
HOUSE BILL 2565

State of Washington

55th Legislature

1998 Regular Session

By Representatives Fisher, K. Schmidt, Radcliff and Murray

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

1 AN ACT Relating to special fuel tax; amending RCW 35A.82.010,
2 82.04.4285, 82.38.020, 82.38.030, 82.38.070, 82.38.080, 82.38.090,
3 82.38.100, 82.38.110, 82.38.120, 82.38.130, 82.38.150, 82.38.160,
4 82.38.170, 82.38.180, 82.38.190, 82.38.210, 82.38.220, 82.38.230,
5 82.38.235, 82.38.240, 82.38.260, 43.05.110, and 82.47.010; reenacting
6 and amending RCW 82.08.0255, 82.12.0256, and 82.38.140; adding new
7 sections to chapter 82.38 RCW; creating new sections; repealing RCW
8 82.38.040, 82.38.082, and 82.38.086; prescribing penalties; and
9 providing an effective date.

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

11 NEW SECTION. **Sec. 1.** The legislature finds and declares that:
12 (1) The health, safety, and welfare of the people of the state of
13 Washington are dependent on the state's ability to properly collect the
14 taxes enacted by the legislature;
15 (2) The current system for collecting special fuel taxes has
16 allowed many parties to fraudulently evade paying the special fuel
17 taxes due the state; and
18 (3) By changing the point of collection of the special fuel taxes
19 from distributors to suppliers, the department of licensing will have

1 fewer parties to collect tax from and enforcement will be enhanced,
2 thus leading to greater revenues for the state.

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

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

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

13 In computing tax there may be deducted from the measure of tax so
14 much of the sale price of motor vehicle fuel as constitutes the amount
15 of tax imposed by the state under chapters 82.36 and 82.38 RCW or the
16 United States government, under 26 U.S.C., Subtitle D, chapters 31 and
17 32, upon the sale thereof.

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

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

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

23 (b) Motor vehicle and special fuel if:

24 (i) The fuel is purchased for the purpose of public transportation
25 and the purchaser is entitled to a refund or an exemption under RCW
26 82.36.275 or 82.38.080(~~(+9)~~) (3); or

27 (ii) The fuel is purchased by a private, nonprofit transportation
28 provider certified under chapter 81.66 RCW and the purchaser is
29 entitled to a refund or an exemption under RCW 82.36.285 or
30 82.38.080(~~(+8)~~) (1)(h); or

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

32 (2) Any person who has paid the tax imposed by RCW 82.08.020 on the
33 sale of special fuel delivered in this state shall be entitled to a
34 credit or refund of such tax with respect to fuel subsequently
35 established to have been actually transported and used outside this
36 state by persons engaged in interstate commerce. The tax shall be

1 claimed as a credit or refunded through the tax reports required under
2 RCW 82.38.150.

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

5 The provisions of this chapter shall not apply in respect to the
6 use of:

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

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

11 (3) Motor vehicle and special fuel if:

12 (a) The fuel is used for the purpose of public transportation and
13 the purchaser is entitled to a refund or an exemption under RCW
14 82.36.275 or 82.38.080(~~(+9)~~) (3); or

15 (b) The fuel is purchased by a private, nonprofit transportation
16 provider certified under chapter 81.66 RCW and the purchaser is
17 entitled to a refund or an exemption under RCW 82.36.285 or
18 82.38.080(~~(+8)~~) (1)(h); or

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

25 **Sec. 6.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read
26 as follows:

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

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

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

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

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

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

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

8 ~~(7) "Special fuel dealer" means any person engaged in the business~~
9 ~~of delivering special fuel into the fuel supply tank or tanks of a~~
10 ~~motor vehicle not then owned or controlled by him, or into bulk storage~~
11 ~~facilities for subsequent use in a motor vehicle. For this purpose the~~
12 ~~term "fuel supply tank or tanks" does not include cargo tanks even~~
13 ~~though fuel is withdrawn directly therefrom for propulsion of the~~
14 ~~vehicle.~~

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

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

22 ~~(10) "Unbonded service station" means any service station at which~~
23 ~~an unbonded special fuel dealer regularly makes sales of special fuel~~
24 ~~by means of delivery thereof into the fuel supply tanks of motor~~
25 ~~vehicles.~~

26 ~~(11) "Bond" means: (a) A bond duly executed by such special fuel~~
27 ~~dealer or special fuel user as principal with a corporate surety~~
28 ~~qualified under the provisions of chapter 48.28 RCW which bond shall be~~
29 ~~payable to the state of Washington conditioned upon faithful~~
30 ~~performance of all requirements of this chapter, including the payment~~
31 ~~of all taxes, penalties, and other obligations of such dealer, arising~~
32 ~~out of this chapter; or (b) a deposit with the state treasurer by the~~
33 ~~special fuel dealer or special fuel user, under such terms and~~
34 ~~conditions as the department may prescribe, a like amount of lawful~~
35 ~~money of the United States or bonds or other obligations of the United~~
36 ~~States, the state of Washington, or any county of said state, of an~~
37 ~~actual market value not less than the amount so fixed by the~~
38 ~~department; or (c) such other instruments as the department may~~

1 determine and prescribe by rule to protect the interests of the state
2 and to insure compliance of the requirements of this chapter.

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

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

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

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

17 (a) A knowing: False statement, misrepresentation of fact, or
18 other act of deception; or

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

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

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

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

32 (4) "Bulk transfer-terminal system" means the special fuel
33 distribution system consisting of refineries, pipelines, vessels, and
34 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
35 is in the bulk transfer-terminal system. Special fuel in the fuel tank
36 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
37 equipment suitable for ground transportation is not in the bulk
38 transfer-terminal system.

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

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

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

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

10 (9) "Evasion" or "evade" means to diminish or avoid the
11 computation, assessment, or payment of authorized taxes or fees
12 through:

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

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

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

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

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

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

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

31 (15) "Licensee" means a person holding a license issued under this
32 chapter.

33 (16) "Motor vehicle" means every self-propelled vehicle designed
34 for operation upon land utilizing special fuel as the means of
35 propulsion.

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

1 (18) "Person" means every natural person, fiduciary, association,
2 or corporation. The term "person" as applied to an association means
3 and includes the partners or members thereof, and as applied to
4 corporations, the officers thereof.

5 (19) "Position holder" means a person who holds the inventory
6 position in special fuel, as reflected by the records of the terminal
7 operator. A person holds the inventory position in special fuel if the
8 person has a contractual agreement with the terminal for the use of
9 storage facilities and terminal services at a terminal with respect to
10 special fuel. "Position holder" includes a terminal operator that owns
11 special fuel in their terminal.

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

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

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

19 (23) "Special fuel supplier" means a person who owns and stores
20 special fuel in a terminal facility or who refines and stores special
21 fuel at a refinery.

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

25 (25) "Special fuel importer" means a person who imports special
26 fuel into the state by a means other than the bulk transfer-terminal
27 system. If the importer of record is acting as an agent, the person
28 for whom the agent is acting is the importer. If there is no importer
29 of record, the owner of the special fuel at the time of importation is
30 the importer.

31 (26) "Special fuel user" means a person engaged in uses of special
32 fuel that are not specifically exempted from the special fuel tax
33 imposed under this chapter.

