
SUBSTITUTE HOUSE BILL 2893

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Blanton, K. Schmidt, Dyer, Mitchell, Ballasiotes, Hankins, Hickel, Robertson, Benton and Koster)

Read first time 02/02/96.

1 AN ACT Relating to fuel tax evasion; amending RCW 82.36.030,
2 82.36.045, 82.36.060, 82.36.070, 82.36.160, 82.36.390, 82.38.030,
3 82.38.110, 82.38.120, 82.38.140, 82.38.150, 82.38.170, 82.42.020,
4 82.42.040, and 82.42.080; creating new sections; and prescribing
5 penalties.

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

7 **Sec. 1.** RCW 82.36.030 and 1994 c 262 s 18 are each amended to read
8 as follows:

9 Every distributor shall on or before the twenty-fifth day of each
10 calendar month file, on forms furnished by the department, a statement
11 signed by the distributor or his or her authorized agent showing the
12 total number of gallons of motor vehicle fuel sold, distributed, or
13 used by such distributor within this state during the preceding
14 calendar month and, for counties within which an additional excise tax
15 on motor vehicle fuel has been levied by that jurisdiction under RCW
16 82.80.010, showing the total number of gallons of motor vehicle fuel
17 sold, distributed, or used by the distributor within the boundaries of
18 the county during the preceding calendar month. As directed by the
19 department, the distributor shall periodically submit with the

1 statement, on forms furnished by the department, updated license
2 information.

3 **Sec. 2.** RCW 82.36.045 and 1991 c 339 s 1 are each amended to read
4 as follows:

5 (1) If the department determines that the tax reported by a motor
6 vehicle fuel distributor is deficient, the department shall assess the
7 deficiency on the basis of information available to it, and shall add
8 a penalty of two percent of the amount of the deficiency.

9 (2) If a distributor, whether licensed or not licensed as such,
10 fails, neglects, or refuses to file a motor vehicle fuel tax report the
11 department shall, on the basis of information available to it,
12 determine the tax liability of the distributor for the period during
13 which no report was filed. The department shall add the penalty
14 provided in subsection (1) of this section to the tax. An assessment
15 made by the department under this subsection or subsection (1) of this
16 section is presumed to be correct. In any case, where the validity of
17 the assessment is questioned, the burden is on the person who
18 challenges the assessment to establish by a fair preponderance of
19 evidence that it is erroneous or excessive, as the case may be.

20 (3) If a distributor files a false or fraudulent report with intent
21 to evade the tax imposed by this chapter, the department shall add to
22 the amount of deficiency a penalty equal to twenty-five percent of the
23 deficiency, in addition to the penalty provided in subsections (1) and
24 (2) of this section and all other penalties prescribed by law.

25 (4) Motor vehicle fuel tax, penalties, and interest payable under
26 this chapter bears interest at the rate of one percent per month, or
27 fraction thereof, from the first day of the calendar month after the
28 amount or any portion of it should have been paid until the date of
29 payment. If a distributor establishes by a fair preponderance of
30 evidence that the failure to pay the amount of tax due was attributable
31 to reasonable cause and was not intentional or willful, the department
32 may waive the penalty. The department may waive the interest when it
33 determines the cost of processing or collection of the interest exceeds
34 the amount of interest due.

35 (5) Except in the case of a fraudulent report, neglect or refusal
36 to make a report, or failure to pay or to pay the proper amount, the
37 department shall assess the deficiency under subsection (1) or (2) of
38 this section within (~~three~~) five years from the last day of the

1 succeeding calendar month after the reporting period for which the
2 amount is proposed to be determined or within (~~three~~) five years
3 after the return is filed, whichever period expires later.

4 (6) Except in the case of violations of filing a false or
5 fraudulent report, if the department deems mitigation of penalties and
6 interest to be reasonable and in the best interest of carrying out the
7 purpose of this chapter, it may mitigate such assessments upon whatever
8 terms the department deems proper, giving consideration to the degree
9 and extent of the lack of records and reporting errors. The department
10 may ascertain the facts regarding recordkeeping and payment penalties
11 in lieu of more elaborate proceedings under this chapter.

12 (7) A distributor against whom an assessment is made under
13 subsection (1) or (2) of this section may petition for a reassessment
14 within thirty days after service upon the distributor of notice of the
15 assessment. If the petition is not filed within the thirty-day period,
16 the amount of the assessment becomes final at the expiration of that
17 period.

18 If a petition for reassessment is filed within the thirty-day
19 period, the department shall reconsider the assessment and, if the
20 distributor has so requested in its petition, shall grant the
21 distributor an oral hearing and give the distributor twenty days'
22 notice of the time and place of the hearing. The department may
23 continue the hearing from time to time. The decision of the department
24 upon a petition for reassessment becomes final thirty days after
25 service of notice upon the distributor.

26 An assessment made by the department becomes due and payable when
27 it becomes final. If it is not paid to the department when due and
28 payable, the department shall add a penalty of ten percent of the
29 amount of the tax.

30 (8) In a suit brought to enforce the rights of the state under this
31 chapter, the assessment showing the amount of taxes, penalties,
32 interest, and cost unpaid to the state is prima facie evidence of the
33 facts as shown.

34 (9) A notice of assessment required by this section must be served
35 personally or by mail. If it is served by mail, service shall be made
36 by deposit of the notice in the United States mail, postage prepaid,
37 addressed to the distributor at the most current address furnished to
38 the department.

