
SENATE BILL 5697

State of Washington

55th Legislature

1997 Regular Session

By Senators Wood, Haugen, Rasmussen, Jacobsen, Horn and Oke; by request of Legislative Transportation Committee

Read first time 02/07/97. Referred to Committee on Transportation.

1 AN ACT Relating to special fuel tax; amending RCW 35A.82.010,
2 82.04.4285, 82.38.020, 82.38.030, 82.38.070, 82.38.080, 82.38.090,
3 82.38.100, 82.38.110, 82.38.120, 82.38.130, 82.38.150, 82.38.160,
4 82.38.170, 82.38.180, 82.38.190, 82.38.210, 82.38.220, 82.38.230,
5 82.38.235, 82.38.240, 82.38.260, 43.05.110, 82.47.010, and 82.80.010;
6 reenacting and amending RCW 82.08.0255, 82.12.0256, and 82.38.140;
7 adding new sections to chapter 82.38 RCW; creating new sections;
8 repealing RCW 82.38.040, 82.38.082, and 82.38.086; prescribing
9 penalties; and providing an effective date.

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

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

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

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

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

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

13 In computing tax there may be deducted from the measure of tax so
14 much of the sale price of motor vehicle fuel as constitutes the amount
15 of tax imposed by the state under chapters 82.36 and 82.38 RCW or the
16 United States government, under 28 U.S.C., Subtitle D, chapters 31 and
17 32, upon the sale thereof.

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

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

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

23 (b) Motor vehicle and special fuel if:

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

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

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

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

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

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

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

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

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

11 (3) Motor vehicle and special fuel if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 sales or movement of special fuel in that state or foreign
2 jurisdiction.

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

6 It is expressly provided that delivery of special fuel may be made
7 without collecting the tax otherwise imposed, when such deliveries are
8 made by a bonded special fuel dealer to special fuel users who are
9 authorized by the department as hereinafter provided, to purchase fuel
10 without payment of tax to the bonded special fuel dealer.

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

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

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

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

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

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

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

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

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

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

33 (f) Dyed special fuel is used on highway, as authorized by the
34 internal revenue code, unless the use is exempt from the special fuel
35 tax.

36 (3) The tax ((required)) imposed by this chapter, if required to be
37 collected by the ((seller)) licensee, is held in trust by the
38 ((seller)) licensee until paid to the department, and a ((seller))
39 licensee who appropriates or converts the tax collected to his or her

1 own use or to any use other than the payment of the tax to the extent
2 that the money required to be collected is not available for payment on
3 the due date as prescribed in this chapter is guilty of a felony, or
4 gross misdemeanor in accordance with the theft and anticipatory
5 provisions of Title 9A RCW. A person, partnership, corporation, or
6 corporate officer who fails to collect the tax imposed by this section,
7 or who has collected the tax and fails to pay it to the department in
8 the manner prescribed by this chapter, is personally liable to the
9 state for the amount of the tax.

10 NEW SECTION. **Sec. 8.** The tax under RCW 82.38.030, if not
11 previously imposed and paid, shall be paid over to the department by
12 special fuel users and persons licensed under the international fuel
13 tax agreement or other fuel tax reciprocity agreements entered into
14 with the state of Washington, on the use of special fuel to operate
15 motor vehicles on the highways of this state, unless the use is exempt
16 from the tax under this chapter.

17 NEW SECTION. **Sec. 9.** (1) A position holder shall remit tax to the
18 department on special fuel removed from a terminal as provided in RCW
19 82.38.030(2)(a). On a two-party exchange, the receiving exchange
20 partner becomes the position holder, who shall remit the tax.

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

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

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

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

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

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

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

1 (3) The position holder has an expired internal revenue service
2 notification certificate; or

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

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

14 NEW SECTION. **Sec. 12.** A person may not operate or maintain a
15 motor vehicle on a public highway of this state with dyed special fuel
16 in the fuel supply tank unless the use is authorized by the internal
17 revenue code. The special fuel tax set forth in RCW 82.38.030 is
18 imposed on users of dyed special fuel authorized by the internal
19 revenue code to operate on-highway motor vehicles using dyed special
20 fuel, unless the use is exempt from the special fuel tax.

