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SENATE BILL 5039

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State of Washington

63rd Legislature

2013 Regular Session

By Senators McAuliffe, Shin, Kohl-Welles, and Kline; by request of Governor Gregoire

Read first time 01/15/13. Referred to Committee on Ways & Means.

1 AN ACT Relating to increasing revenues dedicated to basic education  
2 purposes; amending RCW 66.24.290 and 82.04.29002; adding a new section  
3 to chapter 82.08 RCW; adding a new chapter to Title 82 RCW; providing  
4 an effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 66.24.290 and 2010 1st sp.s. c 23 s 1301 are each  
7 amended to read as follows:

8 (1) Any microbrewer or domestic brewery or beer distributor  
9 licensed under this title may sell and deliver beer and strong beer to  
10 holders of authorized licenses direct, but to no other person, other  
11 than the board. Any certificate of approval holder authorized to act  
12 as a distributor under RCW 66.24.270 (~~shall~~) must pay the taxes  
13 imposed by this section.

14 (a) Every such brewery or beer distributor (~~shall~~) must report  
15 all sales to the board monthly, pursuant to the regulations, and  
16 (~~shall~~) must pay to the board as an added tax for the privilege of  
17 manufacturing and selling the beer and strong beer within the state a  
18 tax of one dollar and thirty cents per barrel of thirty-one gallons on  
19 sales to licensees within the state and on sales to licensees within

1 the state of bottled and canned beer, including strong beer, (~~shall~~)  
2 must pay a tax computed in gallons at the rate of one dollar and thirty  
3 cents per barrel of thirty-one gallons.

4 (b) Any brewery or beer distributor whose applicable tax payment is  
5 not postmarked by the twentieth day following the month of sale will be  
6 assessed a penalty at the rate of two percent per month or fraction  
7 thereof. Beer and strong beer (~~shall~~) must be sold by breweries and  
8 distributors in sealed barrels or packages.

9 (c) The moneys collected under this subsection (~~shall~~) must be  
10 distributed as follows: (i) Three-tenths of a percent (~~shall~~) must  
11 be distributed to border areas under RCW 66.08.195; and (ii) of the  
12 remaining moneys: (A) Twenty percent (~~shall~~) must be distributed to  
13 counties in the same manner as under RCW 66.08.200; and (B) eighty  
14 percent (~~shall~~) must be distributed to incorporated cities and towns  
15 in the same manner as under RCW 66.08.210.

16 (d) Any licensed retailer authorized to purchase beer from a  
17 certificate of approval holder with a direct shipment endorsement or a  
18 brewery or microbrewery (~~shall~~) must make monthly reports to the  
19 liquor control board on beer purchased during the preceding calendar  
20 month in the manner and upon such forms as may be prescribed by the  
21 board.

22 (2) An additional tax is imposed on all beer and strong beer  
23 subject to tax under subsection (1) of this section. The additional  
24 tax is equal to two dollars per barrel of thirty-one gallons. All  
25 revenues collected during any month from this additional tax (~~shall~~)  
26 must be deposited in the state general fund by the twenty-fifth day of  
27 the following month.

28 (3)(a) An additional tax is imposed on all beer and strong beer  
29 subject to tax under subsection (1) of this section. The additional  
30 tax is equal to ninety-six cents per barrel of thirty-one gallons  
31 through June 30, 1995, two dollars and thirty-nine cents per barrel of  
32 thirty-one gallons for the period July 1, 1995, through June 30, 1997,  
33 and four dollars and seventy-eight cents per barrel of thirty-one  
34 gallons thereafter.

35 (b) The additional tax imposed under this subsection does not apply  
36 to the sale of the first sixty thousand barrels of beer each year by  
37 breweries that are entitled to a reduced rate of tax under 26 U.S.C.

1 Sec. 5051, as existing on July 1, 1993, or such subsequent date as may  
2 be provided by the board by rule consistent with the purposes of this  
3 exemption.

4 (c) All revenues collected from the additional tax imposed under  
5 this subsection (3) (~~shall~~) must be deposited in the state general  
6 fund.

7 (4) An additional tax is imposed on all beer and strong beer that  
8 is subject to tax under subsection (1) of this section that is in the  
9 first sixty thousand barrels of beer and strong beer by breweries that  
10 are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as  
11 existing on July 1, 1993, or such subsequent date as may be provided by  
12 the board by rule consistent with the purposes of the exemption under  
13 subsection (3)(b) of this section. The additional tax is equal to one  
14 dollar and forty-eight and two-tenths cents per barrel of thirty-one  
15 gallons. By the twenty-fifth day of the following month, three percent  
16 of the revenues collected from this additional tax (~~shall~~) must be  
17 distributed to border areas under RCW 66.08.195 and the remaining  
18 moneys (~~shall~~) must be transferred to the state general fund.