1 (10) The tax required by this chapter, to be collected by the
2 seller, is held in trust by the seller until paid to the department,
3 and a seller who appropriates or converts the tax collected to his or
4 her own use or to any use other than the payment of the tax to the
5 extent that the money required to be collected is not available for
6 payment on the due date as prescribed in this chapter is guilty of a
7 crime.

8 **Sec. 3.** RCW 82.36.060 and 1994 c 262 s 19 are each amended to read
9 as follows:

10 Every person, before becoming a distributor or continuing in
11 business as a distributor, shall make an application to the department
12 for a license authorizing the applicant to engage in business as a
13 distributor. Applications for such licenses shall be made to the
14 department on forms to be furnished by the department.

15 Every application for a distributor's license must contain the
16 following information to the extent it applies to the applicant:

17 (1) Proof as the department may require concerning the applicant's
18 identity, including but not limited to his or her fingerprints or those
19 of the officers of a corporation making the application;

20 (2) The applicant's form and place of organization including proof
21 that the individual, partnership, or corporation is licensed to do
22 business in this state;

23 (3) The qualification and business history of the applicant and any
24 partner, officer, or director;

25 (4) The applicant's financial condition or history including a bank
26 reference and whether the applicant or any partner, officer, or
27 director has ever been adjudged bankrupt or has an unsatisfied judgment
28 in a federal or state court;

29 (5) Whether the applicant has been adjudged guilty of a crime that
30 directly relates to the business for which the license is sought and
31 the time elapsed since the conviction is less than ten years, or has
32 suffered a judgment within the preceding five years in a civil action
33 involving fraud, misrepresentation, or conversion and in the case of a
34 corporation or partnership, all directors, officers, or partners.

35 After receipt of an application for a license, the director may
36 conduct an investigation to determine whether the facts set forth are
37 true. The director may require a fingerprint record check of the
38 applicant through the Washington state patrol criminal identification

1 system and the federal bureau of investigation before issuance of a
2 license. The results of the background investigation including
3 criminal history information may be released to authorized department
4 personnel as the director deems necessary. The department shall charge
5 a license holder or license applicant a fee of fifty dollars for each
6 background investigation conducted.

7 An applicant who makes a false statement of a material fact on the
8 application may be prosecuted for false swearing as defined by RCW
9 9A.72.040.

10 Before granting any license authorizing any person to engage in
11 business as a distributor, the department shall require applicant to
12 file with the department, in such form as shall be prescribed by the
13 department, a corporate surety bond duly executed by the applicant as
14 principal, payable to the state and conditioned for faithful
15 performance of all the requirements of this chapter, including the
16 payment of all taxes, penalties, and other obligations arising out of
17 this chapter. The total amount of the bond or bonds, required of any
18 distributor shall be fixed by the department and may be increased or
19 reduced by the department at any time subject to the limitations herein
20 provided. In fixing the total amount of the bond or bonds required of
21 any distributor, the department shall require a bond or bonds
22 equivalent in total amount to twice the estimated monthly excise tax
23 determined in such manner as the department may deem proper. If at any
24 time the estimated excise tax to become due during the succeeding month
25 amounts to more than fifty percent of the established bond, the
26 department shall require additional bonds or securities to maintain the
27 marginal ratio herein specified or shall demand excise tax payments to
28 be made weekly or semimonthly to meet the requirements hereof.

29 ~~((In lieu of a bond in excess of five thousand dollars the~~
30 ~~distributor may file with the department a property statement setting~~
31 ~~forth a complete description of all his property and the values~~
32 ~~thereof, and showing the amount of any indebtedness or encumbrance~~
33 ~~thereon to the end that the department may ascertain whether or not the~~
34 ~~distributor can be compelled to respond in twice the amount of the~~
35 ~~taxes due or to become due hereunder. If the department determines~~
36 ~~that the distributor can be compelled to respond in twice the amount of~~
37 ~~the tax the department may accept such statement in lieu of a bond in~~
38 ~~excess of five thousand dollars. The department may at any time demand~~
39 ~~from the distributor a new property statement and may at any time if~~

1 ~~the department deems the property of the distributor insufficient to~~
2 ~~secure the payment of twice the amount of the taxes require the~~
3 ~~distributor to furnish a bond in such amount as will secure the payment~~
4 ~~of twice the amount of the taxes.))~~

5 The total amount of the bond or bonds required of any distributor
6 shall never be less than five thousand dollars nor more than fifty
7 thousand dollars.

8 No recoveries on any bond or the execution of any new bond shall
9 invalidate any bond and no revocation of any license shall effect the
10 validity of any bond but the total recoveries under any one bond shall
11 not exceed the amount of the bond.

12 In lieu of any such bond or bonds in total amount as herein fixed,
13 a distributor may deposit with the state treasurer, under such terms
14 and conditions as the department may prescribe, a like amount of lawful
15 money of the United States or bonds or other obligations of the United
16 States, the state, or any county of the state, of an actual market
17 value not less than the amount so fixed by the department.

