuel" means and includes all combustible gases and  
16 liquids suitable for the generation of power for propulsion of motor  
17 vehicles, except that it does not include motor vehicle fuel as defined  
18 in chapter 82.36 RCW.

19       (6) "Bulk storage" means the placing of special fuel by a special  
20 fuel dealer into a receptacle other than the fuel supply tank of a  
21 motor vehicle.

22       (7) "Special fuel dealer" means any person engaged in the business  
23 of delivering special fuel into the fuel supply tank or tanks of a  
24 motor vehicle not then owned or controlled by him, or into bulk storage  
25 facilities for subsequent use in a motor vehicle. For this purpose the  
26 term "fuel supply tank or tanks" does not include cargo tanks even  
27 though fuel is withdrawn directly therefrom for propulsion of the  
28 vehicle.

29       (8) "Special fuel user" means any person purchasing special fuel  
30 into bulk storage without payment of the special fuel tax for  
31 subsequent use in a motor vehicle, or any person engaged in interstate  
32 commercial operation of motor vehicles any part of which is within this  
33 state.

34       (9) "Service station" means any location at which fueling of motor  
35 vehicles is offered to the general public.

36       (10) "Unbonded service station" means any service station at which  
37 an unbonded special fuel dealer regularly makes sales of special fuel

1 by means of delivery thereof into the fuel supply tanks of motor  
2 vehicles.

3 (11) "Bond" means: (a) A bond duly executed by such special fuel  
4 dealer or special fuel user as principal with a corporate surety  
5 qualified under the provisions of chapter 48.28 RCW which bond shall be  
6 payable to the state of Washington conditioned upon faithful  
7 performance of all requirements of this chapter, including the payment  
8 of all taxes, penalties, and other obligations of such dealer, arising  
9 out of this chapter; or (b) a deposit with the state treasurer by the  
10 special fuel dealer or special fuel user, under such terms and  
11 conditions as the department may prescribe, a like amount of lawful  
12 money of the United States or bonds or other obligations of the United  
13 States, the state of Washington, or any county of said state, of an  
14 actual market value not less than the amount so fixed by the  
15 department; or (c) such other instruments as the department may  
16 determine and prescribe by rule to protect the interests of the state  
17 and to insure compliance of the requirements of this chapter.

18 (12) "Lessor" means any person (a) whose principal business is the  
19 bona fide leasing or renting of motor vehicles without drivers for  
20 compensation to the general public, and (b) who maintains established  
21 places of business and whose lease or rental contracts require such  
22 motor vehicles to be returned to the established places of business.

23 (13) "Natural gas" means naturally occurring mixtures of  
24 hydrocarbon gases and vapors consisting principally of methane, whether  
25 in gaseous or liquid form.

26 (14) "Standard pressure and temperature" means fourteen and  
27 seventy-three hundredths pounds of pressure per square inch at sixty  
28 degrees Fahrenheit.

29 (15) "Evasion" or "evade" means to diminish or avoid the  
30 computation, assessment, or payment of authorized taxes or fees  
31 through:

32 (a) A knowing false statement, misrepresentation of fact, or other  
33 act of deception; or

34 (b) An intentional omission, failure to file a return or report, or  
35 other act of deception.

36 **Sec. 4.** RCW 82.38.270 and 1979 c 40 s 19 are each amended to read  
37 as follows:

38 ~~((It shall be unlawful for any person to:~~

1       ~~(1) Refuse, or knowingly and intentionally fail to make and file~~  
2 ~~any statement required by this chapter in the manner or within the time~~  
3 ~~required;~~

4       ~~(2) Knowingly and with intent to evade or to aid in the evasion of~~  
5 ~~the tax imposed herein to make any false statement or conceal any~~  
6 ~~material fact in any record, return, or affidavit provided for in this~~  
7 ~~chapter;~~

8       ~~(3) Conduct any activities requiring a license under this chapter~~  
9 ~~without a license or after a license has been suspended, surrendered,~~  
10 ~~canceled, or revoked;~~

11       ~~(4) Fail to keep and maintain the books and records required by~~  
12 ~~this chapter;~~

