
SUBSTITUTE HOUSE BILL 2659

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Transportation Policy & Budget (originally sponsored by Representatives Fisher, K. Schmidt, Radcliff, O'Brien and Murray; by request of Governor Locke)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to special fuel and motor vehicle fuel taxes;
2 amending RCW 35A.82.010, 82.04.4285, 82.36.020, 82.36.032, 82.36.045,
3 82.36.047, 82.36.060, 82.36.070, 82.36.080, 82.36.090, 82.36.100,
4 82.36.120, 82.36.130, 82.36.140, 82.36.150, 82.36.160, 82.36.170,
5 82.36.180, 82.36.190, 82.36.200, 82.36.210, 82.36.230, 82.36.280,
6 82.36.300, 82.36.310, 82.36.330, 82.36.335, 82.36.350, 82.36.370,
7 82.36.375, 82.36.390, 82.36.400, 82.38.020, 82.38.030, 82.38.070,
8 82.38.080, 82.38.090, 82.38.100, 82.38.110, 82.38.120, 82.38.130,
9 82.38.150, 82.38.160, 82.38.170, 82.38.180, 82.38.190, 82.38.210,
10 82.38.220, 82.38.230, 82.38.235, 82.38.240, 82.38.260, 43.05.110,
11 82.47.010, and 82.80.010; reenacting and amending RCW 82.08.0255,
12 82.12.0256, 82.36.010, and 82.38.140; adding new sections to chapter
13 82.36 RCW; adding new sections to chapter 82.38 RCW; creating new
14 sections; repealing RCW 82.36.030, 82.36.038, 82.36.220, 82.38.040,
15 82.38.082, and 82.38.086; prescribing penalties; and providing an
16 effective date.

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

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

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

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

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

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

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

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

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

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

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

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

32 (b) Motor vehicle and special fuel if:

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

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

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

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

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

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

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

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

21 (3) Motor vehicle and special fuel if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (15) "Motor vehicle fuel distributor" means a person who acquires
7 motor vehicle fuel from a supplier, distributor, or licensee for
8 subsequent sale and distribution.

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

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

22 (18) "Motor vehicle fuel supplier" means a person who owns and
23 stores motor vehicle fuel in a terminal facility or who refines and
24 stores motor vehicle fuel at a refinery.

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

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

32 (21) "Person" means a natural person, fiduciary, association, or
33 corporation. The term "person" as applied to an association means and
34 includes the partners or members thereof, and as applied to
35 corporations, the officers thereof.

36 (22) "Position holder" means a person who holds the inventory
37 position in motor vehicle fuel, as reflected by the records of the
38 terminal operator. A person holds the inventory position in motor
39 vehicle fuel if the person has a contractual agreement with the

1 terminal for the use of storage facilities and terminating services at
2 a terminal with respect to motor vehicle fuel. "Position holder"
3 includes a terminal operator that owns motor vehicle fuel in their
4 terminal.

5 (23) "Rack" means a mechanism for delivering motor vehicle fuel
6 from a refinery or terminal into a truck, trailer, railcar, or other
7 means of nonbulk transfer.

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

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

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

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

18 (28) "Two-party exchange" or "buy-sell agreement" means a
19 transaction in which taxable motor vehicle fuel is transferred from one
20 licensed supplier to another licensed supplier under an exchange or
21 buy-sell agreement whereby the supplier that is the position holder
22 agrees to deliver taxable motor vehicle fuel to the other supplier or
23 the other supplier's customer at the rack of the terminal at which the
24 delivering supplier is the position holder.

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

27 ~~((Every distributor shall pay, in addition to any other taxes~~
28 ~~provided by law, an excise tax to the director at a rate computed in~~
29 ~~the manner provided in RCW 82.36.025 for each gallon of motor vehicle~~
30 ~~fuel sold, distributed, or used by him in the state as well as on each~~
31 ~~gallon upon which he has assumed liability for payment of the tax under~~
32 ~~the provisions of RCW 82.36.100: PROVIDED, That under such regulations~~
33 ~~as the director may prescribe sales or distribution of motor vehicle~~
34 ~~fuel may be made by one licensed distributor to another licensed~~
35 ~~distributor free of the tax. In the computation of the tax, one-~~
36 ~~quarter of one percent of the net gallonage otherwise taxable shall be~~
37 ~~deducted by the distributor before computing the tax due, on account of~~
38 ~~the losses sustained through handling. The tax imposed hereunder shall~~

1 ~~be in addition to any other tax required by law, and shall not be~~
2 ~~imposed under circumstances in which the tax is prohibited by the~~
3 ~~Constitution or laws of the United States. The tax herein imposed~~
4 ~~shall be collected and paid to the state but once in respect to any~~
5 ~~motor vehicle fuel. An invoice shall be rendered by a distributor to~~
6 ~~a purchaser for each distribution of motor vehicle fuel.))~~

7 (1) There is hereby levied and imposed upon motor vehicle fuel
8 users a tax at the rate computed in the manner provided in RCW
9 82.36.025 on each gallon of motor vehicle fuel.

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

12 (a) Motor vehicle fuel is removed in this state from a terminal if
13 the motor vehicle fuel is removed at the rack unless the removal is to
14 a licensed exporter for direct delivery to a destination outside of the
15 state;

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

18 (i) The removal is by bulk transfer and the refiner or the owner of
19 the motor vehicle fuel immediately before the removal is not a
20 licensee; or

21 (ii) The removal is at the refinery rack unless the removal is to
22 a licensed exporter for direct delivery to a destination outside of the
23 state;

24 (c) Motor vehicle fuel enters into this state for sale,
25 consumption, use, 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) Motor vehicle fuel is removed in this state to an unlicensed
30 entity unless there was a prior taxable removal, entry, or sale of the
31 motor vehicle fuel;

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

38 (3) The proceeds of the motor vehicle fuel excise tax collected
39 ((on the net gallonage after the deduction provided for herein and))

1 after the deductions for payments and expenditures as provided in RCW
2 46.68.090((7)) shall be distributed as provided in RCW 46.68.100.

3 NEW SECTION. **Sec. 8.** (1) A position holder shall remit tax to the
4 department on motor vehicle fuel removed from a terminal as provided in
5 RCW 82.36.020(2)(a). On a two-party exchange, or buy-sell agreement
6 between two suppliers, the receiving exchange partner or buyer, becomes
7 the position holder, who shall remit the tax.

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

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

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

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

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

19 (2) The terminal operator is not a licensee;

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

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

24 NEW SECTION. **Sec. 10.** Upon the taxable removal of motor vehicle
25 fuel, the licensee who acquired or removed the motor vehicle fuel,
26 other than a motor vehicle fuel exporter, shall be entitled to a
27 deduction from the tax liability on the gallonage of taxable motor
28 vehicle fuel removed in order to account for handling losses, as
29 follows: For a motor vehicle fuel supplier acting as a distributor,
30 one-quarter of one percent; and for all other licensees, thirty one-
31 hundredths of one percent. For those licensees required to file tax
32 reports, the handling loss deduction shall be reported on tax reports
33 filed with the department. For motor vehicle fuel distributors, the
34 handling loss deduction shall be shown on the invoice provided to the
35 motor vehicle fuel distributor by the seller.

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

6 A report shall be filed with the department even though no motor
7 vehicle fuel tax is due for the reporting period. Each tax report
8 shall contain a declaration by the person making the same, to the
9 effect that the statements contained therein are true and made under
10 penalties of perjury, which declaration has the same force and effect
11 as a verification of the report and is in lieu of the verification.
12 The report shall show information as the department may require for the
13 proper administration and enforcement of this chapter. Tax reports
14 shall be filed on or before the twenty-fifth day of the next succeeding
15 calendar month following the period to which the reports relate. If
16 the final filing date falls on a Saturday, Sunday, or legal holiday the
17 next secular or business day shall be the final filing date.

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

22 NEW SECTION. **Sec. 12.** (1) The tax imposed by this chapter shall
23 be computed by multiplying the tax rate per gallon provided in this
24 chapter by the number of gallons of motor vehicle fuel subject to the
25 motor vehicle fuel tax.

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

30 (3) If the tax is paid by electronic funds transfer, the tax shall
31 be paid on or before the tenth calendar day of the month that is the
32 second month immediately following the reporting period. When the
33 reporting period is May, the tax shall be paid on the last business day
34 of June.

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

37 (5) A motor vehicle fuel distributor shall remit tax on motor
38 vehicle fuel purchased from a motor vehicle fuel supplier, and due to

1 the state for that reporting period, to the motor vehicle fuel
2 supplier.

3 (6) At the election of the distributor, the payment of the motor
4 vehicle fuel tax owed on motor vehicle fuel purchased from a supplier
5 shall be remitted to the supplier on terms agreed upon between the
6 distributor and supplier or no later than two business days before the
7 last business day of the following month. This election shall be
8 subject to a condition that the distributor's remittances of all
9 amounts of motor vehicle fuel tax due to the supplier shall be paid by
10 electronic funds transfer. The distributor's election may be
11 terminated by the supplier if the distributor does not make timely
12 payments to the supplier as required by this section. This section
13 shall not apply if the distributor is required by the supplier to pay
14 cash or cash equivalent for motor vehicle fuel purchases.

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

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

22 NEW SECTION. **Sec. 14.** A motor vehicle fuel supplier shall, no
23 later than the twentieth calendar day or next state business day after
24 the motor vehicle fuel tax is due from a motor vehicle fuel distributor
25 under this chapter, notify the department of the failure of a motor
26 vehicle fuel distributor to pay the full amount of the tax owed.

27 Upon notification and submission of satisfactory evidence by a
28 motor vehicle fuel supplier that a motor vehicle fuel distributor has
29 failed to pay the full amount of the tax owed, the department may
30 suspend the license of the motor vehicle fuel distributor.

31 Upon the suspension, the department shall immediately notify all
32 motor vehicle fuel suppliers that the authority of the motor vehicle
33 fuel distributor to purchase tax-deferred motor vehicle fuel has been
34 suspended and all subsequent purchases of motor vehicle fuel by the
35 motor vehicle fuel distributor must be tax-paid at the time of removal.

36 If, after notification by the department, a motor vehicle fuel
37 supplier continues to sell tax-deferred motor vehicle fuel to a motor

1 vehicle fuel distributor whose license is suspended, the motor vehicle
2 fuel supplier's license is subject to revocation or suspension under
3 RCW 82.36.190. Furthermore, if notified of a license suspension, a
4 motor vehicle fuel supplier is liable for any unpaid motor vehicle fuel
5 tax owed on motor vehicle fuel sold to a suspended motor vehicle fuel
6 distributor.