18 Any surety on a bond furnished by a distributor as provided herein
19 shall be released and discharged from any and all liability to the
20 state accruing on such bond after the expiration of thirty days from
21 the date upon which such surety has lodged with the department a
22 written request to be released and discharged, but this provision shall
23 not operate to relieve, release, or discharge the surety from any
24 liability already accrued or which shall accrue before the expiration
25 of the thirty day period. The department shall promptly, upon
26 receiving any such request, notify the distributor who furnished the
27 bond; and unless the distributor, on or before the expiration of the
28 thirty day period, files a new bond, or makes a deposit in accordance
29 with the requirements of this section, the department shall forthwith
30 cancel the distributor's license. Whenever a new bond is furnished by
31 a distributor, the department shall cancel his or her old bond as soon
32 as the department and the attorney general are satisfied that all
33 liability under the old bond has been fully discharged.

34 The department may require a distributor to give a new or
35 additional surety bond or to deposit additional securities of the
36 character specified in this section if, in its opinion, the security of
37 the surety bond theretofore filed by such distributor, or the market
38 value of the properties deposited as security by the distributor, shall
39 become impaired or inadequate; and upon the failure of the distributor

1 to give such new or additional surety bond or to deposit additional
2 securities within thirty days after being requested so to do by the
3 department, the department shall forthwith cancel his or her license.

4 **Sec. 4.** RCW 82.36.070 and 1994 c 262 s 20 are each amended to read
5 as follows:

6 The application in proper form having been accepted for filing, the
7 filing fee paid, and the bond or other security having been accepted
8 and approved, the department shall issue to the applicant a license to
9 transact business as a distributor in the state, and such license shall
10 be valid until canceled or revoked.

11 The license so issued by the department shall not be assignable,
12 and shall be valid only for the distributor in whose name issued.

13 The department shall keep and file all applications and bonds with
14 an alphabetical index thereof, together with a record of all licensed
15 distributors.

16 Each distributor shall be assigned a license number upon qualifying
17 for a license hereunder, and the department shall issue to each such
18 licensee a license certificate which shall be displayed conspicuously
19 by the distributor at his or her principal place of business. The
20 department may refuse to issue or may revoke a motor vehicle fuel
21 distributor license, to a person:

22 (1) Who formerly held a motor vehicle fuel distributor's license
23 that, before the time of filing for application, has been revoked or
24 canceled for cause;

25 (2) Who is a subterfuge for the real party in interest whose
26 license has been revoked or canceled for cause;

27 (3) Who, as an individual licensee or officer, director, owner, or
28 managing employee of a nonindividual licensee, has had a motor vehicle
29 fuel distributor license revoked or canceled for cause;

30 (4) Who has an unsatisfied debt to the state assessed under either
31 chapter 82.36, 82.37, 82.38, 82.42, or 46.87 RCW; (~~or~~)

32 (5) Who formerly held as an individual, officer, director, owner,
33 managing employee of a nonindividual licensee, or subterfuge for a real
34 party in interest, a license issued by the federal government or a
35 state that allowed a person to buy or sell untaxed motor vehicle or
36 special fuel, which license, before the time of filing for application,
37 has been revoked for cause;

1 (6) Who pled guilty to or was convicted as an individual, corporate
2 officer, director, owner, or managing employee in this or any other
3 state or in any federal jurisdiction of a gross misdemeanor or felony
4 crime in which fraud is an element, notwithstanding chapter 9.96A RCW;
5 or

6 (7) Upon other sufficient cause being shown.

7 Before such a refusal or revocation, the department shall grant the
8 applicant a hearing and shall give the applicant at least twenty days'
9 written notice of the time and place of the hearing.

10 For the purpose of considering an application for a distributor's
11 license, the department may inspect, cause an inspection, investigate,
12 or cause an investigation of the records of this or any other state or
13 of the federal government to ascertain the veracity of the information
14 on the application form and the applicant's criminal and licensing
15 history.

16 The department may, in the exercise of reasonable discretion,
17 suspend a motor vehicle distributor license at any time before and
18 pending such a hearing for unpaid taxes or reasonable cause.

19 **Sec. 5.** RCW 82.36.160 and 1961 c 15 s 82.36.160 are each amended
20 to read as follows:

21 Every distributor shall maintain in the office of his or her
22 principal place of business in this state, for a period of ((three))
23 five years, records of motor vehicle fuel received, sold, distributed,
24 or used by ((him)) the distributor, in such form as the director may
25 prescribe, together with invoices, bills of lading, and other pertinent
26 papers as may be required under the provisions of this chapter.

27 Every dealer purchasing motor vehicle fuel taxable under this
28 chapter for the purpose of resale, shall maintain within this state,
29 for a period of two years a record of motor vehicle fuels received, the
30 amount of tax paid to the distributor as part of the purchase price,
31 together with delivery tickets, invoices, and bills of lading, and such
32 other records as the director shall require.