21 NEW SECTION. **Sec. 13.** (1) Special fuel that is dyed satisfies the
22 dyeing requirements of this chapter if it meets the dyeing requirements
23 of the United States environmental protection agency and the internal
24 revenue service, including, but not limited to, requirements respecting
25 type, dosage, and timing.

26 (2) Marking must meet the marking requirements of the internal
27 revenue service.

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

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

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

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

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

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

25 NEW SECTION. **Sec. 15.** A special fuel distributor, special fuel
26 importer, or special fuel blender, under rules adopted by the
27 department, shall be entitled to a refund of the tax paid on those
28 sales of special fuel for which no consideration has been received from
29 or on behalf of the purchaser and that have been declared to be
30 worthless accounts receivable. The amount of the tax refunded shall
31 not exceed the amount of tax paid by the special fuel distributor,
32 special fuel importer, or special fuel blender. If the special fuel
33 distributor, special fuel importer, or special fuel blender
34 subsequently collects any amount of the special fuel tax on the sales,
35 the collected amount shall be returned to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (i) The person otherwise liable for the tax is a licensee other
20 than a dyed special fuel user or international fuel tax agreement
21 licensee;

22 (ii) For a removal from a terminal, the terminal is a licensed
23 terminal; and

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

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

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

32 (A) Facilities operated by the supplier;

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

36 (C) Delivery by the supplier to a vessel clearing from port of this
37 state for a port outside this state and actually exported from this
38 state in the vessel.

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

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

4 (B) "Forwarding agent" means a person or firm engaged in the
5 business of preparing property for shipment or arranging for its
6 shipment.

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

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

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

34 A special fuel dealer's license authorizes a person to deliver
35 previously untaxed special fuel into the fuel supply tanks of motor
36 vehicles, collect the special fuel tax on behalf of the state at the
37 time of delivery, and remit the taxes collected to the state as
38 provided herein. A licensed special fuel dealer may also deliver

1 untaxed special fuel into bulk storage facilities of a licensed special
2 fuel user or dealer without collecting the special fuel tax. Special
3 fuel dealers, when making deliveries of special fuel into bulk storage
4 to any person not holding a valid special fuel license, must collect
5 the special fuel tax at time of delivery, unless the person to whom the
6 delivery is made is specifically exempted from the tax as provided
7 herein.

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

21 (a) Special fuel supplier;

22 (b) Special fuel distributor;

23 (c) Special fuel exporter;

24 (d) Special fuel importer;

25 (e) Special fuel blender;

26 (f) Dyed special fuel user; or

27 (g) International fuel tax agreement licensee.

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

32 (3) Special fuel users operating motor vehicles in interstate
33 commerce having two axles and a gross vehicle weight or registered
34 gross vehicle weight not exceeding twenty-six thousand pounds are not
35 required to be licensed. Special fuel users operating motor vehicles
36 in interstate commerce having two axles and a gross vehicle weight or
37 registered gross vehicle weight exceeding twenty-six thousand pounds,
38 or having three or more axles regardless of weight, or a combination of
39 vehicles, when the combination exceeds twenty-six thousand pounds gross

1 vehicle weight, must comply with the licensing and reporting
2 requirements of this chapter. A copy of the license must be carried in
3 each motor vehicle entering this state from another state or province.

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

6 (1) Any special fuel user operating a motor vehicle into this state
7 for commercial purposes may make application for a trip permit (~~in~~
8 ~~lieu of a special fuel user's license required in RCW 82.38.090 and~~
9 ~~82.38.120 which~~) that shall be good for a period of three consecutive
10 days beginning and ending on the dates specified on the face of the
11 permit issued, and only for the vehicle for which it is issued.

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

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

29 (4) Blank permits may be obtained from field offices of the
30 department of transportation, Washington state patrol, department of
31 licensing, or other agents appointed by the department. The department
32 may appoint county auditors or businesses as agents for the purpose of
33 selling trip permits to the public. County auditors or businesses so
34 appointed may retain the filing fee collected for each trip permit to
35 defray expenses incurred in handling and selling the permits.