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

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

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

28 (2) If a ((distributor, whether licensed or not licensed))
29 licensee, or person acting as such, fails, neglects, or refuses to file
30 a motor vehicle fuel tax report the department shall, on the basis of
31 information available to it, determine the tax liability of the
32 ((distributor)) licensee or person for the period during which no
33 report was filed. The department shall add the penalty provided in
34 subsection (1) of this section to the tax. An assessment made by the
35 department under this subsection or subsection (1) of this section is
36 presumed to be correct. In any case, where the validity of the
37 assessment is questioned, the burden is on the person who challenges

1 the assessment to establish by a fair preponderance of evidence that it
2 is erroneous or excessive, as the case may be.

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

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

20 (5) Except in the case of a fraudulent report, neglect or refusal
21 to make a report, or failure to pay or to pay the proper amount, the
22 department shall assess the deficiency under subsection (1) or (2) of
23 this section within five years from the last day of the succeeding
24 calendar month after the reporting period for which the amount is
25 proposed to be determined or within five years after the return is
26 filed, whichever period expires later.

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

35 (7) A (~~distributor~~) licensee or person acting as such against
36 whom an assessment is made under subsection (1) or (2) of this section
37 may petition for a reassessment within thirty days after service upon
38 the (~~distributor~~) licensee of notice of the assessment. If the

1 petition is not filed within the thirty-day period, the amount of the
2 assessment becomes final at the expiration of that period.

3 If a petition for reassessment is filed within the thirty-day
4 period, the department shall reconsider the assessment and, if the
5 ((~~distributor~~)) petitioner has so requested in its petition, shall
6 grant the ((~~distributor~~)) petitioner an oral hearing and give the
7 ((~~distributor~~)) petitioner twenty days' notice of the time and place of
8 the hearing. The department may continue the hearing from time to
9 time. The decision of the department upon a petition for reassessment
10 becomes final thirty days after service of notice upon the
11 ((~~distributor~~)) petitioner.

12 An assessment made by the department becomes due and payable when
13 it becomes final. If it is not paid to the department when due and
14 payable, the department shall add a penalty of ten percent of the
15 amount of the tax.

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

20 (9) A notice of assessment required by this section must be served
21 personally or by certified or registered mail. If it is served by
22 mail, service shall be made by deposit of the notice in the United
23 States mail, postage prepaid, addressed to the ((~~distributor~~))
24 respondent at the most current address furnished to the department.

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

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

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

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

23 (~~Every person, before becoming a distributor or continuing in~~
24 ~~business as a distributor, shall make~~) (1) An application (~~to the~~
25 ~~department~~) for a license (~~authorizing the applicant to engage in~~
26 ~~business as a distributor. Applications for such licenses~~) issued
27 under this chapter shall be made to the department on forms to be
28 furnished by the department and shall contain such information as the
29 department deems necessary.

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

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

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

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

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

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

14 (3) An applicant for a license as a motor vehicle fuel importer
15 must list on the application each state, province, or country from
16 which the applicant intends to import motor vehicle fuel and, if
17 required by the state, province, or country listed, must be licensed or
18 registered for motor vehicle fuel tax purposes in that state, province,
19 or country.

20 (4) An applicant for a license as a motor vehicle fuel exporter
21 must list on the application each state, province, or country to which
22 the exporter intends to export motor vehicle fuel received in this
23 state by means of a transfer outside of the bulk transfer-terminal
24 system and, if required by the state, province, or country listed, must
25 be licensed or registered for motor vehicle fuel tax purposes in that
26 state, province, or country.

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

32 (6) After receipt of an application for a license, the director may
33 conduct an investigation to determine whether the facts set forth are
34 true. The director (~~may~~) shall require a fingerprint record check of
35 the applicant through the Washington state patrol criminal
36 identification system and the federal bureau of investigation before
37 issuance of a license. The results of the background investigation
38 including criminal history information may be released to authorized
39 department personnel as the director deems necessary. The department

1 shall charge a license holder or license applicant a fee of fifty
2 dollars for each background investigation conducted.

3 An applicant who makes a false statement of a material fact on the
4 application may be prosecuted for false swearing as defined by RCW
5 9A.72.040.

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

26 The total amount of the bond or bonds required of any
27 (~~((distributor))~~) licensee shall never be less than five thousand dollars
28 nor more than (~~((fifty))~~) one hundred thousand dollars.

29 No recoveries on any bond or the execution of any new bond shall
30 invalidate any bond and no revocation of any license shall effect the
31 validity of any bond but the total recoveries under any one bond shall
32 not exceed the amount of the bond.

33 In lieu of any such bond or bonds in total amount as herein fixed,
34 a (~~((distributor))~~) licensee may deposit with the state treasurer, under
35 such terms and conditions as the department may prescribe, a like
36 amount of lawful money of the United States or bonds or other
37 obligations of the United States, the state, or any county of the
38 state, of an actual market value not less than the amount so fixed by
39 the department.

1 Any surety on a bond furnished by a ~~((distributor))~~ licensee as
2 provided herein shall be released and discharged from any and all
3 liability to the state accruing on such bond after the expiration of
4 thirty days from the date upon which such surety has lodged with the
5 department a written request to be released and discharged, but this
6 provision shall not operate to relieve, release, or discharge the
7 surety from any liability already accrued or which shall accrue before
8 the expiration of the thirty day period. The department shall
9 promptly, upon receiving any such request, notify the ~~((distributor))~~
10 licensee who furnished the bond; and unless the ~~((distributor))~~
11 licensee, on or before the expiration of the thirty day period, files
12 a new bond, or makes a deposit in accordance with the requirements of
13 this section, the department shall forthwith cancel the
14 ~~((distributor's))~~ license. Whenever a new bond is furnished by a
15 ~~((distributor))~~ licensee, the department shall cancel ~~((his or her))~~
16 the old bond as soon as the department and the attorney general are
17 satisfied that all liability under the old bond has been fully
18 discharged.

19 The department may require a ~~((distributor))~~ licensee to give a new
20 or additional surety bond or to deposit additional securities of the
21 character specified in this section if, in its opinion, the security of
22 the surety bond theretofore filed by such ~~((distributor))~~ licensee, or
23 the market value of the properties deposited as security by the
24 ~~((distributor))~~ licensee, shall become impaired or inadequate; and upon
25 the failure of the ~~((distributor))~~ licensee to give such new or
26 additional surety bond or to deposit additional securities within
27 thirty days after being requested so to do by the department, the
28 department shall forthwith cancel his or her license.

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

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

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

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

4 Each ~~((distributor))~~ licensee shall be assigned a license number
5 ~~((upon qualifying for a license hereunder))~~, and the department shall
6 issue to each ~~((such))~~ licensee a license certificate which shall be
7 displayed conspicuously ~~((by the distributor))~~ at his or her principal
8 place of business. The department may refuse to issue or may revoke a
9 motor vehicle fuel ~~((distributor))~~ license, to a person:

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

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

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

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

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

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

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

34 (8) Who violated a statute or administrative rule regulating fuel
35 taxation or distribution;

36 (9) Who failed to cooperate with the department's investigations
37 by:

38 (a) Not furnishing papers or documents;

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

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

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

6 (11) Upon other sufficient cause being shown.

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

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

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

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

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

26 (a) Motor vehicle fuel supplier;

27 (b) Motor vehicle fuel distributor;

28 (c) Motor vehicle fuel exporter;

29 (d) Motor vehicle fuel importer; or

30 (e) Motor vehicle fuel blender.

31 (2) A person engaged in more than one activity for which a license
32 is required must have a separate license classification for each
33 activity, but a motor vehicle fuel supplier is not required to obtain
34 a separate license classification for any other activity for which a
35 license is required.

36 (3) If any person (~~becomes~~) acts as a (~~distributor~~) licensee
37 without first securing the license required herein the excise tax shall
38 be immediately due and payable on account of all motor vehicle fuel

1 distributed or used by ~~((him))~~ the person. The director shall proceed
2 forthwith to determine from the best available sources, the amount of
3 the tax, and ~~((he))~~ the director shall immediately assess the tax in
4 the amount found due, together with a penalty of one hundred percent of
5 the tax, and shall make ~~((his))~~ a certificate of such assessment and
6 penalty. In any suit or proceeding to collect the tax or penalty, or
7 both, such certificate shall be prima facie evidence that the person
8 therein named is indebted to the state in the amount of the tax and
9 penalty therein stated. Any tax or penalty so assessed may be
10 collected in the manner prescribed in this chapter with reference to
11 delinquency in payment of the tax or by an action at law, which the
12 attorney general shall commence and prosecute to final determination at
13 the request of the director. The foregoing remedies of the state shall
14 be cumulative and no action taken pursuant to this section shall
15 relieve any person from the penal provisions of this chapter.

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

18 ~~((Whenever a distributor))~~ A licensee who ceases to engage in
19 business ~~((as a distributor))~~ within the state by reason of the
20 discontinuance, sale, or transfer of ~~((his))~~ the business~~((, he))~~ shall
21 notify the director in writing at the time the discontinuance, sale, or
22 transfer takes effect. Such notice shall give the date of
23 discontinuance, and, in the event of a sale or transfer of the
24 business, the date thereof and the name and address of the purchaser or
25 transferee thereof. All taxes, penalties, and interest under this
26 chapter, not yet due and payable, shall become due and payable
27 concurrently with such discontinuance, sale, or transfer, and any such
28 ~~((distributor))~~ licensee shall make a report and pay all such taxes,
29 interest, and penalties, and surrender to the director the license
30 certificate theretofore issued to him or her.

31 If an overpayment of tax was made by the ~~((distributor))~~ licensee,
32 prior to the discontinuance or transfer of his or her business, such
33 overpayment may be refunded to such ~~((distributor or may be credited to~~
34 ~~the transferee of such business if such transferee qualifies as a~~
35 ~~distributor under the provisions of this chapter))~~ licensee.

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

1 Every person other than a ~~((distributor))~~ licensee who acquires any
2 motor vehicle fuel within this state upon which payment of tax is
3 required under the provisions of this chapter, or imports such motor
4 vehicle fuel into this state and sells, distributes, or in any manner
5 uses it in this state shall, if the tax has not been paid, apply for a
6 license to carry on such activities, ~~((file bond, make reports,))~~
7 comply with all ~~((regulations))~~ the ~~((director may prescribe in respect~~
8 ~~thereto))~~ provisions of this chapter, and pay an excise tax at the rate
9 computed in the manner provided in RCW 82.36.025 for each gallon
10 thereof so sold, distributed, or used during the fiscal year for which
11 such rate is applicable ~~((in the manner provided for distributors, and~~
12 ~~the director shall issue a license to such person in the manner~~
13 ~~provided for issuance of licenses to distributors))~~. The proceeds of
14 the tax imposed by this section shall be distributed in the manner
15 provided for the distribution of the motor vehicle fuel excise tax in
16 RCW 82.36.020. ~~((However, a distributor licensed under this chapter~~
17 ~~may deliver motor vehicle fuel to an importer in individual quantities~~
18 ~~of five hundred gallons or less and assume the liability for payment of~~
19 ~~the tax to this state. Under such conditions, the importer is exempt~~
20 ~~from the requirements of this section.))~~ For failure to comply with
21 this chapter such person is subject to the same penalties imposed upon
22 ~~((distributors))~~ licensees. The director shall pursue against such
23 persons the same procedure and remedies for audits, adjustments,
24 collection, and enforcement of this chapter as is provided with respect
25 to ~~((distributors))~~ licensees. Nothing in this section may be
26 construed as classifying such persons as ~~((distributors))~~ licensees.