33 **Sec. 6.** RCW 82.36.390 and 1961 c 15 s 82.36.390 are each amended
34 to read as follows:

35 Any person who, through false statement, trick, or device, or
36 otherwise, obtains motor vehicle fuel for export and fails to export
37 the same or any portion thereof, or causes such motor vehicle fuel or

1 any thereof not to be exported, or who diverts said motor vehicle fuel
2 or any thereof or who causes it to be diverted from interstate or
3 foreign transit begun in this state, or who unlawfully returns such
4 fuel or any thereof to this state and sells or uses it or any thereof
5 in this state or causes it or any thereof to be used or sold in this
6 state and fails to notify the distributor from whom such motor vehicle
7 fuel was originally purchased of his or her act, and any distributor or
8 other person who conspires with any person to withhold from export, or
9 divert from interstate or foreign transit begun in this state, or to
10 return motor vehicle fuel to this state for sale or use with intent to
11 avoid any of the taxes imposed by this chapter, (~~shall be~~) is guilty
12 of a (~~gross misdemeanor, and upon conviction thereof shall be punished~~
13 ~~by a fine of not less than five hundred dollars nor more than five~~
14 ~~thousand dollars, or by imprisonment in the county jail not exceeding~~
15 ~~one year, or by both such fine and imprisonment~~) crime as defined by
16 RCW 9A.56.020. Each shipment illegally diverted or illegally returned
17 shall be a separate offense, and the unit of each shipment shall be the
18 cargo of one vessel, or one railroad carload, or one automobile truck
19 load, or such truck and trailer load, or one drum, or one barrel, or
20 one case or one can.

21 **Sec. 7.** RCW 82.38.030 and 1989 c 193 s 3 are each amended to read
22 as follows:

23 (1) There is hereby levied and imposed upon special fuel users a
24 tax at the rate computed in the manner provided in RCW 82.36.025 per
25 gallon or each one hundred cubic feet of compressed natural gas
26 measured at standard pressure and temperature on the use of special
27 fuel in any motor vehicle operated upon the highways of this state
28 during the fiscal year for which such rate is applicable.

29 (2) The tax shall be collected by the special fuel dealer and shall
30 be paid over to the department as hereinafter provided: (a) With
31 respect to all special fuel delivered by a special fuel dealer into
32 supply tanks of motor vehicles or into storage facilities used for the
33 fueling of motor vehicles at unbonded service stations in this state;
34 or (b) in all other transactions where the purchaser is not the holder
35 of a valid special fuel license issued pursuant to this chapter
36 allowing the purchase of untaxed special fuel, except sales of special
37 fuel for export. To claim an exemption on account of sales by a
38 licensed special fuel dealer for export, the purchaser shall obtain

1 from the selling special fuel dealer, and such selling special fuel
2 dealer must furnish the purchaser, an invoice giving such details of
3 the sale for export as the director may require, copies of which shall
4 be furnished the department and the entity of the state or foreign
5 jurisdiction of destination which is charged by the laws of that state
6 or foreign jurisdiction with the control or monitoring or both, of the
7 sales or movement of special fuel in that state or foreign
8 jurisdiction.

9 (3) The tax shall be paid over to the department by the special
10 fuel user as hereinafter provided with respect to the taxable use of
11 special fuel upon which the tax has not previously been imposed.

12 It is expressly provided that delivery of special fuel may be made
13 without collecting the tax otherwise imposed, when such deliveries are
14 made by a bonded special fuel dealer to special fuel users who are
15 authorized by the department as hereinafter provided, to purchase fuel
16 without payment of tax to the bonded special fuel dealer.

17 (4) The tax required by this chapter, to be collected by the
18 seller, is held in trust by the seller until paid to the department,
19 and a seller who appropriates or converts the tax collected to his or
20 her own use or to any use other than the payment of the tax to the
21 extent that the money required to be collected is not available for
22 payment on the due date as prescribed in this chapter is guilty of a
23 crime.

24 **Sec. 8.** RCW 82.38.110 and 1988 c 122 s 2 are each amended to read
25 as follows:

26 Application for a special fuel dealer's license(~~(, special fuel~~
27 ~~supplier's license,)) or a special fuel user's license shall be made to~~
28 the department. The application shall be filed upon a form prepared
29 and furnished by the department and shall contain such information as
30 the department deems necessary.

31 Every application for a special fuel dealer's license must contain
32 the following information to the extent it applies to the applicant:

33 (1) Proof as the department may require concerning the applicant's
34 identity, including but not limited to his or her fingerprints or those
35 of the officers of a corporation making the application;

36 (2) The applicant's form and place of organization including proof
37 that the individual, partnership, or corporation is licensed to do
38 business in this state;

1 (3) The qualification and business history of the applicant and any
2 partner, officer, or director;

3 (4) The applicant's financial condition or history including a bank
4 reference and whether the applicant or any partner, officer, or
5 director has ever been adjudged bankrupt or has an unsatisfied judgment
6 in a federal or state court;

7 (5) Whether the applicant has been adjudged guilty of a crime that
8 directly relates to the business for which the license is sought and
9 the time elapsed since the conviction is less than ten years, or has
10 suffered a judgment within the preceding five years in a civil action
11 involving fraud, misrepresentation, or conversion and in the case of a
12 corporation or partnership, all directors, officers, or partners.

13 After receipt of an application for a license, the director may
14 conduct an investigation to determine whether the facts set forth are
15 true. The director may require a fingerprint record check of the
16 applicant through the Washington state patrol criminal identification
17 system and the federal bureau of investigation before issuance of a
18 license. The results of the background investigation including
19 criminal history information may be released to authorized department
20 personnel as the director deems necessary. The department shall charge
21 a license holder or license applicant a fee of fifty dollars for each
22 background investigation conducted.

23 An applicant who makes a false statement of a material fact on the
24 application may be prosecuted for false swearing as defined by RCW
25 9A.72.040.