34 (27) "Special fuel" means and includes all combustible gases and
35 liquids suitable for the generation of power for propulsion of motor
36 vehicles, except that it does not include motor vehicle fuel as defined
37 in chapter 82.36 RCW.

1 (28) "Special fuel distributor" means a person who acquires special
2 fuel from a supplier or another distributor for subsequent sale and
3 distribution.

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

7 (30) "Terminal operator" means a person who owns, operates, or
8 otherwise controls a terminal.

9 (31) "Terminal" means a special fuel storage and distribution
10 facility that has been assigned a terminal control number by the
11 Internal Revenue Service, is supplied by pipeline or vessel, and from
12 which reportable special fuel is removed at a rack.

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

19 **Sec. 7.** RCW 82.38.030 and 1996 c 104 s 7 are each amended to read
20 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (e) Blended special fuel is removed or sold in this state by the
33 blender of the fuel. The number of gallons of blended special fuel
34 subject to tax is the difference between the total number of gallons of
35 blended special fuel removed or sold and the number of gallons of
36 previously taxed special fuel used to produced the blended special
37 fuel; and

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

4 (3) The tax (~~(required)~~) imposed by this chapter, if required to be
5 collected by the (~~(seller)~~) licensee, is held in trust by the
6 (~~(seller)~~) licensee until paid to the department, and a (~~(seller)~~)
7 licensee who appropriates or converts the tax collected to his or her
8 own use or to any use other than the payment of the tax to the extent
9 that the money required to be collected is not available for payment on
10 the due date as prescribed in this chapter is guilty of a felony, or
11 gross misdemeanor in accordance with the theft and anticipatory
12 provisions of Title 9A RCW. A person, partnership, corporation, or
13 corporate officer who fails to collect the tax imposed by this section,
14 or who has collected the tax and fails to pay it to the department in
15 the manner prescribed by this chapter, is personally liable to the
16 state for the amount of the tax.

17 NEW SECTION. **Sec. 8.** The tax under RCW 82.38.030, if not
18 previously imposed and paid, must be paid over to the department by
19 special fuel users and persons licensed under the International Fuel
20 Tax Agreement or other fuel tax reciprocity agreements entered into
21 with the state of Washington, on the use of special fuel to operate
22 motor vehicles on the highways of this state, unless the use is exempt
23 from the tax under this chapter.

24 NEW SECTION. **Sec. 9.** (1) A position holder shall remit tax to the
25 department on special fuel removed from a terminal as provided in RCW
26 82.38.030(2)(a). On a two-party exchange, the receiving exchange
27 partner becomes the position holder, who shall remit the tax.

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

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

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

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

1 NEW SECTION. **Sec. 10.** A terminal operator is jointly and
2 severally liable for remitting the tax imposed under RCW 82.38.030(1)
3 if, at the time of removal:

4 (1) The position holder with respect to the special fuel is a
5 person other than the terminal operator and is not a special fuel
6 licensee;

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

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

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

12 NEW SECTION. **Sec. 11.** A terminal operator is jointly and
13 severally liable for remitting the tax imposed under RCW 82.38.030(1)
14 if, in connection with the removal of special fuel that is not dyed or
15 marked in accordance with the United States environmental protection
16 agency or internal revenue service requirements, the terminal operator
17 provides a person with a bill of lading, shipping paper, or similar
18 document indicating that the special fuel is dyed or marked in
19 accordance with the United States Environmental Protection Agency or
20 Internal Revenue Service requirements.

21 NEW SECTION. **Sec. 12.** A person may not operate or maintain a
22 motor vehicle on a public highway of this state with dyed special fuel
23 in the fuel supply tank unless the use is authorized by the Internal
24 Revenue Code and the person is the holder of an uncanceled dyed special
25 fuel user license issued to him or her by the department. The special
26 fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special
27 fuel authorized by the Internal Revenue Code to operate on-highway
28 motor vehicles using dyed special fuel, unless the use is exempt from
29 the special fuel tax.

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

35 (2) Marking must meet the marking requirements of the Internal
36 Revenue Service.

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

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

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

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

12 **Sec. 14.** RCW 82.38.070 and 1990 c 250 s 83 are each amended to
13 read as follows:

14 A special fuel (~~((dealer shall be))~~) supplier is entitled(~~((, under~~
15 ~~rules and regulations prescribed by the department,))~~) to a credit of
16 the tax paid over to the department on those sales of special fuel for
17 which the (~~((dealer))~~) supplier has received no consideration from or on
18 behalf of the purchaser(~~((, which have been declared by the dealer to be~~
19 ~~worthless accounts receivable, and which have been claimed as bad debts~~
20 ~~for federal income tax purposes))~~). The amount of the tax (~~((refunded))~~)
21 credit shall not exceed the amount of tax imposed by this chapter on
22 such sales. If a (~~((refund))~~) credit has been granted under this
23 section, any amounts collected for application against the accounts on
24 which such a (~~((refund))~~) credit is based shall be reported (~~((with the~~
25 ~~first))~~) on a subsequent return filed after such collection, and the
26 amount of (~~((refund))~~) credit received by the (~~((dealer))~~) supplier based
27 upon the collected amount shall be returned to the department. In the
28 event the (~~((refund))~~) credit has not been paid, the amount of the
29 (~~((refund))~~) credit requested by the (~~((dealer))~~) supplier shall be
30 adjusted by the department to reflect the decrease in the amount on
31 which the claim is based. (~~((The department may require the dealer to~~
32 ~~submit periodical reports listing accounts which are delinquent for~~
33 ~~ninety days or more.))~~)

34 NEW SECTION. **Sec. 15.** A special fuel distributor, special fuel
35 importer, or special fuel blender, under rules adopted by the
36 department, is entitled to a refund of the tax paid on those sales of
37 special fuel for which no consideration has been received from or on

1 behalf of the purchaser and that have been declared to be worthless
2 accounts receivable. The amount of the tax refunded must not exceed
3 the amount of tax paid by the special fuel distributor, special fuel
4 importer, or special fuel blender. If the special fuel distributor,
5 special fuel importer, or special fuel blender subsequently collects
6 any amount of the special fuel tax on the sales, the collected amount
7 must be returned to the department.