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

29 If a ~~((distributor))~~ licensee is delinquent in the payment of an
30 obligation imposed under this chapter, the department may give notice
31 of the amount of the delinquency by registered or certified mail to all
32 persons having in their possession or under their control any credits
33 or other personal property belonging to such ~~((distributor))~~ licensee,
34 or owing any debts to such ~~((distributor))~~ licensee at the time of
35 receipt by them of such notice. Upon service, the notice and order to
36 withhold and deliver constitutes a continuing lien on property of the
37 taxpayer. The department shall include in the caption of the notice to
38 withhold and deliver "continuing lien." The effective date of a notice

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

11 If a person fails to answer the notice within the time prescribed
12 by this section, it is lawful for the court, upon application of the
13 department and after the time to answer the notice has expired, to
14 render judgment by default against the person for the full amount
15 claimed by the department in the notice to withhold and deliver,
16 together with costs.

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

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

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

1 In a suit or action by the state on any bond filed with the
2 director recovery thereon may be had without first having sought or
3 exhausted its remedy against the ((distributor)) licensee; nor shall
4 the fact that the state has pursued, or is in the course of pursuing,
5 any remedy against the ((distributor)) licensee waive its right to
6 collect the taxes, penalties, and interest by proceeding against such
7 bond or against any deposit of money or securities made by the
8 ((distributor)) licensee.

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

11 Every ((distributor)) licensee shall keep a true and accurate
12 record on such form as the director may prescribe of all stock of
13 petroleum products on hand, of all raw gasoline, gasoline stock, diesel
14 oil, kerosene, kerosene distillates, casing-head gasoline and other
15 petroleum products needed in, or which may be used in, compounding,
16 blending, or manufacturing motor vehicle fuel; of the amount of crude
17 oil refined, the gravity thereof and the yield therefrom, as well as of
18 such other matters relating to transactions in petroleum products as
19 the director may require. Every ((distributor)) licensee shall take a
20 physical inventory of the petroleum products at least once during each
21 calendar month and have the record of such inventory and of the other
22 matters mentioned in this section available at all times for the
23 inspection of the director. Upon demand of the director every
24 ((distributor)) licensee shall furnish a statement under oath as to the
25 contents of any records to be kept hereunder.

26 ~~((Every producer shall keep a true and accurate record in such form
27 as may be prescribed by the director of all manufacture and
28 distribution of casing head gasoline, kerosene distillates and other
29 petroleum products used in, or which may be used in, the blending,
30 compounding, or manufacturing of motor vehicle fuel, and every broker
31 shall likewise keep a true and accurate record of all purchases of such
32 petroleum products in such manner as to disclose the vendor, the
33 quantity purchased, the correct description of the commodity, and the
34 means of transportation from such broker to the vendee. All records
35 required by this section shall be available at all times for the
36 inspection of the director or his representative who may require a
37 statement under oath as to contents thereof.))~~

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

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

9 Every dealer purchasing motor vehicle fuel taxable under this
10 chapter for the purpose of resale, shall maintain within this state,
11 for a period of two years a record of motor vehicle fuels received, the
12 amount of tax paid to the (~~distributor~~) licensee as part of the
13 purchase price, together with delivery tickets, invoices, and bills of
14 lading, and such other records as the director shall require.

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

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

21 NEW SECTION. **Sec. 29.** The department may require a person other
22 than a licensee engaged in the business of selling, purchasing,
23 distributing, storing, transporting, or delivering motor vehicle fuel
24 to submit periodic reports to the department regarding the disposition
25 of the fuel. The reports must be on forms prescribed by the department
26 and must contain such information as the department may require.

27 **Sec. 30.** RCW 82.36.180 and 1967 ex.s. c 89 s 6 are each amended to
28 read as follows:

29 The director, or (~~his~~) duly authorized agents, may make such
30 examinations of the records, stocks, facilities, and equipment of
31 (~~distributors, producers, brokers~~) any licensee, and service
32 stations, and such other investigations as (~~he may deem~~) deemed
33 necessary in carrying out the provisions of this chapter. If such
34 examinations or investigations disclose that any reports of
35 (~~distributors of motor vehicle fuel~~) licensees theretofore filed with
36 the director pursuant to the requirements of this chapter have shown

1 incorrectly the gallonage of motor vehicle fuel distributed or the tax
2 accruing thereon, the director may make such changes in subsequent
3 reports and payments of such ~~((distributors))~~ licensees as ~~((he may~~
4 ~~deem))~~ deemed necessary to correct the errors disclosed.

5 Every such ~~((distributor))~~ licensee or such other person not
6 maintaining records in this state so that an audit of such records may
7 be made by the director or ~~((his))~~ a duly authorized representative
8 shall be required to make the necessary records available to the
9 director ~~((at his))~~ upon request and at ~~((his))~~ a designated office
10 within this state; or, in lieu thereof, the director or ~~((his))~~ a duly
11 authorized representative shall proceed to any out-of-state office at
12 which the records are prepared and maintained to make such examination.

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

15 The department shall suspend or revoke the license of any
16 ~~((distributor))~~ licensee refusing or neglecting to comply with any
17 provision of this chapter. The department shall mail by registered
18 mail addressed to such ~~((distributor))~~ licensee at ~~((his))~~ the last
19 known address a notice of intention to cancel, which notice shall give
20 the reason for cancellation. The cancellation shall become effective
21 without further notice if within ten days from the mailing of the
22 notice the ~~((distributor))~~ licensee has not made good his or her
23 default or delinquency.

24 The department may cancel any license issued to any ~~((distributor))~~
25 licensee, such cancellation to become effective sixty days from the
26 date of receipt of the written request of such ~~((distributor))~~ licensee
27 for cancellation thereof, and the department may cancel the license of
28 any ~~((distributor))~~ licensee upon investigation and sixty days notice
29 mailed to the last known address of such ~~((distributor))~~ licensee if
30 the department ascertains and finds that the person to whom the license
31 was issued is no longer engaged in ~~((the))~~ business ~~((of a~~
32 ~~distributor))~~, and has not been so engaged for the period of six months
33 prior to such cancellation. No license shall be canceled upon the
34 request of any ~~((distributor))~~ licensee unless the ~~((distributor))~~
35 licensee, prior to the date of such cancellation, pays to the state all
36 taxes imposed by the provisions of this chapter, together with all
37 penalties accruing by reason of any failure on the part of the

1 ((distributor)) licensee to make accurate reports or pay said taxes and
2 penalties.

3 In the event the license of any ((distributor)) licensee is
4 canceled, and in the further event that the ((distributor)) licensee
5 pays to the state all excise taxes due and payable by him or her upon
6 the receipt, sale, or use of motor vehicle fuel, together with any and
7 all penalties accruing by reason of any failure on the part of the
8 ((distributor)) licensee to make accurate reports or pay said taxes and
9 penalties, the department shall cancel the bond filed by the
10 ((distributor)) licensee.

11 **Sec. 32.** RCW 82.36.200 and 1965 ex.s. c 79 s 7 are each amended to
12 read as follows:

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

19 **Sec. 33.** RCW 82.36.210 and 1965 ex.s. c 79 s 8 are each amended to
20 read as follows:

21 Every person operating any conveyance for the purpose of hauling,
22 transporting or delivering motor vehicle fuel in bulk (~~to points in~~
23 ~~this state from any point without this state~~), shall (~~before entering~~
24 ~~upon the public highways of this state with such conveyance,~~) have and
25 possess during the entire time they are hauling motor vehicle fuel, an
26 invoice, bill of sale, or other statement showing the ((true)) name
27 ((and)), address, and license number of the seller or consignor, the
28 destination, name, and address of the purchaser or consignee, license
29 number, if ((any)) applicable, and the number of gallons. The person
30 hauling such motor vehicle fuel shall at the request of any (~~sheriff,~~
31 ~~deputy sheriff, constable, highway patrolman~~) law enforcement officer,
32 or authorized representative of the department, or other person
33 authorized by law to inquire into, or investigate said matters, produce
34 (~~and offer~~) for inspection such invoice, bill of sale, or other
35 statement and shall permit such official to inspect and gauge the
36 contents of the vehicle. (~~If the hauler fails to produce the invoice,~~
37 ~~bill of sale, or other statement, or if when produced it fails to~~

1 disclose the aforesaid information, the officer or other person
2 authorized to make inquiry, shall take and impound the motor vehicle
3 fuel together with the conveying equipment until the tax on the motor
4 vehicle fuel, together with penalty equal to one hundred percent of the
5 tax, and other expenses, charges, and costs have been paid. In case of
6 default, and the taking and impounding herein provided for, the tax,
7 damages, and costs shall be collected, even though the full excise tax
8 may have already been paid on the motor vehicle fuel. In case the tax,
9 damages and other charges are not paid within forty eight hours after
10 the taking of said property, the director may proceed to sell it in the
11 mode and manner provided by law for the sale of personal property under
12 execution.))

13 **Sec. 34.** RCW 82.36.230 and 1993 c 54 s 4 are each amended to read
14 as follows:

15 The provisions of this chapter requiring the payment of taxes do
16 not apply to motor vehicle fuel imported into the state in interstate
17 or foreign commerce and intended to be sold while in interstate or
18 foreign commerce, nor to motor vehicle fuel exported from this state by
19 a ((qualified distributor)) licensee nor to any motor vehicle fuel sold
20 by a ((qualified distributor)) licensee to the armed forces of the
21 United States or to the national guard for use exclusively in ships or
22 for export from this state. The ((distributor)) licensee shall report
23 such imports, exports and sales to the department at such times, on
24 such forms, and in such detail as the department may require, otherwise
25 the exemption granted in this section is null and void, and all fuel
26 shall be considered distributed in this state fully subject to the
27 provisions of this chapter. Each invoice covering exempt sales shall
28 have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly
29 marked thereon.