26 No special fuel dealer's license may be issued to any person or
27 continued in force unless such person has furnished bond, as defined in
28 RCW 82.38.020, in such form as the department may require, to secure
29 his or her compliance with this chapter, and the payment of any and all
30 taxes, interest, and penalties due and to become due hereunder. The
31 requirement of furnishing a bond shall be waived for special fuel
32 dealers who only deliver special fuel into the fuel tanks of marine
33 vessels.

34 The department may require a special fuel user to post a bond if
35 the special fuel user, after having been licensed, has failed to file
36 timely reports or has failed to remit taxes due, or when an
37 investigation or audit indicates problems severe enough that the
38 department, in its discretion, determines that a bond is required to
39 protect the interests of the state. The department may also adopt

1 rules prescribing conditions that, in the department's discretion,
2 require a bond to protect the interests of the state.

3 The total amount of the bond or bonds required of any special fuel
4 dealer or special fuel user shall be equivalent to three times the
5 estimated monthly fuel tax, determined in such manner as the department
6 may deem proper: PROVIDED, That those special fuel dealers having held
7 a special fuel license for five or more years without having said
8 license suspended or revoked by the department shall be permitted to
9 reduce the amount of their bond to twice the estimated monthly tax
10 liability: PROVIDED FURTHER, That the total amount of the bond or
11 bonds shall never be less than five hundred dollars nor more than fifty
12 thousand dollars.

13 **Sec. 9.** RCW 82.38.120 and 1995 c 274 s 21 are each amended to read
14 as follows:

15 Upon receipt and approval of an application and bond, if required,
16 the department shall issue to the applicant a license to act as a
17 special fuel dealer or a special fuel user. However, the department
18 may refuse to issue a special fuel dealer's license or a special fuel
19 user's license to any person:

20 (1) Who formerly held either type of license which, prior to the
21 time of filing for application, has been revoked for cause;

22 (2) Who is a subterfuge for the real party in interest whose
23 license prior to the time of filing for application, has been revoked
24 for cause;

25 (3) Who, as an individual licensee, or officer, director, owner, or
26 managing employee of a nonindividual licensee, has had a special fuel
27 license revoked for cause;

28 (4) Who has an unsatisfied debt to the state assessed under either
29 chapter 82.36, 82.38, or 46.87 RCW; ((or))

30 (5) Who formerly held as an individual, officer, director, owner,
31 managing employee of a nonindividual licensee, or subterfuge for a real
32 party in interest, a license issued by the federal government or a
33 state that allowed a person to buy or sell untaxed motor vehicle or
34 special fuel, which license, before the time of filing for application,
35 has been revoked for cause;

36 (6) Who pled guilty to or was convicted as an individual, officer,
37 director, owner, or managing employee of a nonindividual licensee in
38 this or any other state or in any federal jurisdiction of a gross

1 misdemeanor or felony crime in which fraud is an element,
2 notwithstanding chapter 9.96A RCW; or

3 (7) Upon other sufficient cause being shown.

4 Before such refusal, the department shall grant the applicant a
5 hearing and shall grant the applicant at least ((five)) twenty days
6 written notice of the time and place thereof.

7 The department shall determine from the information shown in the
8 application or other investigation the kind and class of license to be
9 issued. For the purpose of considering any application for a special
10 fuel dealer's license, the department may inspect, cause an inspection,
11 investigate, or cause an investigation of the records of this or any
12 other state or of the federal government to ascertain the veracity of
13 the information on the application form and the applicant's criminal
14 and licensing history.

15 All licenses shall be posted in a conspicuous place or kept
16 available for inspection at the principal place of business of the
17 owner thereof. License holders shall reproduce the license by
18 photostat or other method and keep a copy on display for ready
19 inspection at each additional place of business or other place of
20 storage from which special fuel is sold, delivered or used and in each
21 motor vehicle used by the license holder to transport special fuel
22 purchased by him or her for resale, delivery or use. Every licensed
23 special fuel user operating a motor vehicle registered in a
24 jurisdiction other than this state shall reproduce the license and
25 carry a photocopy thereof with each motor vehicle being operated upon
26 the highways of this state.

27 A special fuel dealer may use special fuel in motor vehicles owned
28 or operated by the dealer without securing a license as a special fuel
29 user but the dealer is subject to all other conditions, requirements,
30 and liabilities imposed herein upon a special fuel user.

31 Each special fuel dealer's license and special fuel user's license
32 shall be valid until the expiration date if shown on the license, or
33 until suspended or revoked for cause or otherwise canceled.

34 No special fuel dealer's license or special fuel user's license
35 shall be transferable.

36 **Sec. 10.** RCW 82.38.140 and 1995 c 274 s 22 are each amended to
37 read as follows:

1 (1) Every special fuel dealer, special fuel user, and every person
2 importing, manufacturing, refining, dealing in, transporting, or
3 storing special fuel in this state shall keep for a period of not less
4 than (~~three~~) five years open to inspection at all times during the
5 business hours of the day to the department or its authorized
6 representatives, a complete record of all special fuel purchased or
7 received and all of such products sold, delivered, or used by them.
8 Such records shall show:

9 (a) The date of each receipt;

10 (b) The name and address of the person from whom purchased or
11 received;

12 (c) The number of gallons received at each place of business or
13 place of storage in the state of Washington;

14 (d) The date of each sale or delivery;

15 (e) The number of gallons sold, delivered, or used for taxable
16 purposes;

17 (f) The number of gallons sold, delivered, or used for any purpose
18 not subject to the tax imposed herein;

19 (g) The name, address, and special fuel license number of the
20 purchaser if the special fuel tax is not collected on the sale or
21 delivery;

22 (h) The inventories of special fuel on hand at each place of
23 business at the end of each month.