36 (5) All fees and excise taxes collected by the department for trip
37 permits shall be credited and deposited in the same manner as the

1 special fuel tax collected under this chapter and shall not be subject
2 to exchange, refund, or credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Upon receipt and approval of an application and bond, if required,
24 the department shall issue ((to the applicant)) a license to ((act as
25 a special fuel dealer or a special fuel user)) the applicant. However,
26 the department may refuse to issue a ((special fuel dealer's)) license
27 ((or a special fuel user's license)) to any person:

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

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

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

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

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

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

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

15 (8) Who violated a statute or administrative rule regulating fuel
16 taxation or distribution;

17 (9) Who failed to cooperate with the department's investigations
18 by:

19 (a) Not furnishing papers or documents;

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

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

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

25 (11) Upon other sufficient cause being shown.

26 Before such refusal, the department shall grant the applicant a
27 hearing and shall grant the applicant at least twenty days written
28 notice of the time and place thereof.

29 The department shall determine from the information shown in the
30 application or other investigation the kind and class of license to be
31 issued. For the purpose of considering any application for a special
32 fuel ((dealer's)) license, the department may inspect, cause an
33 inspection, investigate, or cause an investigation of the records of
34 this or any other state or of the federal government to ascertain the
35 veracity of the information on the application form and the applicant's
36 criminal and licensing history.

37 All licenses shall be posted in a conspicuous place or kept
38 available for inspection at the principal place of business of the
39 owner thereof. License holders shall reproduce the license by

1 photostat or other method and keep a copy on display for ready
2 inspection at each additional place of business or other place of
3 storage from which special fuel is sold, delivered or used and in each
4 motor vehicle used by the license holder to transport special fuel
5 purchased by him or her for resale, delivery or use. (~~Every licensed
6 special fuel user operating a motor vehicle registered in a
7 jurisdiction other than this state shall reproduce the license and
8 carry a photocopy thereof with each motor vehicle being operated upon
9 the highways of this state.~~)

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

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

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

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

21 The department may revoke the license of any special fuel (~~dealer,
22 or special fuel user~~) licensee for any of the grounds constituting
23 cause for denial of a license set forth in RCW 82.38.120 or for other
24 reasonable cause. Before revoking such license the department shall
25 notify the licensee to show cause within twenty days of the date of the
26 notice why the license should not be revoked: PROVIDED, That at any
27 time prior to and pending such hearing the department may, in the
28 exercise of reasonable discretion, suspend such license.

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

32 Any surety on a bond furnished by a special fuel (~~dealer or
33 special fuel user~~) licensee as provided (~~herein~~) in this chapter
34 shall be released and discharged from any and all liability to the
35 state accruing on such bond after the expiration of forty-five days
36 from the date which such surety shall have lodged with the department
37 a written request to be released and discharged, but this provision
38 shall not operate to relieve, release, or discharge the surety from any

1 liability already accrued or which shall accrue before the expiration
2 of the forty-five day period. The department shall promptly, upon
3 receiving any such request, notify the special fuel (~~dealer or special~~
4 ~~fuel user~~) licensee who furnished the bond, and unless the special
5 fuel (~~dealer or special fuel user shall~~) licensee, on or before the
6 expiration of the forty-five day period, files a new bond, in
7 accordance with (~~the requirements of~~) this section, (~~or make a~~
8 ~~deposit in lieu thereof as provided in RCW 82.38.020(11),~~) the
9 department forthwith shall cancel the special fuel (~~dealer's or~~
10 ~~special fuel user's~~) license.

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

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

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

35 (a) The date of each receipt;

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

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

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

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

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

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

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

13 (2)(a) All (~~special fuel users using special fuel~~) international
14 fuel tax agreement licensees and dyed special fuel users authorized to
15 use dyed special fuel on highway in vehicles licensed for highway
16 operation shall maintain detailed mileage records on an individual
17 vehicle basis.