30 To claim any exemption from taxes under this section on account of
31 sales by a ((licensed distributor)) licensee of motor vehicle fuel for
32 export, the purchaser shall obtain from the selling ((distributor))
33 licensee, and such selling ((distributor)) licensee must furnish the
34 purchaser, an invoice giving such details of the sale for export as the
35 department may require, copies of which shall be furnished the
36 department and the entity of the state or foreign jurisdiction of
37 destination which is charged by the laws of that state or foreign
38 jurisdiction with the control or monitoring, or both, of the sales or

1 movement of motor vehicle fuel in that state or foreign jurisdiction.
2 For the purposes of this section, motor vehicle fuel distributed to a
3 federally recognized Indian tribal reservation located within the state
4 of Washington is not considered exported outside this state.

5 To claim any (~~exemption from taxes under this section~~) refund of
6 taxes previously paid on account of sales of motor vehicle fuel to the
7 armed forces of the United States or to the national guard, the
8 (~~distributor~~) licensee shall be required to execute an exemption
9 certificate in such form as shall be furnished by the department,
10 containing a certified statement by an authorized officer of the armed
11 forces having actual knowledge of the purpose for which the exemption
12 is claimed. (~~Any claim for exemption based on such sales shall be~~
13 ~~made by the distributor within six months of the date of sale.~~) The
14 provisions of this section exempting motor vehicle fuel sold to the
15 armed forces of the United States or to the national guard from the tax
16 imposed hereunder do not apply to any motor vehicle fuel sold to
17 contractors purchasing such fuel either for their own account or as the
18 agents of the United States or the national guard for use in the
19 performance of contracts with the armed forces of the United States or
20 the national guard.

21 The department may at any time require of any (~~distributor~~)
22 licensee any information the department deems necessary to determine
23 the validity of the claimed exemption, and failure to supply such data
24 will constitute a waiver of all right to the exemption claimed. The
25 department is hereby empowered with full authority to promulgate rules
26 and regulations and to prescribe forms to be used by (~~distributors~~)
27 licensees in reporting to the department so as to prevent evasion of
28 the tax imposed by this chapter.

29 Upon request from the officials to whom are entrusted the
30 enforcement of the motor vehicle fuel tax law of any other state, the
31 District of Columbia, the United States, its territories and
32 possessions, the provinces, or the Dominion of Canada, the department
33 may forward to such officials any information which the department may
34 have relative to the import or export of any motor vehicle fuel by any
35 (~~distributor~~) licensee: PROVIDED, That such governmental unit
36 furnish like information to this state.

37 NEW SECTION. Sec. 35. A licensee, other than a motor vehicle fuel
38 exporter, is entitled to a refund of motor vehicle fuel tax previously

1 paid on motor vehicle fuel which is purchased from the licensee by a
2 person who is exempt from payment of the motor vehicle fuel tax imposed
3 by this chapter. Application for the refund shall be accompanied by an
4 invoice or proof satisfactory to the department documenting each sale
5 wherein the purchaser was exempt the motor vehicle fuel tax. Claims
6 for refunds shall be made under this chapter.

7 **Sec. 36.** RCW 82.36.280 and 1993 c 141 s 1 are each amended to read
8 as follows:

9 Any person who uses any motor vehicle fuel for the purpose of
10 operating any internal combustion engine not used on or in conjunction
11 with any motor vehicle licensed to be operated over and along any of
12 the public highways, and as the motive power thereof, upon which motor
13 vehicle fuel excise tax has been paid, shall be entitled to and shall
14 receive a refund of the amount of the motor vehicle fuel excise tax
15 paid on each gallon of motor vehicle fuel so used, whether such motor
16 vehicle excise tax has been paid either directly to the vendor from
17 whom the motor vehicle fuel was purchased or indirectly by adding the
18 amount of such excise tax to the price of such fuel. No refund shall
19 be made for motor vehicle fuel consumed by any motor vehicle as herein
20 defined that is required to be registered and licensed as provided in
21 chapter 46.16 RCW; and is operated over and along any public highway
22 except that a refund shall be allowed for motor vehicle fuel consumed:

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

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

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

37 (b) For fuel used in operating a power take-off unit on a cement
38 mixer truck or load compactor on a garbage truck, claimant shall be

1 allowed a refund of twenty-five percent of the tax paid on all fuel
2 used in such a truck; and

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

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

14 **Sec. 37.** RCW 82.36.300 and 1963 ex.s. c 22 s 21 are each amended
15 to read as follows:

16 Every person who shall export any motor vehicle fuel for use
17 outside of this state and who has paid the motor vehicle fuel excise
18 tax upon such motor vehicle fuel shall be entitled to and shall receive
19 a refund of the amount of the motor vehicle fuel excise tax paid on
20 each gallon of motor vehicle fuel so exported. For the purposes of
21 this section, motor vehicle fuel distributed to a federally recognized
22 Indian tribal reservation located within the state of Washington is not
23 considered exported outside this state.

24 **Sec. 38.** RCW 82.36.310 and 1995 c 318 s 3 are each amended to read
25 as follows:

26 Any person claiming a refund for motor vehicle fuel used or
27 exported as in this chapter provided shall not be entitled to receive
28 such refund until he presents to the director a claim upon forms to be
29 provided by the director with such information as the director shall
30 require, which claim to be valid shall in all cases be accompanied by
31 the (~~original~~) invoice or invoices issued to the claimant at the time
32 of the purchases of the motor vehicle fuel, approved as to invoice form
33 by the director(~~(: PROVIDED, That in the event of the loss or~~
34 ~~destruction of the original invoice or invoices, the person claiming a~~
35 ~~refund may submit in lieu thereof a duplicate copy of such invoice~~
36 ~~certified by the vendor, but no payment of refund based upon such~~
37 ~~duplicate invoice shall be made until after expiration of such~~

1 ~~statutory period specified in RCW 82.36.330 for filing of refund~~
2 ~~applications)). The requirement to provide invoices may be waived for~~
3 ~~small refund amounts, as determined by the department. Claims for~~
4 ~~refund of motor vehicle fuel tax must be at least twenty dollars.~~

5 Any person claiming refund by reason of exportation of motor
6 vehicle fuel shall in addition to the invoices required furnish to the
7 director the export certificate therefor, and the signature on the
8 exportation certificate shall be certified by a notary public. In all
9 cases the claim shall be signed by the person claiming the refund, if
10 it is a corporation, by some proper officer of the corporation, or if
11 it is a limited liability company, by some proper manager or member of
12 the limited liability company.

13 **Sec. 39.** RCW 82.36.330 and 1971 ex.s. c 180 s 9 are each amended
14 to read as follows:

15 Upon the approval of the director of the claim for refund, the
16 state treasurer shall draw a warrant upon the state treasury for the
17 amount of the claim in favor of the person making such claim and the
18 warrant shall be paid from the excise tax collected on motor vehicle
19 fuel: PROVIDED, That the state treasurer shall deduct from each marine
20 use refund claim an amount equivalent to one cent per gallon and shall
21 deposit the same in the coastal protection fund created by RCW
22 90.48.390. Applications for refunds of excise tax shall be filed in
23 the office of the director not later than the close of the last
24 business day of a period thirteen months from the date of purchase of
25 such motor fuel, and if not filed within this period the right to
26 refund shall be forever barred, except that such limitation shall not
27 apply to claims for loss or destruction of motor vehicle fuel as
28 provided by the provisions of RCW 82.36.370. The department shall pay
29 interest of one percent on any refund payable under this chapter that
30 is issued more than thirty state business days after the receipt of a
31 claim properly filed and completed in accordance with this section.
32 After the end of the thirty business-day period, additional interest
33 shall accrue at the rate of one percent on the amount payable for each
34 thirty calendar-day period, until the refund is issued. Any person or
35 the member of any firm or the officer or agent of any corporation who
36 makes any false statement in any claim required for the refund of
37 excise tax, as provided in this chapter, or who collects or causes to
38 be repaid to him or to any other person any such refund without being

1 entitled to the same under the provisions of this chapter shall be
2 guilty of a gross misdemeanor.

3 **Sec. 40.** RCW 82.36.335 and 1997 c 183 s 8 are each amended to read
4 as follows:

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

12 **Sec. 41.** RCW 82.36.350 and 1961 c 15 s 82.36.350 are each amended
13 to read as follows:

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

19 **Sec. 42.** RCW 82.36.370 and 1967 c 153 s 5 are each amended to read
20 as follows:

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

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

35 (3) Recovery for such loss or destruction under either subsection
36 (1) or (2) must be susceptible to positive proof thereby enabling the

1 director to conduct such investigation and require such information as
2 ((he)) the director may deem necessary.

3 In the event that the director is not satisfied that the fuel was
4 lost or destroyed as claimed, wherefore required information or proof
5 as required hereunder is not sufficient to substantiate the accuracy of
6 the claim, ((he)) the director may deem as sufficient cause the denial
7 of all right relating to the refund or credit for the excise tax on
8 motor vehicle fuel alleged to be lost or destroyed.

9 NEW SECTION. **Sec. 43.** A motor vehicle fuel distributor, motor
10 vehicle fuel importer, or motor vehicle fuel blender, under rules
11 adopted by the department, is entitled to a refund of the tax paid on
12 those sales of motor vehicle fuel for which no consideration has been
13 received from or on behalf of the purchaser and that has been declared
14 to be worthless accounts receivable. The amount of tax refunded must
15 not exceed the amount of tax paid by the motor vehicle fuel
16 distributor, motor vehicle fuel importer, or motor vehicle fuel blender
17 under this chapter. If the motor vehicle fuel distributor, motor
18 vehicle fuel importer, or motor vehicle fuel blender subsequently
19 collects any amount from the account declared worthless, the amount
20 collected shall be apportioned between the charges for the fuel and tax
21 thereon. The motor vehicle fuel tax collected must be returned to the
22 department.

23 **Sec. 44.** RCW 82.36.375 and 1965 ex.s. c 79 s 16 are each amended
24 to read as follows:

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

34 Except in the case of a fraudulent report or neglect or refusal to
35 make a report every notice of additional tax, penalty or interest
36 assessed hereunder shall be served on the ((distributor)) licensee

1 within ((three)) five years from the date upon which such additional
2 taxes became due.