24 (2)(a) All special fuel users using special fuel in vehicles
25 licensed for highway operation shall maintain detailed mileage records
26 on an individual vehicle basis.

27 (b) Such operating records shall show both on-highway and off-
28 highway usage of special fuel on a daily basis for each vehicle.

29 (3) Persons using special fuel for heating purposes only are not
30 required to maintain records of fuel usage.

31 (4) Invoices shall be prepared for sales and deliveries of special
32 fuel in the manner and containing such information as may be prescribed
33 by the department.

34 Every special fuel dealer or special fuel user making such sales or
35 deliveries of special fuel and every person so receiving and purchasing
36 special fuel must each retain one copy of each such invoice as part of
37 the dealer's permanent records for the time and purposes above
38 provided.

1 (5) Every special fuel user shall keep, in addition to the dealer's
2 records of deliveries into motor vehicles, a complete record as
3 prescribed by the department of the total gallons of special fuel used
4 for other purposes during each month and the purposes for which said
5 special fuel was used.

6 (6) Subsections (1)(f), (2)(b), and (5) of this section do not
7 apply to special fuel users when the special fuel is used off-highway
8 in farming, construction, or logging operations. Upon filing a special
9 fuel user tax report, every such special fuel user shall certify and
10 bear the burden of proof as to the number of gallons of special fuel
11 used off-highway.

12 **Sec. 11.** RCW 82.38.150 and 1995 c 274 s 23 are each amended to
13 read as follows:

14 For the purpose of determining the amount of liability for the tax
15 herein imposed, and to periodically update license information, each
16 special fuel dealer and each special fuel user shall file tax reports
17 with the department, on forms prescribed by the department. Special
18 fuel dealers shall file the reports at the intervals as shown in the
19 following schedule:

20	Estimated Yearly	
21	Tax Liability	Reporting Frequency
22	\$ 0 - \$100	Yearly
23	\$101 - 250	Semi-yearly
24	\$251 - 499	Quarterly
25	\$500 and over	Monthly

26 Special fuel users whose estimated yearly tax liability is two
27 hundred fifty dollars or less, shall file a report yearly, and special
28 fuel users whose estimated yearly tax liability is more than two
29 hundred fifty dollars, shall file reports quarterly.

30 The department shall establish the reporting frequency for each
31 applicant at the time the special fuel license is issued. If it
32 becomes apparent that any special fuel licensee is not reporting in
33 accordance with the above schedule, the department shall change the
34 licensee's reporting frequency by giving thirty days' notice to the
35 licensee by mail to the licensee's address of record. A report shall
36 be filed with the department even though no special fuel was used, or
37 tax is due, for the reporting period. Each tax report shall contain a

1 declaration by the person making the same, to the effect that the
2 statements contained therein are true and are made under penalties of
3 perjury, which declaration shall have the same force and effect as a
4 verification of the report and is in lieu of such verification. The
5 report shall show such information as the department may reasonably
6 require for the proper administration and enforcement of this chapter.
7 For counties within which an additional excise tax on special fuel has
8 been levied by that jurisdiction under RCW 82.80.010, the report must
9 show the quantities of special fuel sold, distributed, or withdrawn
10 from bulk storage by the reporting dealer or user within the county's
11 boundaries and the tax liability from its levy. The special fuel
12 dealer or special fuel user shall file the report on or before the
13 twenty-fifth day of the next succeeding calendar month following the
14 period to which it relates.

15 Subject to the written approval of the department, tax reports may
16 cover a period ending on a day other than the last day of the calendar
17 month. Taxpayers granted approval to file reports in this manner will
18 file such reports on or before the twenty-fifth day following the end
19 of the reporting period. No change to this reporting period will be
20 made without the written authorization of the department.

21 If the final filing date falls on a Saturday, Sunday, or legal
22 holiday the next secular or business day shall be the final filing
23 date. Such reports shall be considered filed or received on the date
24 shown by the post office cancellation mark stamped upon an envelope
25 containing such report properly addressed to the department, or on the
26 date it was mailed if proof satisfactory to the department is available
27 to establish the date it was mailed.

28 The department, if it deems it necessary in order to insure payment
29 of the tax imposed by this chapter, or to facilitate the administration
30 of this chapter, has the authority to require the filing of reports and
31 tax remittances at shorter intervals than one month if, in its opinion,
32 an existing bond has become insufficient.

33 The department may permit any special fuel user whose sole use of
34 special fuel is in motor vehicles or equipment exempt from tax as
35 provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in
36 lieu of the reports required in this section, to submit reports
37 annually or as requested by the department, in such form as the
38 department may require.

1 A special fuel user whose sole use of special fuel is for purposes
2 other than the propulsion of motor vehicles upon the public highways of
3 this state shall not be required to submit the reports required in this
4 section.

