
HOUSE BILL 2564

State of Washington 55th Legislature 1998 Regular Session

By Representatives Fisher, K. Schmidt, Radcliff, Wood and Murray

Read first time 01/15/98. Referred to Committee on Transportation Policy & Budget.

1 AN ACT Relating to special fuel and motor vehicle fuel taxes;
2 amending RCW 35A.82.010, 82.04.4285, 82.36.020, 82.36.032, 82.36.045,
3 82.36.047, 82.36.060, 82.36.070, 82.36.080, 82.36.090, 82.36.100,
4 82.36.120, 82.36.130, 82.36.140, 82.36.150, 82.36.160, 82.36.170,
5 82.36.180, 82.36.190, 82.36.200, 82.36.230, 82.36.280, 82.36.335,
6 82.36.350, 82.36.370, 82.36.375, 82.36.390, 82.36.400, 82.38.020,
7 82.38.030, 82.38.070, 82.38.080, 82.38.090, 82.38.100, 82.38.110,
8 82.38.120, 82.38.130, 82.38.150, 82.38.160, 82.38.170, 82.38.180,
9 82.38.190, 82.38.210, 82.38.220, 82.38.230, 82.38.235, 82.38.240,
10 82.38.260, 43.05.110, 82.47.010, and 82.80.010; reenacting and amending
11 RCW 82.08.0255, 82.12.0256, 82.36.010, and 82.38.140; adding new
12 sections to chapter 82.36 RCW; adding new sections to chapter 82.38
13 RCW; creating a new section; repealing RCW 82.36.030, 82.36.220,
14 82.38.040, 82.38.082, and 82.38.086; prescribing penalties; and
15 providing an effective date.

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

17 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

1 (1) The health, safety, and welfare of the people of the state of
2 Washington are dependent on the state's ability to properly collect the
3 taxes enacted by the legislature;

4 (2) The current system for collecting special fuel taxes and motor
5 vehicle fuel tax has allowed many parties to fraudulently evade paying
6 the special fuel taxes and motor vehicle fuel tax due the state; and

7 (3) By changing the point of collection of the special fuel taxes
8 and motor vehicle fuel tax from distributors to suppliers, the
9 department of licensing will have fewer parties to collect tax from and
10 enforcement will be enhanced, thus leading to greater revenues for the
11 state.

12 **Sec. 2.** RCW 35A.82.010 and 1995 c 274 s 4 are each amended to read
13 as follows:

14 A code city shall collect, receive and share in the distribution of
15 state collected and distributed excise taxes to the same extent and
16 manner as general laws relating thereto apply to any class of city or
17 town including, but not limited to, funds distributed to cities under
18 RCW 82.36.020 relating to motor vehicle fuel tax, RCW 82.38.290
19 relating to use fuel tax, and RCW 82.36.275 and 82.38.080(~~(+9)~~) (3).

20 **Sec. 3.** RCW 82.04.4285 and 1980 c 37 s 6 are each amended to read
21 as follows:

22 In computing tax there may be deducted from the measure of tax so
23 much of the sale price of motor vehicle fuel as constitutes the amount
24 of tax imposed by the state under chapters 82.36 and 82.38 RCW or the
25 United States government, under 26 U.S.C., Subtitle D, chapters 31 and
26 32, upon the sale thereof.

27 **Sec. 4.** RCW 82.08.0255 and 1983 1st ex.s. c 35 s 2 and 1983 c 108
28 s 1 are each reenacted and amended to read as follows:

29 (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

30 (a) Motor vehicle fuel used in aircraft by the manufacturer thereof
31 for research, development, and testing purposes; and

32 (b) Motor vehicle and special fuel if:

33 (i) The fuel is purchased for the purpose of public transportation
34 and the purchaser is entitled to a refund or an exemption under RCW
35 82.36.275 or 82.38.080(~~(+9)~~) (3); or

1 (ii) The fuel is purchased by a private, nonprofit transportation
2 provider certified under chapter 81.66 RCW and the purchaser is
3 entitled to a refund or an exemption under RCW 82.36.285 or
4 82.38.080(~~(+8+)~~) (1)(h); or

5 (iii) The fuel is taxable under chapter 82.36 or 82.38 RCW.

6 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the
7 sale of special fuel delivered in this state shall be entitled to a
8 credit or refund of such tax with respect to fuel subsequently
9 established to have been actually transported and used outside this
10 state by persons engaged in interstate commerce. The tax shall be
11 claimed as a credit or refunded through the tax reports required under
12 RCW 82.38.150.

13 **Sec. 5.** RCW 82.12.0256 and 1983 1st ex.s. c 35 s 3 and 1983 c 108
14 s 2 are each reenacted and amended to read as follows:

15 The provisions of this chapter shall not apply in respect to the
16 use of:

17 (1) Motor vehicle fuel used in aircraft by the manufacturer thereof
18 for research, development, and testing purposes; and

19 (2) Special fuel purchased in this state upon which a refund is
20 obtained as provided in RCW 82.38.180(2); and

21 (3) Motor vehicle and special fuel if:

22 (a) The fuel is used for the purpose of public transportation and
23 the purchaser is entitled to a refund or an exemption under RCW
24 82.36.275 or 82.38.080(~~(+9+)~~) (3); or

25 (b) The fuel is purchased by a private, nonprofit transportation
26 provider certified under chapter 81.66 RCW and the purchaser is
27 entitled to a refund or an exemption under RCW 82.36.285 or
28 82.38.080(~~(+8+)~~) (1)(h); or

29 (c) The fuel is taxable under chapter 82.36 or 82.38 RCW:
30 PROVIDED, That the use of motor vehicle and special fuel upon which a
31 refund of the applicable fuel tax is obtained shall not be exempt under
32 this subsection (3)(c), and the director of licensing shall deduct from
33 the amount of such tax to be refunded the amount of tax due under this
34 chapter and remit the same each month to the department of revenue.

35 **Sec. 6.** RCW 82.36.010 and 1995 c 287 s 1 and 1995 c 274 s 20 are
36 each reenacted and amended to read as follows:

37 (~~For the purposes of this chapter:~~

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

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

11 (3) ~~"Distributor" means every person who refines, manufactures,~~
12 ~~produces, or compounds motor vehicle fuel and sells, distributes, or in~~
13 ~~any manner uses it in this state; also every person engaged in business~~
14 ~~as a bona fide wholesale merchant dealing in motor vehicle fuel who~~
15 ~~either acquires it within the state from any person refining it within~~
16 ~~or importing it into the state, on which the tax has not been paid, or~~
17 ~~imports it into this state and sells, distributes, or in any manner~~
18 ~~uses it in this state; also every person who acquires motor vehicle~~
19 ~~fuel, on which the tax has not been paid, and exports it by commercial~~
20 ~~motor vehicle to a location outside the state. For the purposes of~~
21 ~~liability for a county fuel tax, "distributor" has that meaning defined~~
22 ~~in the county ordinance imposing the tax. For the purposes of this~~
23 ~~subsection, "commercial motor vehicle" means any motor vehicle used,~~
24 ~~designed, or maintained for transportation of persons or property and:~~
25 ~~(a) Having two axles and a gross vehicle weight or registered gross~~
26 ~~vehicle weight exceeding twenty six thousand pounds; or (b) having~~
27 ~~three or more axles regardless of weight; or (c) is used in~~
28 ~~combination, when the weight of such combination exceeds twenty six~~
29 ~~thousand pounds gross vehicle weight. "Commercial motor vehicle" does~~
30 ~~not include recreational vehicles;~~

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

33 (5) ~~"Department" means the department of licensing;~~

34 (6) ~~"Director" means the director of licensing;~~

35 (7) ~~"Dealer" means any person engaged in the retail sale of liquid~~
36 ~~motor vehicle fuels;~~

37 (8) ~~"Person" means every natural person, firm, partnership,~~
38 ~~association, or private or public corporation;~~

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

3 ~~(10) "Broker" means every person, other than a distributor, engaged~~
4 ~~in business as a broker, jobber, or wholesale merchant dealing in motor~~
5 ~~vehicle fuel or other petroleum products used or usable in propelling~~
6 ~~motor vehicles, or in other petroleum products which may be used in~~
7 ~~blending, compounding, or manufacturing of motor vehicle fuel;~~

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

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

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

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

22 ~~(15) "Alcohol" means alcohol that is produced from renewable~~
23 ~~resources;~~

24 ~~(16) "Electronic funds transfer" means any transfer of funds, other~~
25 ~~than a transaction originated by check, draft, or similar paper~~
26 ~~instrument, which is initiated through an electronic terminal,~~
27 ~~telephonic instrument, or computer or magnetic tape so as to order,~~
28 ~~instruct, or authorize a financial institution to debit or credit an~~
29 ~~account;~~

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

33 ~~(a) A knowing: False statement, misrepresentation of fact, or~~
34 ~~other act of deception; or~~

35 ~~(b) An intentional: Omission, failure to file a return or report,~~
36 ~~or other act of deception.)) The definitions in this section apply~~
37 ~~throughout this chapter unless the context clearly requires otherwise.~~

1 (1) "Blended fuel" means a mixture of motor fuel and another
2 liquid, other than a de minimus amount of the liquid, that can be used
3 as a fuel to propel a motor vehicle.

4 (2) "Bond" means a bond duly executed with a corporate surety
5 qualified under chapter 48.28 RCW, which bond is payable to the state
6 of Washington conditioned upon faithful performance of all requirements
7 of this chapter, including the payment of all taxes, penalties, and
8 other obligations arising out of this chapter.

9 (3) "Bulk transfer" means a transfer of motor fuel by pipeline or
10 vessel.

11 (4) "Bulk transfer-terminal system" means the motor fuel
12 distribution system consisting of refineries, pipelines, vessels, and
13 terminals. Motor fuel in a refinery, pipeline, vessel, or terminal is
14 in the bulk transfer-terminal system. Motor fuel in the fuel tank of
15 an engine, motor vehicle, or in a railcar, trailer, truck, or other
16 equipment suitable for ground transportation is not in the bulk
17 transfer-terminal system.

18 (5) "Dealer" means a person engaged in the retail sale of motor
19 fuel.

20 (6) "Department" means the department of licensing.

21 (7) "Director" means the director of licensing.

22 (8) "Evasion" or "evade" means to diminish or avoid the
23 computation, assessment, or payment of authorized taxes or fees
24 through:

25 (a) A knowing: False statement; misrepresentation of fact; or
26 other act of deception; or

27 (b) An intentional: Omission; failure to file a return or report;
28 or other act of deception.

29 (9) "Export" means to obtain motor fuel in this state for sales or
30 distribution outside the state.

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

33 (11) "Import" means to bring motor fuel into this state by a means
34 of conveyance other than the fuel supply tank of a motor vehicle.

35 (12) "Licensee" means a person holding a license issued under this
36 chapter.

37 (13) "Marine fuel dealer" means a person engaged in the retail sale
38 of motor vehicle fuel whose place of business and/or sale outlet is
39 located upon a navigable waterway.

1 (14) "Motor fuel blender" means a person who produces blended motor
2 fuel outside the bulk transfer-terminal system.

3 (15) "Motor fuel distributor" means a person who acquires motor
4 fuel from a supplier, distributor, or licensee for subsequent sale and
5 distribution.

6 (16) "Motor fuel exporter" means a person who purchases motor fuel
7 in this state and exports the fuel by a means other than the bulk
8 transfer-terminal system to a destination outside of the state. If the
9 exporter of record is acting as an agent, the person for whom the agent
10 is acting is the exporter. If there is no exporter of record, the
11 owner of the motor fuel at the time of exportation is the exporter.

12 (17) "Motor fuel importer" means a person who imports motor fuel
13 into the state by a means other than the bulk transfer-terminal system.
14 If the importer of record is acting as an agent, the person for whom
15 the agent is acting is the importer. If there is no importer of
16 record, the owner of the motor fuel at the time of importation is the
17 importer.

18 (18) "Motor fuel supplier" means a person who owns and stores motor
19 fuel in a terminal facility or who refines and stores motor fuel at a
20 refinery.

21 (19) "Motor vehicle" means a self-propelled vehicle designed for
22 operation upon land utilizing motor fuel as the means of propulsion.

23 (20) "Motor vehicle fuel" means gasoline and any other inflammable
24 gas or liquid, by whatsoever name the gasoline, gas, or liquid may be
25 known or sold, the chief use of which is as fuel for the propulsion of
26 motor vehicles or motorboats.

27 (21) "Person" means a natural person, fiduciary, association, or
28 corporation. The term "person" as applied to an association means and
29 includes the partners or members thereof, and as applied to
30 corporations, the officers thereof.

31 (22) "Position holder" means a person who holds the inventory
32 position in motor fuel, as reflected by the records of the terminal
33 operator. A person holds the inventory position in motor fuel if the
34 person has a contractual agreement with the terminal for the use of
35 storage facilities and terminating services at a terminal with respect
36 to motor fuel. "Position holder" includes a terminal operator that
37 owns motor fuel in their terminal.

1 (23) "Rack" means a mechanism for delivering motor fuel from a
2 refinery or terminal into a truck, trailer, railcar, or other means of
3 nonbulk transfer.

4 (24) "Refiner" means a person who owns, operates, or otherwise
5 controls a refinery.

6 (25) "Removal" means a physical transfer of motor fuel other than
7 by evaporation, loss, or destruction.

8 (26) "Terminal" means a motor fuel storage and distribution
9 facility that has been assigned a terminal control number by the
10 internal revenue service, is supplied by pipeline or vessel, and from
11 which reportable motor fuel is removed at a rack.

12 (27) "Terminal operator" means a person who owns, operates, or
13 otherwise controls a terminal.

14 (28) "Two-party exchange" means a transaction in which taxable
15 motor fuel is transferred from one licensed supplier to another
16 licensed supplier under an exchange agreement whereby the supplier that
17 is the position holder agrees to deliver taxable motor fuel to the
18 other supplier or the other supplier's customer at the rack of the
19 terminal at which the delivering supplier is the position holder.

20 **Sec. 7.** RCW 82.36.020 and 1983 1st ex.s. c 49 s 26 are each
21 amended to read as follows:

22 ~~((Every distributor shall pay, in addition to any other taxes~~
23 ~~provided by law, an excise tax to the director at a rate computed in~~
24 ~~the manner provided in RCW 82.36.025 for each gallon of motor vehicle~~
25 ~~fuel sold, distributed, or used by him in the state as well as on each~~
26 ~~gallon upon which he has assumed liability for payment of the tax under~~
27 ~~the provisions of RCW 82.36.100: PROVIDED, That under such regulations~~
28 ~~as the director may prescribe sales or distribution of motor vehicle~~
29 ~~fuel may be made by one licensed distributor to another licensed~~
30 ~~distributor free of the tax. In the computation of the tax, one-~~
31 ~~quarter of one percent of the net gallonage otherwise taxable shall be~~
32 ~~deducted by the distributor before computing the tax due, on account of~~
33 ~~the losses sustained through handling. The tax imposed hereunder shall~~
34 ~~be in addition to any other tax required by law, and shall not be~~
35 ~~imposed under circumstances in which the tax is prohibited by the~~
36 ~~Constitution or laws of the United States. The tax herein imposed~~
37 ~~shall be collected and paid to the state but once in respect to any~~

1 ~~motor vehicle fuel. An invoice shall be rendered by a distributor to~~
2 ~~a purchaser for each distribution of motor vehicle fuel.))~~

3 (1) There is hereby levied and imposed upon motor fuel users a tax
4 at the rate computed in the manner provided in RCW 82.36.025 on each
5 gallon of motor fuel.

6 (2) The tax imposed by subsection (1) of this section is imposed
7 when any of the following occurs:

8 (a) Motor fuel is removed in this state from a terminal if the
9 motor fuel is removed at the rack;

10 (b) Motor fuel is removed in this state from a refinery if either
11 of the following applies:

12 (i) The removal is by bulk transfer and the refiner or the owner of
13 the motor fuel immediately before the removal is not a licensee; or

14 (ii) The removal is at the refinery rack;

15 (c) Motor fuel enters into this state for sale, consumption, use,
16 or storage if either of the following applies:

17 (i) The entry is by bulk transfer and the importer is not a
18 licensee; or

19 (ii) The entry is not by bulk transfer;

20 (d) Motor fuel is removed in this state to an unlicensed entity
21 unless there was a prior taxable removal, entry, or sale of the motor
22 fuel;

23 (e) Blended motor fuel is removed or sold in this state by the
24 blender of the fuel. The number of gallons of blended motor fuel
25 subject to the tax is the difference between the total number of
26 gallons of blended motor fuel removed or sold and the number of gallons
27 of previously taxed motor fuel used to produce the blended fuel.

28 (3) The proceeds of the motor vehicle fuel excise tax collected
29 ((on the net gallonage after the deduction provided for herein and))
30 after the deductions for payments and expenditures as provided in RCW
31 46.68.090((7)) shall be distributed as provided in RCW 46.68.100.

32 NEW SECTION. Sec. 8. (1) A position holder shall remit tax to the
33 department on motor fuel removed from a terminal as provided in RCW
34 82.36.020(2)(a). On a two-party exchange, the receiving exchange
35 partner becomes the position holder, who shall remit the tax.

36 (2) A refiner shall remit tax to the department on motor fuel
37 removed from a refinery as provided in RCW 82.36.020(2)(b).

1 (3) An importer shall remit tax to the department on motor fuel
2 imported into this state as provided in RCW 82.36.020(2)(c).

3 (4) A blender shall remit tax to the department on the removal or
4 sale of blended motor fuel as provided in RCW 82.36.020(2)(e).

5 NEW SECTION. **Sec. 9.** A terminal operator is jointly and severally
6 liable for remitting the tax imposed under RCW 82.36.020(1) if, at the
7 time of removal:

8 (1) The position holder with respect to the motor fuel is a person
9 other than the terminal operator and is not a motor fuel licensee;

10 (2) The terminal operator is not a motor fuel licensee;

11 (3) The position holder has an expired internal revenue service
12 notification certificate issued under 26 C.F.R. Part 48; or

13 (4) The terminal operator had reason to believe that information on
14 the notification certificate was false.