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

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

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

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

28 ~~Every special fuel dealer or special fuel user making such sales or~~
29 ~~deliveries of special fuel and every person so receiving and purchasing~~
30 ~~special fuel must each retain one copy of each such invoice as part of~~
31 ~~the dealer's permanent records for the time and purposes above~~
32 ~~provided.~~

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

38 (6) ~~Subsections (1)(f), (2)(b), and (5) of this section do not~~
39 ~~apply to special fuel users when the special fuel is used off highway~~

1 in farming, construction, or logging operations. Upon filing a special
2 fuel user tax report, every such special fuel user shall certify and
3 bear the burden of proof as to the number of gallons of special fuel
4 used off-highway.)) The department may require any licensee or a
5 person engaged in the business of selling, purchasing, distributing,
6 storing, transporting, or delivering special fuel to submit periodic
7 reports to the department regarding the disposition of such fuel. The
8 reports must be on forms prescribed by the department and must contain
9 such information as the department may require.

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

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

Estimated Yearly	
Tax Liability	Reporting Frequency
\$ 0 -- \$100	Yearly
\$101 -- 250	Semi-yearly
\$251 -- 499	Quarterly
\$500 and over	Monthly))

25 Dyed special fuel users whose estimated yearly tax liability is two
26 hundred fifty dollars or less, shall file a report yearly, and dyed
27 special fuel users whose estimated yearly tax liability is more than
28 two hundred fifty dollars, shall file reports quarterly. Special fuel
29 users licensed under the international fuel tax agreement shall file
30 reports quarterly.

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

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

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

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

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

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

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

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

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

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

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

37 ~~((+3))~~ (4) If the tax is paid by electronic funds transfer ~~((and~~
38 ~~the reporting period ends on the last day of a calendar month)),~~ the

1 tax shall be paid on or before the (~~state business day immediately~~
2 ~~preceding the last state business day of the month following the end of~~
3 ~~the reporting period~~) expiration of five state business days
4 immediately following the second-to-last business day of the month
5 immediately following the end of the reporting period. When the
6 reporting period is May, the tax shall be paid on the last state
7 business day of June. If the tax is paid by electronic funds transfer
8 and the reporting period ends on a day other than the last day of a
9 calendar month as provided in RCW 82.38.150, the tax shall be paid on
10 or before (~~the state business day immediately preceding~~) the last
11 state business day of the thirty-day period following the end of the
12 reporting period.

13 (~~(4)~~) (5) The tax shall be paid by electronic funds transfer
14 whenever the amount due is fifty thousand dollars or more.

15 (6) A special fuel supplier that receives a payment of the special
16 fuel tax may not apply the payment towards debts for special fuel
17 purchased from the supplier or for any other services provided to the
18 debtor by the special fuel supplier.

19 NEW SECTION. Sec. 25. A special fuel distributor who makes a
20 timely payment of the special fuel tax to a special fuel supplier may
21 deduct from such payment an administrative discount of six-tenths of
22 one percent of the amount of tax payable. A special fuel supplier who
23 files a timely return may deduct from the amount of tax payable with
24 the return an administrative discount of two-tenths of one percent of
25 the amount of tax payable to assist in covering expenses incurred in
26 collecting the special fuel tax. A special fuel supplier may also
27 deduct from the amount of tax payable the administrative discount
28 allowed by this section which was provided by the special fuel supplier
29 to the special fuel distributor.

30 NEW SECTION. Sec. 26. (1) A special fuel supplier shall, no later
31 than the twentieth day or next business day after the special fuel tax
32 is due from the special fuel distributor under RCW 82.38.160(2), notify
33 the department of the failure of a special fuel distributor to pay the
34 full amount of the tax owed.

35 (2) Upon notification and submission of satisfactory evidence by a
36 special fuel supplier that a special fuel distributor has failed to

1 comply with RCW 82.38.160(2), the department may summarily suspend the
2 license of the special fuel distributor.