3 **Sec. 45.** RCW 82.36.390 and 1996 c 104 s 6 are each amended to read
4 as follows:

5 Any person who(~~(, through false statement, trick, or device, or~~
6 ~~otherwise,~~) obtains motor vehicle fuel for export and fails to export
7 the same or any portion thereof, or causes such motor vehicle fuel or
8 any thereof not to be exported, or who diverts said motor vehicle fuel
9 or any thereof or who causes it to be diverted from interstate or
10 foreign transit begun in this state, or who unlawfully returns such
11 fuel or any thereof to this state and sells or uses it or any thereof
12 in this state or causes it or any thereof to be used or sold in this
13 state and fails to notify the ((distributor)) licensee from whom such
14 motor vehicle fuel was originally purchased ((of his or her act)), and
15 any ((distributor)) licensee or ((other)) person who conspires with any
16 person to withhold from export, or divert from interstate or foreign
17 transit begun in this state, or to return motor vehicle fuel to this
18 state for sale or use with intent to avoid any of the taxes imposed by
19 this chapter, is guilty of a felony, or gross misdemeanor in accordance
20 with the theft and anticipatory provisions of Title 9A RCW. Each
21 shipment illegally diverted or illegally returned shall be a separate
22 offense, and the unit of each shipment shall be the cargo of one
23 vessel, or one railroad carload, or one automobile truck load, or such
24 truck and trailer load, or one drum, or one barrel, or one case or one
25 can.

26 **Sec. 46.** RCW 82.36.400 and 1971 ex.s. c 156 s 3 are each amended
27 to read as follows:

28 It shall be unlawful for any person to commit any of the following
29 acts:

30 (1) To display, or cause to permit to be displayed, or to have in
31 possession, any motor vehicle fuel ((distributor's)) license knowing
32 the same to be fictitious or to have been suspended, canceled, revoked
33 or altered;

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

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

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

7 (5) To refuse to permit the director, or any agent appointed by him
8 or her in writing, to examine his or her books, records, papers,
9 storage tanks, or other equipment pertaining to the use or sale and
10 delivery of motor vehicle fuels within the state.

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

16 NEW SECTION. **Sec. 47.** A motor vehicle fuel distributor who incurs
17 liability in December 1998 for the motor vehicle fuel tax imposed under
18 this chapter shall report the liability and pay the tax in January 1999
19 in the manner required by this chapter as it existed before January 1,
20 1999.

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

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

35 NEW SECTION. **Sec. 48.** (1) It is intended that the ultimate
36 liability for the tax imposed under this chapter be upon the motor
37 vehicle fuel user, regardless of the manner in which collection of the

1 tax is provided for in this chapter. The tax on motor vehicle fuel
2 imposed under this chapter, if not previously imposed and paid, must be
3 paid over to the department by the users of such motor vehicle fuel,
4 unless such use is exempt from the motor vehicle fuel tax.

5 (2) This section does not apply to agreements entered into under
6 RCW 82.36.450 between the department and federally recognized Indian
7 tribes, nor does it apply to the consent decrees entered in
8 *Confederated Tribes of the Colville Reservation v. Washington*
9 *Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v.*
10 *Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

11 NEW SECTION. **Sec. 49.** The department of licensing may enter into
12 a motor vehicle fuel tax cooperative agreement with another state or
13 Canadian province for the administration, collection, and enforcement
14 of each state's or Canadian province's motor vehicle fuel taxes.

15 **Sec. 50.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read
16 as follows:

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

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

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

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

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

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

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

34 (7) ~~"Special fuel dealer" means any person engaged in the business~~
35 ~~of delivering special fuel into the fuel supply tank or tanks of a~~
36 ~~motor vehicle not then owned or controlled by him, or into bulk storage~~
37 ~~facilities for subsequent use in a motor vehicle. For this purpose the~~

1 term "fuel supply tank or tanks" does not include cargo tanks even
2 though fuel is withdrawn directly therefrom for propulsion of the
3 vehicle.

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

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

11 (10) "Unbonded service station" means any service station at which
12 an unbonded special fuel dealer regularly makes sales of special fuel
13 by means of delivery thereof into the fuel supply tanks of motor
14 vehicles.

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

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

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

1 ~~(14) "Standard pressure and temperature" means fourteen and~~
2 ~~seventy-three hundredths pounds of pressure per square inch at sixty~~
3 ~~degrees Fahrenheit.~~

4 ~~(15) "Evasion" or "evade" means to diminish or avoid the~~
5 ~~computation, assessment, or payment of authorized taxes or fees~~
6 ~~through:~~

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

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

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

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

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

22 (4) "Bulk transfer-terminal system" means the special fuel
23 distribution system consisting of refineries, pipelines, vessels, and
24 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
25 is in the bulk transfer-terminal system. Special fuel in the fuel tank
26 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
27 equipment suitable for ground transportation is not in the bulk
28 transfer-terminal system.

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

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

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

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

1 (9) "Evasion" or "evade" means to diminish or avoid the
2 computation, assessment, or payment of authorized taxes or fees
3 through:

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

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

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

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

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

14 (13) "International fuel tax agreement licensee" means a special
15 fuel user operating qualified motor vehicles in interstate commerce and
16 licensed by the department under the international fuel tax agreement.

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

22 (15) "Licensee" means a person holding a license issued under this
23 chapter.

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

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

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

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

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

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

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

8 (23) "Special fuel" means and includes all combustible gases and
9 liquids suitable for the generation of power for propulsion of motor
10 vehicles, except that it does not include motor vehicle fuel as defined
11 in chapter 82.36 RCW, nor does it include dyed special fuel as defined
12 by federal regulations. However, if the federal regulations authorize
13 dyed special fuel to be used in highway vehicles, that usage is
14 considered taxable under this chapter, unless otherwise exempted.

15 (24) "Special fuel distributor" means a person who acquires special
16 fuel from a supplier, distributor, or licensee for subsequent sale and
17 distribution.

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

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

28 (27) "Special fuel supplier" means a person who owns and stores
29 special fuel in a terminal facility or who refines and stores special
30 fuel at a refinery.

31 (28) "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 (29) "Terminal" means a special fuel storage and distribution
35 facility that has been assigned a terminal control number by the
36 internal revenue service, is supplied by pipeline or vessel, and from
37 which reportable special fuel is removed at a rack.

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

1 (31) "Two-party exchange" or "buy-sell agreement" means a
2 transaction in which taxable special fuel is transferred from one
3 licensed supplier to another licensed supplier under an exchange or
4 buy-sell agreement whereby the supplier that is the position holder
5 agrees to deliver taxable special fuel to the other supplier or the
6 other supplier's customer at the rack of the terminal at which the
7 delivering supplier is the position holder.

8 **Sec. 51.** RCW 82.38.030 and 1996 c 104 s 7 are each amended to read
9 as follows:

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

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

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

1 It is expressly provided that delivery of special fuel may be made
2 without collecting the tax otherwise imposed, when such deliveries are
3 made by a bonded special fuel dealer to special fuel users who are
4 authorized by the department as hereinafter provided, to purchase fuel
5 without payment of tax to the bonded special fuel dealer.

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

7 (a) Special fuel is removed in this state from a terminal if the
8 special fuel is removed at the rack unless the removal is to a licensed
9 exporter for direct delivery to a destination outside of the state, or
10 the removal is to a special fuel distributor for direct delivery to an
11 international fuel tax agreement licensee under section 83 of this act;

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

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

16 (ii) The removal is at the refinery rack unless the removal is to
17 a licensed exporter for direct delivery to a destination outside of the
18 state, or the removal is to a special fuel distributor for direct
19 delivery to an international fuel tax agreement licensee under section
20 83 of this act;

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

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

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

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

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

35 (f) Dyed special fuel is used on a highway, as authorized by the
36 Internal Revenue Code, unless the use is exempt from the special fuel
37 tax; and

38 (g) Special fuel purchased by an international fuel tax agreement
39 licensee under section 83 of this act is used on a highway.

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

14 NEW SECTION. **Sec. 52.** The tax under RCW 82.38.030, if not
15 previously imposed and paid, must be paid over to the department by
16 special fuel users and persons licensed under the international fuel
17 tax agreement or other fuel tax reciprocity agreements entered into
18 with the state of Washington, on the use of special fuel to operate
19 motor vehicles on the highways of this state, unless the use is exempt
20 from the tax under this chapter.

21 NEW SECTION. **Sec. 53.** (1) A position holder shall remit tax to
22 the department on special fuel removed from a terminal as provided in
23 RCW 82.38.030(2)(a). On a two-party exchange, or buy-sell agreement
24 between two suppliers, the receiving exchange partner or buyer becomes
25 the position holder, who shall remit the tax.

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

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

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

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

34 NEW SECTION. **Sec. 54.** A terminal operator is jointly and
35 severally liable for remitting the tax imposed under RCW 82.38.030(1)
36 if, at the time of removal:

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

3 (2) The terminal operator is not a licensee;

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

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

8 NEW SECTION. **Sec. 55.** A terminal operator is jointly and
9 severally liable for remitting the tax imposed under RCW 82.38.030(1)
10 if, in connection with the removal of special fuel that is not dyed or
11 marked in accordance with internal revenue service requirements, the
12 terminal operator provides a person with a bill of lading, shipping
13 paper, or similar document indicating that the special fuel is dyed or
14 marked in accordance with internal revenue service requirements.

15 NEW SECTION. **Sec. 56.** A person may not operate or maintain a
16 motor vehicle on a public highway of this state with dyed special fuel
17 in the fuel supply tank unless the use is authorized by the Internal
18 Revenue Code and the person is the holder of an uncanceled dyed special
19 fuel user license issued to him or her by the department. The special
20 fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special
21 fuel authorized by the Internal Revenue Code to operate on-highway
22 motor vehicles using dyed special fuel, unless the use is exempt from
23 the special fuel tax.

24 NEW SECTION. **Sec. 57.** (1) Special fuel that is dyed satisfies the
25 dyeing requirements of this chapter if it meets the dyeing requirements
26 of the internal revenue service, including, but not limited to,
27 requirements respecting type, dosage, and timing.

28 (2) Marking must meet the marking requirements of the internal
29 revenue service.

30 (3) As required by the internal revenue service, notice is required
31 with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL,
32 NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

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

35 (b) Provided by a seller of dyed special fuel to its buyer if the
36 special fuel is located outside the bulk transfer-terminal system and

1 is not sold from a retail pump posted in accordance with the
2 requirements of this subsection; or

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

5 **Sec. 58.** RCW 82.38.070 and 1990 c 250 s 83 are each amended to
6 read as follows:

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

27 NEW SECTION. **Sec. 59.** A special fuel distributor, special fuel
28 importer, or special fuel blender, under rules adopted by the
29 department, is entitled to a refund of the tax paid on those sales of
30 special fuel for which no consideration has been received from or on
31 behalf of the purchaser and that have been declared to be worthless
32 accounts receivable. The amount of the tax refunded must not exceed
33 the amount of tax paid by the special fuel distributor, special fuel
34 importer, or special fuel blender paid under this chapter. If the
35 special fuel distributor, special fuel importer, or special fuel
36 blender subsequently collects any amount from the account declared
37 worthless, the amount collected shall be apportioned between the

1 charges for the fuel and tax thereon. The special fuel tax collected
2 must be returned to the department.