15 NEW SECTION. **Sec. 10.** Upon the taxable removal of motor fuel from
16 a rack, the licensee who acquired or removed the motor fuel, other than
17 a motor fuel exporter, shall be entitled to a one-quarter of one
18 percent deduction of the tax liability on the gallonage of taxable
19 motor fuel removed in order to account for handling losses. For those
20 licensees required to file tax reports, the handling loss deduction
21 shall be reported on tax reports filed with the department. For motor
22 fuel distributors, the handling loss deduction shall be shown on the
23 invoice provided to the motor fuel distributor by the seller.

24 NEW SECTION. **Sec. 11.** For the purpose of determining the amount
25 of liability for the tax imposed under this chapter, and to
26 periodically update license information, each motor fuel licensee,
27 other than a motor fuel distributor, shall file monthly tax reports
28 with the department, on a form prescribed by the department.

29 A report shall be filed with the department even though no motor
30 fuel tax is due for the reporting period. Each tax report shall
31 contain a declaration by the person making the same, to the effect that
32 the statements contained therein are true and made under penalties of
33 perjury, which declaration has the same force and effect as a
34 verification of the report and is in lieu of the verification. The
35 report shall show information as the department may require for the
36 proper administration and enforcement of this chapter. For counties in

1 which an additional excise tax on motor fuel has been levied by that
2 jurisdiction under RCW 82.80.010, the report must show the quantities
3 of motor fuel sold, distributed, or used by the licensee within the
4 county's boundaries and the tax liability from its levy. Tax reports
5 shall be filed on or before the twenty-fifth day of the next succeeding
6 calendar month following the period to which the reports relate. If
7 the final filing date falls on a Saturday, Sunday, or legal holiday the
8 next secular or business day shall be the final filing date.

9 The department, if it deems it necessary in order to ensure payment
10 of the tax imposed under this chapter, or to facilitate the
11 administration of this chapter, may require the filing of reports and
12 tax remittances at shorter intervals than one month.

13 NEW SECTION. **Sec. 12.** (1) The tax imposed by this chapter shall
14 be computed by multiplying the tax rate per gallon provided in this
15 chapter by the number of gallons of motor fuel subject to the motor
16 fuel tax.

17 (2) Except as provided in subsection (3) of this section, tax
18 reports shall be accompanied by a remittance payable to the state
19 treasurer covering the tax amount determined to be due for the
20 reporting period.

21 (3) If the tax is paid by electronic funds transfer, the tax shall
22 be paid on or before the expiration of five business days immediately
23 following the day that is two business days before the last business
24 day of the month immediately following the end of the reporting period.
25 When the reporting period is May, the tax shall be paid on the last
26 business day of June.

27 (4) The tax shall be paid by electronic funds transfer whenever the
28 amount due is fifty thousand dollars or more.

29 (5) A motor fuel distributor shall remit tax on motor fuel
30 purchased from a motor fuel supplier, and due to the state for that
31 reporting period, to the motor fuel supplier.

32 (6) At the election of the distributor, the payment of the motor
33 fuel tax owed on motor fuel purchased from a supplier shall be remitted
34 to the supplier on terms agreed upon between the distributor and
35 supplier or no later than two business days before the last business
36 day of the following month. This election shall be subject to a
37 condition that the distributor's remittances of all amounts of motor
38 fuel tax due to the supplier shall be paid by electronic funds

1 transfer. The distributor's election may be terminated by the supplier
2 if the distributor does not make timely payments to the supplier as
3 required by this section. This section shall not apply if the
4 distributor is required by the supplier to pay cash or cash equivalent
5 for motor fuel purchases.

6 (7) A motor fuel supplier that receives a payment of the motor fuel
7 tax may not apply the payment towards debts for motor fuel purchased
8 from the supplier or for any other services provided to the debtor by
9 the motor fuel supplier.

10 **Sec. 13.** RCW 82.36.032 and 1987 c 174 s 7 are each amended to read
11 as follows:

12 If any ((distributor)) licensee files a fraudulent ((monthly
13 ~~gallonage return~~) tax report with intent to evade the tax imposed by
14 this chapter, there shall be added to the amount of deficiency
15 determined by the department a penalty equal to twenty-five percent of
16 the deficiency, in addition to all other penalties prescribed by law.

17 NEW SECTION. **Sec. 14.** A motor fuel supplier shall, no later than
18 the twentieth day or next business day after the motor fuel tax is due
19 from a motor fuel distributor under this chapter, notify the department
20 of the failure of a motor fuel distributor to pay the full amount of
21 the tax owed.

22 Upon notification and submission of satisfactory evidence by a
23 motor fuel supplier that a motor fuel distributor has failed to pay the
24 full amount of the tax owed, the department may summarily suspend the
25 license of the motor fuel distributor.

26 Upon the suspension, the department shall immediately notify all
27 motor fuel suppliers that the authority of the motor fuel distributor
28 to purchase tax-deferred motor fuel has been suspended and all
29 subsequent purchases of motor fuel by the motor fuel distributor must
30 be tax-paid at the time of removal.

31 If, after notification by the department, a motor fuel supplier
32 continues to sell tax-deferred motor fuel to a motor fuel distributor
33 whose license is suspended, the motor fuel supplier's license is
34 subject to revocation or suspension under RCW 82.36.190. Furthermore,
35 if notified of a license suspension, a motor fuel supplier is liable
36 for any unpaid motor fuel tax owed on motor fuel sold to a suspended
37 motor fuel distributor.

1 NEW SECTION. **Sec. 15.** A motor fuel supplier is entitled to a
2 credit of the tax paid over to the department on those sales of motor
3 fuel for which the supplier has received no consideration from or on
4 behalf of the purchaser. The amount of the tax credit shall not exceed
5 the amount of tax imposed by this chapter on such sales. If a credit
6 has been granted under this section, any amounts collected for
7 application against accounts on which such a credit is based shall be
8 reported on a subsequent tax return filed after such collection, and
9 the amount of credit received by the supplier based upon the collected
10 amount shall be returned to the department. In the event the credit
11 has not been paid, the amount of the credit requested by the supplier
12 shall be adjusted by the department to reflect the decrease in the
13 amount on which the claim is based.

14 **Sec. 16.** RCW 82.36.045 and 1996 c 104 s 2 are each amended to read
15 as follows:

16 (1) If the department determines that the tax reported by a motor
17 vehicle fuel (~~((distributor))~~) licensee is deficient, the department
18 shall assess the deficiency on the basis of information available to
19 it, and shall add a penalty of two percent of the amount of the
20 deficiency.

21 (2) If a (~~((distributor, whether licensed or not licensed))~~)
22 licensee, or person acting as such, fails, neglects, or refuses to file
23 a motor vehicle fuel tax report the department shall, on the basis of
24 information available to it, determine the tax liability of the
25 (~~((distributor))~~) licensee or person for the period during which no
26 report was filed. The department shall add the penalty provided in
27 subsection (1) of this section to the tax. An assessment made by the
28 department under this subsection or subsection (1) of this section is
29 presumed to be correct. In any case, where the validity of the
30 assessment is questioned, the burden is on the person who challenges
31 the assessment to establish by a fair preponderance of evidence that it
32 is erroneous or excessive, as the case may be.

33 (3) If a (~~((distributor))~~) licensee or person acting as such files a
34 false or fraudulent report with intent to evade the tax imposed by this
35 chapter, the department shall add to the amount of deficiency a penalty
36 equal to twenty-five percent of the deficiency, in addition to the
37 penalty provided in subsections (1) and (2) of this section and all
38 other penalties prescribed by law.

1 (4) Motor vehicle fuel tax, penalties, and interest payable under
2 this chapter bears interest at the rate of one percent per month, or
3 fraction thereof, from the first day of the calendar month after the
4 amount or any portion of it should have been paid until the date of
5 payment. If a ~~((distributor))~~ licensee or person acting as such
6 establishes by a fair preponderance of evidence that the failure to pay
7 the amount of tax due was attributable to reasonable cause and was not
8 intentional or willful, the department may waive the penalty. The
9 department may waive the interest when it determines the cost of
10 processing or collection of the interest exceeds the amount of interest
11 due.

12 (5) Except in the case of a fraudulent report, neglect or refusal
13 to make a report, or failure to pay or to pay the proper amount, the
14 department shall assess the deficiency under subsection (1) or (2) of
15 this section within five years from the last day of the succeeding
16 calendar month after the reporting period for which the amount is
17 proposed to be determined or within five years after the return is
18 filed, whichever period expires later.

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

27 (7) A ~~((distributor))~~ licensee or person acting as such against
28 whom an assessment is made under subsection (1) or (2) of this section
29 may petition for a reassessment within thirty days after service upon
30 the ~~((distributor))~~ licensee of notice of the assessment. If the
31 petition is not filed within the thirty-day period, the amount of the
32 assessment becomes final at the expiration of that period.

33 If a petition for reassessment is filed within the thirty-day
34 period, the department shall reconsider the assessment and, if the
35 ~~((distributor))~~ petitioner has so requested in its petition, shall
36 grant the ~~((distributor))~~ petitioner an oral hearing and give the
37 ~~((distributor))~~ petitioner twenty days' notice of the time and place of
38 the hearing. The department may continue the hearing from time to
39 time. The decision of the department upon a petition for reassessment

1 becomes final thirty days after service of notice upon the
2 (~~distributor~~) petitioner.

3 An assessment made by the department becomes due and payable when
4 it becomes final. If it is not paid to the department when due and
5 payable, the department shall add a penalty of ten percent of the
6 amount of the tax.

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

11 (9) A notice of assessment required by this section must be served
12 personally or by mail. If it is served by mail, service shall be made
13 by deposit of the notice in the United States mail, postage prepaid,
14 addressed to the (~~distributor~~) respondent at the most current address
15 furnished to the department.

16 (10) The tax (~~required~~) imposed by this chapter, if required to
17 be collected by the seller, is held in trust by the (~~seller~~) licensee
18 until paid to the department, and a (~~seller~~) licensee who
19 appropriates or converts the tax collected to his or her own use or to
20 any use other than the payment of the tax to the extent that the money
21 required to be collected is not available for payment on the due date
22 as prescribed in this chapter is guilty of a felony, or gross
23 misdemeanor in accordance with the theft and anticipatory provisions of
24 Title 9A RCW. A person, partnership, corporation, or corporate officer
25 who fails to collect the tax imposed by this section, or who has
26 collected the tax and fails to pay it to the department in the manner
27 prescribed by this chapter, is personally liable to the state for the
28 amount of the tax.

29 **Sec. 17.** RCW 82.36.047 and 1991 c 339 s 4 are each amended to read
30 as follows:

31 When an assessment becomes final in accordance with this chapter,
32 the department may file with the clerk of any county within the state
33 a warrant in the amount of the assessment of taxes, penalties,
34 interest, and a filing fee of five dollars. The clerk of the county in
35 which the warrant is filed shall immediately designate a superior court
36 cause number for the warrant, and the clerk shall cause to be entered
37 in the judgment docket under the superior court cause number assigned
38 to the warrant the name of the (~~distributor~~) licensee or person

1 mentioned in the warrant, the amount of the tax, penalties, interest,
2 and filing fee, and the date when the warrant was filed. The aggregate
3 amount of the warrant as docketed becomes a lien upon the title to and
4 interest in all real and personal property of the named person against
5 whom the warrant is issued, the same as a judgment in a civil case duly
6 docketed in the office of the clerk. The warrant so docketed is
7 sufficient to support the issuance of writs of execution and writs of
8 garnishment in favor of the state in the manner provided by law in the
9 case of a civil judgment, wholly or partially unsatisfied. The clerk
10 of the court is entitled to a filing fee of five dollars.

11 **Sec. 18.** RCW 82.36.060 and 1996 c 104 s 3 are each amended to read
12 as follows:

13 ~~((Every person, before becoming a distributor or continuing in
14 business as a distributor, shall make))~~ (1) An application ~~((to the
15 department))~~ for a license ~~((authorizing the applicant to engage in
16 business as a distributor. Applications for such licenses))~~ issued
17 under this chapter shall be made to the department on forms to be
18 furnished by the department and shall contain such information as the
19 department deems necessary.

20 (2) Every application for a ~~((distributor's))~~ license must contain
21 the following information to the extent it applies to the applicant:

22 ~~((+1))~~ (a) Proof as the department may require concerning the
23 applicant's identity, including but not limited to his or her
24 fingerprints or those of the officers of a corporation making the
25 application;

26 ~~((+2))~~ (b) The applicant's form and place of organization
27 including proof that the individual, partnership, or corporation is
28 licensed to do business in this state;

29 ~~((+3))~~ (c) The qualification and business history of the applicant
30 and any partner, officer, or director;

31 ~~((+4))~~ (d) The applicant's financial condition or history
32 including a bank reference and whether the applicant or any partner,
33 officer, or director has ever been adjudged bankrupt or has an
34 unsatisfied judgment in a federal or state court;

35 ~~((+5))~~ (e) Whether the applicant has been adjudged guilty of a
36 crime that directly relates to the business for which the license is
37 sought and the time elapsed since the conviction is less than ten
38 years, or has suffered a judgment within the preceding five years in a

1 civil action involving fraud, misrepresentation, or conversion and in
2 the case of a corporation or partnership, all directors, officers, or
3 partners.

4 (3) An applicant for a license as a motor fuel importer must list
5 on the application each state, province, or country from which the
6 applicant intends to import motor fuel and, if required by the state,
7 province, or country listed, must be licensed or registered for motor
8 fuel tax purposes in that state, province, or country.

9 (4) An applicant for a license as a motor fuel exporter must list
10 on the application each state, province, or country to which the
11 exporter intends to export motor fuel received in this state by means
12 of a transfer outside of the bulk transfer-terminal system and, if
13 required by the state, province, or country listed, must be licensed or
14 registered for motor fuel tax purposes in that state, province, or
15 country.

16 (5) An applicant for a license as a motor fuel supplier must have
17 a federal certificate of registry that is issued under the internal
18 revenue code and authorizes the applicant to enter into federal tax-
19 free transactions on motor fuel in the terminal transfer system.

20 (6) After receipt of an application for a license, the director may
21 conduct an investigation to determine whether the facts set forth are
22 true. The director ((may)) shall require a fingerprint record check of
23 the applicant through the Washington state patrol criminal
24 identification system and the federal bureau of investigation before
25 issuance of a license. The results of the background investigation
26 including criminal history information may be released to authorized
27 department personnel as the director deems necessary. The department
28 shall charge a license holder or license applicant a fee of fifty
29 dollars for each background investigation conducted.

30 An applicant who makes a false statement of a material fact on the
31 application may be prosecuted for false swearing as defined by RCW
32 9A.72.040.

33 Before granting any license ((authorizing any person to engage in
34 business as a distributor)) issued under this chapter, the department
35 shall require applicant to file with the department, in such form as
36 shall be prescribed by the department, a corporate surety bond duly
37 executed by the applicant as principal, payable to the state and
38 conditioned for faithful performance of all the requirements of this
39 chapter, including the payment of all taxes, penalties, and other

1 obligations arising out of this chapter. The total amount of the bond
2 or bonds(~~(, required of any distributor)~~) shall be fixed by the
3 department and may be increased or reduced by the department at any
4 time subject to the limitations herein provided. In fixing the total
5 amount of the bond or bonds (~~(required of any distributor)~~), the
6 department shall require a bond or bonds equivalent in total amount to
7 twice the estimated monthly excise tax determined in such manner as the
8 department may deem proper. If at any time the estimated excise tax to
9 become due during the succeeding month amounts to more than fifty
10 percent of the established bond, the department shall require
11 additional bonds or securities to maintain the marginal ratio herein
12 specified or shall demand excise tax payments to be made weekly or
13 semimonthly to meet the requirements hereof.

14 The total amount of the bond or bonds required of any
15 (~~(distributor)~~) licensee shall never be less than five thousand dollars
16 nor more than fifty thousand dollars.

17 No recoveries on any bond or the execution of any new bond shall
18 invalidate any bond and no revocation of any license shall effect the
19 validity of any bond but the total recoveries under any one bond shall
20 not exceed the amount of the bond.

21 In lieu of any such bond or bonds in total amount as herein fixed,
22 a (~~(distributor)~~) licensee may deposit with the state treasurer, under
23 such terms and conditions as the department may prescribe, a like
24 amount of lawful money of the United States or bonds or other
25 obligations of the United States, the state, or any county of the
26 state, of an actual market value not less than the amount so fixed by
27 the department.

28 Any surety on a bond furnished by a (~~(distributor)~~) licensee as
29 provided herein shall be released and discharged from any and all
30 liability to the state accruing on such bond after the expiration of
31 thirty days from the date upon which such surety has lodged with the
32 department a written request to be released and discharged, but this
33 provision shall not operate to relieve, release, or discharge the
34 surety from any liability already accrued or which shall accrue before
35 the expiration of the thirty day period. The department shall
36 promptly, upon receiving any such request, notify the (~~(distributor)~~)
37 licensee who furnished the bond; and unless the (~~(distributor)~~)
38 licensee, on or before the expiration of the thirty day period, files
39 a new bond, or makes a deposit in accordance with the requirements of

1 this section, the department shall forthwith cancel the
2 ~~((distributor's))~~ license. Whenever a new bond is furnished by a
3 ~~((distributor))~~ licensee, the department shall cancel ~~((his or her))~~
4 the old bond as soon as the department and the attorney general are
5 satisfied that all liability under the old bond has been fully
6 discharged.

7 The department may require a ~~((distributor))~~ licensee to give a new
8 or additional surety bond or to deposit additional securities of the
9 character specified in this section if, in its opinion, the security of
10 the surety bond theretofore filed by such ~~((distributor))~~ licensee, or
11 the market value of the properties deposited as security by the
12 ~~((distributor))~~ licensee, shall become impaired or inadequate; and upon
13 the failure of the ~~((distributor))~~ licensee to give such new or
14 additional surety bond or to deposit additional securities within
15 thirty days after being requested so to do by the department, the
16 department shall forthwith cancel his or her license.

17 **Sec. 19.** RCW 82.36.070 and 1996 c 104 s 4 are each amended to read
18 as follows:

19 The application in proper form having been accepted for filing, the
20 filing fee paid, and the bond or other security having been accepted
21 and approved, the department shall issue to the applicant ~~((a))~~ the
22 appropriate license ~~((to transact business as a distributor in the~~
23 ~~state))~~, and such license shall be valid until canceled or revoked.

24 The license so issued by the department shall not be assignable,
25 and shall be valid only for the ~~((distributor))~~ person in whose name
26 issued.