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

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

15 **Sec. 27.** RCW 82.38.170 and 1996 c 104 s 12 are each amended to
16 read as follows:

17 (1) If any special fuel (~~dealer or special fuel user~~) licensee
18 fails to pay any taxes collected or due the state of Washington (~~by~~
19 ~~said dealer or user~~) within the time prescribed by RCW 82.38.150 and
20 82.38.160, (~~said dealer or user~~) the licensee shall pay in addition
21 to such tax a penalty of ten percent of the amount thereof.

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

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

1 preponderance of the evidence that it is erroneous or excessive as the
2 case may be.

3 (4) If any special fuel (~~((dealer or special fuel user))~~) licensee
4 shall establish by a fair preponderance of evidence that his or her
5 failure to file a report or pay the proper amount of tax within the
6 time prescribed was due to reasonable cause and was not intentional or
7 willful, the department may waive the penalty prescribed in subsections
8 (1), (2), and (3) of this section.

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

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

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

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

37 (9) Any special fuel (~~((dealer or special fuel user))~~) licensee
38 against whom an assessment is made under the provisions of subsections
39 (2) or (3) of this section may petition for a reassessment thereof

1 within thirty days after service upon the special fuel (~~dealer or~~
2 ~~special fuel user~~) licensee of notice thereof. If such petition is
3 not filed within such thirty day period, the amount of the assessment
4 becomes final at the expiration thereof.

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

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

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

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

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

38 (13) Unless expressly authorized by the internal revenue code and
39 this chapter, a person using dyed special fuel in the propulsion of a

1 motor vehicle upon the highways of this state is subject to a civil
2 penalty of ten dollars for each gallon of dyed special fuel placed into
3 the supply tank of the motor vehicle, or one thousand dollars,
4 whichever is greater. The civil penalty collected as a result of this
5 subsection shall be deposited in the motor vehicle fund. The penalties
6 shall be collected and administered under this chapter.

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

13 (15) The Washington state patrol shall, by January 1, 1998, develop
14 and implement procedures for collection, analysis, and storage of fuel
15 samples collected under this chapter.

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

18 **Sec. 28.** RCW 82.38.180 and 1972 ex.s. c 138 s 4 are each amended
19 to read as follows:

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

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

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

30 (3) Any tax, penalty, or interest erroneously or illegally
31 collected or paid by a licensee.

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

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

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

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

13 **Sec. 29.** RCW 82.38.190 and 1996 c 91 s 4 are each amended to read
14 as follows:

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

23 (2) Any amount determined to be refundable by the department under
24 RCW 82.38.180 shall first be credited on any amounts then due and
25 payable from ~~((the special fuel dealer or special fuel user or to))~~ any
26 person to whom the refund is due, and the department shall then certify
27 the balance thereof to the state treasurer, who shall thereupon draw
28 his or her warrant for such certified amount to such ~~((special fuel~~
29 ~~dealer or special fuel user or any))~~ person ~~((: PROVIDED, HOWEVER, That~~
30 ~~the department shall deduct fifty cents from all such refunds as a~~
31 ~~filing fee, which fee shall be deducted from the warrant issued in~~
32 ~~payment of such refund to defray expenses in furnishing the claim forms~~
33 ~~and other forms provided for in this chapter))~~.

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

37 (a) Within thirteen months from the date of purchase or from the
38 last day of the month following the close of the reporting period for

1 which the refundable amount or credit is due with respect to refunds or
2 credits allowable under RCW 82.38.180(~~(7-subsections)~~) (1), (2), (4),
3 and (5), and if not filed within this period the right to refund shall
4 be forever barred.

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

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

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

19 The interest shall be paid:

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

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

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

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

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

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

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

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

35 In the event any special fuel (~~user or special fuel dealer~~)
36 licensee is delinquent in the payment of any obligation imposed under
37 this chapter, the department may give notice of the amount of such
38 delinquency by registered or certified mail to all persons having in

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

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

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

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

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

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

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

1 ~~supplier's, or dealer's~~) special fuel licensee's bondsman a notice of
2 the delinquency, with a demand for the payment of the amount due.