3 **Sec. 60.** RCW 82.38.080 and 1996 c 244 s 6 are each amended to read
4 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) The person otherwise liable for the tax is a licensee other
23 than a dyed special fuel user or international fuel tax agreement
24 licensee;

25 (ii) For a removal from a terminal, the terminal is a licensed
26 terminal; and

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

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

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

35 (A) Facilities operated by the supplier;

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

1 (C) Delivery by the supplier to a vessel clearing from port of this
2 state for a port outside this state and actually exported from this
3 state in the vessel.

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

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

8 (B) "Forwarding agent" means a person or firm engaged in the
9 business of preparing property for shipment or arranging for its
10 shipment.

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

31 **Sec. 61.** RCW 82.38.090 and 1995 c 20 s 13 are each amended to read
32 as follows:

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

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

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

- 26 (a) Special fuel supplier;
- 27 (b) Special fuel distributor;
- 28 (c) Special fuel exporter;
- 29 (d) Special fuel importer;
- 30 (e) Special fuel blender;
- 31 (f) Dyed special fuel user; or
- 32 (g) International fuel tax agreement licensee.

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

38 (3) Special fuel users operating motor vehicles in interstate
39 commerce having two axles and a gross vehicle weight or registered

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

10 **Sec. 62.** RCW 82.38.100 and 1983 c 78 s 1 are each amended to read
11 as follows:

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

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

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

35 (4) Blank permits may be obtained from field offices of the
36 department of transportation, Washington state patrol, department of
37 licensing, or other agents appointed by the department. The department
38 may appoint county auditors or businesses as agents for the purpose of

1 selling trip permits to the public. County auditors or businesses so
2 appointed may retain the filing fee collected for each trip permit to
3 defray expenses incurred in handling and selling the permits.

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

8 **Sec. 63.** RCW 82.38.110 and 1996 c 104 s 8 are each amended to read
9 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (12) An application for an international fuel tax agreement license
24 must be made to the department. The application must be filed upon a
25 form prescribed by the department and contain such information as the
26 department may require.

27 **Sec. 64.** RCW 82.38.120 and 1996 c 104 s 9 are each amended to read
28 as follows:

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

34 (1) Who formerly held (~~either type of~~) a license issued under
35 chapter 82.36 or 82.42 RCW or this chapter which, prior to the time of
36 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. 65.** 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 special
20 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. 66.** 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 (4) ~~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 person other than a
14 licensee engaged in the business of selling, purchasing, distributing,
15 storing, transporting, or delivering special fuel to submit periodic
16 reports to the department regarding the disposition of the fuel. The
17 reports must be on forms prescribed by the department and must contain
18 such information as the department may require.

19 (4) Every person operating any conveyance for the purpose of
20 hauling, transporting, or delivering special fuel in bulk shall have
21 and possess during the entire time the person is hauling special fuel,
22 an invoice, bill of sale, or other statement showing the name, address,
23 and license number of the seller or consigner, the destination, name,
24 and address of the purchaser or consignee, license number, if
25 applicable, and the number of gallons. The person hauling such special
26 fuel shall at the request of any law enforcement officer or authorized
27 representative of the department, or other person authorized by law to
28 inquire into, or investigate those types of matters, produce for
29 inspection such invoice, bill of sale, or other statement and shall
30 permit such official to inspect and gauge the contents of the vehicle.

31 **Sec. 67.** RCW 82.38.150 and 1996 c 104 s 11 are each amended to
32 read as follows:

33 For the purpose of determining the amount of liability for the tax
34 herein imposed, and to periodically update license information, each
35 ((special fuel dealer and each)) licensee, other than a special fuel
36 distributor, an international fuel tax agreement licensee, or a dyed
37 special fuel user, shall file monthly tax reports with the department,

1 on forms prescribed by the department. (~~Special fuel dealers shall~~
2 ~~file the reports at the intervals as shown in the following schedule:~~

3	Estimated Yearly	
4	Tax Liability	Reporting Frequency
5	\$ 0 -- \$100	Yearly
6	\$101 -- 250	Semi-yearly
7	\$251 -- 499	Quarterly
8	\$500 and over	Monthly))

9 Dyed special fuel users whose estimated yearly tax liability is two
10 hundred fifty dollars or less, shall file a report yearly, and dyed
11 special fuel users whose estimated yearly tax liability is more than
12 two hundred fifty dollars, shall file reports quarterly. Special fuel
13 users licensed under the international fuel tax agreement shall file
14 reports quarterly. Special fuel distributors subject to the pollution
15 liability insurance agency fee and reporting requirements shall remit
16 pollution liability insurance agency returns and any associated payment
17 due to the department annually.

18 The department shall establish the reporting frequency for each
19 applicant at the time the special fuel license is issued. If it
20 becomes apparent that any (~~special fuel~~) licensee is not reporting in
21 accordance with the above schedule, the department shall change the
22 licensee's reporting frequency by giving thirty days' notice to the
23 licensee by mail to the licensee's address of record. A report shall
24 be filed with the department even though no special fuel was used, or
25 tax is due, for the reporting period. Each tax report shall contain a
26 declaration by the person making the same, to the effect that the
27 statements contained therein are true and are made under penalties of
28 perjury, which declaration shall have the same force and effect as a
29 verification of the report and is in lieu of such verification. The
30 report shall show such information as the department may reasonably
31 require for the proper administration and enforcement of this chapter.
32 For counties within which an additional excise tax on special fuel has
33 been levied by that jurisdiction under RCW 82.80.010, the report must
34 show the quantities of special fuel sold, distributed, or withdrawn
35 from bulk storage by the reporting dealer or user within the county's
36 boundaries and the tax liability from its levy. (~~The special fuel~~
37 ~~dealer or special fuel user~~) A licensee shall file ((the)) a tax

1 report on or before the twenty-fifth day of the next succeeding
2 calendar month following the period to which it relates.

3 Subject to the written approval of the department, tax reports may
4 cover a period ending on a day other than the last day of the calendar
5 month. Taxpayers granted approval to file reports in this manner will
6 file such reports on or before the twenty-fifth day following the end
7 of the reporting period. No change to this reporting period will be
8 made without the written authorization of the department.

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

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

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

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

31 **Sec. 68.** RCW 82.38.160 and 1987 c 174 s 5 are each amended to read
32 as follows:

33 (1) The tax imposed by this chapter shall be computed ~~((as follows:~~
34 ~~(a) With respect to special fuel upon which the tax has been collected~~
35 ~~by the seller thereof as a special fuel dealer,))~~ by multiplying the
36 tax rate per gallon provided in this chapter by the number of gallons
37 of special fuel ~~((delivered))~~ subject to the special fuel tax ~~((; (b)~~
38 ~~with respect to special fuel on which the tax has not been paid to a~~

1 ~~special fuel dealer in this state and which has been consumed by the~~
2 ~~purchaser thereof as a special fuel user, by multiplying the tax rate~~
3 ~~per gallon provided in this chapter by the number of gallons of special~~
4 ~~fuel consumed by him in the propulsion of a motor vehicle on the~~
5 ~~highways of this state)).~~

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

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

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

26 ((+3)) (5) If the tax is paid by electronic funds transfer ((and
27 the reporting period ends on the last day of a calendar month)), the
28 tax shall be paid on or before the ((state business day immediately
29 preceding the last state business day of the month following the end
30 of)) tenth calendar day of the month that is the second month
31 immediately following the reporting period. When the reporting period
32 is May, the tax shall be paid on the last state business day of June.
33 If the tax is paid by electronic funds transfer and the reporting
34 period ends on a day other than the last day of a calendar month as
35 provided in RCW 82.38.150, the tax shall be paid on or before ((the
36 state business day immediately preceding)) the last state business day
37 of the thirty-day period following the end of the reporting period.

38 ((+4)) (6) The tax shall be paid by electronic funds transfer
39 whenever the amount due is fifty thousand dollars or more.

1 NEW SECTION. **Sec. 69.** A special fuel supplier shall, no later
2 than the twentieth day or next business day after the special fuel tax
3 is due from the special fuel distributor under RCW 82.38.160(2), notify
4 the department of the failure of a special fuel distributor to pay the
5 full amount of the tax owed.

6 Upon notification and submission of satisfactory evidence by a
7 special fuel supplier that a special fuel distributor has failed to
8 comply with RCW 82.38.160(2), the department may suspend the license of
9 the special fuel distributor.

10 Upon the suspension, the department shall immediately notify all
11 special fuel suppliers that the authority of the special fuel
12 distributor to purchase tax-deferred special fuel has been suspended
13 and all subsequent purchases of special fuel by the special fuel
14 distributor must be tax-paid at the time of removal.

15 If, after notification by the department, a special fuel supplier
16 continues to sell tax-deferred special fuel to a special fuel
17 distributor whose license is suspended, the special fuel supplier's
18 license is subject to revocation or suspension under RCW 82.38.130.
19 Furthermore, if notified of a license suspension, a special fuel
20 supplier is liable for any unpaid special fuel tax owed on special fuel
21 sold to a suspended special fuel distributor.

22 **Sec. 70.** RCW 82.38.170 and 1996 c 104 s 12 are each amended to
23 read as follows:

24 (1) If any (~~(special fuel dealer or special fuel user)~~) licensee
25 fails to pay any taxes collected or due the state of Washington (~~by~~
26 ~~said dealer or user~~) within the time prescribed by RCW 82.38.150 and
27 82.38.160, (~~(said dealer or user)~~) the licensee shall pay in addition
28 to such tax a penalty of ten percent of the amount thereof.

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

34 (3) If any (~~(special fuel dealer or special fuel user)~~) licensee,
35 whether or not he or she is licensed as such, fails, neglects, or
36 refuses to file a special fuel tax report required under this chapter,
37 the department may, on the basis of information available to it,
38 determine the tax liability of the (~~(special fuel dealer or the special~~

1 ~~fuel-user))~~ licensee for the period during which no report was filed,
2 and to the tax as thus determined, the department shall add the penalty
3 and interest provided in subsection (2) of this section. An assessment
4 made by the department pursuant to this subsection or to subsection (2)
5 of this section shall be presumed to be correct, and in any case where
6 the validity of the assessment is drawn in question, the burden shall
7 be on the person who challenges the assessment to establish by a fair
8 preponderance of the evidence that it is erroneous or excessive as the
9 case may be.

10 (4) If any (~~special fuel dealer or special fuel user shall~~)
11 licensee establishes by a fair preponderance of evidence that his or
12 her failure to file a report or pay the proper amount of tax within the
13 time prescribed was due to reasonable cause and was not intentional or
14 willful, the department may waive the penalty prescribed in subsections
15 (1), (2), and (3) of this section.