27 ~~((The department shall keep and file all applications and bonds~~
28 ~~with an alphabetical index thereof, together with a record of all~~
29 ~~licensed distributors.))~~

30 Each ~~((distributor))~~ licensee shall be assigned a license number
31 ~~((upon qualifying for a license hereunder))~~, and the department shall
32 issue to each ~~((such))~~ licensee a license certificate which shall be
33 displayed conspicuously ~~((by the distributor))~~ at his or her principal
34 place of business. The department may refuse to issue or may revoke a
35 motor vehicle fuel ~~((distributor))~~ license, to a person:

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

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

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

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

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

14 (6) Who pled guilty to or was convicted as an individual, corporate
15 officer, director, owner, or managing employee in this or any other
16 state or in any federal jurisdiction of a gross misdemeanor or felony
17 crime directly related to the business or has been subject to a civil
18 judgment involving fraud, misrepresentation, conversion, or dishonesty,
19 notwithstanding chapter 9.96A RCW;

20 (7) Who misrepresented or concealed a material fact in obtaining a
21 license or in reinstatement thereof;

22 (8) Who violated a statute or administrative rule regulating fuel
23 taxation or distribution;

24 (9) Who failed to cooperate with the department's investigations
25 by:

26 (a) Not furnishing papers or documents;

27 (b) Not furnishing in writing a full and complete explanation
28 regarding a matter under investigation by the department; or

29 (c) Not responding to subpoenas issued by the department, whether
30 or not the recipient of the subpoena is the subject of the proceeding;

31 (10) Who failed to comply with an order issued by the director; or

32 (11) Upon other sufficient cause being shown.

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

36 For the purpose of considering an application for a
37 (~~((distributor's))~~) license issued under this chapter, the department may
38 inspect, cause an inspection, investigate, or cause an investigation of
39 the records of this or any other state or of the federal government to

1 ascertain the veracity of the information on the application form and
2 the applicant's criminal and licensing history.

3 The department may, in the exercise of reasonable discretion,
4 suspend a motor vehicle (~~((distributor))~~) fuel license at any time before
5 and pending such a hearing for unpaid taxes or reasonable cause.

6 **Sec. 20.** RCW 82.36.080 and 1961 c 15 s 82.36.080 are each amended
7 to read as follows:

8 (1) It shall be unlawful for any person to (~~((be a distributor~~
9 without first securing a license from the director)) engage in business
10 in this state as any of the following unless the person is the holder
11 of an uncanceled license issued by the department authorizing the
12 person to engage in that business:

- 13 (a) Motor fuel supplier;
- 14 (b) Motor fuel distributor;
- 15 (c) Motor fuel exporter;
- 16 (d) Motor fuel importer; or
- 17 (e) Motor fuel blender.

18 (2) A person engaged in more than one activity for which a license
19 is required must have a separate license for each activity, but a motor
20 fuel supplier is not required to obtain a separate license for any
21 other activity for which a license is required.

22 (3) If any person (~~((becomes))~~) acts as a (~~((distributor))~~) licensee
23 without first securing the license required herein the excise tax shall
24 be immediately due and payable on account of all motor vehicle fuel
25 distributed or used by (~~((him))~~) the person. The director shall proceed
26 forthwith to determine from the best available sources, the amount of
27 the tax, and (~~((he))~~) the director shall immediately assess the tax in
28 the amount found due, together with a penalty of one hundred percent of
29 the tax, and shall make (~~((his))~~) a certificate of such assessment and
30 penalty. In any suit or proceeding to collect the tax or penalty, or
31 both, such certificate shall be prima facie evidence that the person
32 therein named is indebted to the state in the amount of the tax and
33 penalty therein stated. Any tax or penalty so assessed may be
34 collected in the manner prescribed in this chapter with reference to
35 delinquency in payment of the tax or by an action at law, which the
36 attorney general shall commence and prosecute to final determination at
37 the request of the director. The foregoing remedies of the state shall

1 be cumulative and no action taken pursuant to this section shall
2 relieve any person from the penal provisions of this chapter.

3 **Sec. 21.** RCW 82.36.090 and 1967 c 153 s 2 are each amended to read
4 as follows:

5 (~~Whenever a distributor~~) A licensee who ceases to engage in
6 business (~~as a distributor~~) within the state by reason of the
7 discontinuance, sale, or transfer of (~~his~~) the business(~~, he~~) shall
8 notify the director in writing at the time the discontinuance, sale, or
9 transfer takes effect. Such notice shall give the date of
10 discontinuance, and, in the event of a sale or transfer of the
11 business, the date thereof and the name and address of the purchaser or
12 transferee thereof. All taxes, penalties, and interest under this
13 chapter, not yet due and payable, shall become due and payable
14 concurrently with such discontinuance, sale, or transfer, and any such
15 (~~distributor~~) licensee shall make a report and pay all such taxes,
16 interest, and penalties, and surrender to the director the license
17 certificate theretofore issued to him or her.

18 If an overpayment of tax was made by the (~~distributor~~) licensee,
19 prior to the discontinuance or transfer of his or her business, such
20 overpayment may be refunded to such (~~distributor or may be credited to~~
21 ~~the transferee of such business if such transferee qualifies as a~~
22 ~~distributor under the provisions of this chapter~~) licensee.

23 **Sec. 22.** RCW 82.36.100 and 1983 1st ex.s. c 49 s 28 are each
24 amended to read as follows:

25 Every person other than a (~~distributor~~) licensee who acquires any
26 motor vehicle fuel within this state upon which payment of tax is
27 required under the provisions of this chapter, or imports such motor
28 vehicle fuel into this state and sells, distributes, or in any manner
29 uses it in this state shall, if the tax has not been paid, apply for a
30 license to carry on such activities, (~~file bond, make reports,~~)
31 comply with all (~~regulations~~) the (~~director may prescribe in respect~~
32 ~~thereto~~) provisions of this chapter, and pay an excise tax at the rate
33 computed in the manner provided in RCW 82.36.025 for each gallon
34 thereof so sold, distributed, or used during the fiscal year for which
35 such rate is applicable (~~in the manner provided for distributors, and~~
36 ~~the director shall issue a license to such person in the manner~~
37 ~~provided for issuance of licenses to distributors~~). The proceeds of

1 the tax imposed by this section shall be distributed in the manner
2 provided for the distribution of the motor vehicle fuel excise tax in
3 RCW 82.36.020. (~~However, a distributor licensed under this chapter~~
4 ~~may deliver motor vehicle fuel to an importer in individual quantities~~
5 ~~of five hundred gallons or less and assume the liability for payment of~~
6 ~~the tax to this state. Under such conditions, the importer is exempt~~
7 ~~from the requirements of this section.)) For failure to comply with
8 this chapter such person is subject to the same penalties imposed upon
9 ((~~distributors~~)) licensees. The director shall pursue against such
10 persons the same procedure and remedies for audits, adjustments,
11 collection, and enforcement of this chapter as is provided with respect
12 to ((~~distributors~~)) licensees. Nothing in this section may be
13 construed as classifying such persons as ((~~distributors~~)) licensees.~~

14 **Sec. 23.** RCW 82.36.120 and 1994 c 262 s 21 are each amended to
15 read as follows:

16 If a ((~~distributor~~)) licensee is delinquent in the payment of an
17 obligation imposed under this chapter, the department may give notice
18 of the amount of the delinquency by registered or certified mail to all
19 persons having in their possession or under their control any credits
20 or other personal property belonging to such ((~~distributor~~)) licensee,
21 or owing any debts to such ((~~distributor~~)) licensee at the time of
22 receipt by them of such notice. Upon service, the notice and order to
23 withhold and deliver constitutes a continuing lien on property of the
24 taxpayer. The department shall include in the caption of the notice to
25 withhold and deliver "continuing lien." The effective date of a notice
26 to withhold and deliver served under this section is the date of
27 service of the notice. A person so notified shall neither transfer nor
28 make any other disposition of such credits, personal property, or debts
29 until the department consents to a transfer or other disposition. All
30 persons so notified must, within twenty days after receipt of the
31 notice, advise the department of any and all such credits, personal
32 property, or debts in their possession, under their control or owing by
33 them, as the case may be, and shall deliver upon demand the credits,
34 personal property, or debts to the department or its duly authorized
35 representative to be applied to the indebtedness involved.

36 If a person fails to answer the notice within the time prescribed
37 by this section, it is lawful for the court, upon application of the
38 department and after the time to answer the notice has expired, to

1 render judgment by default against the person for the full amount
2 claimed by the department in the notice to withhold and deliver,
3 together with costs.

4 **Sec. 24.** RCW 82.36.130 and 1961 c 15 s 82.36.130 are each amended
5 to read as follows:

6 If any ((~~distributor~~)) licensee is in default for more than ten
7 days in the payment of any excise taxes or penalties thereon, the
8 director shall issue a warrant under the official seal of ((~~his~~)) the
9 director's office directed to the sheriff of any county of the state
10 commanding him or her to levy upon and sell the goods and chattels of
11 the ((~~distributor~~)) licensee, without exemption, found within his or
12 her jurisdiction, for the payment of the amount of such delinquency,
13 with the added penalties and interest and the cost of executing the
14 warrant, and to return such warrant to the director and to pay the
15 director the money collected by virtue thereof within the time to be
16 therein specified, which shall not be less than twenty nor more than
17 sixty days from the date of the warrant. The sheriff to whom the
18 warrant is directed shall proceed upon it in all respects and with like
19 effect and in the same manner as prescribed by law in respect to
20 executions issued against goods and chattels upon judgment by a court
21 of record and shall be entitled to the same fees for his or her
22 services to be collected in the same manner.

23 **Sec. 25.** RCW 82.36.140 and 1961 c 15 s 82.36.140 are each amended
24 to read as follows:

25 In a suit or action by the state on any bond filed with the
26 director recovery thereon may be had without first having sought or
27 exhausted its remedy against the ((~~distributor~~)) licensee; nor shall
28 the fact that the state has pursued, or is in the course of pursuing,
29 any remedy against the ((~~distributor~~)) licensee waive its right to
30 collect the taxes, penalties, and interest by proceeding against such
31 bond or against any deposit of money or securities made by the
32 ((~~distributor~~)) licensee.

33 **Sec. 26.** RCW 82.36.150 and 1965 ex.s. c 79 s 5 are each amended to
34 read as follows:

35 Every ((~~distributor~~)) licensee shall keep a true and accurate
36 record on such form as the director may prescribe of all stock of

1 petroleum products on hand, of all raw gasoline, gasoline stock, diesel
2 oil, kerosene, kerosene distillates, casing-head gasoline and other
3 petroleum products needed in, or which may be used in, compounding,
4 blending, or manufacturing motor vehicle fuel; of the amount of crude
5 oil refined, the gravity thereof and the yield therefrom, as well as of
6 such other matters relating to transactions in petroleum products as
7 the director may require. Every ~~((distributor))~~ licensee shall take a
8 physical inventory of the petroleum products at least once during each
9 calendar month and have the record of such inventory and of the other
10 matters mentioned in this section available at all times for the
11 inspection of the director. Upon demand of the director every
12 ~~((distributor))~~ licensee shall furnish a statement under oath as to the
13 contents of any records to be kept hereunder.

14 ~~((Every producer shall keep a true and accurate record in such form
15 as may be prescribed by the director of all manufacture and
16 distribution of casing head gasoline, kerosene distillates and other
17 petroleum products used in, or which may be used in, the blending,
18 compounding, or manufacturing of motor vehicle fuel, and every broker
19 shall likewise keep a true and accurate record of all purchases of such
20 petroleum products in such manner as to disclose the vendor, the
21 quantity purchased, the correct description of the commodity, and the
22 means of transportation from such broker to the vendee. All records
23 required by this section shall be available at all times for the
24 inspection of the director or his representative who may require a
25 statement under oath as to contents thereof.))~~

26 **Sec. 27.** RCW 82.36.160 and 1996 c 104 s 5 are each amended to read
27 as follows:

28 Every ~~((distributor))~~ licensee shall maintain in the office of his
29 or her principal place of business in this state, for a period of five
30 years, records of motor vehicle fuel received, sold, distributed, or
31 used by the ~~((distributor))~~ licensee, in such form as the director may
32 prescribe, together with invoices, bills of lading, and other pertinent
33 papers as may be required under the provisions of this chapter.

34 Every dealer purchasing motor vehicle fuel taxable under this
35 chapter for the purpose of resale, shall maintain within this state,
36 for a period of two years a record of motor vehicle fuels received, the
37 amount of tax paid to the ~~((distributor))~~ licensee as part of the

1 purchase price, together with delivery tickets, invoices, and bills of
2 lading, and such other records as the director shall require.

3 **Sec. 28.** RCW 82.36.170 and 1961 c 15 s 82.36.170 are each amended
4 to read as follows:

5 The director may, from time to time, require additional reports
6 from ~~((distributors, brokers, dealers, or producers))~~ any licensee with
7 reference to any of the matters herein concerned. Such reports shall
8 be made and filed on forms prepared by the director.

9 **Sec. 29.** RCW 82.36.180 and 1967 ex.s. c 89 s 6 are each amended to
10 read as follows:

11 The director, or ~~((his))~~ duly authorized agents, may make such
12 examinations of the records, stocks, facilities, and equipment of
13 ~~((distributors, producers, brokers))~~ any licensee, and service
14 stations, and such other investigations as ~~((he may deem))~~ deemed
15 necessary in carrying out the provisions of this chapter. If such
16 examinations or investigations disclose that any reports of
17 ~~((distributors of motor vehicle fuel))~~ licensees theretofore filed with
18 the director pursuant to the requirements of this chapter have shown
19 incorrectly the gallonage of motor vehicle fuel distributed or the tax
20 accruing thereon, the director may make such changes in subsequent
21 reports and payments of such ~~((distributors))~~ licensees as ~~((he may~~
22 deem)) deemed necessary to correct the errors disclosed.

23 Every such ~~((distributor))~~ licensee or such other person not
24 maintaining records in this state so that an audit of such records may
25 be made by the director or ~~((his))~~ a duly authorized representative
26 shall be required to make the necessary records available to the
27 director ~~((at his))~~ upon request and at ~~((his))~~ a designated office
28 within this state; or, in lieu thereof, the director or ~~((his))~~ a duly
29 authorized representative shall proceed to any out-of-state office at
30 which the records are prepared and maintained to make such examination.

31 **Sec. 30.** RCW 82.36.190 and 1990 c 250 s 80 are each amended to
32 read as follows:

33 The department shall suspend or revoke the license of any
34 ~~((distributor))~~ licensee refusing or neglecting to comply with any
35 provision of this chapter. The department shall mail by registered
36 mail addressed to such ~~((distributor))~~ licensee at ~~((his))~~ the last

1 known address a notice of intention to cancel, which notice shall give
2 the reason for cancellation. The cancellation shall become effective
3 without further notice if within ten days from the mailing of the
4 notice the ~~((distributor))~~ licensee has not made good his or her
5 default or delinquency.

6 The department may cancel any license issued to any ~~((distributor))~~
7 licensee, such cancellation to become effective sixty days from the
8 date of receipt of the written request of such ~~((distributor))~~ licensee
9 for cancellation thereof, and the department may cancel the license of
10 any ~~((distributor))~~ licensee upon investigation and sixty days notice
11 mailed to the last known address of such ~~((distributor))~~ licensee if
12 the department ascertains and finds that the person to whom the license
13 was issued is no longer engaged in ~~((the))~~ business ~~((of—a~~
14 ~~distributor))~~, and has not been so engaged for the period of six months
15 prior to such cancellation. No license shall be canceled upon the
16 request of any ~~((distributor))~~ licensee unless the ~~((distributor))~~
17 licensee, prior to the date of such cancellation, pays to the state all
18 taxes imposed by the provisions of this chapter, together with all
19 penalties accruing by reason of any failure on the part of the
20 ~~((distributor))~~ licensee to make accurate reports or pay said taxes and
21 penalties.

22 In the event the license of any ~~((distributor))~~ licensee is
23 canceled, and in the further event that the ~~((distributor))~~ licensee
24 pays to the state all excise taxes due and payable by him or her upon
25 the receipt, sale, or use of motor vehicle fuel, together with any and
26 all penalties accruing by reason of any failure on the part of the
27 ~~((distributor))~~ licensee to make accurate reports or pay said taxes and
28 penalties, the department shall cancel the bond filed by the
29 ~~((distributor))~~ licensee.

30 **Sec. 31.** RCW 82.36.200 and 1965 ex.s. c 79 s 7 are each amended to
31 read as follows:

32 The director or ~~((his))~~ authorized agents may at any time during
33 normal business hours examine the records, stocks, facilities and
34 equipment of any person engaged in the transportation of motor vehicle
35 fuel within the state of Washington for the purpose of checking
36 shipments or use of motor vehicle fuel, detecting diversions thereof or
37 evasion of taxes on same in enforcing the provisions of this chapter.

1 **Sec. 32.** RCW 82.36.230 and 1993 c 54 s 4 are each amended to read
2 as follows:

3 The provisions of this chapter requiring the payment of taxes do
4 not apply to motor vehicle fuel imported into the state in interstate
5 or foreign commerce and intended to be sold while in interstate or
6 foreign commerce, nor to motor vehicle fuel exported from this state by
7 a (~~qualified distributor~~) licensee nor to any motor vehicle fuel sold
8 by a (~~qualified distributor~~) licensee to the armed forces of the
9 United States or to the national guard for use exclusively in ships or
10 for export from this state. The (~~distributor~~) licensee shall report
11 such imports, exports and sales to the department at such times, on
12 such forms, and in such detail as the department may require, otherwise
13 the exemption granted in this section is null and void, and all fuel
14 shall be considered distributed in this state fully subject to the
15 provisions of this chapter. Each invoice covering exempt sales shall
16 have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly
17 marked thereon.

18 To claim any exemption from taxes under this section on account of
19 sales by a (~~licensed distributor~~) licensee of motor vehicle fuel for
20 export, the purchaser shall obtain from the selling (~~distributor~~)
21 licensee, and such selling (~~distributor~~) licensee must furnish the
22 purchaser, an invoice giving such details of the sale for export as the
23 department may require, copies of which shall be furnished the
24 department and the entity of the state or foreign jurisdiction of
25 destination which is charged by the laws of that state or foreign
26 jurisdiction with the control or monitoring, or both, of the sales or
27 movement of motor vehicle fuel in that state or foreign jurisdiction.