19 (5)(a) From June 1, 2010, through (~~June 30, 2013~~) December 31,  
20 2016, an additional tax is imposed on all beer and strong beer subject  
21 to tax under subsection (1) of this section. The additional tax is  
22 equal to fifteen dollars and fifty cents per barrel of thirty-one  
23 gallons.

24 (b) The additional tax imposed under this subsection does not apply  
25 to the sale of the first sixty thousand barrels of beer each year by  
26 breweries that are entitled to a reduced rate of tax under 26 U.S.C.  
27 Sec. 5051 of the federal internal revenue code, as existing on July 1,  
28 1993, or such subsequent date as may be provided by the board by rule  
29 consistent with the purposes of this exemption.

30 (c) All revenues collected from the additional tax imposed under  
31 this subsection (~~shall~~) must be deposited in the (~~state general~~  
32 ~~fund~~) education legacy trust account created in RCW 83.100.230.

33 (6) The board may make refunds for all taxes paid on beer and  
34 strong beer exported from the state for use outside the state.

35 (7) The board may require filing with the board of a bond to be  
36 approved by it, in such amount as the board may fix, securing the  
37 payment of the tax. If any licensee fails to pay the tax when due, the

1 board may forthwith suspend or cancel his or her license until all  
2 taxes are paid.

3 **Sec. 2.** RCW 82.04.29002 and 2010 1st sp.s. c 23 s 1101 are each  
4 amended to read as follows:

5 (1) Beginning May 1, 2010, through (~~June 30, 2013~~) December 31,  
6 2016, an additional rate of tax of 0.30 percent is added to the rate  
7 provided for in RCW 82.04.255, 82.04.285, and 82.04.290(2)(a). All  
8 revenues collected from the additional tax under this section must be  
9 deposited into the education legacy trust account created in RCW  
10 83.100.230.

11 (2)(a) The additional rate in subsection (1) of this section does  
12 not apply to persons engaging within this state in business as a  
13 hospital. "Hospital" has the meaning provided in chapter 70.41 RCW but  
14 also includes any hospital that comes within the scope of chapter 71.12  
15 RCW if the hospital is also licensed under chapter 70.41 RCW.

16 (b) The additional rate in subsection (1) of this section does not  
17 apply to amounts received from performing scientific research and  
18 development services including but not limited to research and  
19 development in the physical, engineering, and life sciences (such as  
20 agriculture, bacteriological, biotechnology, chemical, life sciences,  
21 and physical science research and development laboratories or  
22 services).

23 NEW SECTION. **Sec. 3.** (1) The legislature intends to impose a new  
24 excise tax on taxable fuel to provide funding for state allocations to  
25 school districts for pupil transportation purposes under chapter  
26 28A.160 RCW. The proceeds of the tax are not intended to be used in  
27 any way for "highway purposes" as that term is used in Article II,  
28 section 40 of the Washington Constitution.

29 (2) It is the intent and purpose of this chapter to impose a tax on  
30 the distribution of taxable fuel in this state and that the tax applies  
31 to the first distribution of taxable fuel in this state by a person who  
32 is not exempt from the tax.

33 NEW SECTION. **Sec. 4.** Unless the context clearly requires  
34 otherwise, the definitions in or incorporated by this section apply  
35 throughout this chapter.

1 (1) "Department" means the department of revenue.

2 (2) "Diesel fuel" means any fuel that is sold for use in diesel-  
3 powered engines and is represented or sold as diesel fuel, biodiesel  
4 fuel, a blend of biodiesel fuel and diesel fuel, marine gasoil,  
5 distillate marine diesel, blended marine diesel, intermediate fuel oil,  
6 and residual fuel oil. "Diesel fuel" includes undyed diesel fuel,  
7 diesel fuel that meets the dyeing and marking requirements prescribed  
8 by federal regulations adopted under the authority of 26 U.S.C. Sec.  
9 4082, and emulsified diesel fuel. "Diesel fuel" does not include  
10 heating oil unless sold for use in diesel-powered engines; kerosene,  
11 including kerosene-type jet fuel; liquefied petroleum gas; natural gas;  
12 or alcohol.

13 (3) "Distribute" or "distribution" means any of the activities that  
14 constitute a taxable event.

15 (4) "Distributor" means a person that distributes taxable fuel.

16 (5) "First taxable event" means the first distribution of taxable  
17 fuel in this state that is not exempt from the tax imposed by this  
18 chapter.

19 (6)(a) "Gasoline" means a liquid product of petroleum that is  
20 represented or sold as gasoline or that is designed for use in spark-  
21 ignition internal combustion engines. The term includes conventional  
22 gasoline; all types of gasoline blends, including ethanol-blended  
23 gasoline, oxygenated gasoline, and reformulated gasoline; and aviation  
24 gasoline, which means all special grades of gasoline suitable for use  
25 in aviation reciprocating engines.