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

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

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

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

1 **Sec. 35.** 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 fuel
13 (~~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. 36.** 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 shall not apply to agreements between
14 the department and federally recognized Indian tribes entered into
15 under RCW 82.38.310, nor shall 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. 37.** A special fuel distributor who incurs
20 liability in December 1997 for the special fuel tax imposed under this
21 chapter shall report the liability and pay the tax in January 1998 in
22 the manner required by this chapter before January 1, 1998.

23 A special fuel distributor or special fuel user shall inventory all
24 special fuel that is on hand or in the person's possession as of 12:01
25 a.m. on January 1, 1998, and is not in the bulk transfer-terminal
26 system and shall report the results of the inventory to the department
27 no later than the last business day of February 1998. The report of
28 inventory must be made on a form prescribed by the department.

29 The special fuel tax imposed by this chapter is due and payable at
30 the time the report of inventory is submitted. A special fuel
31 distributor may pay the tax due on fuel in inventory any time before
32 February 28, 1999, but at least one-twelfth of the amount due must be
33 paid by the last day of each month starting with February 1998.
34 Payments not received in accordance with this section are late and are
35 subject to the interest and penalty provisions of this chapter.
36 Payments made after February 1999 are late and are subject to the
37 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 act. Payments not received in accordance with
4 the filing frequency are late and are subject to the interest and
5 penalty provisions of this chapter.

6 NEW SECTION. **Sec. 38.** A licensee holding both a special fuel user
7 and international fuel tax agreement license issued under this chapter
8 is entitled to a credit of five percent of the licensee's special fuel
9 tax liability reported on the licensee's fourth quarter 1997 special
10 fuel user tax return. In addition to accepting the credit, the
11 licensee may elect to enter into a deferred payment contract with the
12 department. The contract shall allow the licensee to defer payment of
13 the licensee's fourth quarter 1997 Washington special fuel tax
14 liability reported on their special fuel user tax return. The licensee
15 may pay the tax due any time before December 31, 1998, but at least
16 one-twelfth of the amount due must be paid by the last day of each
17 month starting with January 1998. Payments not received in accordance
18 with this section are late and are subject to the interest and penalty
19 provisions of this chapter. Payments made after December 31, 1998, are
20 late and are subject to the interest and penalty provisions of this
21 chapter.

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

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

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

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

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

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

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

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

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

18 **Sec. 41.** RCW 82.80.010 and 1991 c 339 s 12 are each amended to
19 read as follows:

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

1 the election results are certified by the county election officer. The
2 commencement date for the levy of any tax under this section shall be
3 the first day of January, April, July, or October.

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

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

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

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

22 NEW SECTION. Sec. 42. The department of licensing, in cooperation
23 with the fuel tax advisory committee, shall present draft legislation
24 to shift the point of taxation for motor fuel to the terminal rack to
25 the legislative transportation committee by December 31, 1997.

26 NEW SECTION. Sec. 43. The department of licensing, in cooperation
27 with the fuel tax advisory committee, shall prepare and submit a report
28 to the legislative transportation committee containing recommendations
29 for special fuel and motor fuel recordkeeping and tax reporting
30 requirements, including but not limited to recommendations regarding
31 the form and manner in which the records and tax reports must be
32 maintained and made available to the department. The report is due no
33 later than December 31, 1997.

34 NEW SECTION. Sec. 44. The department of licensing may enter into
35 a fuel tax cooperative agreement with another state or Canadian

1 province for the administration, collection, and enforcement of each
2 state's or Canadian province's fuel taxes.

3 NEW SECTION. **Sec. 45.** The following acts or parts of acts are
4 each repealed:

5 (1) RCW 82.38.040 and 1990 c 250 s 81, 1973 1st ex.s. c 156 s 2, &
6 1971 ex.s. c 175 s 5;

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

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

9 NEW SECTION. **Sec. 46.** Sections 8 through 13, 15, 25, 26, 36
10 through 38, and 44 of this act are each added to chapter 82.38 RCW.

11 NEW SECTION. **Sec. 47.** This act takes effect January 1, 1998.

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