28 To claim any (~~exemption from taxes under this section~~) refund of
29 taxes previously paid on account of sales of motor vehicle fuel to the
30 armed forces of the United States or to the national guard, the
31 (~~distributor~~) licensee shall be required to execute an exemption
32 certificate in such form as shall be furnished by the department,
33 containing a certified statement by an authorized officer of the armed
34 forces having actual knowledge of the purpose for which the exemption
35 is claimed. (~~Any claim for exemption based on such sales shall be~~
36 ~~made by the distributor within six months of the date of sale.~~) The
37 provisions of this section exempting motor vehicle fuel sold to the
38 armed forces of the United States or to the national guard from the tax
39 imposed hereunder do not apply to any motor vehicle fuel sold to

1 contractors purchasing such fuel either for their own account or as the
2 agents of the United States or the national guard for use in the
3 performance of contracts with the armed forces of the United States or
4 the national guard.

5 The department may at any time require of any ((~~distributor~~))
6 licensee any information the department deems necessary to determine
7 the validity of the claimed exemption, and failure to supply such data
8 will constitute a waiver of all right to the exemption claimed. The
9 department is hereby empowered with full authority to promulgate rules
10 and regulations and to prescribe forms to be used by ((~~distributors~~))
11 licensees in reporting to the department so as to prevent evasion of
12 the tax imposed by this chapter.

13 Upon request from the officials to whom are entrusted the
14 enforcement of the motor fuel tax law of any other state, the District
15 of Columbia, the United States, its territories and possessions, the
16 provinces, or the Dominion of Canada, the department may forward to
17 such officials any information which the department may have relative
18 to the import or export of any motor vehicle fuel by any
19 ((~~distributor~~)) licensee: PROVIDED, That such governmental unit
20 furnish like information to this state.

21 NEW SECTION. **Sec. 33.** A licensee, other than a motor fuel
22 exporter, is entitled to a refund of motor fuel tax previously paid on
23 motor fuel which is purchased from the licensee by a person who is
24 exempt from payment of the motor fuel tax imposed by this chapter.
25 Application for the refund shall be accompanied by an invoice
26 documenting each sale. Each invoice covering the sale shall have the
27 statement "Ex Washington Motor Vehicle Fuel Tax," clearly marked on it.
28 Claims for refunds shall be made under this chapter.

29 **Sec. 34.** RCW 82.36.280 and 1993 c 141 s 1 are each amended to read
30 as follows:

31 Any person who uses any motor vehicle fuel for the purpose of
32 operating any internal combustion engine not used on or in conjunction
33 with any motor vehicle licensed to be operated over and along any of
34 the public highways, and as the motive power thereof, upon which motor
35 vehicle fuel excise tax has been paid, shall be entitled to and shall
36 receive a refund of the amount of the motor vehicle fuel excise tax
37 paid on each gallon of motor vehicle fuel so used, whether such motor

1 vehicle excise tax has been paid either directly to the vendor from
2 whom the motor vehicle fuel was purchased or indirectly by adding the
3 amount of such excise tax to the price of such fuel. No refund shall
4 be made for motor vehicle fuel consumed by any motor vehicle as herein
5 defined that is required to be registered and licensed as provided in
6 chapter 46.16 RCW; and is operated over and along any public highway
7 except that a refund shall be allowed for motor vehicle fuel consumed:

8 (1) In a motor vehicle owned by the United States that is operated
9 off the public highways for official use;

10 (2) By auxiliary equipment not used for motive power, provided such
11 consumption is accurately measured by a metering device that has been
12 specifically approved by the department or is established by either of
13 the following formulae:

14 (a) For fuel used in pumping fuel or heating oils by a power take-
15 off unit on a delivery truck, refund shall be allowed claimant for tax
16 paid on fuel purchased at the rate of three-fourths of one gallon for
17 each one thousand gallons of fuel delivered: PROVIDED, That claimant
18 when presenting his or her claim to the department in accordance with
19 the provisions of this chapter, shall provide to said claim, invoices
20 of fuel oil delivered, or such other appropriate information as may be
21 required by the department to substantiate his or her claim; or

22 (b) For fuel used in operating a power take-off unit on a cement
23 mixer truck or load compactor on a garbage truck, claimant shall be
24 allowed a refund of twenty-five percent of the tax paid on all fuel
25 used in such a truck; and

26 (c) The department is authorized to establish by rule additional
27 formulae for determining fuel usage when operating other types of
28 equipment by means of power take-off units when direct measurement of
29 the fuel used is not feasible. The department is also authorized to
30 adopt rules regarding the usage of on board computers for the
31 production of records required by this chapter(~~(; and~~

32 ~~(3) Before December 31, 1992, in a commercial vehicle as defined in~~
33 ~~RCW 46.04.140 or a farm vehicle as defined in RCW 46.04.181, if the~~
34 ~~motor vehicle fuel consumed contains nine and one-half percent or more~~
35 ~~by volume of alcohol and the commercial vehicle or farm vehicle is~~
36 ~~operated off the public highways of this state)).~~

37 **Sec. 35.** RCW 82.36.335 and 1997 c 183 s 8 are each amended to read
38 as follows:

1 In lieu of the collection and refund of the tax on motor vehicle
2 fuel used by a ((distributor)) licensee in such a manner as would
3 entitle a purchaser to claim refund under this chapter, credit may be
4 given the ((distributor)) licensee upon the ((distributor's))
5 licensee's tax return in the determination of the amount of the
6 ((distributor's)) licensee's tax. Payment credits shall not be carried
7 forward and applied to subsequent tax returns.

8 **Sec. 36.** RCW 82.36.350 and 1961 c 15 s 82.36.350 are each amended
9 to read as follows:

10 If upon investigation the director determines that any claim has
11 been supported by an invoice or invoices fraudulently made or altered
12 in any manner to support the claim, ((he)) the director may suspend the
13 pending and all further refunds to any such person making the claim for
14 a period not to exceed one year.

15 **Sec. 37.** RCW 82.36.370 and 1967 c 153 s 5 are each amended to read
16 as follows:

17 (1) A refund shall be made in the manner provided in this chapter
18 or a credit given allowing for the excise tax paid or accrued on all
19 motor vehicle fuel which is lost or destroyed, while applicant shall be
20 the owner thereof, through fire, lightning, flood, wind storm, or
21 explosion.

22 (2) A refund shall be made in the manner provided in this chapter
23 or a credit given allowing for the excise tax paid or accrued on all
24 motor vehicle fuel of five hundred gallons or more which is lost or
25 destroyed, while applicant shall be the owner thereof, through leakage
26 or other casualty except evaporation, shrinkage or unknown causes:
27 PROVIDED, That the director shall be notified in writing as to the full
28 circumstances surrounding such loss or destruction and the amount of
29 the loss or destruction within thirty days from the day of discovery of
30 such loss or destruction.

31 (3) Recovery for such loss or destruction under either subsection
32 (1) or (2) must be susceptible to positive proof thereby enabling the
33 director to conduct such investigation and require such information as
34 ((he)) the director may deem necessary.

35 In the event that the director is not satisfied that the fuel was
36 lost or destroyed as claimed, wherefore required information or proof
37 as required hereunder is not sufficient to substantiate the accuracy of

1 the claim, ((he)) the director may deem as sufficient cause the denial
2 of all right relating to the refund or credit for the excise tax on
3 motor vehicle fuel alleged to be lost or destroyed.

4 NEW SECTION. **Sec. 38.** A motor fuel distributor, motor fuel
5 importer, or motor fuel blender, under rules adopted by the department,
6 is entitled to a refund of the tax paid on those sales of motor fuel
7 for which no consideration has been received from or on behalf of the
8 purchaser and that has been declared to be worthless accounts
9 receivable. The amount of tax refunded must not exceed the amount of
10 tax paid by the motor fuel distributor, motor fuel importer, or motor
11 fuel blender. If the motor fuel distributor, motor fuel importer, or
12 motor fuel blender subsequently collects any amount from the account
13 declared worthless, the amount collected shall be apportioned between
14 the charges for the fuel and tax thereon. The motor fuel tax collected
15 must be returned to the department.

16 **Sec. 39.** RCW 82.36.375 and 1965 ex.s. c 79 s 16 are each amended
17 to read as follows:

18 Unless otherwise provided, any credit for erroneous overpayment of
19 tax made by a ((distributor)) licensee to be taken on a subsequent
20 return or any claim of refund for tax erroneously overpaid by a
21 ((distributor)) licensee, pursuant to the provisions of RCW 82.36.090,
22 must be so taken within three years after the date on which the
23 overpayment was made to the state. Failure to take such credit or
24 claim such refund within the time prescribed in this section shall
25 constitute waiver of any and all demands against this state on account
26 of overpayment hereunder.

27 Except in the case of a fraudulent report or neglect or refusal to
28 make a report every notice of additional tax, penalty or interest
29 assessed hereunder shall be served on the ((distributor)) licensee
30 within three years from the date upon which such additional taxes
31 became due.

32 **Sec. 40.** RCW 82.36.390 and 1996 c 104 s 6 are each amended to read
33 as follows:

34 Any person who, through false statement, trick, or device, or
35 otherwise, obtains motor vehicle fuel for export and fails to export
36 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~~)) licensee from whom such
7 motor vehicle fuel was originally purchased ((~~of his or her act~~)), and
8 any ((~~distributor~~)) licensee or ((~~other~~)) person who conspires with any
9 person to withhold from export, or divert from interstate or foreign
10 transit begun in this state, or to return motor vehicle fuel to this
11 state for sale or use with intent to avoid any of the taxes imposed by
12 this chapter, is guilty of a felony, or gross misdemeanor in accordance
13 with the theft and anticipatory provisions of Title 9A RCW. Each
14 shipment illegally diverted or illegally returned shall be a separate
15 offense, and the unit of each shipment shall be the cargo of one
16 vessel, or one railroad carload, or one automobile truck load, or such
17 truck and trailer load, or one drum, or one barrel, or one case or one
18 can.

19 **Sec. 41.** RCW 82.36.400 and 1971 ex.s. c 156 s 3 are each amended
20 to read as follows:

21 It shall be unlawful for any person to commit any of the following
22 acts:

23 (1) To display, or cause to permit to be displayed, or to have in
24 possession, any motor vehicle fuel ((~~distributor's~~)) license knowing
25 the same to be fictitious or to have been suspended, canceled, revoked
26 or altered;

27 (2) To lend to, or knowingly permit the use of, by one not entitled
28 thereto, any motor vehicle fuel ((~~distributor's~~)) license issued to the
29 person lending it or permitting it to be used;

30 (3) To display or to represent as one's own any motor vehicle fuel
31 ((~~distributor's~~)) license not issued to the person displaying the same;

32 (4) To use a false or fictitious name or give a false or fictitious
33 address in any application or form required under the provisions of
34 this chapter, or otherwise commit a fraud in any application, record,
35 or report;

36 (5) To refuse to permit the director, or any agent appointed by him
37 or her in writing, to examine his or her books, records, papers,

1 storage tanks, or other equipment pertaining to the use or sale and
2 delivery of motor vehicle fuels within the state.

3 Except as otherwise provided, any person violating any of the
4 provisions of this chapter shall be guilty of a gross misdemeanor and
5 shall, upon conviction thereof, be sentenced to pay a fine of not less
6 than five hundred dollars nor more than one thousand dollars and costs
7 of prosecution, or imprisonment for not more than one year, or both.

8 NEW SECTION. **Sec. 42.** A motor fuel distributor who incurs
9 liability in December 1998 for the motor fuel tax imposed under this
10 chapter shall report the liability and pay the tax in January 1999 in
11 the manner required by this chapter as it existed before January 1,
12 1999.

13 A motor fuel distributor shall inventory all motor fuel that is on
14 hand or in possession as of 12:01 a.m. on January 1, 1999, and is not
15 in the bulk transfer-terminal system and shall report the results of
16 the inventory to the department no later than the last business day of
17 February 1999. The report of inventory must be made on a form
18 prescribed by the department.

19 A motor fuel distributor may pay the tax due on motor fuel in
20 inventory any time before February 28, 2000, but at least one-twelfth
21 of the amount due must be paid by the last day of each month starting
22 with February 1999. Payments not received in accordance with this
23 section are late and are subject to the interest and penalty provisions
24 of this chapter. Payments made after February 2000 are late and are
25 subject to the interest and penalty provisions of this chapter.

26 NEW SECTION. **Sec. 43.** (1) It is intended that the ultimate
27 liability for the tax imposed under this chapter be upon the motor fuel
28 user, regardless of the manner in which collection of the tax is
29 provided for in this chapter. The tax on motor fuel imposed under this
30 chapter, if not previously imposed and paid, must be paid over to the
31 department by the users of such motor fuel, unless such use is exempt
32 from the motor fuel tax.

33 (2) This section does not apply to agreements entered into under
34 RCW 82.36.450 between the department and federally recognized Indian
35 tribes, nor does it apply to the consent decrees entered in
36 *Confederated Tribes of the Colville Reservation v. Washington*

1 *Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v.*
2 *Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

3 NEW SECTION. **Sec. 44.** The department of licensing may enter into
4 a motor fuel tax cooperative agreement with another state or Canadian
5 province for the administration, collection, and enforcement of each
6 state's or Canadian province's motor fuel taxes.

7 **Sec. 45.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read
8 as follows:

9 (~~As used in this chapter:~~

10 (1) ~~"Person" means every natural person, fiduciary, association, or~~
11 ~~corporation. The term "person" as applied to an association means and~~
12 ~~includes the partners or members thereof, and as applied to~~
13 ~~corporations, the officers thereof.~~

14 (2) ~~"Department" means the department of licensing.~~

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

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

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

23 (6) ~~"Bulk storage" means the placing of special fuel by a special~~
24 ~~fuel dealer into a receptacle other than the fuel supply tank of a~~
25 ~~motor vehicle.~~

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

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

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

3 (10) "Unbonded service station" means any service station at which
4 an unbonded special fuel dealer regularly makes sales of special fuel
5 by means of delivery thereof into the fuel supply tanks of motor
6 vehicles.

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

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

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

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

33 (15) "Evasion" or "evade" means to diminish or avoid the
34 computation, assessment, or payment of authorized taxes or fees
35 through:

36 (a) A knowing:—False statement, misrepresentation of fact, or
37 other act of deception; or

1 ~~(b) An intentional: Omission, failure to file a return or report,~~
2 ~~or other act of deception.))~~ The definitions in this section apply
3 throughout this chapter unless the context clearly requires otherwise.

4 (1) "Blended fuel" means a mixture of undyed diesel fuel and
5 another liquid, other than a de minimus amount of the liquid, that can
6 be used as a fuel to propel a motor vehicle.

7 (2) "Blender" means a person who produces blended special fuel
8 outside the bulk transfer-terminal system.

9 (3) "Bond" means a bond duly executed with a corporate surety
10 qualified under chapter 48.28 RCW, which bond is payable to the state
11 of Washington conditioned upon faithful performance of all requirements
12 of this chapter, including the payment of all taxes, penalties, and
13 other obligations arising out of this chapter.

14 (4) "Bulk transfer-terminal system" means the special fuel
15 distribution system consisting of refineries, pipelines, vessels, and
16 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
17 is in the bulk transfer-terminal system. Special fuel in the fuel tank
18 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
19 equipment suitable for ground transportation is not in the bulk
20 transfer-terminal system.

21 (5) "Bulk transfer" means a transfer of special fuel by pipeline or
22 vessel.

23 (6) "Bulk storage" means the placing of special fuel into a
24 receptacle other than the fuel supply tank of a motor vehicle.

25 (7) "Department" means the department of licensing.

26 (8) "Dyed special fuel user" means a person authorized by the
27 Internal Revenue Code to operate a motor vehicle on the highway using
28 dyed special fuel, in which the use is not exempt from the special fuel
29 tax.

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

33 (a) A knowing: False statement; misrepresentation of fact; or
34 other act of deception; or

35 (b) An intentional: Omission; failure to file a return or report;
36 or other act of deception.

37 (10) "Export" means to obtain special fuel in this state for sales
38 or distribution outside the state.

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

3 (12) "Import" means to bring special fuel into this state by a
4 means of conveyance other than the fuel supply tank of a motor vehicle.

5 (13) "International Fuel Tax Agreement licensee" means a special
6 fuel user operating qualified motor vehicles in interstate commerce and
7 licensed by the department under the International Fuel Tax Agreement.

8 (14) "Lessor" means a person: (a) Whose principal business is the
9 bona fide leasing or renting of motor vehicles without drivers for
10 compensation to the general public; and (b) who maintains established
11 places of business and whose lease or rental contracts require the
12 motor vehicles to be returned to the established places of business.

13 (15) "Licensee" means a person holding a license issued under this
14 chapter.

15 (16) "Motor vehicle" means a self-propelled vehicle designed for
16 operation upon land utilizing special fuel as the means of propulsion.

17 (17) "Natural gas" means naturally occurring mixtures of
18 hydrocarbon gases and vapors consisting principally of methane, whether
19 in gaseous or liquid form.

20 (18) "Person" means a natural person, fiduciary, association, or
21 corporation. The term "person" as applied to an association means and
22 includes the partners or members thereof, and as applied to
23 corporations, the officers thereof.

24 (19) "Position holder" means a person who holds the inventory
25 position in special fuel, as reflected by the records of the terminal
26 operator. A person holds the inventory position in special fuel if the
27 person has a contractual agreement with the terminal for the use of
28 storage facilities and terminal services at a terminal with respect to
29 special fuel. "Position holder" includes a terminal operator that owns
30 special fuel in their terminal.

31 (20) "Rack" means a mechanism for delivering special fuel from a
32 refinery or terminal into a truck, trailer, railcar, or other means of
33 nonbulk transfer.

34 (21) "Refiner" means a person who owns, operates, or otherwise
35 controls a refinery.

36 (22) "Removal" means a physical transfer of special fuel other than
37 by evaporation, loss, or destruction.

38 (23) "Special fuel" means and includes all combustible gases and
39 liquids suitable for the generation of power for propulsion of motor

1 vehicles, except that it does not include motor vehicle fuel as defined
2 in chapter 82.36 RCW.