5 **Sec. 12.** RCW 82.38.170 and 1995 c 274 s 24 are each amended to
6 read as follows:

7 (1) If any special fuel dealer or special fuel user fails to pay
8 any taxes collected or due the state of Washington by said dealer or
9 user within the time prescribed by RCW 82.38.150 and 82.38.160, said
10 dealer or user shall pay in addition to such tax a penalty of ten
11 percent of the amount thereof.

12 (2) If it be determined by the department that the tax reported by
13 any special fuel dealer or special fuel user is deficient it may
14 proceed to assess the deficiency on the basis of information available
15 to it and there shall be added to this deficiency a penalty of ten
16 percent of the amount of the deficiency.

17 (3) If any special fuel dealer or special fuel user, whether or not
18 he or she is licensed as such, fails, neglects, or refuses to file a
19 special fuel tax report, the department may, on the basis of
20 information available to it, determine the tax liability of the special
21 fuel dealer or the special fuel user for the period during which no
22 report was filed, and to the tax as thus determined, the department
23 shall add the penalty and interest provided in subsection (2) of this
24 section. An assessment made by the department pursuant to this
25 subsection or to subsection (2) of this section shall be presumed to be
26 correct, and in any case where the validity of the assessment is drawn
27 in question, the burden shall be on the person who challenges the
28 assessment to establish by a fair preponderance of the evidence that it
29 is erroneous or excessive as the case may be.

30 (4) If any special fuel dealer or special fuel user shall establish
31 by a fair preponderance of evidence that his or her failure to file a
32 report or pay the proper amount of tax within the time prescribed was
33 due to reasonable cause and was not intentional or willful, the
34 department may waive the penalty prescribed in subsections (1), (2),
35 and (3) of this section.

36 (5) If any special fuel dealer or special fuel user shall file a
37 false or fraudulent report with intent to evade the tax imposed by this
38 chapter, there shall be added to the amount of deficiency determined by

1 the department a penalty equal to twenty-five percent of the
2 deficiency, in addition to the penalty provided in subsection (2) of
3 this section and all other penalties prescribed by law.

4 (6) Any fuel tax, penalties, and interest payable under this
5 chapter shall bear interest at the rate of one percent per month, or
6 fraction thereof, from the first day of the calendar month after the
7 amount or any portion thereof should have been paid until the date of
8 payment: PROVIDED, That the department may waive the interest when it
9 determines that the cost of processing the collection of the interest
10 exceeds the amount of interest due.

11 (7) Except in the case of violations of filing a false or
12 fraudulent report, if the department deems mitigation of penalties and
13 interest to be reasonable and in the best interests of carrying out the
14 purpose of this chapter, it may mitigate such assessments upon whatever
15 terms the department deems proper, giving consideration to the degree
16 and extent of the lack of records and reporting errors. The department
17 may ascertain the facts regarding recordkeeping and payment penalties
18 in lieu of more elaborate proceedings under this chapter.

19 (8) Except in the case of a fraudulent report or of neglect or
20 refusal to make a report, every deficiency shall be assessed under
21 subsection (2) of this section within (~~three~~) five years from the
22 twenty-fifth day of the next succeeding calendar month following the
23 reporting period for which the amount is proposed to be determined or
24 within (~~three~~) five years after the return is filed, whichever period
25 expires the later.

26 (9) Any special fuel dealer or special fuel user against whom an
27 assessment is made under the provisions of subsections (2) or (3) of
28 this section may petition for a reassessment thereof within thirty days
29 after service upon the special fuel dealer or special fuel user of
30 notice thereof. If such petition is not filed within such thirty day
31 period, the amount of the assessment becomes final at the expiration
32 thereof.

33 If a petition for reassessment is filed within the thirty day
34 period, the department shall reconsider the assessment and, if the
35 special fuel dealer or special fuel user has so requested in his or her
36 petition, shall grant such special fuel dealer or special fuel user an
37 oral hearing and give the special fuel dealer or special fuel user ten
38 days' notice of the time and place thereof. The department may
39 continue the hearing from time to time. The decision of the department

1 upon a petition for reassessment shall become final thirty days after
2 service upon the special fuel dealer or special fuel user of notice
3 thereof.

4 Every assessment made by the department shall become due and
5 payable at the time it becomes final and if not paid to the department
6 when due and payable, there shall be added thereto a penalty of ten
7 percent of the amount of the tax.

8 (10) Any notice of assessment required by this section shall be
9 served personally or by mail; if by mail, service shall be made by
10 depositing such notice in the United States mail, postage prepaid
11 addressed to the special fuel dealer or special fuel user at his or her
12 address as the same appears in the records of the department.

13 (11) Any licensee who has had either their special fuel user
14 license or special fuel dealer license, or both, revoked shall pay a
15 one hundred dollar penalty prior to the issuance of a new license.

16 (12) Any person who, upon audit or investigation by the department,
17 is found to have not paid special fuel taxes as required by this
18 chapter shall be subject to cancellation of all vehicle registrations
19 for vehicles utilizing special fuel as a means of propulsion. Any
20 unexpired Washington tonnage on the vehicles in question may be
21 transferred to a purchaser of the vehicles upon application to the
22 department who shall hold such tonnage in its custody until a sale of
23 the vehicle is made or the tonnage has expired.