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

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

30 (7) Except in the case of violations of filing a false or
31 fraudulent report, if the department deems mitigation of penalties and
32 interest to be reasonable and in the best interests of carrying out the
33 purpose of this chapter, it may mitigate such assessments upon whatever
34 terms the department deems proper, giving consideration to the degree
35 and extent of the lack of records and reporting errors. The department
36 may ascertain the facts regarding recordkeeping and payment penalties
37 in lieu of more elaborate proceedings under this chapter.

38 (8) Except in the case of a fraudulent report or of neglect or
39 refusal to make a report, every deficiency shall be assessed under

1 subsection (2) of this section within five years from the twenty-fifth
2 day of the next succeeding calendar month following the reporting
3 period for which the amount is proposed to be determined or within five
4 years after the return is filed, whichever period expires the later.

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

12 If a petition for reassessment is filed within the thirty day
13 period, the department shall reconsider the assessment and, if the
14 (~~special fuel dealer or special fuel user~~) licensee has so requested
15 in his or her petition, shall grant such (~~special fuel dealer or~~
16 ~~special fuel user~~) licensee an oral hearing and give the (~~special~~
17 ~~fuel dealer or special fuel user~~) licensee ten days' notice of the
18 time and place thereof. The department may continue the hearing from
19 time to time. The decision of the department upon a petition for
20 reassessment shall become final thirty days after service upon the
21 (~~special fuel dealer or special fuel user~~) licensee of notice
22 thereof.

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

27 (10) Any notice of assessment required by this section shall be
28 served personally or by certified or registered mail; if by mail,
29 service shall be made by depositing such notice in the United States
30 mail, postage prepaid addressed to the (~~special fuel dealer or special~~
31 ~~fuel user~~) licensee at his or her address as the same appears in the
32 records of the department.

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

37 (12) Any person who, upon audit or investigation by the department,
38 is found to have not paid special fuel taxes as required by this
39 chapter shall be subject to cancellation of all vehicle registrations

1 for vehicles utilizing special fuel as a means of propulsion. Any
2 unexpired Washington tonnage on the vehicles in question may be
3 transferred to a purchaser of the vehicles upon application to the
4 department who shall hold such tonnage in its custody until a sale of
5 the vehicle is made or the tonnage has expired.

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

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

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

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

24 **Sec. 71.** RCW 82.38.180 and 1972 ex.s. c 138 s 4 are each amended
25 to read as follows:

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

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

33 (2) Any taxes previously paid on special fuel exported for use
34 outside of this state. Special fuel carried from this state in the
35 fuel tank of a motor vehicle is deemed to be exported from this state.
36 Special fuel distributed to a federally recognized Indian tribal
37 reservation located within the state of Washington is not considered
38 exported outside this state.

1 (3) Any tax, penalty, or interest erroneously or illegally
2 collected or paid.

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

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

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

12 Recovery for such loss or destruction under either subsection (4)
13 (~~(5)~~), (5), or (6) of this section must be susceptible to positive
14 proof thereby enabling the department to conduct such investigation and
15 require such information as they may deem necessary. In the event that
16 the department is not satisfied that the fuel was lost (~~(5)~~),
17 destroyed, or contaminated as claimed because information or proof as
18 required hereunder is not sufficient to substantiate the accuracy of
19 the claim, they may deem such as sufficient cause to deny all right
20 relating to the refund or credit for the excise tax paid on special
21 fuel alleged to be lost or destroyed.

22 No refund or claim for credit shall be approved by the department
23 unless the gallons of special fuel claimed as nontaxable satisfy the
24 conditions specifically set forth in this section and the nontaxable
25 event or use occurred during the period covered by the refund claim.
26 Refunds or claims for credit by sellers or users of special fuel shall
27 not be allowed for anticipated nontaxable use or events.

28 NEW SECTION. Sec. 72. (1) Upon application, the department may
29 give special authorization to farmers, logging companies, and
30 construction companies to purchase nondyed special fuel directly into
31 the supply tanks of nonhighway equipment or into portable slip tanks
32 for nonhighway use without payment of the special fuel tax. Purchases
33 of this nondyed special fuel must be made at a card lock facility owned
34 and operated by a special fuel distributor who is required to pay the
35 special fuel tax on nondyed special fuel delivered to the card lock
36 facility and has elected to sell the special fuel in this manner. The
37 election is solely at the discretion of the special fuel distributor
38 and must be approved by the department.

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

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

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

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

13 (d) The claim contains a statement that the special fuel
14 distributor has not included the amount of the tax in the sale price of
15 the nondyed special fuel and has not collected the special fuel tax
16 from the purchaser; and

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

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

22 (4) The department may terminate the election of a special fuel
23 distributor if the special fuel distributor fails to comply with this
24 section.

25 (5) The department shall require a holder of a special
26 authorization to submit a request at least once every two years for
27 renewal of the special authorization upon forms supplied by the
28 department. The department shall prescribe the information to be
29 submitted by the special authorization holder and shall determine
30 whether the special authorization shall continue.

31 (6) For any special fuel purchased under this special
32 authorization, a special authorization holder shall retain records
33 required under RCW 82.38.190 for refund submittals for three years
34 following the purchase date of the fuel.

35 (7) Notwithstanding the special provisions provided under this
36 section, the special authorization holder is subject to all provisions
37 of this chapter that apply to refund claims.

1 NEW SECTION. **Sec. 73.** A licensee, other than a special fuel
2 exporter, is entitled to a refund of the special fuel tax previously
3 paid on special fuel which has been purchased from the licensee by a
4 person who is exempt from payment of the special fuel tax imposed by
5 this chapter. Application for the refund shall be accompanied by an
6 invoice or proof satisfactory to the department documenting each sale
7 wherein the purchaser was exempt from the special fuel tax. Claims for
8 refunds shall be made under this chapter.

9 **Sec. 74.** 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. The requirement to provide invoices may be
19 waived for small refund amounts, as determined by the department.
20 Claims for refund of special fuel tax must be for at least twenty
21 dollars.

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

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

32 (a) Within thirteen months from the date of purchase or from the
33 last day of the month following the close of the reporting period for
34 which the refundable amount or credit is due with respect to refunds or
35 credits allowable under RCW 82.38.180(~~(7-subsections)~~) (1), (2), (4),
36 and (5), and if not filed within this period the right to refund shall
37 be forever barred.

1 (b) Within (~~three~~) five years from the last day of the month
2 following the close of the reporting period for which the overpayment
3 is due with respect to the refunds or credits allowable under RCW
4 82.38.180(3). The department shall refund any amount paid that has
5 been verified by the department to be more than ten dollars over the
6 amount actually due for the reporting period. Payment credits shall
7 not be carried forward and applied to subsequent tax returns for a
8 person licensed under this chapter.

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

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

16 The interest shall be paid:

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

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

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

28 (6) The department shall pay interest of one percent on any refund
29 payable under RCW 82.38.180 (1), (2), or (6) that is issued more than
30 thirty state business days after the receipt of a claim properly filed
31 and completed in accordance with this section. After the end of the
32 thirty business-day period, additional interest shall accrue at the
33 rate of one percent on the amount payable for each thirty calendar-day
34 period, until the refund is issued.

35 (7) No injunction or writ of mandate or other legal or equitable
36 process shall issue in any suit, action or proceeding in any court
37 against this state or against any officer of the state to prevent or
38 enjoin the collection under this chapter of any tax or any amount of
39 tax required to be collected.

1 **Sec. 75.** RCW 82.38.210 and 1979 c 40 s 15 are each amended to read
2 as follows:

3 If any (~~special fuel dealer, supplier, or user~~) licensee liable
4 for the remittance of tax imposed by this chapter fails to pay the
5 same, the amount thereof, including any interest, penalty, or addition
6 to such tax, together with any costs that may accrue in addition
7 thereto, shall be a lien in favor of the state upon all franchises,
8 property, and rights to property, whether real or personal, then
9 belonging to or thereafter acquired by such person, whether such
10 property is employed by such person for personal or business use or is
11 in the hands of a trustee, or receiver, or assignee for the benefit of
12 creditors, from the date the taxes were due and payable, until the
13 amount of the lien is paid or the property sold in payment thereof.
14 The lien shall have priority over any lien or encumbrance whatsoever,
15 except the lien of other state taxes having priority by law, and except
16 that such lien shall not be valid as against any bona fide mortgagee,
17 pledgee, judgment creditor, or purchaser whose rights have attached
18 prior to the time the department has filed and recorded notice of such
19 lien as hereinafter provided.

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

35 **Sec. 76.** RCW 82.38.220 and 1994 c 262 s 26 are each amended to
36 read as follows:

37 In the event any (~~special fuel user or special fuel dealer~~)
38 licensee is delinquent in the payment of any obligation imposed under

1 this chapter, the department may give notice of the amount of such
2 delinquency by registered or certified mail to all persons having in
3 their possession or under their control any credits or other personal
4 property belonging to (~~such user or dealer~~) the licensee or owing any
5 debts to (~~such user or dealer~~) the licensee, at the time of the
6 receipt by them of such notice. Any person so notified shall neither
7 transfer nor make other disposition of such credits, personal property,
8 or debts until the department consents to a transfer or other
9 disposition. All persons so notified must, within twenty days after
10 receipt of the notice, advise the department of any and all such
11 credits, personal property, or debts in their possession, under their
12 control or owing by them, as the case may be, and shall immediately
13 deliver such credits, personal property, or debts to the department or
14 its duly authorized representative to be applied to the indebtedness
15 involved.

16 Upon service, the notice and order to withhold and deliver
17 constitutes a continuing lien on property of the taxpayer. The
18 department shall include in the caption of the notice to withhold and
19 deliver "continuing lien." The effective date of a notice to withhold
20 and deliver served under this section is the date of service of the
21 notice.

22 If a person fails to answer the notice within the time prescribed
23 by this section, it is lawful for the court, upon application of the
24 department and after the time to answer the notice has expired, to
25 render judgment by default against the party named in the notice to
26 withhold and deliver for the full amount claimed by the department in
27 the notice to withhold and deliver, together with costs.