3 (24) "Special fuel distributor" means a person who acquires special
4 fuel from a supplier or another distributor for subsequent sale and
5 distribution.

6 (25) "Special fuel exporter" means a person, who purchases special
7 fuel in this state and exports the fuel by a means other than the bulk
8 transfer-terminal system to a destination outside of the state.

9 (26) "Special fuel importer" means a person who imports special
10 fuel into the state by a means other than the bulk transfer-terminal
11 system. If the importer of record is acting as an agent, the person
12 for whom the agent is acting is the importer. If there is no importer
13 of record, the owner of the special fuel at the time of importation is
14 the importer.

15 (27) "Special fuel supplier" means a person who owns and stores
16 special fuel in a terminal facility or who refines and stores special
17 fuel at a refinery.

18 (28) "Special fuel user" means a person engaged in uses of special
19 fuel that are not specifically exempted from the special fuel tax
20 imposed under this chapter.

21 (29) "Standard pressure and temperature" means fourteen and
22 seventy-three hundredths pounds of pressure per square inch at sixty
23 degrees Fahrenheit.

24 (30) "Terminal" means a special fuel storage and distribution
25 facility that has been assigned a terminal control number by the
26 Internal Revenue Service, is supplied by pipeline or vessel, and from
27 which reportable special fuel is removed at a rack.

28 (31) "Terminal operator" means a person who owns, operates, or
29 otherwise controls a terminal.

30 (32) "Two-party exchange" means a transaction in which taxable
31 special fuel is transferred from one licensed supplier to another
32 licensed supplier under an exchange agreement whereby the supplier that
33 is the position holder agrees to deliver taxable special fuel to the
34 other supplier or the other supplier's customer at the rack of the
35 terminal at which the delivering supplier is the position holder.

36 **Sec. 46.** RCW 82.38.030 and 1996 c 104 s 7 are each amended to read
37 as follows:

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

8 (2) The tax (~~shall be collected by the special fuel dealer and~~
9 ~~shall be paid over to the department as hereinafter provided:~~ (a) With
10 respect to all special fuel delivered by a special fuel dealer into
11 supply tanks of motor vehicles or into storage facilities used for the
12 fueling of motor vehicles at unbonded service stations in this state;
13 or (b) in all other transactions where the purchaser is not the holder
14 of a valid special fuel license issued pursuant to this chapter
15 allowing the purchase of untaxed special fuel, except sales of special
16 fuel for export. To claim an exemption on account of sales by a
17 licensed special fuel dealer for export, the purchaser shall obtain
18 from the selling special fuel dealer, and such selling special fuel
19 dealer must furnish the purchaser, an invoice giving such details of
20 the sale for export as the director may require, copies of which shall
21 be furnished the department and the entity of the state or foreign
22 jurisdiction of destination which is charged by the laws of that state
23 or foreign jurisdiction with the control or monitoring or both, of the
24 sales or movement of special fuel in that state or foreign
25 jurisdiction.

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

29 It is expressly provided that delivery of special fuel may be made
30 without collecting the tax otherwise imposed, when such deliveries are
31 made by a bonded special fuel dealer to special fuel users who are
32 authorized by the department as hereinafter provided, to purchase fuel
33 without payment of tax to the bonded special fuel dealer.

34 (4) imposed by subsection (1) of this section is imposed when:

35 (a) Special fuel is removed in this state from a terminal if the
36 special fuel is removed at the rack;

37 (b) Special fuel is removed in this state from a refinery if either
38 of the following applies:

1 (i) The removal is by bulk transfer and the refiner or the owner of
2 the special fuel immediately before the removal is not a licensee; or

3 (ii) The removal is at the refinery rack;

4 (c) Special fuel enters into this state for sale, consumption, use,
5 or storage if either of the following applies:

6 (i) The entry is by bulk transfer and the importer is not a
7 licensee; or

8 (ii) The entry is not by bulk transfer;

9 (d) Special fuel is removed in this state to an unlicensed entity
10 unless there was a prior taxable removal, entry, or sale of the special
11 fuel;

12 (e) Blended special fuel is removed or sold in this state by the
13 blender of the fuel. The number of gallons of blended special fuel
14 subject to tax is the difference between the total number of gallons of
15 blended special fuel removed or sold and the number of gallons of
16 previously taxed special fuel used to produced the blended special
17 fuel; and

18 (f) Dyed special fuel is used on a highway, as authorized by the
19 Internal Revenue Code, unless the use is exempt from the special fuel
20 tax.

21 (3) The tax (~~(required)~~) imposed by this chapter, if required to be
22 collected by the (~~(seller)~~) licensee, is held in trust by the
23 (~~(seller)~~) licensee until paid to the department, and a (~~(seller)~~)
24 licensee who appropriates or converts the tax collected to his or her
25 own use or to any use other than the payment of the tax to the extent
26 that the money required to be collected is not available for payment on
27 the due date as prescribed in this chapter is guilty of a felony, or
28 gross misdemeanor in accordance with the theft and anticipatory
29 provisions of Title 9A RCW. A person, partnership, corporation, or
30 corporate officer who fails to collect the tax imposed by this section,
31 or who has collected the tax and fails to pay it to the department in
32 the manner prescribed by this chapter, is personally liable to the
33 state for the amount of the tax.

34 NEW SECTION. Sec. 47. The tax under RCW 82.38.030, if not
35 previously imposed and paid, must be paid over to the department by
36 special fuel users and persons licensed under the International Fuel
37 Tax Agreement or other fuel tax reciprocity agreements entered into
38 with the state of Washington, on the use of special fuel to operate

1 motor vehicles on the highways of this state, unless the use is exempt
2 from the tax under this chapter.

3 NEW SECTION. **Sec. 48.** (1) A position holder shall remit tax to
4 the department on special fuel removed from a terminal as provided in
5 RCW 82.38.030(2)(a). On a two-party exchange, the receiving exchange
6 partner becomes the position holder, who shall remit the tax.

7 (2) A refiner shall remit tax to the department on special fuel
8 removed from a refinery as provided in RCW 82.38.030(2)(b).

9 (3) An importer shall remit tax to the department on special fuel
10 imported into this state as provided in RCW 82.38.030(2)(c).

11 (4) A blender shall remit tax to the department on the removal or
12 sale of blended special fuel as provided in RCW 82.38.030(2)(e).

13 (5) A dyed special fuel user shall remit tax to the department on
14 the use of dyed special fuel as provided in RCW 82.38.030(2)(f).

15 NEW SECTION. **Sec. 49.** A terminal operator is jointly and
16 severally liable for remitting the tax imposed under RCW 82.38.030(1)
17 if, at the time of removal:

18 (1) The position holder with respect to the special fuel is a
19 person other than the terminal operator and is not a special fuel
20 licensee;

21 (2) The terminal operator is not a special fuel licensee;

22 (3) The position holder has an expired internal revenue service
23 notification certificate issued under chapter 26, C.F.R. Part 48; or

24 (4) The terminal operator had reason to believe that information on
25 the notification certificate was false.

26 NEW SECTION. **Sec. 50.** A terminal operator is jointly and
27 severally liable for remitting the tax imposed under RCW 82.38.030(1)
28 if, in connection with the removal of special fuel that is not dyed or
29 marked in accordance with the United States environmental protection
30 agency or internal revenue service requirements, the terminal operator
31 provides a person with a bill of lading, shipping paper, or similar
32 document indicating that the special fuel is dyed or marked in
33 accordance with the United States Environmental Protection Agency or
34 Internal Revenue Service requirements.

1 NEW SECTION. **Sec. 51.** A person may not operate or maintain a
2 motor vehicle on a public highway of this state with dyed special fuel
3 in the fuel supply tank unless the use is authorized by the Internal
4 Revenue Code and the person is the holder of an uncanceled dyed special
5 fuel user license issued to him or her by the department. The special
6 fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special
7 fuel authorized by the Internal Revenue Code to operate on-highway
8 motor vehicles using dyed special fuel, unless the use is exempt from
9 the special fuel tax.

10 NEW SECTION. **Sec. 52.** (1) Special fuel that is dyed satisfies the
11 dyeing requirements of this chapter if it meets the dyeing requirements
12 of the United States Environmental Protection Agency and the Internal
13 Revenue Service, including, but not limited to, requirements respecting
14 type, dosage, and timing.

15 (2) Marking must meet the marking requirements of the Internal
16 Revenue Service.

17 (3) As required by the Internal Revenue Service, notice is required
18 with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL,
19 NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

20 (a) Provided by the terminal operator to a person who receives dyed
21 special fuel at a terminal rack of that terminal operator;

22 (b) Provided by a seller of dyed special fuel to its buyer if the
23 special fuel is located outside the bulk transfer-terminal system and
24 is not sold from a retail pump posted in accordance with the
25 requirements of this subsection; or

26 (c) Posted by a seller on a retail pump where it sells dyed special
27 fuel for use by its buyer.

28 **Sec. 53.** RCW 82.38.070 and 1990 c 250 s 83 are each amended to
29 read as follows:

30 A special fuel (~~((dealer shall be))~~) supplier is entitled(~~((, under~~
31 ~~rules and regulations prescribed by the department,))~~) to a credit of
32 the tax paid over to the department on those sales of special fuel for
33 which the (~~((dealer))~~) supplier has received no consideration from or on
34 behalf of the purchaser(~~((, which have been declared by the dealer to be~~
35 ~~worthless accounts receivable, and which have been claimed as bad debts~~
36 ~~for federal income tax purposes))~~). The amount of the tax (~~((refunded))~~)
37 credit shall not exceed the amount of tax imposed by this chapter on

1 such sales. If a ~~((refund))~~ credit has been granted under this
2 section, any amounts collected for application against the accounts on
3 which such a ~~((refund))~~ credit is based shall be reported ~~((with the~~
4 ~~first))~~ on a subsequent return filed after such collection, and the
5 amount of ~~((refund))~~ credit received by the ~~((dealer))~~ supplier based
6 upon the collected amount shall be returned to the department. In the
7 event the ~~((refund))~~ credit has not been paid, the amount of the
8 ~~((refund))~~ credit requested by the ~~((dealer))~~ supplier shall be
9 adjusted by the department to reflect the decrease in the amount on
10 which the claim is based. ~~((The department may require the dealer to~~
11 ~~submit periodical reports listing accounts which are delinquent for~~
12 ~~ninety days or more.))~~

13 NEW SECTION. Sec. 54. A special fuel distributor, special fuel
14 importer, or special fuel blender, under rules adopted by the
15 department, is entitled to a refund of the tax paid on those sales of
16 special fuel for which no consideration has been received from or on
17 behalf of the purchaser and that have been declared to be worthless
18 accounts receivable. The amount of the tax refunded must not exceed
19 the amount of tax paid by the special fuel distributor, special fuel
20 importer, or special fuel blender. If the special fuel distributor,
21 special fuel importer, or special fuel blender subsequently collects
22 any amount of the special fuel tax on the sales, the collected amount
23 must be returned to the department.

24 Sec. 55. RCW 82.38.080 and 1996 c 244 s 6 are each amended to read
25 as follows:

26 (1) There is exempted from the tax imposed by this chapter, the use
27 of fuel for:

28 ~~((+1))~~ (a) Street and highway construction and maintenance
29 purposes in motor vehicles owned and operated by the state of
30 Washington, or any county or municipality;

31 ~~((+2))~~ (b) Publicly owned fire fighting equipment;

32 ~~((+3))~~ (c) Special mobile equipment as defined in RCW 46.04.552;

33 ~~((+4))~~ (d) Power pumping units or other power take-off equipment
34 of any motor vehicle which is accurately measured by metering devices
35 that have been specifically approved by the department or which is
36 established by ~~((either))~~ any of the following formulae:

1 ~~((a))~~ (i) Pumping propane, or fuel or heating oils or milk picked
2 up from a farm or dairy farm storage tank by a power take-off unit on
3 a delivery truck, at ~~((the))~~ a rate ~~((of three-fourths of one gallon~~
4 for each one thousand gallons of fuel delivered or milk picked up))
5 determined by the department: PROVIDED, That claimant when presenting
6 his or her claim to the department in accordance with ~~((the provisions~~
7 of)) this chapter, shall provide to ~~((said))~~ the claim, invoices of
8 propane, or fuel or heating oil delivered, or such other appropriate
9 information as may be required by the department to substantiate his or
10 her claim; ~~((or~~

11 ~~(b))~~ (ii) Operating a power take-off unit on a cement mixer truck
12 or a load compactor on a garbage truck at the rate of twenty-five
13 percent of the total gallons of fuel used in such a truck; ~~((and))~~ or

14 ~~((c))~~ (iii) The department is authorized to establish by rule
15 additional formulae for determining fuel usage when operating other
16 types of equipment by means of power take-off units when direct
17 measurement of the fuel used is not feasible. The department is also
18 authorized to adopt rules regarding the usage of on board computers for
19 the production of records required by this chapter;

20 ~~((5))~~ (e) Motor vehicles owned and operated by the United States
21 government;

22 ~~((6))~~ (f) Heating purposes;

23 ~~((7))~~ (g) Moving a motor vehicle on a public highway between two
24 pieces of private property when said moving is incidental to the
25 primary use of the motor vehicle;

26 ~~((8))~~ (h) Transportation services for persons with special
27 transportation needs by a private, nonprofit transportation provider
28 regulated under chapter 81.66 RCW; ~~((and~~

29 ~~(9))~~ (i) Vehicle refrigeration units, mixing units, or other
30 equipment powered by separate motors from separate fuel tanks; and

31 (j) The operation of a motor vehicle as a part of or incidental to
32 logging operations upon a highway under federal jurisdiction within the
33 boundaries of a federal area if the federal government requires a fee
34 for the privilege of operating the motor vehicle upon the highway, the
35 proceeds of which are reserved for constructing or maintaining roads in
36 the federal area, or requires maintenance or construction work to be
37 performed on the highway for the privilege of operating the motor
38 vehicle on the highway.

1 (2) There is exempted from the tax imposed by this chapter the
2 removal or entry of special fuel under the following circumstances and
3 conditions:

4 (a) If it is the removal from a terminal or refinery of, or the
5 entry or sale of, a special fuel if all of the following apply:

6 (i) The person otherwise liable for the tax is a licensee other
7 than a dyed special fuel user or international fuel tax agreement
8 licensee;

9 (ii) For a removal from a terminal, the terminal is a licensed
10 terminal; and

11 (iii) The special fuel satisfies the dyeing and marking
12 requirements of this chapter;

13 (b) If it is an entry or removal from a terminal or refinery of
14 taxable special fuel transferred to a refinery or terminal and the
15 persons involved, including the terminal operator, are licensed; and

16 (c)(i) If it is a special fuel that, under contract of sale, is
17 shipped to a point outside this state by a supplier by means of any of
18 the following:

19 (A) Facilities operated by the supplier;

20 (B) Delivery by the supplier to a carrier, customs broker, or
21 forwarding agent, whether hired by the purchaser or not, for shipment
22 to the out-of-state point;

23 (C) Delivery by the supplier to a vessel clearing from port of this
24 state for a port outside this state and actually exported from this
25 state in the vessel.

26 (ii) For purposes of this subsection (2)(c):

27 (A) "Carrier" means a person or firm engaged in the business of
28 transporting for compensation property owned by other persons, and
29 includes both common and contract carriers; and

30 (B) "Forwarding agent" means a person or firm engaged in the
31 business of preparing property for shipment or arranging for its
32 shipment.

33 (3) Notwithstanding any provision of law to the contrary, every
34 urban passenger transportation system and carriers as defined by
35 chapters 81.68 and 81.70 RCW shall be exempt from the provisions of
36 this chapter requiring the payment of special fuel taxes. For the
37 purposes of this section "urban passenger transportation system" means
38 every transportation system, publicly or privately owned, having as its
39 principal source of revenue the income from transporting persons for

1 compensation by means of motor vehicles and/or trackless trolleys, each
2 having a seating capacity for over fifteen persons over prescribed
3 routes in such a manner that the routes of such motor vehicles and/or
4 trackless trolleys, either alone or in conjunction with routes of other
5 such motor vehicles and/or trackless trolleys subject to routing by the
6 same transportation system, shall not extend for a distance exceeding
7 twenty-five road miles beyond the corporate limits of the county in
8 which the original starting points of such motor vehicles are located:
9 PROVIDED, That no refunds or credits shall be granted on fuel used by
10 any urban transportation vehicle or vehicle operated pursuant to
11 chapters 81.68 and 81.70 RCW on any trip where any portion of said trip
12 is more than twenty-five road miles beyond the corporate limits of the
13 county in which said trip originated.

14 **Sec. 56.** RCW 82.38.090 and 1995 c 20 s 13 are each amended to read
15 as follows:

16 (1) It shall be unlawful for any person to ~~((act as a special fuel~~
17 ~~dealer or a special fuel user))~~ engage in business in this state as any
18 of the following unless ~~((such))~~ the person is the holder of an
19 uncanceled ~~((special fuel dealer's or a special fuel user's))~~ license
20 issued to him or her by the department~~((-~~

21 ~~A special fuel dealer's license authorizes a person to deliver~~
22 ~~previously untaxed special fuel into the fuel supply tanks of motor~~
23 ~~vehicles, collect the special fuel tax on behalf of the state at the~~
24 ~~time of delivery, and remit the taxes collected to the state as~~
25 ~~provided herein. A licensed special fuel dealer may also deliver~~
26 ~~untaxed special fuel into bulk storage facilities of a licensed special~~
27 ~~fuel user or dealer without collecting the special fuel tax. Special~~
28 ~~fuel dealers, when making deliveries of special fuel into bulk storage~~
29 ~~to any person not holding a valid special fuel license, must collect~~
30 ~~the special fuel tax at time of delivery, unless the person to whom the~~
31 ~~delivery is made is specifically exempted from the tax as provided~~
32 ~~herein.~~

33 ~~A special fuel user's license authorizes a person to purchase~~
34 ~~special fuel into bulk storage for use in motor vehicles either on or~~
35 ~~off the public highways of this state without payment of the special~~
36 ~~fuel tax at time of purchase. Holders of special fuel licenses are all~~
37 ~~subject to the bonding, reporting, tax payment, and record keeping~~
38 ~~provisions of this chapter. All purchases of special fuel by a~~

1 ~~licensed special fuel user directly into the fuel supply tank of a~~
2 ~~motor vehicle are subject to the special fuel tax at time of purchase.~~
3 ~~Special authorization may be given to farmers, logging companies, and~~
4 ~~construction companies to purchase special fuel directly into the~~
5 ~~supply tanks of nonhighway equipment or into portable slip tanks for~~
6 ~~nonhighway use without payment of the special fuel tax.)~~ authorizing
7 the person to engage in that business:

8 (a) Special fuel supplier;

9 (b) Special fuel distributor;

10 (c) Special fuel exporter;

11 (d) Special fuel importer;

12 (e) Special fuel blender;

13 (f) Dyed special fuel user; or

14 (g) International Fuel Tax Agreement licensee.