13       ~~(5) Divert special fuel purchased for a nontaxable use to a use~~  
14 ~~subject to the taxes imposed by this chapter without payment of the~~  
15 ~~taxes as required by this chapter.~~

16       ~~Except as otherwise provided by law, any person violating any of~~  
17 ~~the provisions of this chapter shall be guilty of a gross misdemeanor~~  
18 ~~and shall, upon conviction thereof, be sentenced to pay a fine of not~~  
19 ~~less than five hundred dollars nor more than one thousand dollars and~~  
20 ~~costs of prosecution, or imprisonment for not more than one year, or~~  
21 ~~both.~~

22       ~~The fine and imprisonment provided for in this section shall be in~~  
23 ~~addition to any other penalty imposed by any other provision of this~~  
24 ~~chapter.))~~ (1) It is unlawful for a person or corporation to evade a  
25 tax or fee imposed under this chapter.

26       (2) Evasion of taxes or fees under this chapter is a class C felony  
27 under chapter 9A.20 RCW. In addition to other penalties and remedies  
28 provided by law, the court shall order a person or corporation found  
29 guilty of violating subsection (1) of this section to:

30       (a) Pay the tax or fee evaded plus interest, commencing at the date  
31 the tax or fee was first due, at the rate of twelve percent per year,  
32 compounded monthly; and

33       (b) Pay a penalty of one hundred percent of the tax evaded, to the  
34 general fund of the state.

35       **Sec. 5.** RCW 9A.04.080 and 1993 c 214 s 1 are each amended to read  
36 as follows:

37       (1) Prosecutions for criminal offenses shall not be commenced after  
38 the periods prescribed in this section.

1 (a) The following offenses may be prosecuted at any time after  
2 their commission:

3 (i) Murder;

4 (ii) Arson if a death results.

5 (b) The following offenses shall not be prosecuted more than ten  
6 years after their commission:

7 (i) Any felony committed by a public officer if the commission is  
8 in connection with the duties of his or her office or constitutes a  
9 breach of his or her public duty or a violation of the oath of office;

10 (ii) Arson if no death results; or

11 (iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is  
12 reported to a law enforcement agency within one year of its commission;  
13 except that if the victim is under fourteen years of age when the rape  
14 is committed and the rape is reported to a law enforcement agency  
15 within one year of its commission, the violation may be prosecuted up  
16 to three years after the victim's eighteenth birthday or up to ten  
17 years after the rape's commission, whichever is later. If a violation  
18 of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape  
19 may not be prosecuted: (A) More than three years after its commission  
20 if the violation was committed against a victim fourteen years of age  
21 or older; or (B) more than three years after the victim's eighteenth  
22 birthday or more than seven years after the rape's commission,  
23 whichever is later, if the violation was committed against a victim  
24 under fourteen years of age.

25 (c) Violations of the following statutes shall not be prosecuted  
26 more than three years after the victim's eighteenth birthday or more  
27 than seven years after their commission, whichever is later: RCW  
28 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080,  
29 9A.44.100(1)(b), or 9A.64.020.

30 (d) The following offenses shall not be prosecuted more than six  
31 years after their commission: Violations of RCW 9A.82.060 or  
32 9A.82.080.

33 (e) The following offenses shall not be prosecuted more than five  
34 years after their commission: Any class C felony under chapter 74.09,  
35 82.32, 82.36, or 82.38 RCW.

36 (f) Bigamy shall not be prosecuted more than three years after the  
37 time specified in RCW 9A.64.010.

38 (g) No other felony may be prosecuted more than three years after  
39 its commission.

1 (h) No gross misdemeanor may be prosecuted more than two years  
2 after its commission.

3 (i) No misdemeanor may be prosecuted more than one year after its  
4 commission.

5 (2) The periods of limitation prescribed in subsection (1) of this  
6 section do not run during any time when the person charged is not  
7 usually and publicly resident within this state.

8 (3) If, before the end of a period of limitation prescribed in  
9 subsection (1) of this section, an indictment has been found or a  
10 complaint or an information has been filed, and the indictment,  
11 complaint, or information is set aside, then the period of limitation  
12 is extended by a period equal to the length of time from the finding or  
13 filing to the setting aside.

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