26 (b) "Gasoline" does not include:

27 (i) The products commonly known as diesel fuel, fuel oil, coal oil,  
28 or kerosene, except when any such product is mixed or combined with  
29 gasoline; and

30 (ii) Blendstock, not sold or represented as gasoline, that is  
31 intended to be further refined or blended before sale or use as  
32 gasoline.

33 (7) "Person" has the same meaning as in RCW 82.04.030, except that  
34 "person" does not include any municipal corporation, political  
35 subdivision, or the United States and any of its departments, agencies,  
36 and instrumentalities.

37 (8) "Removed" has the same meaning as "removal" in RCW 82.36.010.

38 (9) "Tax" means the tax imposed in this chapter.

1 (10) "Taxable event" means any of the following activities  
2 conducted in this state:

3 (a) The removal of taxable fuel at a terminal or refinery rack;

4 (b) The removal of taxable fuel at a refinery or terminal other  
5 than at a refinery or terminal rack;

6 (c) The entry of taxable fuel into this state other than by  
7 pipeline or vessel, if the taxable fuel will be sold in this state; or

8 (d) The wholesale sale of taxable fuel or the removal of taxable  
9 fuel, unless there was a prior distribution of the taxable fuel in this  
10 state resulting in the imposition of the tax under this chapter.

11 (11) "Taxable fuel" means gasoline and diesel fuel.

12 (12) "Wholesale value" means either:

13 (a) The gross proceeds of the wholesale sale by the taxpayer of the  
14 taxable fuel distributed in this state; or

15 (b) If the taxpayer did not make a wholesale sale of the taxable  
16 fuel distributed in this state, the fair market wholesale value,  
17 determined as nearly as possible according to the wholesale selling  
18 price of taxable fuel of like quality and character at the place of the  
19 first taxable event, in accordance with rules of the department.

20 (13) The definitions in chapters 82.04 and 82.36 RCW apply to this  
21 chapter to the extent they do not conflict with any provision of this  
22 chapter. References to "motor vehicle fuel" or "motor fuel" in the  
23 definitions incorporated into this chapter from chapter 82.36 RCW must  
24 be construed to mean, depending on the context, gasoline, diesel fuel,  
25 or both gasoline and diesel fuel, for purposes of this chapter.

26 NEW SECTION. **Sec. 5.** (1) A tax is levied for the privilege of  
27 distributing taxable fuel in this state. The tax applies to the first  
28 taxable event and is imposed on the distributor of the taxable fuel.  
29 The tax is equal to the wholesale value of the taxable fuel distributed  
30 in this state multiplied by the rate of:

31 (a) Beginning July 1, 2013, through June 30, 2015, 1.85 percent;

32 (b) Beginning July 1, 2015, through June 30, 2017, 2.91 percent;

33 and

34 (c) Beginning July 1, 2017, 4.62 percent.

35 (2) If the tax is not paid by the date due, the department may  
36 collect the tax from the distributor liable for the tax or any person  
37 that subsequently distributes the taxable fuel. If the tax is paid by

1 any distributor other than the taxable distributor, the amount of tax  
2 paid constitutes a debt owed by the taxable distributor to the  
3 distributor that paid the tax.

4 (3) The tax applies to the distribution of taxable fuel regardless  
5 of whether it is intended to be used for on or off-road purposes or in  
6 a motor vehicle.

7 (4) The department must collect the tax. Chapter 82.32 RCW applies  
8 to the tax. The tax reporting frequency for the tax must coincide with  
9 the taxpayer's reporting frequency for the tax imposed in chapter 82.04  
10 RCW.

11 (5) The tax is in addition to all other taxes imposed under this  
12 title on the same taxable event or with respect to the same taxable  
13 fuel.

14 (6) The proceeds of the tax must be deposited into the education  
15 legacy trust account created in RCW 83.100.230. Taxes collected under  
16 this chapter may be spent only for state allocations to school  
17 districts for pupil transportation purposes under chapter 28A.160 RCW.

18 NEW SECTION. **Sec. 6.** A person subject to the tax imposed by this  
19 chapter is entitled to a deduction under this section if the taxpayer  
20 is also entitled to a handling loss deduction under RCW 82.36.029 or a  
21 refund or credit under RCW 82.38.180 (4), (5), or (6), with respect to  
22 the distribution of the same taxable fuel. The deduction from the  
23 measure of tax is equal to the wholesale value of the same gallonage of  
24 taxable fuel for which the taxpayer was entitled to claim a deduction  
25 under RCW 82.36.029 or refund or credit under RCW 82.38.180 (4), (5),  
26 or (6).