15 (2) A person engaged in more than one activity for which a license
16 is required must have a separate license for each activity, but a
17 special fuel supplier is not required to obtain a separate license for
18 any other activity for which a license is required.

19 (3) Special fuel users operating motor vehicles in interstate
20 commerce having two axles and a gross vehicle weight or registered
21 gross vehicle weight not exceeding twenty-six thousand pounds are not
22 required to be licensed. Special fuel users operating motor vehicles
23 in interstate commerce having two axles and a gross vehicle weight or
24 registered gross vehicle weight exceeding twenty-six thousand pounds,
25 or having three or more axles regardless of weight, or a combination of
26 vehicles, when the combination exceeds twenty-six thousand pounds gross
27 vehicle weight, must comply with the licensing and reporting
28 requirements of this chapter. A copy of the license must be carried in
29 each motor vehicle entering this state from another state or province.

30 **Sec. 57.** RCW 82.38.100 and 1983 c 78 s 1 are each amended to read
31 as follows:

32 (1) Any special fuel user operating a motor vehicle into this state
33 for commercial purposes may make application for a trip permit ((in
34 lieu of a special fuel user's license required in RCW 82.38.090 and
35 82.38.120 which)) that shall be good for a period of three consecutive
36 days beginning and ending on the dates specified on the face of the
37 permit issued, and only for the vehicle for which it is issued.

1 (2) Every permit shall identify, as the department may require, the
2 vehicle for which it is issued and shall be completed in its entirety,
3 signed, and dated by the operator before operation of the vehicle on
4 the public highways of this state. Correction of data on the permit
5 such as dates, vehicle license number, or vehicle identification number
6 invalidates the permit. A violation of, or a failure to comply with,
7 this subsection is a gross misdemeanor.

8 (3) For each permit issued, there shall be collected a filing fee
9 of one dollar, an administrative fee of ten dollars, and an excise tax
10 of nine dollars. Such fees and tax shall be in lieu of the special
11 fuel tax otherwise assessable against the permit holder for importing
12 and using special fuel in a motor vehicle on the public highways of
13 this state and no report of mileage shall be required with respect to
14 such vehicle. Trip permits will not be issued if the applicant has
15 outstanding fuel taxes, penalties or interest owing to the state or has
16 had a special fuel license revoked for cause and the cause has not been
17 removed.

18 (4) Blank permits may be obtained from field offices of the
19 department of transportation, Washington state patrol, department of
20 licensing, or other agents appointed by the department. The department
21 may appoint county auditors or businesses as agents for the purpose of
22 selling trip permits to the public. County auditors or businesses so
23 appointed may retain the filing fee collected for each trip permit to
24 defray expenses incurred in handling and selling the permits.

25 (5) All fees and excise taxes collected by the department for trip
26 permits shall be credited and deposited in the same manner as the
27 special fuel tax collected under this chapter and shall not be subject
28 to exchange, refund, or credit.

29 **Sec. 58.** RCW 82.38.110 and 1996 c 104 s 8 are each amended to read
30 as follows:

31 (1) Application for a (~~special fuel dealer's license or a special~~
32 ~~fuel user's~~) license issued under this chapter shall be made to the
33 department. The application shall be filed upon a form prepared and
34 furnished by the department and shall contain such information as the
35 department deems necessary.

36 (2) Every application for a special fuel (~~dealer's~~) license,
37 other than an application for a dyed special fuel user or international

1 fuel tax agreement license, must contain the following information to
2 the extent it applies to the applicant:

3 ~~((1))~~ (a) Proof as the department ~~((may))~~ shall require
4 concerning the applicant's identity, including but not limited to his
5 or her fingerprints or those of the officers of a corporation making
6 the application;

7 ~~((2))~~ (b) The applicant's form and place of organization
8 including proof that the individual, partnership, or corporation is
9 licensed to do business in this state;

10 ~~((3))~~ (c) The qualification and business history of the applicant
11 and any partner, officer, or director;

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

16 ~~((5))~~ (e) Whether the applicant has been adjudged guilty of a
17 crime that directly relates to the business for which the license is
18 sought and the time elapsed since the conviction is less than ten
19 years, or has suffered a judgment within the preceding five years in a
20 civil action involving fraud, misrepresentation, or conversion and in
21 the case of a corporation or partnership, all directors, officers, or
22 partners.

23 (3) An applicant for a license as a special fuel importer must list
24 on the application each state, province, or country from which the
25 applicant intends to import fuel and, if required by the state,
26 province, or country listed, must be licensed or registered for special
27 fuel tax purposes in that state, province, or country.

28 (4) An applicant for a license as a special fuel exporter must list
29 on the application each state, province, or country to which the
30 exporter intends to export special fuel received in this state by means
31 of a transfer outside the bulk transfer-terminal system and, if
32 required by the state, province, or country listed, must be licensed or
33 registered for special fuel tax purposes in that state, province, or
34 country.

35 (5) An applicant for a license as a special fuel supplier must have
36 a federal certificate of registry that is issued under the Internal
37 Revenue Code and authorizes the applicant to enter into federal tax-
38 free transactions on special fuel in the terminal transfer system.

1 (6) After receipt of an application for a license, the director
2 (~~may~~) shall conduct an investigation to determine whether the facts
3 set forth are true. The director (~~may~~) shall require a fingerprint
4 record check of the applicant through the Washington state patrol
5 criminal identification system and the federal bureau of investigation
6 before issuance of a license. The results of the background
7 investigation including criminal history information may be released to
8 authorized department personnel as the director deems necessary. The
9 department shall charge a license holder or license applicant a fee of
10 fifty dollars for each background investigation conducted.

11 (7) An applicant who makes a false statement of a material fact on
12 the application may be prosecuted for false swearing as defined by RCW
13 9A.72.040.

14 (~~No~~) (8) A special fuel (~~dealer's~~) license may not be issued to
15 any person or continued in force unless such person has furnished bond,
16 as defined in RCW 82.38.020, in such form as the department may
17 require, to secure his or her compliance with this chapter, and the
18 payment of any and all taxes, interest, and penalties due and to become
19 due hereunder. The requirement of furnishing a bond (~~shall~~) may be
20 waived for special fuel (~~dealers~~) distributors who only deliver
21 special fuel into the fuel tanks of marine vessels, for dyed special
22 fuel users and for persons issued licenses under the International Fuel
23 Tax Agreement.

24 (9) The department may require a (~~special fuel user~~) licensee to
25 post a bond if the (~~special fuel user~~) licensee, after having been
26 licensed, has failed to file timely reports or has failed to remit
27 taxes due, or when an investigation or audit indicates problems severe
28 enough that the department, in its discretion, determines that a bond
29 is required to protect the interests of the state. The department may
30 also adopt rules prescribing conditions that, in the department's
31 discretion, require a bond to protect the interests of the state.

32 (10) The total amount of the bond or bonds required of any special
33 fuel (~~dealer or special fuel user~~) licensee shall be equivalent to
34 three times the estimated monthly fuel tax, determined in such manner
35 as the department may deem proper: PROVIDED, That those special fuel
36 (~~dealers~~) licensees having held a special fuel license for five or
37 more years without having said license suspended or revoked by the
38 department shall be permitted to reduce the amount of their bond to
39 twice the estimated monthly tax liability: PROVIDED FURTHER, That the

1 total amount of the bond or bonds shall never be less than five hundred
2 dollars nor more than ~~((fifty))~~ one hundred thousand dollars.

3 (11) An application for a dyed special fuel user license must be
4 made to the department. The application must be filed upon a form
5 prescribed by the department and contain such information as the
6 department deems necessary.

7 (12) An application for an International Fuel Tax Agreement license
8 must be made to the department. The application must be filed upon a
9 form prescribed by the department and contain such information as the
10 department may require.

11 **Sec. 59.** RCW 82.38.120 and 1996 c 104 s 9 are each amended to read
12 as follows:

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

18 (1) Who formerly held ~~((either type of))~~ a license issued under
19 chapter 82.36 or 82.42 RCW or this chapter which, prior to the time of
20 filing for application, has been revoked for cause;

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

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

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

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

35 (6) Who pled guilty to or was convicted as an individual, officer,
36 director, owner, or managing employee of a nonindividual licensee in
37 this or any other state or in any federal jurisdiction of a gross
38 misdemeanor or felony crime directly related to the business or has

1 been subject to a civil judgment involving fraud, misrepresentation,
2 conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

3 (7) Who misrepresented or concealed a material fact in obtaining a
4 license or in reinstatement thereof;

5 (8) Who violated a statute or administrative rule regulating fuel
6 taxation or distribution;

7 (9) Who failed to cooperate with the department's investigations
8 by:

9 (a) Not furnishing papers or documents;

10 (b) Not furnishing in writing a full and complete explanation
11 regarding a matter under investigation by the department; or

12 (c) Not responding to subpoenas issued by the department, whether
13 or not the recipient of the subpoena is the subject of the proceeding;

14 (10) Who failed to comply with an order issued by the director; or

15 (11) Upon other sufficient cause being shown.

16 Before such refusal, the department shall grant the applicant a
17 hearing and shall grant the applicant at least twenty days written
18 notice of the time and place thereof.

19 The department shall determine from the information shown in the
20 application or other investigation the kind and class of license to be
21 issued. For the purpose of considering any application for a special
22 fuel ((dealer's)) license, the department may inspect, cause an
23 inspection, investigate, or cause an investigation of the records of
24 this or any other state or of the federal government to ascertain the
25 veracity of the information on the application form and the applicant's
26 criminal and licensing history.

27 All licenses shall be posted in a conspicuous place or kept
28 available for inspection at the principal place of business of the
29 owner thereof. License holders shall reproduce the license by
30 photostat or other method and keep a copy on display for ready
31 inspection at each additional place of business or other place of
32 storage from which special fuel is sold, delivered or used and in each
33 motor vehicle used by the license holder to transport special fuel
34 purchased by him or her for resale, delivery or use. ((Every licensed
35 special fuel user operating a motor vehicle registered in a
36 jurisdiction other than this state shall reproduce the license and
37 carry a photocopy thereof with each motor vehicle being operated upon
38 the highways of this state.

1 ~~A special fuel dealer may use special fuel in motor vehicles owned~~
2 ~~or operated by the dealer without securing a license as a special fuel~~
3 ~~user but the dealer is subject to all other conditions, requirements,~~
4 ~~and liabilities imposed herein upon a special fuel user.))~~

5 Each special fuel ~~((dealer's license and special fuel user's))~~
6 license shall be valid until the expiration date if shown on the
7 license, or until suspended or revoked for cause or otherwise canceled.

8 No special fuel ~~((dealer's license or special fuel user's))~~ license
9 shall be transferable.

10 **Sec. 60.** RCW 82.38.130 and 1994 c 262 s 24 are each amended to
11 read as follows:

12 The department may revoke the license of any special fuel ~~((dealer,~~
13 ~~or special fuel user))~~ licensee for any of the grounds constituting
14 cause for denial of a license set forth in RCW 82.38.120 or for other
15 reasonable cause. Before revoking such license the department shall
16 notify the licensee to show cause within twenty days of the date of the
17 notice why the license should not be revoked: PROVIDED, That at any
18 time prior to and pending such hearing the department may, in the
19 exercise of reasonable discretion, suspend such license.

20 The department shall cancel any ~~((license to act as a))~~ special
21 fuel ~~((dealer, or a special fuel user))~~ license immediately upon
22 surrender thereof by the holder.

23 Any surety on a bond furnished by a special fuel ~~((dealer or~~
24 ~~special fuel user))~~ licensee as provided ~~((herein))~~ in this chapter
25 shall be released and discharged from any and all liability to the
26 state accruing on such bond after the expiration of forty-five days
27 from the date which such surety shall have lodged with the department
28 a written request to be released and discharged, but this provision
29 shall not operate to relieve, release, or discharge the surety from any
30 liability already accrued or which shall accrue before the expiration
31 of the forty-five day period. The department shall promptly, upon
32 receiving any such request, notify the special fuel ~~((dealer or special~~
33 ~~fuel user))~~ licensee who furnished the bond, and unless the special
34 fuel ~~((dealer or special fuel user shall))~~ licensee, on or before the
35 expiration of the forty-five day period, files a new bond, in
36 accordance with ~~((the requirements of))~~ this section, ~~((or make a~~
37 ~~deposit in lieu thereof as provided in RCW 82.38.020(11),))~~ the

1 department forthwith shall cancel the special fuel (~~dealer's or~~
2 ~~special fuel user's~~) license.

3 The department may require a (~~special fuel dealer or special fuel~~
4 ~~user to give a~~) new or additional surety bond (~~or to deposit~~
5 ~~additional securities~~) of the character specified in RCW
6 82.38.020(~~(11)~~) (3) if, in its opinion, the security of the surety
7 bond therefor filed by such special fuel (~~dealer or special fuel user,~~
8 ~~or the market value of the properties deposited as security by such~~
9 ~~special fuel dealer or special fuel user~~) licensee, shall become
10 impaired or inadequate. Upon failure of the special fuel (~~dealer or~~
11 ~~special fuel user~~) licensee to give such new or additional surety bond
12 (~~or to deposit additional securities~~) within forty-five days after
13 being requested to do so by the department, or after he or she shall
14 fail or refuse to file reports and remit or pay taxes at the intervals
15 fixed by the department, the department forthwith shall cancel his or
16 her license.

17 **Sec. 61.** RCW 82.38.140 and 1996 c 104 s 10 and 1996 c 90 s 2 are
18 each reenacted and amended to read as follows:

19 (1) Every (~~special fuel dealer, special fuel user,~~) licensee and
20 every person importing, manufacturing, refining, dealing in,
21 transporting, blending, or storing special fuel in this state shall
22 keep for a period of not less than five years open to inspection at all
23 times during the business hours of the day to the department or its
24 authorized representatives, a complete record of all special fuel
25 purchased or received and all of such products sold, delivered, or used
26 by them. Such records shall show:

27 (a) The date of each receipt;

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

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

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

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

35 (f) The number of gallons sold, delivered, or used for any purpose
36 not subject to the tax imposed (~~herein~~) in this chapter;

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

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

6 (2)(a) All (~~special fuel users using special fuel~~) International
7 Fuel Tax Agreement licensees and dyed special fuel users authorized to
8 use dyed special fuel on highway in vehicles licensed for highway
9 operation shall maintain detailed mileage records on an individual
10 vehicle basis.

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

13 (c) In the absence of operating records that show both on-highway
14 and off-highway usage of special fuel on a daily basis for each
15 vehicle, fuel consumption must be computed under RCW 82.38.060.

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

18 (4) ~~Invoices shall be prepared for sales and deliveries of special~~
19 ~~fuel in the manner and containing such information as may be prescribed~~
20 ~~by the department.~~

21 ~~Every special fuel dealer or special fuel user making such sales or~~
22 ~~deliveries of special fuel and every person so receiving and purchasing~~
23 ~~special fuel must each retain one copy of each such invoice as part of~~
24 ~~the dealer's permanent records for the time and purposes above~~
25 ~~provided.~~

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

31 (6) ~~Subsections (1)(f), (2)(b), and (5) of this section do not~~
32 ~~apply to special fuel users when the special fuel is used off-highway~~
33 ~~in farming, construction, or logging operations. Upon filing a special~~
34 ~~fuel user tax report, every such special fuel user shall certify and~~
35 ~~bear the burden of proof as to the number of gallons of special fuel~~
36 ~~used off-highway.)~~ The department may require a licensee or a person
37 engaged in the business of selling, purchasing, distributing, storing,
38 transporting, or delivering special fuel to submit periodic reports to
39 the department regarding the disposition of the fuel. The reports must

1 be on forms prescribed by the department and must contain such
2 information as the department may require.

3 **Sec. 62.** RCW 82.38.150 and 1996 c 104 s 11 are each amended to
4 read as follows:

5 For the purpose of determining the amount of liability for the tax
6 herein imposed, and to periodically update license information, each
7 special fuel (~~dealer and each~~) licensee, other than a special fuel
8 distributor, an International Fuel Tax Agreement licensee, or a dyed
9 special fuel user, shall file monthly tax reports with the department,
10 on forms prescribed by the department. (~~Special fuel dealers shall~~
11 ~~file the reports at the intervals as shown in the following schedule:~~

| 12 | Estimated Yearly | | |
|----|-----------------------------|--------------------------------|--|
| 13 | Tax Liability | Reporting Frequency | |
| 14 | \$ 0 -- \$100 | Yearly | |
| 15 | \$101 -- 250 | Semi-yearly | |
| 16 | \$251 -- 499 | Quarterly | |
| 17 | \$500 and over | Monthly | |

18 Dyed special fuel users whose estimated yearly tax liability is two
19 hundred fifty dollars or less, shall file a report yearly, and dyed
20 special fuel users whose estimated yearly tax liability is more than
21 two hundred fifty dollars, shall file reports quarterly. Special fuel
22 users licensed under the International Fuel Tax Agreement may file
23 reports monthly or quarterly.

24 The department shall establish the reporting frequency for each
25 applicant at the time the special fuel license is issued. If it
26 becomes apparent that any special fuel licensee is not reporting in
27 accordance with the above schedule, the department shall change the
28 licensee's reporting frequency by giving thirty days' notice to the
29 licensee by mail to the licensee's address of record. A report shall
30 be filed with the department even though no special fuel was used, or
31 tax is due, for the reporting period. Each tax report shall contain a
32 declaration by the person making the same, to the effect that the
33 statements contained therein are true and are made under penalties of
34 perjury, which declaration shall have the same force and effect as a
35 verification of the report and is in lieu of such verification. The
36 report shall show such information as the department may reasonably
37 require for the proper administration and enforcement of this chapter.