24 **Sec. 13.** RCW 82.42.020 and 1982 1st ex.s. c 25 s 2 are each
25 amended to read as follows:

26 There is hereby levied, and there shall be collected by every
27 distributor of aircraft fuel, an excise tax at the rate computed under
28 RCW 82.42.025 on each gallon of aircraft fuel sold, delivered or used
29 in this state: PROVIDED HOWEVER, That such aircraft fuel excise tax
30 shall not apply to fuel for aircraft that both operate from a private,
31 non-state-funded airfield during at least ninety-five percent of the
32 aircraft's normal use and are used principally for the application of
33 pesticides, herbicides, or other agricultural chemicals: PROVIDED
34 FURTHER, That there shall be collected from every consumer or user of
35 aircraft fuel either the use tax imposed by RCW 82.12.020, as amended,
36 or the retail sales tax imposed by RCW 82.08.020, as amended,
37 collection procedure to be as prescribed by law and/or rule or
38 regulation of the department of revenue. The taxes imposed by this

1 chapter shall be collected and paid to the state but once in respect to
2 any aircraft fuel.

3 The tax required by this chapter, to be collected by the seller, is
4 held in trust by the seller until paid to the department, and a seller
5 who appropriates or converts the tax collected to his or her own use or
6 to any use other than the payment of the tax to the extent that the
7 money required to be collected is not available for payment on the due
8 date as prescribed in this chapter is guilty of a crime.

9 **Sec. 14.** RCW 82.42.040 and 1982 1st ex.s. c 25 s 5 are each
10 amended to read as follows:

11 The director shall by rule and regulation adopted as provided in
12 chapter 34.05 RCW (Administrative Procedure Act) set up the necessary
13 administrative procedure for collection by the department of the
14 aircraft fuel excise tax as provided for in RCW 82.42.020, placing the
15 responsibility of collection of said tax upon every distributor of
16 aircraft fuel within the state; he may require the licensing of every
17 distributor of aircraft fuel and shall require such a corporate surety
18 bond or security of any distributor or person not otherwise bonded
19 under provisions of chapter 82.36 RCW as is provided for distributors
20 of motor vehicle fuel under RCW 82.36.060; he shall provide such forms
21 and may require such reports or statements as in his determination
22 shall be necessary for the proper administration of this chapter. The
23 director may require such records to be kept, and for such periods of
24 time, as deemed necessary for the administration of this chapter, which
25 records shall be available at all times for the director or his
26 representative who may require a statement under oath as to the
27 contents thereof.

28 Every application for a distributor's license must contain the
29 following information to the extent it applies to the applicant:

30 (1) Proof as the department may require concerning the applicant's
31 identity, including but not limited to his or her fingerprints or those
32 of the officers of a corporation making the application;

33 (2) The applicant's form and place of organization including proof
34 that the individual, partnership, or corporation is licensed to do
35 business in this state;

36 (3) The qualification and business history of the applicant and any
37 partner, officer, or director;

1 (4) The applicant's financial condition or history including a bank
2 reference and whether the applicant or any partner, officer, or
3 director has ever been adjudged bankrupt or has an unsatisfied judgment
4 in a federal or state court;

5 (5) Whether the applicant has been adjudged guilty of a crime that
6 directly relates to the business for which the license is sought and
7 the time elapsed since the conviction is less than ten years, or has
8 suffered a judgment within the preceding five years in a civil action
9 involving fraud, misrepresentation, or conversion and in the case of a
10 corporation or partnership, all directors, officers, or partners.

11 After receipt of an application for a license, the director may
12 conduct an investigation to determine whether the facts set forth are
13 true. The director may require a fingerprint record check of the
14 applicant through the Washington state patrol criminal identification
15 system and the federal bureau of investigation before issuance of a
16 license. The results of the background investigation including
17 criminal history information may be released to authorized department
18 personnel as the director deems necessary. The department shall charge
19 a license holder or license applicant a fee of fifty dollars for each
20 background investigation conducted.

21 An applicant who makes a false statement of a material fact on the
22 application may be prosecuted for false swearing as defined by RCW
23 9A.72.040.

24 **Sec. 15.** RCW 82.42.080 and 1982 1st ex.s. c 25 s 7 are each
25 amended to read as follows:

26 Any person violating any provision of this chapter or any rule or
27 regulation of the director promulgated hereunder, or making any false
28 statement, or concealing any material fact in any report, statement,
29 record or claim, or who commits any act with intent to avoid payment of
30 the aircraft fuel excise tax imposed by this chapter, or who conspires
31 with another person with intent to interfere with the orderly
32 collection of such tax due and owing under this chapter, (~~shall be~~)
33 is guilty of a gross misdemeanor.

34 NEW SECTION. **Sec. 16.** By December 31, 1996, the department of
35 licensing shall implement a PC or server-based data base of fuel dealer
36 and distributor license application information.

1 NEW SECTION. **Sec. 17.** By July 1, 1996, the department of
2 licensing shall establish a fuel tax advisory group comprised of state
3 agency and petroleum industry representatives to develop or recommend
4 audit and investigation techniques, changes to fuel tax statutes and
5 rules, information protocols that allow sharing of information with
6 other states, and other tools that improve fuel tax administration or
7 combat fuel tax evasion.

8 NEW SECTION. **Sec. 18.** The department of licensing, in cooperation
9 with the code reviser, shall propose and submit to the legislative
10 transportation committee by December 1, 1996, draft language to merge
11 chapters 82.36, 82.38, and 82.42 RCW.

--- END ---