8 **Sec. 16.** RCW 82.38.080 and 1996 c 244 s 6 are each amended to read
9 as follows:

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

12 ~~((1))~~ (a) Street and highway construction and maintenance
13 purposes in motor vehicles owned and operated by the state of
14 Washington, or any county or municipality;

15 ~~((2))~~ (b) Publicly owned fire fighting equipment;

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

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

21 ~~((a))~~ (i) Pumping propane, or fuel or heating oils or milk picked
22 up from a farm or dairy farm storage tank by a power take-off unit on
23 a delivery truck, at ~~((the))~~ a rate ~~((of three-fourths of one gallon
24 for each one thousand gallons of fuel delivered or milk picked up))~~
25 determined by the department: PROVIDED, That claimant when presenting
26 his or her claim to the department in accordance with ~~((the provisions
27 of))~~ this chapter, shall provide to ~~((said))~~ the claim, invoices of
28 propane, or fuel or heating oil delivered, or such other appropriate
29 information as may be required by the department to substantiate his or
30 her claim; ~~((or~~

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

34 ~~((c))~~ (iii) The department is authorized to establish by rule
35 additional formulae for determining fuel usage when operating other
36 types of equipment by means of power take-off units when direct
37 measurement of the fuel used is not feasible. The department is also

1 authorized to adopt rules regarding the usage of on board computers for
2 the production of records required by this chapter;

3 ~~((+5))~~ (e) Motor vehicles owned and operated by the United States
4 government;

5 ~~((+6))~~ (f) Heating purposes;

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

9 ~~((+8))~~ (h) Transportation services for persons with special
10 transportation needs by a private, nonprofit transportation provider
11 regulated under chapter 81.66 RCW; ~~((and~~

12 +9)) (i) Vehicle refrigeration units, mixing units, or other
13 equipment powered by separate motors from separate fuel tanks; and

14 (j) The operation of a motor vehicle as a part of or incidental to
15 logging operations upon a highway under federal jurisdiction within the
16 boundaries of a federal area if the federal government requires a fee
17 for the privilege of operating the motor vehicle upon the highway, the
18 proceeds of which are reserved for constructing or maintaining roads in
19 the federal area, or requires maintenance or construction work to be
20 performed on the highway for the privilege of operating the motor
21 vehicle on the highway.

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

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

27 (i) The person otherwise liable for the tax is a licensee other
28 than a dyed special fuel user or international fuel tax agreement
29 licensee;

30 (ii) For a removal from a terminal, the terminal is a licensed
31 terminal; and

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

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

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

1 (A) Facilities operated by the supplier;

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

5 (C) Delivery by the supplier to a vessel clearing from port of this
6 state for a port outside this state and actually exported from this
7 state in the vessel.

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

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

12 (B) "Forwarding agent" means a person or firm engaged in the
13 business of preparing property for shipment or arranging for its
14 shipment.

15 (3) Notwithstanding any provision of law to the contrary, every
16 urban passenger transportation system and carriers as defined by
17 chapters 81.68 and 81.70 RCW shall be exempt from the provisions of
18 this chapter requiring the payment of special fuel taxes. For the
19 purposes of this section "urban passenger transportation system" means
20 every transportation system, publicly or privately owned, having as its
21 principal source of revenue the income from transporting persons for
22 compensation by means of motor vehicles and/or trackless trolleys, each
23 having a seating capacity for over fifteen persons over prescribed
24 routes in such a manner that the routes of such motor vehicles and/or
25 trackless trolleys, either alone or in conjunction with routes of other
26 such motor vehicles and/or trackless trolleys subject to routing by the
27 same transportation system, shall not extend for a distance exceeding
28 twenty-five road miles beyond the corporate limits of the county in
29 which the original starting points of such motor vehicles are located:
30 PROVIDED, That no refunds or credits shall be granted on fuel used by
31 any urban transportation vehicle or vehicle operated pursuant to
32 chapters 81.68 and 81.70 RCW on any trip where any portion of said trip
33 is more than twenty-five road miles beyond the corporate limits of the
34 county in which said trip originated.

35 **Sec. 17.** RCW 82.38.090 and 1995 c 20 s 13 are each amended to read
36 as follows:

37 (1) It shall be unlawful for any person to ((act as a special fuel
38 dealer or a special fuel user)) engage in business in this state as any

1 of the following unless ((such)) the person is the holder of an
2 uncanceled ((special fuel dealer's or a special fuel user's)) license
3 issued to him or her by the department((-

4 ~~A special fuel dealer's license authorizes a person to deliver~~
5 ~~previously untaxed special fuel into the fuel supply tanks of motor~~
6 ~~vehicles, collect the special fuel tax on behalf of the state at the~~
7 ~~time of delivery, and remit the taxes collected to the state as~~
8 ~~provided herein. A licensed special fuel dealer may also deliver~~
9 ~~untaxed special fuel into bulk storage facilities of a licensed special~~
10 ~~fuel user or dealer without collecting the special fuel tax. Special~~
11 ~~fuel dealers, when making deliveries of special fuel into bulk storage~~
12 ~~to any person not holding a valid special fuel license, must collect~~
13 ~~the special fuel tax at time of delivery, unless the person to whom the~~
14 ~~delivery is made is specifically exempted from the tax as provided~~
15 ~~herein.~~

16 ~~A special fuel user's license authorizes a person to purchase~~
17 ~~special fuel into bulk storage for use in motor vehicles either on or~~
18 ~~off the public highways of this state without payment of the special~~
19 ~~fuel tax at time of purchase. Holders of special fuel licenses are all~~
20 ~~subject to the bonding, reporting, tax payment, and record keeping~~
21 ~~provisions of this chapter. All purchases of special fuel by a~~
22 ~~licensed special fuel user directly into the fuel supply tank of a~~
23 ~~motor vehicle are subject to the special fuel tax at time of purchase.~~
24 ~~Special authorization may be given to farmers, logging companies, and~~
25 ~~construction companies to purchase special fuel directly into the~~
26 ~~supply tanks of nonhighway equipment or into portable slip tanks for~~
27 ~~nonhighway use without payment of the special fuel tax.)) authorizing~~
28 the person to engage in that business:

29 (a) Special fuel supplier;

30 (b) Special fuel distributor;

31 (c) Special fuel exporter;

32 (d) Special fuel importer;

33 (e) Special fuel blender;

34 (f) Dyed special fuel user; or

35 (g) International Fuel Tax Agreement licensee.

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

1 (3) Special fuel users operating motor vehicles in interstate
2 commerce having two axles and a gross vehicle weight or registered
3 gross vehicle weight not exceeding twenty-six thousand pounds are not
4 required to be licensed. Special fuel users operating motor vehicles
5 in interstate commerce having two axles and a gross vehicle weight or
6 registered gross vehicle weight exceeding twenty-six thousand pounds,
7 or having three or more axles regardless of weight, or a combination of
8 vehicles, when the combination exceeds twenty-six thousand pounds gross
9 vehicle weight, must comply with the licensing and reporting
10 requirements of this chapter. A copy of the license must be carried in
11 each motor vehicle entering this state from another state or province.

12 **Sec. 18.** RCW 82.38.100 and 1983 c 78 s 1 are each amended to read
13 as follows:

14 (1) Any special fuel user operating a motor vehicle into this state
15 for commercial purposes may make application for a trip permit ((in
16 lieu of a special fuel user's license required in RCW 82.38.090 and
17 82.38.120 which)) that shall be good for a period of three consecutive
18 days beginning and ending on the dates specified on the face of the
19 permit issued, and only for the vehicle for which it is issued.

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

27 (3) For each permit issued, there shall be collected a filing fee
28 of one dollar, an administrative fee of ten dollars, and an excise tax
29 of nine dollars. Such fees and tax shall be in lieu of the special
30 fuel tax otherwise assessable against the permit holder for importing
31 and using special fuel in a motor vehicle on the public highways of
32 this state and no report of mileage shall be required with respect to
33 such vehicle. Trip permits will not be issued if the applicant has
34 outstanding fuel taxes, penalties or interest owing to the state or has
35 had a special fuel license revoked for cause and the cause has not been
36 removed.