1 For counties within which an additional excise tax on special fuel has
2 been levied by that jurisdiction under RCW 82.80.010, the report must
3 show the quantities of special fuel sold, distributed, or withdrawn
4 from bulk storage by the reporting dealer or user within the county's
5 boundaries and the tax liability from its levy. (~~The special fuel~~
6 ~~dealer or special fuel user~~) A licensee shall file ~~((the))~~ a tax
7 report on or before the twenty-fifth day of the next succeeding
8 calendar month following the period to which it relates.

9 Subject to the written approval of the department, tax reports may
10 cover a period ending on a day other than the last day of the calendar
11 month. Taxpayers granted approval to file reports in this manner will
12 file such reports on or before the twenty-fifth day following the end
13 of the reporting period. No change to this reporting period will be
14 made without the written authorization of the department.

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

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

27 (~~The department may permit any special fuel user whose sole use of~~
28 ~~special fuel is in motor vehicles or equipment exempt from tax as~~
29 ~~provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in~~
30 ~~lieu of the reports required in this section, to submit reports~~
31 ~~annually or as requested by the department, in such form as the~~
32 ~~department may require.~~

33 ~~A special fuel user whose sole use of special fuel is for purposes~~
34 ~~other than the propulsion of motor vehicles upon the public highways of~~
35 ~~this state shall not be required to submit the reports required in this~~
36 ~~section.))~~

37 **Sec. 63.** RCW 82.38.160 and 1987 c 174 s 5 are each amended to read
38 as follows:

1 (1) The tax imposed by this chapter shall be computed ((as follows:
2 ~~(a) With respect to special fuel upon which the tax has been collected~~
3 ~~by the seller thereof as a special fuel dealer,~~) by multiplying the
4 tax rate per gallon provided in this chapter by the number of gallons
5 of special fuel ((delivered)) subject to the special fuel tax(~~(i-~~(b)
6 ~~with respect to special fuel on which the tax has not been paid to a~~
7 ~~special fuel dealer in this state and which has been consumed by the~~
8 ~~purchaser thereof as a special fuel user,~~ by multiplying the tax rate
9 per gallon provided in this chapter by the number of gallons of special
10 fuel consumed by him in the propulsion of a motor vehicle on the
11 highways of this state)).

12 (2) A special fuel distributor shall remit tax on special fuel
13 purchased from a special fuel supplier, and due to the state for that
14 reporting period, to the special fuel supplier.

15 (3) At the election of the distributor, the payment of the special
16 fuel tax owed on special fuel purchased from a supplier shall be
17 remitted to the supplier on terms agreed upon between the distributor
18 and the supplier or no later than two business days before the last
19 business day of the following month. This election shall be subject to
20 a condition that the distributor's remittances of all amounts of
21 special fuel tax due to the supplier shall be paid by electronic funds
22 transfer. The distributor's election may be terminated by the supplier
23 if the distributor does not make timely payments to the supplier as
24 required by this section. This section shall not apply if the
25 distributor is required by the supplier to pay cash or cash equivalent
26 for special fuel purchases.

27 (4) Except as provided in subsection ~~((3))~~ (5) of this section,
28 the tax return shall be accompanied by a remittance payable to the
29 state treasurer covering the tax ~~((moneys collected by the special fuel~~
30 ~~dealer or the))~~ amount determined to be due ~~((hereunder by licensed~~
31 ~~users of special fuels during))~~ for the ~~((preceding))~~ reporting period.

32 ~~((3))~~ (5) If the tax is paid by electronic funds transfer ((and
33 the reporting period ends on the last day of a calendar month)), the
34 tax shall be paid on or before the ((state business day immediately
35 preceding the last state business day of the month following the end of
36 the reporting period)) expiration of five state business days
37 immediately following the day that is two business days before the last
38 business day of the month immediately following the end of the
39 reporting period. When the reporting period is May, the tax shall be

1 paid on the last state business day of June. If the tax is paid by
2 electronic funds transfer and the reporting period ends on a day other
3 than the last day of a calendar month as provided in RCW 82.38.150, the
4 tax shall be paid on or before (~~the state business day immediately~~
5 ~~preceding~~) the last state business day of the thirty-day period
6 following the end of the reporting period.

7 (~~(4)~~) (6) The tax shall be paid by electronic funds transfer
8 whenever the amount due is fifty thousand dollars or more.

9 (7) A special fuel supplier that receives a payment of the special
10 fuel tax may not apply the payment towards debts for special fuel
11 purchased from the supplier or for any other services provided to the
12 debtor by the special fuel supplier.

13 NEW SECTION. **Sec. 64.** A special fuel supplier shall, no later
14 than the twentieth day or next business day after the special fuel tax
15 is due from the special fuel distributor under this chapter, notify the
16 department of the failure of a special fuel distributor to pay the full
17 amount of the tax owed.

18 Upon notification and submission of satisfactory evidence by a
19 special fuel supplier that a special fuel distributor has failed to
20 comply with this chapter, the department may summarily suspend the
21 license of the special fuel distributor.

22 Upon the suspension, the department shall immediately notify all
23 special fuel suppliers that the authority of the special fuel
24 distributor to purchase tax-deferred special fuel has been suspended
25 and all subsequent purchases of special fuel by the special fuel
26 distributor must be tax-paid at the time of removal.

27 If, after notification by the department, a special fuel supplier
28 continues to sell tax-deferred special fuel to a special fuel
29 distributor whose license is suspended, the special fuel supplier's
30 license is subject to revocation or suspension under RCW 82.38.130.
31 Furthermore, if notified of a license suspension, a special fuel
32 supplier is liable for any unpaid special fuel tax owed on special fuel
33 sold to a suspended special fuel distributor.

34 **Sec. 65.** RCW 82.38.170 and 1996 c 104 s 12 are each amended to
35 read as follows:

36 (1) If any special fuel (~~dealer or special fuel user~~) licensee
37 fails to pay any taxes collected or due the state of Washington (~~by~~

1 ~~said dealer or user~~) within the time prescribed by RCW 82.38.150 and
2 82.38.160, (~~said dealer or user~~) the licensee shall pay in addition
3 to such tax a penalty of ten percent of the amount thereof.

4 (2) If it be determined by the department that the tax reported by
5 any special fuel (~~dealer or special fuel user~~) licensee is deficient
6 it may proceed to assess the deficiency on the basis of information
7 available to it and there shall be added to this deficiency a penalty
8 of ten percent of the amount of the deficiency.

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

23 (4) If any special fuel (~~dealer or special fuel user shall~~)
24 licensee establishes by a fair preponderance of evidence that his or
25 her failure to file a report or pay the proper amount of tax within the
26 time prescribed was due to reasonable cause and was not intentional or
27 willful, the department may waive the penalty prescribed in subsections
28 (1), (2), and (3) of this section.

29 (5) If any special fuel (~~dealer or special fuel user shall~~)
30 licensee files a false or fraudulent report with intent to evade the
31 tax imposed by this chapter, there shall be added to the amount of
32 deficiency determined by the department a penalty equal to twenty-five
33 percent of the deficiency, in addition to the penalty provided in
34 subsection (2) of this section and all other penalties prescribed by
35 law.

36 (6) Any fuel tax, penalties, and interest payable under this
37 chapter shall bear interest at the rate of one percent per month, or
38 fraction thereof, from the first day of the calendar month after the
39 amount or any portion thereof should have been paid until the date of

1 payment: PROVIDED, That the department may waive the interest when it
2 determines that the cost of processing the collection of the interest
3 exceeds the amount of interest due.

4 (7) 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 interests 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 (8) Except in the case of a fraudulent report or of neglect or
13 refusal to make a report, every deficiency shall be assessed under
14 subsection (2) of this section within five years from the twenty-fifth
15 day of the next succeeding calendar month following the reporting
16 period for which the amount is proposed to be determined or within five
17 years after the return is filed, whichever period expires the later.

18 (9) Any special fuel (~~dealer or special fuel user~~) licensee
19 against whom an assessment is made under the provisions of subsections
20 (2) or (3) of this section may petition for a reassessment thereof
21 within thirty days after service upon the special fuel (~~dealer or~~
22 ~~special fuel user~~) licensee of notice thereof. If such petition is
23 not filed within such thirty day period, the amount of the assessment
24 becomes final at the expiration thereof.

25 If a petition for reassessment is filed within the thirty day
26 period, the department shall reconsider the assessment and, if the
27 special fuel (~~dealer or special fuel user~~) licensee has so requested
28 in his or her petition, shall grant such special fuel (~~dealer or~~
29 ~~special fuel user~~) licensee an oral hearing and give the special fuel
30 (~~dealer or special fuel user~~) licensee ten days' notice of the time
31 and place thereof. The department may continue the hearing from time
32 to time. The decision of the department upon a petition for
33 reassessment shall become final thirty days after service upon the
34 special fuel (~~dealer or special fuel user~~) licensee of notice
35 thereof.

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

1 (10) Any notice of assessment required by this section shall be
2 served personally or by mail; if by mail, service shall be made by
3 depositing such notice in the United States mail, postage prepaid
4 addressed to the special fuel (~~dealer or special fuel user~~) licensee
5 at his or her address as the same appears in the records of the
6 department.

7 (11) Any licensee who has had (~~either their~~) the licensee's
8 special fuel (~~user~~) license (~~or special fuel dealer license, or~~
9 ~~both,~~) revoked shall pay a one hundred dollar penalty prior to the
10 issuance of a new license.

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

19 (13) Unless expressly authorized by the Internal Revenue Code and
20 this chapter, a person using dyed special fuel in the propulsion of a
21 motor vehicle upon the highways of this state is subject to a civil
22 penalty of ten dollars for each gallon of dyed special fuel placed into
23 the supply tank of the motor vehicle, or one thousand dollars,
24 whichever is greater. The civil penalty collected as a result of this
25 subsection must be deposited in the motor vehicle fund. The penalties
26 must be collected and administered under this chapter.

27 (14) For the purposes of enforcement of this section, the
28 Washington state patrol or other commercial vehicle safety alliance-
29 certified officers may inspect, collect, and secure samples of special
30 fuel used in the propulsion of a vehicle operated upon the highways of
31 this state to detect the presence of dye or other chemical compounds.

32 (15) The Washington state patrol shall, by January 1, 1999, develop
33 and implement procedures for collection, analysis, and storage of fuel
34 samples collected under this chapter.

35 (16) RCW 43.05.110 does not apply to the civil penalties imposed
36 under subsection (13) of this section.

37 **Sec. 66.** RCW 82.38.180 and 1972 ex.s. c 138 s 4 are each amended
38 to read as follows:

1 Any person who has paid a special fuel tax either directly or to
2 the vendor from whom it was purchased may file a claim with the
3 department for a refund of the tax so paid and shall be reimbursed and
4 repaid the amount of:

5 (1) Any taxes previously paid on special fuel used for purposes
6 other than for the propulsion of motor vehicles upon the public
7 highways in this state.

8 (2) Any taxes previously paid on special fuel exported for use
9 outside of this state. Special fuel carried from this state in the
10 fuel tank of a motor vehicle is deemed to be exported from this state.

11 (3) Any tax, penalty, or interest erroneously or illegally
12 collected or paid.

13 (4) Any taxes previously paid on all special fuel which is lost or
14 destroyed, while applicant shall be the owner thereof, through fire,
15 lightning, flood, wind storm, or explosion.

16 (5) Any taxes previously paid on all special fuel of five hundred
17 gallons or more which is lost or destroyed while applicant shall be the
18 owner thereof, through leakage or other casualty except evaporation,
19 shrinkage, or unknown causes.

20 (6) Any taxes previously paid on special fuel that is inadvertently
21 mixed with dyed special fuel.

22 Recovery for such loss or destruction under either subsection (4)
23 ~~((or))~~, (5), or (6) of this section must be susceptible to positive
24 proof thereby enabling the department to conduct such investigation and
25 require such information as they may deem necessary. In the event that
26 the department is not satisfied that the fuel was lost ~~((or))~~,
27 destroyed, or contaminated as claimed because information or proof as
28 required hereunder is not sufficient to substantiate the accuracy of
29 the claim, they may deem such as sufficient cause to deny all right
30 relating to the refund or credit for the excise tax paid on special
31 fuel alleged to be lost or destroyed.

32 NEW SECTION. Sec. 67. (1) Upon application, the department may
33 give special authorization to farmers, logging companies, and
34 construction companies to purchase special fuel directly into the
35 supply tanks of nonhighway equipment or into portable slip tanks for
36 nonhighway use without payment of the special fuel tax. Purchases of
37 this special fuel must be made at a card lock facility owned and
38 operated by a special fuel distributor who has elected to pay the

1 special fuel tax on special fuel delivered to the card lock facility
2 and to sell the special fuel in this manner. The election is solely at
3 the discretion of the special fuel distributor and must be approved by
4 the department.

5 (2) A special fuel distributor who has paid the special fuel tax on
6 special fuel purchased by a holder of a special authorization may file
7 a claim for refund of the special fuel tax paid. A claim for refund of
8 the special fuel tax paid under this section is allowed only if all the
9 following apply:

10 (a) Special fuel tax was paid by the distributor on the special
11 fuel to which the claim relates and the claim is supported by an
12 invoice or invoices showing such payment;

13 (b) The special fuel distributor sold the special fuel to a holder
14 of a valid special authorization issued by the department;

15 (c) The claim contains the name and special authorization number of
16 each purchaser and the number of gallons sold to the purchaser;

17 (d) The claim contains a statement that the special fuel
18 distributor has not included the amount of the tax in the sale price of
19 the special fuel and has not collected the special fuel tax from the
20 purchaser; and

21 (e) The claim contains a statement that the special fuel covered by
22 the claim did not contain visible evidence of dye.

23 (3) Each claim for refund under this section must be made on a form
24 prescribed by the department and must be for a period of not less than
25 one week.

26 (4) The department may terminate the election of a special fuel
27 distributor if the special fuel distributor fails to comply with this
28 section.

29 **Sec. 68.** RCW 82.38.190 and 1997 c 183 s 10 are each amended to
30 read as follows:

31 (1) Claims under RCW 82.38.180 shall be filed with the department
32 on forms prescribed by the department and shall show the date of filing
33 and the period covered in the claim, the number of gallons of special
34 fuel used for purposes subject to tax refund, and such other facts and
35 information as may be required. Every such claim shall be supported by
36 an invoice or invoices issued to or by the claimant, as may be
37 prescribed by the department, and such other information as the
38 department may require.

1 (2) Any amount determined to be refundable by the department under
2 RCW 82.38.180 shall first be credited on any amounts then due and
3 payable from ~~((the special fuel dealer or special fuel user or to any))~~
4 a person to whom the refund is due, and the department shall then
5 certify the balance thereof to the state treasurer, who shall thereupon
6 draw his or her warrant for ~~((such))~~ the certified amount to ~~((such~~
7 ~~special fuel dealer or special fuel user or any))~~ the person.

8 (3) No refund or credit shall be approved by the department unless
9 a written claim for refund or credit stating the specific grounds upon
10 which the claim is founded is filed with the department:

11 (a) Within thirteen months from the date of purchase or from the
12 last day of the month following the close of the reporting period for
13 which the refundable amount or credit is due with respect to refunds or
14 credits allowable under RCW 82.38.180~~((, subsections))~~ (1), (2), (4),
15 and (5), and if not filed within this period the right to refund shall
16 be forever barred.

17 (b) Within ~~((three))~~ five years from the last day of the month
18 following the close of the reporting period for which the overpayment
19 is due with respect to the refunds or credits allowable under RCW
20 82.38.180(3). The department shall refund any amount paid that has
21 been verified by the department to be more than ten dollars over the
22 amount actually due for the reporting period. Payment credits shall
23 not be carried forward and applied to subsequent tax returns for a
24 person licensed under this chapter.

25 (4) Within thirty days after disallowing any claim in whole or in
26 part, the department shall serve written notice of its action on the
27 claimant.

28 (5) Interest shall be paid upon any refundable amount or credit due
29 under RCW 82.38.180(3) at the rate of one percent per month from the
30 last day of the calendar month following the reporting period for which
31 the refundable amount or credit is due.

32 The interest shall be paid:

33 (a) In the case of a refund, to the last day of the calendar month
34 following the date upon which the person making the overpayment, if he
35 or she has not already filed a claim, is notified by the department
36 that a claim may be filed or the date upon which the claim is approved
37 by the department, whichever date is earlier.

1 (b) In the case of a credit, to the same date as that to which
2 interest is computed on the tax or amount against which the credit is
3 applied.

4 If the department determines that any overpayment has been made
5 intentionally or by reason of carelessness, it shall not allow any
6 interest thereon.

7 (6) The department shall pay interest of one percent per month on
8 any refund payable under RCW 82.38.180 (1), (2), or (6) that is issued
9 more than thirty business days after the receipt of a claim properly
10 filed and completed in accordance with this section.

11 (7) No injunction or writ of mandate or other legal or equitable
12 process shall issue in any suit, action or proceeding in any court
13 against this state or against any officer of the state to prevent or
14 enjoin the collection under this chapter of any tax or any amount of
15 tax required to be collected.

16 **Sec. 69.** RCW 82.38.210 and 1979 c 40 s 15 are each amended to read
17 as follows:

18 If any special fuel (~~dealer, supplier, or user~~) licensee liable
19 for the remittance of tax imposed by this chapter fails to pay the
20 same, the amount thereof, including any interest, penalty, or addition
21 to such tax, together with any costs that may accrue in addition
22 thereto, shall be a lien in favor of the state upon all franchises,
23 property, and rights to property, whether real or personal, then
24 belonging to or thereafter acquired by such person, whether such
25 property is employed by such person for personal or business use or is
26 in the hands of a trustee, or receiver, or assignee for the benefit of
27 creditors, from the date the taxes were due and payable, until the
28 amount of the lien is paid or the property sold in payment thereof.
29 The lien shall have priority over any lien or encumbrance whatsoever,
30 except the lien of other state taxes having priority by law, and except
31 that such lien shall not be valid as against any bona fide mortgagee,
32 pledgee, judgment creditor, or purchaser whose rights have attached
33 prior to the time the department has filed and recorded notice of such
34 lien as hereinafter provided.