28 **Sec. 77.** RCW 82.38.230 and 1979 c 40 s 17 are each amended to read
29 as follows:

30 Whenever any (~~special fuel user, supplier or dealer~~) licensee is
31 delinquent in the payment of any obligation imposed hereunder, and such
32 delinquency continues after notice and demand for payment by the
33 department, the department shall proceed to collect the amount due from
34 the (~~user, supplier or dealer~~) licensee in the following manner: The
35 department shall seize any property subject to the lien of said excise
36 tax, penalty, and interest and thereafter sell it at public auction to
37 pay said obligation and any and all costs that may have been incurred
38 on account of the seizure and sale. Notice of such intended sale and

1 the time and place thereof shall be given to such delinquent ((~~user,~~
2 ~~supplier or dealer~~)) licensee and to all persons appearing of record to
3 have an interest in such property. The notice shall be given in
4 writing at least ten days before the date set for the sale by enclosing
5 it in an envelope addressed to ((~~such user, supplier or dealer~~)) the
6 licensee at ((~~his~~)) the licensee's address as the same appears in the
7 records of the department and, in the case of any person appearing of
8 record to have an interest in such property, addressed to such person
9 at his or her last known residence or place of business, and depositing
10 such envelope in the United States mail, postage prepaid. In addition,
11 the notice shall be published for at least ten days before the date set
12 for the sale in a newspaper of general circulation published in the
13 county in which the property seized is to be sold. If there is no
14 newspaper of general circulation in such county, the notice shall be
15 posted in three public places in the county for a period of ten days.
16 The notice shall contain a description of the property to be sold,
17 together with a statement of the amount due ((~~hereunder~~)) under this
18 chapter, the name of the ((~~user, supplier or dealer~~)) licensee and the
19 further statement that unless such amount is paid on or before the time
20 fixed in the notice the property will be sold in accordance with law.
21 The department shall then proceed to sell the property in
22 accordance with the law and the notice, and shall deliver to the
23 purchaser a bill of sale or deed which shall vest title in the
24 purchaser. If upon any such sale the moneys received exceed the amount
25 due to the state ((~~hereunder~~)) under this chapter from the delinquent
26 ((~~user, supplier or dealer~~)) licensee, the excess shall be returned to
27 ((~~such user, supplier or dealer~~)) the licensee and ((~~his~~)) the
28 licensee's receipt obtained ((~~therefor~~)) for the excess. If any person
29 having an interest in or lien upon the property has filed with the
30 department prior to such sale, notice of such interest or lien, the
31 department shall withhold payment of any such excess to ((~~such user,~~
32 ~~supplier or dealer~~)) the licensee pending a determination of the rights
33 of the respective parties thereto by a court of competent jurisdiction.
34 If for any reason the receipt of ((~~such user, supplier or dealer shall~~
35 ~~not be~~)) the licensee is not available, the department shall deposit
36 such excess with the state treasurer as trustee for ((~~such user,~~
37 ~~supplier or dealer, his~~)) the licensee or the licensee's heirs,
38 successors, or assigns: PROVIDED, That prior to making any seizure of
39 property as ((~~herein~~)) provided for in this section, the department may

1 first serve upon the (~~user's, supplier's, or dealer's~~) licensee's
2 bondsman a notice of the delinquency, with a demand for the payment of
3 the amount due.

4 **Sec. 78.** RCW 82.38.235 and 1979 c 40 s 22 are each amended to read
5 as follows:

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

26 **Sec. 79.** RCW 82.38.240 and 1971 ex.s. c 175 s 25 are each amended
27 to read as follows:

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

1 **Sec. 80.** RCW 82.38.260 and 1995 c 274 s 25 are each amended to
2 read as follows:

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

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

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

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

37 The department shall, upon request from the officials to whom are
38 entrusted the enforcement of the special fuel tax law of any other
39 state, the District of Columbia, the United States, its territories and

1 possessions, the provinces or the Dominion of Canada, forward to such
2 officials any information which he or she may have relative to the
3 receipt, storage, delivery, sale, use, or other disposition of special
4 fuel by any (~~special fuel dealer or special fuel user, provided such~~)
5 licensee if the other state or states furnish like information to this
6 state.

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

10 NEW SECTION. **Sec. 81.** It is intended that the ultimate liability
11 for the tax imposed under this chapter be upon the user, regardless of
12 the manner in which collection of the tax is provided for in this
13 chapter. However, this section does not apply to agreements between
14 the department and federally recognized Indian tribes entered into
15 under RCW 82.38.310, nor does it apply to the consent decrees entered
16 in *Confederated Tribes of the Colville Reservation v. Washington*
17 *Department of Licensing*, No. CS-92-248-JLQ (E.D. Wash.) and *Teo v.*
18 *Steffenson*, No. CY-93-3050-AAM (E.D. Wash.).

19 NEW SECTION. **Sec. 82.** A special fuel distributor who incurs
20 liability in December 1998 for the special fuel tax imposed under this
21 chapter shall report the liability and pay the tax in January 1999 in
22 the manner required by this chapter as it existed before January 1,
23 1999.

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

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

1 A special fuel user shall pay the tax due on fuel in inventory in
2 accordance with the filing frequency assigned to the user before the
3 effective date of this section. Payments not received in accordance
4 with the filing frequency are late and are subject to the interest and
5 penalty provisions of this chapter.

6 NEW SECTION. **Sec. 83.** (1) An international fuel tax agreement
7 licensee who meets the qualifications in subsection (2) of this section
8 may be given special authorization by the department to purchase
9 special fuel delivered into bulk storage without payment of the special
10 fuel tax at the time the fuel is purchased. The special authorization
11 applies only to full truck-trailer loads filled at a terminal rack and
12 delivered directly to the bulk storage facilities of the special
13 authorization holder. The licensee shall pay special fuel tax on the
14 fuel at the time the licensee files their international fuel tax
15 agreement tax return and accompanying schedule with the department.
16 The accompanying schedule shall be provided in a form and manner
17 determined by the department and shall contain information on purchases
18 and usage of all nondyed special fuel purchased during the reporting
19 period. In addition, by the fifteenth day of the month following the
20 month in which fuel under the special authorization was purchased, the
21 licensee must report to the department, the name of the seller and the
22 number of gallons purchased for each purchase of such fuel, and any
23 other information as the department may require.

24 (2) To receive or maintain special authorization under subsection
25 (1) of this section, the following conditions regarding the
26 international fuel tax agreement licensee must apply:

27 (a) During the period encompassing the four consecutive calendar
28 quarters immediately preceding the fourth calendar quarter of the
29 previous year, the number of gallons consumed outside the state of
30 Washington as reported on the licensee's international fuel tax
31 agreement tax returns must have been equal to at least twenty percent
32 of the nondyed special fuel gallons, including fuel used on-road and
33 off-road, purchased by the licensee in the state of Washington, as
34 reported on the accompanying schedules required under subsection (1) of
35 this section;

36 (b) The licensee must have been licensed under the provisions of
37 the international fuel tax agreement during each of the four

1 consecutive calendar quarters immediately preceding the fourth calendar
2 quarter of the previous year; and

3 (c) The licensee has not violated the reporting requirements of
4 this section.

5 (3) A special fuel distributor who sells special fuel under the
6 special authorization provisions of this section is not liable for the
7 special fuel tax on the fuel. By the fifteenth day of the month
8 following the month in which the fuel was sold, the special fuel
9 distributor shall report to the department, the name and special
10 authorization number of the purchaser and the number of gallons sold
11 for each purchase of such special fuel, and any other information as
12 the department may require. The special fuel supplier will report such
13 sales, in a manner prescribed by the department, at the time the
14 special fuel supplier submits the monthly tax report.

15 (4) A supplier selling special fuel under the provisions of this
16 section shall not be responsible for taxes due for special fuel
17 purchased under the provisions of this section.

18 (5) An international fuel tax agreement licensee who qualifies for
19 a special authorization under this section for calendar year 1999 is
20 not subject to the special fuel user requirements of section 82 of this
21 act.

22 **Sec. 84.** 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
38 (4) the violation was committed by a business that employed fifty or

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

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

9 **Sec. 85.** RCW 82.47.010 and 1991 c 173 s 2 are each amended to read
10 as follows:

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

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

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

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

17 **Sec. 86.** RCW 82.80.010 and 1991 c 339 s 12 are each amended to
18 read as follows:

19 (1) Subject to the conditions of this section, any county may levy,
20 by approval of its legislative body and a majority of the registered
21 voters of the county voting on the proposition at a general or special
22 election, additional excise taxes equal to ten percent of the state-
23 wide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of
24 motor vehicle fuel as defined in RCW 82.36.010(~~(+2)~~)) and on each
25 gallon of special fuel as defined in RCW 82.38.020(~~(+5)~~)) sold within
26 the boundaries of the county. Vehicles paying an annual license fee
27 under RCW 82.38.075 are exempt from the county fuel excise tax. An
28 election held under this section must be held not more than twelve
29 months before the date on which the proposed tax is to be levied. The
30 ballot setting forth the proposition shall state the tax rate that is
31 proposed. The county's authority to levy additional excise taxes under
32 this section includes the incorporated and unincorporated areas of the
33 county. The additional excise taxes are subject to the same exceptions
34 and rights of refund as applicable to other motor vehicle fuel and
35 special fuel excise taxes levied under chapters 82.36 and 82.38 RCW.
36 The proposed tax shall not be levied less than one month from the date
37 the election results are certified by the county election officer. The

1 commencement date for the levy of any tax under this section shall be
2 the first day of January, April, July, or October.

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

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

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

15 (5) The department of licensing shall administer and collect the
16 county fuel taxes. The department shall deduct a percentage amount, as
17 provided by contract, for administrative, collection, refund, and audit
18 expenses incurred. The remaining proceeds shall be remitted to the
19 custody of the state treasurer for monthly distribution under RCW
20 82.80.080.

21 NEW SECTION. **Sec. 87.** The department of licensing shall adopt
22 rules necessary to implement this act and shall seek the assistance of
23 the fuel tax advisory committee in developing and adopting the rules.

24 NEW SECTION. **Sec. 88.** The department of licensing may enter into
25 a fuel tax cooperative agreement with another state or Canadian
26 province for the administration, collection, and enforcement of each
27 state's or Canadian province's fuel taxes.

28 NEW SECTION. **Sec. 89.** The following acts or parts of acts are
29 each repealed:

30 (1) RCW 82.36.030 and 1996 c 104 s 1, 1994 c 262 s 18, 1993 c 54 s
31 2, 1991 c 339 s 14, 1990 c 42 s 202, 1987 c 174 s 2, & 1961 c 15 s
32 82.36.030;

33 (2) RCW 82.36.038 and 1987 c 174 s 3;

34 (3) RCW 82.36.220 and 1963 ex.s. c 22 s 20, 1961 ex.s. c 21 s 31,
35 & 1961 c 15 s 82.36.220;

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

3 (5) RCW 82.38.082 and 1987 c 294 s 1; and

4 (6) RCW 82.38.086 and 1981 c 342 s 6.

5 NEW SECTION. **Sec. 90.** (1) Sections 8 through 12, 14, 15, 29, 35,
6 43, and 47 through 49 of this act are each added to chapter 82.36 RCW.

7 (2) Sections 52 through 57, 59, 69, 72, 73, 81 through 83, and 88
8 of this act are each added to chapter 82.38 RCW.

9 NEW SECTION. **Sec. 91.** This act takes effect January 1, 1999.

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