27 NEW SECTION. **Sec. 7.** (1) A taxpayer is entitled to a credit of  
28 the tax paid to the department with respect to taxable fuel sold by the  
29 taxpayer but for which the taxpayer has received no consideration from  
30 or on behalf of the purchaser. The amount of the tax credit equals the  
31 amount of tax imposed by this chapter with respect to such sales. Such  
32 credit may be taken on a tax return subsequent to the tax return on  
33 which the tax was paid over to the department.

34 (2) If a credit is taken under subsection (1) of this section and  
35 the debt is subsequently collected in whole or in part, the tax on the

1 amount collected must be paid and reported on the tax return filed for  
2 the period in which the collection is made.

3 NEW SECTION. **Sec. 8.** (1) A credit is allowed against the tax for  
4 any similar tax paid to another state with respect to the same taxable  
5 fuel. The amount of the credit may not exceed the tax liability  
6 arising under this chapter with respect to that taxable fuel.

7 (2) For purposes of this section, the following definitions apply:

8 (a)(i) "Similar tax" means a tax:

9 (A) That is imposed on the privilege of engaging in any of the  
10 activities described in section 4(10)(a) through (d) of this act, and  
11 that is not generally imposed on other activities or privileges;

12 (B) That is measured by the gross proceeds of the wholesale sale of  
13 taxable fuel or according to the wholesale selling price of taxable  
14 fuel of like quality and character; and

15 (C) That would not, by reason of allowable deductions or credits,  
16 constitute a net income or value added tax.

17 (ii) "Similar tax" does not include any tax on the extraction,  
18 severance, or production of the oil refined into taxable fuel or a tax  
19 on the refining of crude oil into taxable fuel.

20 (iii) For purposes of this subsection (2)(a), "taxable fuel"  
21 includes fuel excise taxes that have either a narrower or broader tax  
22 base than the tax imposed by this chapter, as long as the tax is  
23 imposed only on liquid fuels and applies to gasoline and diesel fuel,  
24 regardless of how those terms are defined for purposes of the tax.

25 (b) "State" means (i) a state of the United States other than  
26 Washington, or any political subdivision of such other state; (ii) the  
27 District of Columbia, the Commonwealth of Puerto Rico, and any  
28 territory or possession of the United States; (iii) a federally  
29 recognized Indian tribe; and (iv) any foreign country or political  
30 subdivision of a foreign country.

31 NEW SECTION. **Sec. 9.** The following are exempt from the tax:

32 (1) The distribution of taxable fuel exported outside this state.  
33 Taxable fuel carried from this state in the fuel tank of a motor  
34 vehicle, vessel, aircraft, or other transportation equipment is not  
35 considered to be exported outside this state; and



1 (2) Persons or activities that the state is prohibited from taxing  
2 under the Constitution of this state or the Constitution or laws of the  
3 United States.

4 NEW SECTION. **Sec. 10.** The department may adopt any rules it  
5 considers necessary or useful in administering this chapter.

6 NEW SECTION. **Sec. 11.** The tax applies to taxable fuel that was  
7 removed in this state, entered this state, or that was sold in this  
8 state, before the effective date of this section, if a subsequent  
9 distribution of the taxable fuel occurs in this state on or after the  
10 effective date of this section by a person not exempt from the tax. In  
11 such cases, the tax is the responsibility of the first person to  
12 distribute the taxable fuel on or after the effective date of this  
13 section and, as applicable, any subsequent distributor as provided in  
14 section 5(2) of this act.

15 NEW SECTION. **Sec. 12.** Sections 3 through 11 of this act  
16 constitute a new chapter in Title 82 RCW.

17 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.08 RCW  
18 to read as follows:

19 (1) If either contingency in RCW 82.08.050(12) occurs, the  
20 department, in consultation with the economic and revenue forecast work  
21 group created in RCW 82.33.040, must annually estimate the anticipated  
22 net increase in state sales tax revenues resulting from remote sellers  
23 collecting and remitting sales tax on retail sales to buyers located in  
24 this state.

25 (2) Annually, beginning in the fiscal year during which either of  
26 the contingencies in RCW 82.08.050(12) occurred, the department must  
27 notify the state treasurer of the estimated amount determined under  
28 subsection (1) of this section for that fiscal year. On the last  
29 working day of the fiscal year, the state treasurer must transfer such  
30 amount from the general fund to the education legacy trust account  
31 created in RCW 83.100.230.

32 (3) For purposes of this section, "net increase" means the increase  
33 in state sales tax revenues received by the state resulting from remote  
34 sellers collecting and remitting sales tax on retail sales to buyers

1 located in this state, which must reflect any vendor compensation the  
2 state is required to provide sellers as a condition to requiring remote  
3 sellers to collect sales tax on sales to Washington consumers.

4 NEW SECTION. **Sec. 14.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 15.** This act is necessary for the immediate  
9 preservation of the public peace, health, or safety, or support of the  
10 state government and its existing public institutions, and takes effect  
11 July 1, 2013.

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