35 In order to avail itself of the lien hereby created, the department
36 shall file with any county auditor a statement of claim and lien
37 specifying the amount of delinquent taxes, penalties and interest
38 claimed by the department. From the time of filing for record, the

1 amount required to be paid shall constitute a lien upon all franchises,
2 property and rights to property, whether real or personal, then
3 belonging to or thereafter acquired by such person in the county. Any
4 lien as provided in this section may also be filed in the office of the
5 secretary of state. Filing in the office of the secretary of state
6 shall be of no effect, however, until the lien or copy thereof shall
7 have been filed with the county auditor in the county where the
8 property is located. When a lien is filed in compliance herewith and
9 with the secretary of state, such filing shall have the same effect as
10 if the lien had been duly filed for record in the office of the auditor
11 in each county of this state.

12 **Sec. 70.** RCW 82.38.220 and 1994 c 262 s 26 are each amended to
13 read as follows:

14 In the event any special fuel (~~(user or special fuel dealer)~~)
15 licensee is delinquent in the payment of any obligation imposed under
16 this chapter, the department may give notice of the amount of such
17 delinquency by registered or certified mail to all persons having in
18 their possession or under their control any credits or other personal
19 property belonging to (~~such user or dealer~~) the special fuel licensee
20 or owing any debts to (~~such user or dealer~~) the special fuel
21 licensee, at the time of the receipt by them of such notice. Any
22 person so notified shall neither transfer nor make other disposition of
23 such credits, personal property, or debts until the department consents
24 to a transfer or other disposition. All persons so notified must,
25 within twenty days after receipt of the notice, advise the department
26 of any and all such credits, personal property, or debts in their
27 possession, under their control or owing by them, as the case may be,
28 and shall immediately deliver such credits, personal property, or debts
29 to the department or its duly authorized representative to be applied
30 to the indebtedness involved.

31 Upon service, the notice and order to withhold and deliver
32 constitutes a continuing lien on property of the taxpayer. The
33 department shall include in the caption of the notice to withhold and
34 deliver "continuing lien." The effective date of a notice to withhold
35 and deliver served under this section is the date of service of the
36 notice.

37 If a person fails to answer the notice within the time prescribed
38 by this section, it is lawful for the court, upon application of the

1 department and after the time to answer the notice has expired, to
2 render judgment by default against the party named in the notice to
3 withhold and deliver for the full amount claimed by the department in
4 the notice to withhold and deliver, together with costs.

5 **Sec. 71.** RCW 82.38.230 and 1979 c 40 s 17 are each amended to read
6 as follows:

7 Whenever any special fuel (~~((user, supplier or dealer))~~) licensee is
8 delinquent in the payment of any obligation imposed hereunder, and such
9 delinquency continues after notice and demand for payment by the
10 department, the department shall proceed to collect the amount due from
11 the (~~((user, supplier or dealer))~~) special fuel licensee in the following
12 manner: The department shall seize any property subject to the lien of
13 said excise tax, penalty, and interest and thereafter sell it at public
14 auction to pay said obligation and any and all costs that may have been
15 incurred on account of the seizure and sale. Notice of such intended
16 sale and the time and place thereof shall be given to such delinquent
17 (~~((user, supplier or dealer))~~) special fuel licensee and to all persons
18 appearing of record to have an interest in such property. The notice
19 shall be given in writing at least ten days before the date set for the
20 sale by enclosing it in an envelope addressed to (~~((such user, supplier~~
21 ~~or dealer))~~) the special fuel licensee at (~~((his))~~) the licensee's address
22 as the same appears in the records of the department and, in the case
23 of any person appearing of record to have an interest in such property,
24 addressed to such person at his or her last known residence or place of
25 business, and depositing such envelope in the United States mail,
26 postage prepaid. In addition, the notice shall be published for at
27 least ten days before the date set for the sale in a newspaper of
28 general circulation published in the county in which the property
29 seized is to be sold. If there is no newspaper of general circulation
30 in such county, the notice shall be posted in three public places in
31 the county for a period of ten days. The notice shall contain a
32 description of the property to be sold, together with a statement of
33 the amount due (~~((hereunder))~~) under this chapter, the name of the
34 (~~((user, supplier or dealer))~~) special fuel licensee and the further
35 statement that unless such amount is paid on or before the time fixed
36 in the notice the property will be sold in accordance with law.

37 The department shall then proceed to sell the property in
38 accordance with the law and the notice, and shall deliver to the

1 purchaser a bill of sale or deed which shall vest title in the
2 purchaser. If upon any such sale the moneys received exceed the amount
3 due to the state ((hereunder)) under this chapter from the delinquent
4 ((~~user, supplier or dealer~~)) special fuel licensee, the excess shall be
5 returned to ((~~such user, supplier or dealer~~)) the licensee and ((his))
6 the licensee's receipt obtained ((~~therefor~~)) for the excess. If any
7 person having an interest in or lien upon the property has filed with
8 the department prior to such sale, notice of such interest or lien, the
9 department shall withhold payment of any such excess to ((~~such user,~~
10 ~~supplier or dealer~~)) the special fuel licensee pending a determination
11 of the rights of the respective parties thereto by a court of competent
12 jurisdiction. If for any reason the receipt of ((~~such user, supplier~~
13 ~~or dealer shall not be~~)) the special fuel licensee is not available,
14 the department shall deposit such excess with the state treasurer as
15 trustee for ((~~such user, supplier or dealer, his~~)) the special fuel
16 licensee or the licensee's heirs, successors, or assigns: PROVIDED,
17 That prior to making any seizure of property as ((herein)) provided for
18 in this section, the department may first serve upon the ((~~user's,~~
19 ~~supplier's, or dealer's~~)) special fuel licensee's bondsman a notice of
20 the delinquency, with a demand for the payment of the amount due.

21 **Sec. 72.** RCW 82.38.235 and 1979 c 40 s 22 are each amended to read
22 as follows:

23 Whenever any assessment shall have become final in accordance with
24 the provisions of this chapter, the department may file with the clerk
25 of any county within the state a warrant in the amount of the
26 assessment of taxes, penalties plus interest and a filing fee of five
27 dollars. The clerk of the county wherein the warrant is filed shall
28 immediately designate a superior court cause number for such warrant,
29 and the clerk shall cause to be entered in the judgment docket under
30 the superior court cause number assigned to the warrant, the name of
31 the special fuel ((~~user, supplier or dealer~~)) licensee mentioned in the
32 warrant, the amount of the tax, penalties, interest and filing fee and
33 the date when such warrant was filed. The aggregate amount of such
34 warrant as docketed shall become a lien upon the title to, and interest
35 in all real and personal property of named person against whom the
36 warrant is issued, the same as a judgment in a civil case duly docketed
37 in the office of such clerk. Such warrant so docketed shall be
38 sufficient to support the issuance of writs of execution and writs of

1 garnishment in favor of the state in the manner provided by law in the
2 case of civil judgment, wholly or partially unsatisfied. The clerk of
3 the court shall be entitled to a filing fee of five dollars, which
4 shall be added to the amount of the warrant.

5 **Sec. 73.** RCW 82.38.240 and 1971 ex.s. c 175 s 25 are each amended
6 to read as follows:

7 Whenever any special fuel (~~(user or special fuel dealer)~~) licensee
8 is delinquent in the payment of any obligation hereunder the department
9 may transmit notice of such delinquency to the attorney general who
10 shall at once proceed to collect by appropriate legal action the amount
11 due the state from (~~(such user or dealer)~~) the special fuel licensee.
12 In any suit brought to enforce the rights of the state hereunder, a
13 certificate by the department showing the delinquency shall be prima
14 facie evidence of the amount of the obligation, of the delinquency
15 thereof and of compliance by the department with all provisions of this
16 chapter relating to such obligation.

17 **Sec. 74.** RCW 82.38.260 and 1995 c 274 s 25 are each amended to
18 read as follows:

19 The department shall enforce the provisions of this chapter, and
20 may prescribe, adopt, and enforce reasonable rules and regulations
21 relating to the administration and enforcement thereof. The Washington
22 state patrol and its officers shall aid the department in the
23 enforcement of this chapter, and, for this purpose, are declared to be
24 peace officers, and given police power and authority throughout the
25 state to arrest on sight any person known to have committed a violation
26 of the provisions of this chapter.

27 The department or its authorized representative is hereby empowered
28 to examine the books, papers, records and equipment of any special fuel
29 (~~(dealer, special fuel user,)~~) licensee or any person dealing in,
30 transporting, or storing special fuel as defined in this chapter and to
31 investigate the character of the disposition which any person makes of
32 such special fuel in order to ascertain and determine whether all taxes
33 due hereunder are being properly reported and paid. The fact that such
34 books, papers, records and equipment are not maintained in this state
35 at the time of demand shall not cause the department to lose any right
36 of such examination under this chapter when and where such records
37 become available.

1 The department or its authorized representative is further
2 empowered to investigate the disposition of special fuel by any person
3 where the department has reason to believe that untaxed special fuel
4 has been diverted to a use subject to the taxes imposed by this chapter
5 without said taxes being paid in accordance with the requirements of
6 this chapter.

7 For the purpose of enforcing the provisions of this chapter it
8 shall be presumed that all special fuel delivered to service stations
9 as well as all special fuel otherwise received (~~((by a special fuel
10 dealer or a special fuel user))~~) into storage and dispensing equipment
11 designed to fuel motor vehicles is delivered (~~((by the special fuel
12 dealer or special fuel user))~~) into the fuel supply tanks of motor
13 vehicles and consumed in the propulsion of motor vehicles on the
14 highways of this state, unless the contrary is established by
15 satisfactory evidence.

16 The department shall, upon request from the officials to whom are
17 entrusted the enforcement of the special fuel tax law of any other
18 state, the District of Columbia, the United States, its territories and
19 possessions, the provinces or the Dominion of Canada, forward to such
20 officials any information which he or she may have relative to the
21 receipt, storage, delivery, sale, use, or other disposition of special
22 fuel by any special fuel (~~((dealer or special fuel user, provided such))~~)
23 licensee if the other state or states furnish like information to this
24 state.

25 Returns required by this chapter, exclusive of schedules, itemized
26 statements and other supporting evidence annexed thereto, shall at all
27 reasonable times be open to the public.

28 NEW SECTION. **Sec. 75.** It is intended that the ultimate liability
29 for the tax imposed under this chapter be upon the user, regardless of
30 the manner in which collection of the tax is provided for in this
31 chapter. However, this section does not apply to agreements between
32 the department and federally recognized Indian tribes entered into
33 under RCW 82.38.310, nor does it apply to the consent decrees entered
34 in *Confederated Tribes of the Colville Reservation v. Washington*
35 *Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v.*
36 *Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

1 NEW SECTION. **Sec. 76.** A special fuel distributor who incurs
2 liability in December 1998 for the special fuel tax imposed under this
3 chapter shall report the liability and pay the tax in January 1999 in
4 the manner required by this chapter as it existed before January 1,
5 1999.

6 A special fuel distributor or special fuel user shall inventory all
7 special fuel, including dyed special fuel, that is on hand or in the
8 person's possession as of 12:01 a.m. on January 1, 1999, and is not in
9 the bulk transfer-terminal system and shall report the results of the
10 inventory to the department no later than the last business day of
11 February 1999. The report of inventory must be made on a form
12 prescribed by the department.

13 A special fuel distributor may pay the tax due on fuel in inventory
14 any time before February 28, 2000, but at least one-twelfth of the
15 amount due must be paid by the last day of each month starting with
16 February 1999. Payments not received in accordance with this section
17 are late and are subject to the interest and penalty provisions of this
18 chapter. Payments made after February 2000 are late and are subject to
19 the interest and penalty provisions of this chapter.

20 A special fuel user shall pay the tax due on fuel in inventory in
21 accordance with the filing frequency assigned to the user before the
22 effective date of this section. Payments not received in accordance
23 with the filing frequency are late and are subject to the interest and
24 penalty provisions of this chapter.

25 NEW SECTION. **Sec. 77.** A licensee holding both a special fuel user
26 and International Fuel Tax Agreement license issued under this chapter
27 as of December 31, 1998, is entitled to a credit of five percent of the
28 licensee's special fuel tax liability on net taxable gallons reported
29 on the licensee's fourth quarter 1998 International Fuel Tax Agreement
30 tax return. In addition to accepting the credit, the licensee may
31 elect to enter into a deferred payment contract with the department.
32 The contract shall allow the licensee to defer payment of the
33 licensee's fourth quarter 1998 Washington special fuel tax liability
34 reported on their International Fuel Tax Agreement tax return.
35 Penalties and interest, less credits due, must be paid by the last day
36 of January 1999. The licensee may pay the remaining amount due any
37 time before December 31, 1999, but at least one-twelfth of the amount
38 due must be paid by the last day of each month starting with January

1 1999. Payments not received in accordance with this section are late
2 and are subject to the interest and penalty provisions of this chapter.
3 Payments made after December 31, 1999, are late and are subject to the
4 interest and penalty provisions of this chapter.

5 **Sec. 78.** RCW 43.05.110 and 1995 c 403 s 612 are each amended to
6 read as follows:

7 The department of agriculture, fish and wildlife, health,
8 licensing, or natural resources may issue a civil penalty provided for
9 by law without first issuing a notice of correction if: (1) The person
10 has previously been subject to an enforcement action for the same or
11 similar type of violation of the same statute or rule or has been given
12 previous notice of the same or similar type of violation of the same
13 statute or rule; or (2) compliance is not achieved by the date
14 established by the department in a previously issued notice of
15 correction, if the department has responded to any request for review
16 of such date by reaffirming the original date or establishing a new
17 date; (3) the violation has a probability of placing a person in danger
18 of death or bodily harm, has a probability of causing more than minor
19 environmental harm, or has a probability of causing physical damage to
20 the property of another in an amount exceeding one thousand dollars; or
21 (4) the violation was committed by a business that employed fifty or
22 more employees on at least one day in each of the preceding twelve
23 months. In addition, the department of fish and wildlife may issue a
24 civil penalty provided for by law without first issuing a notice of
25 correction for a violation of any rule dealing with seasons, catch or
26 bag limits, gear types, or geographical areas for fish or wildlife
27 removal, reporting, or disposal.

28 This section does not apply to the civil penalties imposed under
29 RCW 82.38.170(13).

30 **Sec. 79.** RCW 82.47.010 and 1991 c 173 s 2 are each amended to read
31 as follows:

32 The definitions set forth in this section shall apply throughout
33 this chapter unless the context clearly requires otherwise.

34 (1) "Motor vehicle fuel" has the meaning given in RCW
35 82.36.010(~~((+2))~~).

36 (2) "Special fuel" has the meaning given in RCW 82.38.020(~~((+5))~~).

37 (3) "Motor vehicle" has the meaning given in RCW 82.36.010(~~((+1))~~).

1 **Sec. 80.** RCW 82.80.010 and 1991 c 339 s 12 are each amended to
2 read as follows:

3 (1) Subject to the conditions of this section, any county may levy,
4 by approval of its legislative body and a majority of the registered
5 voters of the county voting on the proposition at a general or special
6 election, additional excise taxes equal to ten percent of the state-
7 wide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of
8 motor vehicle fuel as defined in RCW 82.36.010(~~((+2))~~) and on each
9 gallon of special fuel as defined in RCW 82.38.020(~~((+5))~~) sold within
10 the boundaries of the county. Vehicles paying an annual license fee
11 under RCW 82.38.075 are exempt from the county fuel excise tax. An
12 election held under this section must be held not more than twelve
13 months before the date on which the proposed tax is to be levied. The
14 ballot setting forth the proposition shall state the tax rate that is
15 proposed. The county's authority to levy additional excise taxes under
16 this section includes the incorporated and unincorporated areas of the
17 county. The additional excise taxes are subject to the same exceptions
18 and rights of refund as applicable to other motor vehicle fuel and
19 special fuel excise taxes levied under chapters 82.36 and 82.38 RCW.
20 The proposed tax shall not be levied less than one month from the date
21 the election results are certified by the county election officer. The
22 commencement date for the levy of any tax under this section shall be
23 the first day of January, April, July, or October.

24 (2) Every person subject to the tax shall pay, in addition to any
25 other taxes provided by law, an additional excise tax to the director
26 of licensing at the rate levied by a county exercising its authority
27 under this section.

28 (3) The state treasurer shall distribute monthly to the levying
29 county and cities contained therein the proceeds of the additional
30 excise taxes collected under this section, after the deductions for
31 payments and expenditures as provided in RCW 46.68.090 (1) and (2) and
32 under the conditions and limitations provided in RCW 82.80.080.

33 (4) The proceeds of the additional excise taxes levied under this
34 section shall be used strictly for transportation purposes in
35 accordance with RCW 82.80.070.

36 (5) The department of licensing shall administer and collect the
37 county fuel taxes. The department shall deduct a percentage amount, as
38 provided by contract, for administrative, collection, refund, and audit
39 expenses incurred. The remaining proceeds shall be remitted to the

1 custody of the state treasurer for monthly distribution under RCW
2 82.80.080.

3 NEW SECTION. **Sec. 81.** The department of licensing may enter into
4 a fuel tax cooperative agreement with another state or Canadian
5 province for the administration, collection, and enforcement of each
6 state's or Canadian province's fuel taxes.

7 NEW SECTION. **Sec. 82.** The following acts or parts of acts are
8 each repealed:

9 (1) RCW 82.36.030 and 1996 c 104 s 1, 1994 c 262 s 18, 1993 c 54 s
10 2, 1991 c 339 s 14, 1990 c 42 s 202, 1987 c 174 s 2, & 1961 c 15 s
11 82.36.030;

12 (2) RCW 82.36.220 and 1963 ex.s. c 22 s 20, 1961 ex.s. c 21 s 31,
13 & 1961 c 15 s 82.36.220;

14 (3) RCW 82.38.040 and 1990 c 250 s 81, 1973 1st ex.s. c 156 s 2, &
15 1971 ex.s. c 175 s 5;

16 (4) RCW 82.38.082 and 1987 c 294 s 1; and

17 (5) RCW 82.38.086 and 1981 c 342 s 6.

18 NEW SECTION. **Sec. 83.** (1) Sections 8 through 12, 14, 15, 33, 38,
19 and 42 through 44 of this act are each added to chapter 82.36 RCW.

20 (2) Sections 47 through 52, 54, 64, 67, 75 through 77, and 81 of
21 this act are each added to chapter 82.38 RCW.

22 NEW SECTION. **Sec. 84.** This act takes effect January 1, 1999.

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