37 (4) Blank permits may be obtained from field offices of the
38 department of transportation, Washington state patrol, department of

1 licensing, or other agents appointed by the department. The department
2 may appoint county auditors or businesses as agents for the purpose of
3 selling trip permits to the public. County auditors or businesses so
4 appointed may retain the filing fee collected for each trip permit to
5 defray expenses incurred in handling and selling the permits.

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

10 **Sec. 19.** RCW 82.38.110 and 1996 c 104 s 8 are each amended to read
11 as follows:

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

17 (2) Every application for a special fuel (~~dealer's~~) license,
18 other than an application for a dyed special fuel user or international
19 fuel tax agreement license, must contain the following information to
20 the extent it applies to the applicant:

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

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

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

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

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

1 the case of a corporation or partnership, all directors, officers, or
2 partners.

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

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

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

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

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

32 ((No)) (8) A special fuel ((dealer's)) license may not be issued to
33 any person or continued in force unless such person has furnished bond,
34 as defined in RCW 82.38.020, in such form as the department may
35 require, to secure his or her compliance with this chapter, and the
36 payment of any and all taxes, interest, and penalties due and to become
37 due hereunder. The requirement of furnishing a bond ((shall)) may be
38 waived for special fuel ((dealers)) distributors who only deliver
39 special fuel into the fuel tanks of marine vessels, for dyed special

1 fuel users and for persons issued licenses under the International Fuel
2 Tax Agreement.

3 (9) The department may require a (~~special fuel user~~) licensee to
4 post a bond if the (~~special fuel user~~) licensee, after having been
5 licensed, has failed to file timely reports or has failed to remit
6 taxes due, or when an investigation or audit indicates problems severe
7 enough that the department, in its discretion, determines that a bond
8 is required to protect the interests of the state. The department may
9 also adopt rules prescribing conditions that, in the department's
10 discretion, require a bond to protect the interests of the state.

11 (10) The total amount of the bond or bonds required of any special
12 fuel (~~dealer or special fuel user~~) licensee shall be equivalent to
13 three times the estimated monthly fuel tax, determined in such manner
14 as the department may deem proper: PROVIDED, That those special fuel
15 (~~dealers~~) licensees having held a special fuel license for five or
16 more years without having said license suspended or revoked by the
17 department shall be permitted to reduce the amount of their bond to
18 twice the estimated monthly tax liability: PROVIDED FURTHER, That the
19 total amount of the bond or bonds shall never be less than five hundred
20 dollars nor more than (~~fifty~~) one hundred thousand dollars.

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

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

29 **Sec. 20.** RCW 82.38.120 and 1996 c 104 s 9 are each amended to read
30 as follows:

31 Upon receipt and approval of an application and bond, if required,
32 the department shall issue (~~to the applicant~~) a license to (~~act as~~
33 ~~a special fuel dealer or a special fuel user~~) the applicant. However,
34 the department may refuse to issue a (~~special fuel dealer's~~) license
35 (~~or a special fuel user's license~~) to any person:

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

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

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

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

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

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

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

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

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

27 (a) Not furnishing papers or documents;

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

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

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

33 (11) Upon other sufficient cause being shown.

34 Before such refusal, the department shall grant the applicant a
35 hearing and shall grant the applicant at least twenty days written
36 notice of the time and place thereof.

37 The department shall determine from the information shown in the
38 application or other investigation the kind and class of license to be
39 issued. For the purpose of considering any application for a special

1 fuel ((dealer's)) license, the department may inspect, cause an
2 inspection, investigate, or cause an investigation of the records of
3 this or any other state or of the federal government to ascertain the
4 veracity of the information on the application form and the applicant's
5 criminal and licensing history.

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

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

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

25 No special fuel ((dealer's license or special fuel user's)) license
26 shall be transferable.

27 **Sec. 21.** RCW 82.38.130 and 1994 c 262 s 24 are each amended to
28 read as follows:

29 The department may revoke the license of any special fuel ((dealer,
30 or special fuel user)) licensee for any of the grounds constituting
31 cause for denial of a license set forth in RCW 82.38.120 or for other
32 reasonable cause. Before revoking such license the department shall
33 notify the licensee to show cause within twenty days of the date of the
34 notice why the license should not be revoked: PROVIDED, That at any
35 time prior to and pending such hearing the department may, in the
36 exercise of reasonable discretion, suspend such license.

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

4 Any surety on a bond furnished by a special fuel (~~dealer or~~
5 ~~special fuel user~~) licensee as provided (~~herein~~) in this chapter
6 shall be released and discharged from any and all liability to the
7 state accruing on such bond after the expiration of forty-five days
8 from the date which such surety shall have lodged with the department
9 a written request to be released and discharged, but this provision
10 shall not operate to relieve, release, or discharge the surety from any
11 liability already accrued or which shall accrue before the expiration
12 of the forty-five day period. The department shall promptly, upon
13 receiving any such request, notify the special fuel (~~dealer or special~~
14 ~~fuel user~~) licensee who furnished the bond, and unless the special
15 fuel (~~dealer or special fuel user shall~~) licensee, on or before the
16 expiration of the forty-five day period, files a new bond, in
17 accordance with (~~the requirements of~~) this section, (~~or make a~~
18 ~~deposit in lieu thereof as provided in RCW 82.38.020(11),~~) the
19 department forthwith shall cancel the special fuel (~~dealer's or~~
20 ~~special fuel user's~~) license.

21 The department may require a (~~special fuel dealer or special fuel~~
22 ~~user to give a~~) new or additional surety bond (~~or to deposit~~
23 ~~additional securities~~) of the character specified in RCW
24 82.38.020(~~(11)~~) (3) if, in its opinion, the security of the surety
25 bond therefor filed by such special fuel (~~dealer or special fuel user,~~
26 ~~or the market value of the properties deposited as security by such~~
27 ~~special fuel dealer or special fuel user~~) licensee, shall become
28 impaired or inadequate. Upon failure of the special fuel (~~dealer or~~
29 ~~special fuel user~~) licensee to give such new or additional surety bond
30 (~~or to deposit additional securities~~) within forty-five days after
31 being requested to do so by the department, or after he or she shall
32 fail or refuse to file reports and remit or pay taxes at the intervals
33 fixed by the department, the department forthwith shall cancel his or
34 her license.

35 **Sec. 22.** RCW 82.38.140 and 1996 c 104 s 10 and 1996 c 90 s 2 are
36 each reenacted and amended to read as follows:

37 (1) Every (~~special fuel dealer, special fuel user,~~) licensee and
38 every person importing, manufacturing, refining, dealing in,

1 transporting, blending, or storing special fuel in this state shall
2 keep for a period of not less than five years open to inspection at all
3 times during the business hours of the day to the department or its
4 authorized representatives, a complete record of all special fuel
5 purchased or received and all of such products sold, delivered, or used
6 by them. Such records shall show:

7 (a) The date of each receipt;

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

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

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

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

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

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

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

22 (2)(a) All (~~special fuel users using special fuel~~) International
23 Fuel Tax Agreement licensees and dyed special fuel users authorized to
24 use dyed special fuel on highway in vehicles licensed for highway
25 operation shall maintain detailed mileage records on an individual
26 vehicle basis.

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

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

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

34 (~~Invoices shall be prepared for sales and deliveries of special~~
35 ~~fuel in the manner and containing such information as may be prescribed~~
36 ~~by the department.~~

37 ~~Every special fuel dealer or special fuel user making such sales or~~
38 ~~deliveries of special fuel and every person so receiving and purchasing~~
39 ~~special fuel must each retain one copy of each such invoice as part of~~

1 the dealer's permanent records for the time and purposes above
2 provided.

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

8 (6) Subsections (1)(f), (2)(b), and (5) of this section do not
9 apply to special fuel users when the special fuel is used off highway
10 in farming, construction, or logging operations. Upon filing a special
11 fuel user tax report, every such special fuel user shall certify and
12 bear the burden of proof as to the number of gallons of special fuel
13 used off highway.) The department may require a licensee or a person
14 engaged in the business of selling, purchasing, distributing, storing,
15 transporting, or delivering special fuel to submit periodic reports to
16 the department regarding the disposition of the fuel. The reports must
17 be on forms prescribed by the department and must contain such
18 information as the department may require.

19 **Sec. 23.** RCW 82.38.150 and 1996 c 104 s 11 are each amended to
20 read as follows:

21 For the purpose of determining the amount of liability for the tax
22 herein imposed, and to periodically update license information, each
23 special fuel ((dealer and each)) licensee, other than a special fuel
24 distributor, an International Fuel Tax Agreement licensee, or a dyed
25 special fuel user, shall file monthly tax reports with the department,
26 on forms prescribed by the department. ((Special fuel dealers shall
27 file the reports at the intervals as shown in the following schedule:

28 Estimated Yearly	
29 Tax Liability	Reporting Frequency
30 \$ 0 - \$100	Yearly
31 \$101 - 250	Semi-yearly
32 \$251 - 499	Quarterly
33 \$500 and over	Monthly))

34 Dyed special fuel users whose estimated yearly tax liability is two
35 hundred fifty dollars or less, shall file a report yearly, and dyed
36 special fuel users whose estimated yearly tax liability is more than
37 two hundred fifty dollars, shall file reports quarterly. Special fuel

1 users licensed under the International Fuel Tax Agreement may file
2 reports monthly or quarterly.

3 The department shall establish the reporting frequency for each
4 applicant at the time the special fuel license is issued. If it
5 becomes apparent that any special fuel licensee is not reporting in
6 accordance with the above schedule, the department shall change the
7 licensee's reporting frequency by giving thirty days' notice to the
8 licensee by mail to the licensee's address of record. A report shall
9 be filed with the department even though no special fuel was used, or
10 tax is due, for the reporting period. Each tax report shall contain a
11 declaration by the person making the same, to the effect that the
12 statements contained therein are true and are made under penalties of
13 perjury, which declaration shall have the same force and effect as a
14 verification of the report and is in lieu of such verification. The
15 report shall show such information as the department may reasonably
16 require for the proper administration and enforcement of this chapter.
17 For counties within which an additional excise tax on special fuel has
18 been levied by that jurisdiction under RCW 82.80.010, the report must
19 show the quantities of special fuel sold, distributed, or withdrawn
20 from bulk storage by the reporting dealer or user within the county's
21 boundaries and the tax liability from its levy. (~~The special fuel~~
22 ~~dealer or special fuel user~~) A licensee shall file ~~((the))~~ a tax
23 report on or before the twenty-fifth day of the next succeeding
24 calendar month following the period to which it relates.

25 Subject to the written approval of the department, tax reports may
26 cover a period ending on a day other than the last day of the calendar
27 month. Taxpayers granted approval to file reports in this manner will
28 file such reports on or before the twenty-fifth day following the end
29 of the reporting period. No change to this reporting period will be
30 made without the written authorization of the department.

31 If the final filing date falls on a Saturday, Sunday, or legal
32 holiday the next secular or business day shall be the final filing
33 date. Such reports shall be considered filed or received on the date
34 shown by the post office cancellation mark stamped upon an envelope
35 containing such report properly addressed to the department, or on the
36 date it was mailed if proof satisfactory to the department is available
37 to establish the date it was mailed.

38 The department, if it deems it necessary in order to insure payment
39 of the tax imposed by this chapter, or to facilitate the administration

1 of this chapter, has the authority to require the filing of reports and
2 tax remittances at shorter intervals than one month if, in its opinion,
3 an existing bond has become insufficient.

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

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

14 **Sec. 24.** RCW 82.38.160 and 1987 c 174 s 5 are each amended to read
15 as follows:

16 (1) The tax imposed by this chapter shall be computed ~~((as follows:
17 (a) With respect to special fuel upon which the tax has been collected
18 by the seller thereof as a special fuel dealer,))~~ by multiplying the
19 tax rate per gallon provided in this chapter by the number of gallons
20 of special fuel ~~((delivered))~~ subject to the special fuel tax ~~((; (b)
21 with respect to special fuel on which the tax has not been paid to a
22 special fuel dealer in this state and which has been consumed by the
23 purchaser thereof as a special fuel user, by multiplying the tax rate
24 per gallon provided in this chapter by the number of gallons of special
25 fuel consumed by him in the propulsion of a motor vehicle on the
26 highways of this state)).~~

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

30 (3) At the election of the distributor, the payment of the special
31 fuel tax owed on special fuel purchased from a supplier shall be
32 remitted to the supplier on terms agreed upon between the distributor
33 and the supplier or no later than two business days before the last
34 business day of the following month. This election shall be subject to
35 a condition that the distributor's remittances of all amounts of
36 special fuel tax due to the supplier shall be paid by electronic funds
37 transfer. The distributor's election may be terminated by the supplier
38 if the distributor does not make timely payments to the supplier as

1 required by this section. This section shall not apply if the
2 distributor is required by the supplier to pay cash or cash equivalent
3 for special fuel purchases.

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

9 ~~((+3))~~ (5) If the tax is paid by electronic funds transfer ~~((and~~
10 ~~the reporting period ends on the last day of a calendar month))~~, the
11 tax shall be paid on or before the ~~((state business day immediately~~
12 ~~preceding the last state business day of the month following the end of~~
13 ~~the reporting period))~~ expiration of five state business days
14 immediately following the day that is two business days before the last
15 business day of the month immediately following the end of the
16 reporting period. When the reporting period is May, the tax shall be
17 paid on the last state business day of June. If the tax is paid by
18 electronic funds transfer and the reporting period ends on a day other
19 than the last day of a calendar month as provided in RCW 82.38.150, the
20 tax shall be paid on or before ((the state business day immediately
21 preceding)) the last state business day of the thirty-day period
22 following the end of the reporting period.

23 ~~((+4))~~ (6) The tax shall be paid by electronic funds transfer
24 whenever the amount due is fifty thousand dollars or more.

25 (7) A special fuel supplier that receives a payment of the special
26 fuel tax may not apply the payment towards debts for special fuel
27 purchased from the supplier or for any other services provided to the
28 debtor by the special fuel supplier.

29 NEW SECTION. Sec. 25. A special fuel supplier shall, no later
30 than the twentieth day or next business day after the special fuel tax
31 is due from the special fuel distributor under this chapter, notify the
32 department of the failure of a special fuel distributor to pay the full
33 amount of the tax owed.

34 Upon notification and submission of satisfactory evidence by a
35 special fuel supplier that a special fuel distributor has failed to
36 comply with this chapter, the department may summarily suspend the
37 license of the special fuel distributor.

1 Upon the suspension, the department shall immediately notify all
2 special fuel suppliers that the authority of the special fuel
3 distributor to purchase tax-deferred special fuel has been suspended
4 and all subsequent purchases of special fuel by the special fuel
5 distributor must be tax-paid at the time of removal.

6 If, after notification by the department, a special fuel supplier
7 continues to sell tax-deferred special fuel to a special fuel
8 distributor whose license is suspended, the special fuel supplier's
9 license is subject to revocation or suspension under RCW 82.38.130.
10 Furthermore, if notified of a license suspension, a special fuel
11 supplier is liable for any unpaid special fuel tax owed on special fuel
12 sold to a suspended special fuel distributor.

13 **Sec. 26.** RCW 82.38.170 and 1996 c 104 s 12 are each amended to
14 read as follows:

15 (1) If any special fuel (~~dealer or special fuel user~~) licensee
16 fails to pay any taxes collected or due the state of Washington (~~by~~
17 ~~said dealer or user~~) within the time prescribed by RCW 82.38.150 and
18 82.38.160, (~~said dealer or user~~) the licensee shall pay in addition
19 to such tax a penalty of ten percent of the amount thereof.

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

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

1 (4) If any special fuel (~~dealer or special fuel user shall~~)
2 licensee establishes by a fair preponderance of evidence that his or
3 her failure to file a report or pay the proper amount of tax within the
4 time prescribed was due to reasonable cause and was not intentional or
5 willful, the department may waive the penalty prescribed in subsections
6 (1), (2), and (3) of this section.

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

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

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

29 (8) Except in the case of a fraudulent report or of neglect or
30 refusal to make a report, every deficiency shall be assessed under
31 subsection (2) of this section within five years from the twenty-fifth
32 day of the next succeeding calendar month following the reporting
33 period for which the amount is proposed to be determined or within five
34 years after the return is filed, whichever period expires the later.

35 (9) Any special fuel (~~dealer or special fuel user~~) licensee
36 against whom an assessment is made under the provisions of subsections
37 (2) or (3) of this section may petition for a reassessment thereof
38 within thirty days after service upon the special fuel (~~dealer or~~
39 ~~special fuel user~~) licensee of notice thereof. If such petition is

1 not filed within such thirty day period, the amount of the assessment
2 becomes final at the expiration thereof.

3 If a petition for reassessment is filed within the thirty day
4 period, the department shall reconsider the assessment and, if the
5 special fuel (~~((dealer or special fuel user))~~) licensee has so requested
6 in his or her petition, shall grant such special fuel (~~((dealer or~~
7 ~~special fuel user))~~) licensee an oral hearing and give the special fuel
8 (~~((dealer or special fuel user))~~) licensee ten days' notice of the time
9 and place thereof. The department may continue the hearing from time
10 to time. The decision of the department upon a petition for
11 reassessment shall become final thirty days after service upon the
12 special fuel (~~((dealer or special fuel user))~~) licensee of notice
13 thereof.

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

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

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

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

36 (13) Unless expressly authorized by the Internal Revenue Code and
37 this chapter, a person using dyed special fuel in the propulsion of a
38 motor vehicle upon the highways of this state is subject to a civil
39 penalty of ten dollars for each gallon of dyed special fuel placed into

1 the supply tank of the motor vehicle, or one thousand dollars,
2 whichever is greater. The civil penalty collected as a result of this
3 subsection must be deposited in the motor vehicle fund. The penalties
4 must be collected and administered under this chapter.

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

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

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

15 **Sec. 27.** RCW 82.38.180 and 1972 ex.s. c 138 s 4 are each amended
16 to read as follows:

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

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

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

27 (3) Any tax, penalty, or interest erroneously or illegally
28 collected or paid.

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

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

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

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

11 NEW SECTION. **Sec. 28.** (1) Upon application, the department may
12 give special authorization to farmers, logging companies, and
13 construction companies to purchase special fuel directly into the
14 supply tanks of nonhighway equipment or into portable slip tanks for
15 nonhighway use without payment of the special fuel tax. Purchases of
16 this special fuel must be made at a card lock facility owned and
17 operated by a special fuel distributor who has elected to pay the
18 special fuel tax on special fuel delivered to the card lock facility
19 and to sell the special fuel in this manner. The election is solely at
20 the discretion of the special fuel distributor and must be approved by
21 the department.

22 (2) A special fuel distributor who has paid the special fuel tax on
23 special fuel purchased by a holder of a special authorization may file
24 a claim for refund of the special fuel tax paid. A claim for refund of
25 the special fuel tax paid under this section is allowed only if all the
26 following apply:

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

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

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

34 (d) The claim contains a statement that the special fuel
35 distributor has not included the amount of the tax in the sale price of
36 the special fuel and has not collected the special fuel tax from the
37 purchaser; and

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

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

6 (4) The department may terminate the election of a special fuel
7 distributor if the special fuel distributor fails to comply with this
8 section.

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

11 (1) Claims under RCW 82.38.180 shall be filed with the department
12 on forms prescribed by the department and shall show the date of filing
13 and the period covered in the claim, the number of gallons of special
14 fuel used for purposes subject to tax refund, and such other facts and
15 information as may be required. Every such claim shall be supported by
16 an invoice or invoices issued to or by the claimant, as may be
17 prescribed by the department, and such other information as the
18 department may require.

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

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

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

35 (b) Within ~~((three))~~ five years from the last day of the month
36 following the close of the reporting period for which the overpayment
37 is due with respect to the refunds or credits allowable under RCW
38 82.38.180(3). The department shall refund any amount paid that has

1 been verified by the department to be more than ten dollars over the
2 amount actually due for the reporting period. Payment credits shall
3 not be carried forward and applied to subsequent tax returns for a
4 person licensed under this chapter.

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

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

12 The interest shall be paid:

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

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

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

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

28 (7) No injunction or writ of mandate or other legal or equitable
29 process shall issue in any suit, action or proceeding in any court
30 against this state or against any officer of the state to prevent or
31 enjoin the collection under this chapter of any tax or any amount of
32 tax required to be collected.

33 **Sec. 30.** RCW 82.38.210 and 1979 c 40 s 15 are each amended to read
34 as follows:

35 If any special fuel (~~dealer, supplier, or user~~) licensee liable
36 for the remittance of tax imposed by this chapter fails to pay the
37 same, the amount thereof, including any interest, penalty, or addition
38 to such tax, together with any costs that may accrue in addition

1 thereto, shall be a lien in favor of the state upon all franchises,
2 property, and rights to property, whether real or personal, then
3 belonging to or thereafter acquired by such person, whether such
4 property is employed by such person for personal or business use or is
5 in the hands of a trustee, or receiver, or assignee for the benefit of
6 creditors, from the date the taxes were due and payable, until the
7 amount of the lien is paid or the property sold in payment thereof.
8 The lien shall have priority over any lien or encumbrance whatsoever,
9 except the lien of other state taxes having priority by law, and except
10 that such lien shall not be valid as against any bona fide mortgagee,
11 pledgee, judgment creditor, or purchaser whose rights have attached
12 prior to the time the department has filed and recorded notice of such
13 lien as hereinafter provided.

14 In order to avail itself of the lien hereby created, the department
15 shall file with any county auditor a statement of claim and lien
16 specifying the amount of delinquent taxes, penalties and interest
17 claimed by the department. From the time of filing for record, the
18 amount required to be paid shall constitute a lien upon all franchises,
19 property and rights to property, whether real or personal, then
20 belonging to or thereafter acquired by such person in the county. Any
21 lien as provided in this section may also be filed in the office of the
22 secretary of state. Filing in the office of the secretary of state
23 shall be of no effect, however, until the lien or copy thereof shall
24 have been filed with the county auditor in the county where the
25 property is located. When a lien is filed in compliance herewith and
26 with the secretary of state, such filing shall have the same effect as
27 if the lien had been duly filed for record in the office of the auditor
28 in each county of this state.

29 **Sec. 31.** RCW 82.38.220 and 1994 c 262 s 26 are each amended to
30 read as follows:

31 In the event any special fuel (~~(user or special fuel dealer)~~)
32 licensee is delinquent in the payment of any obligation imposed under
33 this chapter, the department may give notice of the amount of such
34 delinquency by registered or certified mail to all persons having in
35 their possession or under their control any credits or other personal
36 property belonging to (~~(such user or dealer)~~) the special fuel licensee
37 or owing any debts to (~~(such user or dealer)~~) the special fuel
38 licensee, at the time of the receipt by them of such notice. Any

1 person so notified shall neither transfer nor make other disposition of
2 such credits, personal property, or debts until the department consents
3 to a transfer or other disposition. All persons so notified must,
4 within twenty days after receipt of the notice, advise the department
5 of any and all such credits, personal property, or debts in their
6 possession, under their control or owing by them, as the case may be,
7 and shall immediately deliver such credits, personal property, or debts
8 to the department or its duly authorized representative to be applied
9 to the indebtedness involved.

10 Upon service, the notice and order to withhold and deliver
11 constitutes a continuing lien on property of the taxpayer. The
12 department shall include in the caption of the notice to withhold and
13 deliver "continuing lien." The effective date of a notice to withhold
14 and deliver served under this section is the date of service of the
15 notice.

16 If a person fails to answer the notice within the time prescribed
17 by this section, it is lawful for the court, upon application of the
18 department and after the time to answer the notice has expired, to
19 render judgment by default against the party named in the notice to
20 withhold and deliver for the full amount claimed by the department in
21 the notice to withhold and deliver, together with costs.

22 **Sec. 32.** RCW 82.38.230 and 1979 c 40 s 17 are each amended to read
23 as follows:

24 Whenever any special fuel (~~((user, supplier or dealer))~~) licensee is
25 delinquent in the payment of any obligation imposed hereunder, and such
26 delinquency continues after notice and demand for payment by the
27 department, the department shall proceed to collect the amount due from
28 the (~~((user, supplier or dealer))~~) special fuel licensee in the following
29 manner: The department shall seize any property subject to the lien of
30 said excise tax, penalty, and interest and thereafter sell it at public
31 auction to pay said obligation and any and all costs that may have been
32 incurred on account of the seizure and sale. Notice of such intended
33 sale and the time and place thereof shall be given to such delinquent
34 (~~((user, supplier or dealer))~~) special fuel licensee and to all persons
35 appearing of record to have an interest in such property. The notice
36 shall be given in writing at least ten days before the date set for the
37 sale by enclosing it in an envelope addressed to (~~((such user, supplier
38 or dealer))~~) the special fuel licensee at (~~((his))~~) the licensee's address

1 as the same appears in the records of the department and, in the case
2 of any person appearing of record to have an interest in such property,
3 addressed to such person at his or her last known residence or place of
4 business, and depositing such envelope in the United States mail,
5 postage prepaid. In addition, the notice shall be published for at
6 least ten days before the date set for the sale in a newspaper of
7 general circulation published in the county in which the property
8 seized is to be sold. If there is no newspaper of general circulation
9 in such county, the notice shall be posted in three public places in
10 the county for a period of ten days. The notice shall contain a
11 description of the property to be sold, together with a statement of
12 the amount due (~~((hereunder))~~) under this chapter, the name of the
13 (~~((user, supplier or dealer))~~) special fuel licensee and the further
14 statement that unless such amount is paid on or before the time fixed
15 in the notice the property will be sold in accordance with law.

16 The department shall then proceed to sell the property in
17 accordance with the law and the notice, and shall deliver to the
18 purchaser a bill of sale or deed which shall vest title in the
19 purchaser. If upon any such sale the moneys received exceed the amount
20 due to the state (~~((hereunder))~~) under this chapter from the delinquent
21 (~~((user, supplier or dealer))~~) special fuel licensee, the excess shall be
22 returned to (~~((such user, supplier or dealer))~~) the licensee and (~~((his))~~)
23 the licensee's receipt obtained (~~((therefor))~~) for the excess. If any
24 person having an interest in or lien upon the property has filed with
25 the department prior to such sale, notice of such interest or lien, the
26 department shall withhold payment of any such excess to (~~((such user,~~
27 ~~supplier or dealer))~~) the special fuel licensee pending a determination
28 of the rights of the respective parties thereto by a court of competent
29 jurisdiction. If for any reason the receipt of (~~((such user, supplier~~
30 ~~or dealer shall not be))~~) the special fuel licensee is not available,
31 the department shall deposit such excess with the state treasurer as
32 trustee for (~~((such user, supplier or dealer, his))~~) the special fuel
33 licensee or the licensee's heirs, successors, or assigns: PROVIDED,
34 That prior to making any seizure of property as (~~((herein))~~) provided for
35 in this section, the department may first serve upon the (~~((user's,~~
36 ~~supplier's, or dealer's))~~) special fuel licensee's bondsman a notice of
37 the delinquency, with a demand for the payment of the amount due.

1 **Sec. 33.** RCW 82.38.235 and 1979 c 40 s 22 are each amended to read
2 as follows:

3 Whenever any assessment shall have become final in accordance with
4 the provisions of this chapter, the department may file with the clerk
5 of any county within the state a warrant in the amount of the
6 assessment of taxes, penalties plus interest and a filing fee of five
7 dollars. The clerk of the county wherein the warrant is filed shall
8 immediately designate a superior court cause number for such warrant,
9 and the clerk shall cause to be entered in the judgment docket under
10 the superior court cause number assigned to the warrant, the name of
11 the special fuel (~~(user, supplier or dealer)~~) licensee mentioned in the
12 warrant, the amount of the tax, penalties, interest and filing fee and
13 the date when such warrant was filed. The aggregate amount of such
14 warrant as docketed shall become a lien upon the title to, and interest
15 in all real and personal property of named person against whom the
16 warrant is issued, the same as a judgment in a civil case duly docketed
17 in the office of such clerk. Such warrant so docketed shall be
18 sufficient to support the issuance of writs of execution and writs of
19 garnishment in favor of the state in the manner provided by law in the
20 case of civil judgment, wholly or partially unsatisfied. The clerk of
21 the court shall be entitled to a filing fee of five dollars, which
22 shall be added to the amount of the warrant.

23 **Sec. 34.** RCW 82.38.240 and 1971 ex.s. c 175 s 25 are each amended
24 to read as follows:

25 Whenever any special fuel (~~(user or special fuel dealer)~~) licensee
26 is delinquent in the payment of any obligation hereunder the department
27 may transmit notice of such delinquency to the attorney general who
28 shall at once proceed to collect by appropriate legal action the amount
29 due the state from (~~(such user or dealer)~~) the special fuel licensee.
30 In any suit brought to enforce the rights of the state hereunder, a
31 certificate by the department showing the delinquency shall be prima
32 facie evidence of the amount of the obligation, of the delinquency
33 thereof and of compliance by the department with all provisions of this
34 chapter relating to such obligation.

35 **Sec. 35.** RCW 82.38.260 and 1995 c 274 s 25 are each amended to
36 read as follows:

1 The department shall enforce the provisions of this chapter, and
2 may prescribe, adopt, and enforce reasonable rules and regulations
3 relating to the administration and enforcement thereof. The Washington
4 state patrol and its officers shall aid the department in the
5 enforcement of this chapter, and, for this purpose, are declared to be
6 peace officers, and given police power and authority throughout the
7 state to arrest on sight any person known to have committed a violation
8 of the provisions of this chapter.

9 The department or its authorized representative is hereby empowered
10 to examine the books, papers, records and equipment of any special fuel
11 (~~dealer, special fuel user,~~) licensee or any person dealing in,
12 transporting, or storing special fuel as defined in this chapter and to
13 investigate the character of the disposition which any person makes of
14 such special fuel in order to ascertain and determine whether all taxes
15 due hereunder are being properly reported and paid. The fact that such
16 books, papers, records and equipment are not maintained in this state
17 at the time of demand shall not cause the department to lose any right
18 of such examination under this chapter when and where such records
19 become available.

20 The department or its authorized representative is further
21 empowered to investigate the disposition of special fuel by any person
22 where the department has reason to believe that untaxed special fuel
23 has been diverted to a use subject to the taxes imposed by this chapter
24 without said taxes being paid in accordance with the requirements of
25 this chapter.

26 For the purpose of enforcing the provisions of this chapter it
27 shall be presumed that all special fuel delivered to service stations
28 as well as all special fuel otherwise received (~~by a special fuel
29 dealer or a special fuel user~~) into storage and dispensing equipment
30 designed to fuel motor vehicles is delivered (~~by the special fuel
31 dealer or special fuel user~~) into the fuel supply tanks of motor
32 vehicles and consumed in the propulsion of motor vehicles on the
33 highways of this state, unless the contrary is established by
34 satisfactory evidence.

35 The department shall, upon request from the officials to whom are
36 entrusted the enforcement of the special fuel tax law of any other
37 state, the District of Columbia, the United States, its territories and
38 possessions, the provinces or the Dominion of Canada, forward to such
39 officials any information which he or she may have relative to the

1 receipt, storage, delivery, sale, use, or other disposition of special
2 fuel by any special fuel (~~dealer or special fuel user, provided such~~)
3 licensee if the other state or states furnish like information to this
4 state.

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

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

17 NEW SECTION. Sec. 37. A special fuel distributor who incurs
18 liability in December 1998 for the special fuel tax imposed under this
19 chapter shall report the liability and pay the tax in January 1999 in
20 the manner required by this chapter as it existed before January 1,
21 1999.

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

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

36 A special fuel user shall pay the tax due on fuel in inventory in
37 accordance with the filing frequency assigned to the user before the

1 effective date of this act. Payments not received in accordance with
2 the filing frequency are late and are subject to the interest and
3 penalty provisions of this chapter.

4 NEW SECTION. **Sec. 38.** A licensee holding both a special fuel user
5 and International Fuel Tax Agreement license issued under this chapter
6 as of December 31, 1998, is entitled to a credit of five percent of the
7 licensee's special fuel tax liability on net taxable gallons reported
8 on the licensee's fourth quarter 1998 International Fuel Tax Agreement
9 tax return. In addition to accepting the credit, the licensee may
10 elect to enter into a deferred payment contract with the department.
11 The contract shall allow the licensee to defer payment of the
12 licensee's fourth quarter 1998 Washington special fuel tax liability
13 reported on their International Fuel Tax Agreement tax return.
14 Penalties and interest, less credits due, must be paid by the last day
15 of January 1999. The licensee may pay the remaining amount due any
16 time before December 31, 1999, but at least one-twelfth of the amount
17 due must be paid by the last day of each month starting with January
18 1999. Payments not received in accordance with this section are late
19 and are subject to the interest and penalty provisions of this chapter.
20 Payments made after December 31, 1999, are late and are subject to the
21 interest and penalty provisions of this chapter.

22 **Sec. 39.** RCW 43.05.110 and 1995 c 403 s 612 are each amended to
23 read as follows:

24 The department of agriculture, fish and wildlife, health,
25 licensing, or natural resources may issue a civil penalty provided for
26 by law without first issuing a notice of correction if: (1) The person
27 has previously been subject to an enforcement action for the same or
28 similar type of violation of the same statute or rule or has been given
29 previous notice of the same or similar type of violation of the same
30 statute or rule; or (2) compliance is not achieved by the date
31 established by the department in a previously issued notice of
32 correction, if the department has responded to any request for review
33 of such date by reaffirming the original date or establishing a new
34 date; (3) the violation has a probability of placing a person in danger
35 of death or bodily harm, has a probability of causing more than minor
36 environmental harm, or has a probability of causing physical damage to
37 the property of another in an amount exceeding one thousand dollars; or

1 (4) the violation was committed by a business that employed fifty or
2 more employees on at least one day in each of the preceding twelve
3 months. In addition, the department of fish and wildlife may issue a
4 civil penalty provided for by law without first issuing a notice of
5 correction for a violation of any rule dealing with seasons, catch or
6 bag limits, gear types, or geographical areas for fish or wildlife
7 removal, reporting, or disposal.

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

10 **Sec. 40.** RCW 82.47.010 and 1991 c 173 s 2 are each amended to read
11 as follows:

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

14 (1) "Motor vehicle fuel" has the meaning given in RCW
15 82.36.010(~~(+2)~~)).

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

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

18 NEW SECTION. **Sec. 41.** The department of licensing, in cooperation
19 with the fuel tax advisory committee, shall present draft legislation
20 to shift the point of taxation for motor vehicle fuel to the terminal
21 rack to the legislative transportation committee by December 31, 1998.

22 NEW SECTION. **Sec. 42.** The department of licensing may enter into
23 a fuel tax cooperative agreement with another state or Canadian
24 province for the administration, collection, and enforcement of each
25 state's or Canadian province's fuel taxes.

26 NEW SECTION. **Sec. 43.** The following acts or parts of acts are
27 each repealed:

28 (1) RCW 82.38.040 and 1990 c 250 s 81, 1973 1st ex.s. c 156 s 2, &
29 1971 ex.s. c 175 s 5;

30 (2) RCW 82.38.082 and 1987 c 294 s 1; and

31 (3) RCW 82.38.086 and 1981 c 342 s 6.

32 NEW SECTION. **Sec. 44.** Sections 8 through 13, 15, 25, 28, 36
33 through 38, and 42 of this act are each added to chapter 82.38 RCW.

1 NEW SECTION. **Sec. 45.** This act takes effect January 1, 1999.

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