
SENATE BILL 6434

State of Washington 57th Legislature

2002 Regular Session

By Senators Benton, Haugen and T. Sheldon; by request of Department of Licensing

Read first time 01/17/2002. Referred to Committee on Transportation.

1 AN ACT Relating to dyed special fuel; amending RCW 82.38.020,
2 82.38.030, 82.38.065, and 82.38.170; and prescribing penalties.

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

4 **Sec. 1.** RCW 82.38.020 and 2001 c 270 s 4 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

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

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

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

18 (4) "Bulk transfer-terminal system" means the special fuel
19 distribution system consisting of refineries, pipelines, vessels, and

1 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
2 is in the bulk transfer-terminal system. Special fuel in the fuel tank
3 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
4 equipment suitable for ground transportation is not in the bulk
5 transfer-terminal system.

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

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

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

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

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

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

20 (b) An intentional: ((~~Omission~~)) Failure to file a return or
21 report; or other act of deception; or

22 (c) The unlawful use of dyed special fuel.

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

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

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

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

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

37 (15) "Licensee" means a person holding a license issued under this
38 chapter.

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

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

6 (18) "Person" means a natural person, fiduciary, association, or
7 corporation. The term "person" as applied to an association means and
8 includes the partners or members thereof, and as applied to
9 corporations, the officers thereof.

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

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

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

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

24 (23) "Special fuel" means and includes all combustible gases and
25 liquids suitable for the generation of power for propulsion of motor
26 vehicles, except that it does not include motor vehicle fuel as defined
27 in chapter 82.36 RCW, nor does it include dyed special fuel as defined
28 by federal regulations, unless the use is in violation of this chapter.
29 ~~((However, if the federal regulations authorize dyed special fuel to be
30 used in highway vehicles, that usage is considered taxable under this
31 chapter, unless otherwise exempted.))~~ If a person holds for sale,
32 sells, purchases, or uses any dyed special fuel in violation of this
33 chapter, all dyed special fuel held for sale, sold, purchased, stored,
34 or used by that person is considered special fuel, and the person is
35 subject to all presumptions, reporting, and recordkeeping requirements
36 and other obligations which apply to special fuel, along with payment
37 of any applicable taxes, penalties, or interest for illegal use.

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

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

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

14 (27) "Special fuel supplier" means a person who holds a federal
15 certificate issued under the internal revenue code and authorizes the
16 person to tax-free transactions on special fuel in the bulk transfer-
17 terminal system.

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

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

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

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

34 **Sec. 2.** RCW 82.38.030 and 2001 c 270 s 6 are each amended to read
35 as follows:

36 (1) There is hereby levied and imposed upon special fuel users a
37 tax at the rate computed in the manner provided in RCW 82.36.025 on

1 each gallon of special fuel, or each one hundred cubic feet of
2 compressed natural gas, measured at standard pressure and temperature.

3 (2) The tax imposed by subsection (1) of this section is imposed
4 when:

5 (a) Special fuel is removed in this state from a terminal if the
6 special fuel is removed at the rack unless the removal is to a licensed
7 exporter for direct delivery to a destination outside of the state, or
8 the removal is to a special fuel distributor for direct delivery to an
9 international fuel tax agreement licensee under RCW 82.38.320;

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

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

14 (ii) The removal is at the refinery rack unless the removal is to
15 a licensed exporter for direct delivery to a destination outside of the
16 state, or the removal is to a special fuel distributor for direct
17 delivery to an international fuel tax agreement licensee under RCW
18 82.38.320;

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 sold or removed in this state to an unlicensed
25 entity unless there was a prior taxable removal, entry, or sale of the
26 special 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 produce the blended special fuel;

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

35 (g) Dyed special fuel is held for sale, sold, used, or is intended
36 to be used in violation of this chapter;

37 (h) Special fuel purchased by an international fuel tax agreement
38 licensee under RCW 82.38.320 is used on a highway; and

1 (~~(h)~~) (i) Special fuel is sold by a licensed special fuel
2 supplier to a special fuel distributor, special fuel importer, or
3 special fuel blender and the special fuel is not removed from the bulk
4 transfer-terminal system.

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

17 **Sec. 3.** RCW 82.38.065 and 1998 c 176 s 56 are each amended to read
18 as follows:

19 A person may (~~not~~) operate or maintain a licensed or required to
20 be licensed motor vehicle (~~(on a public highway of this state)~~) with
21 dyed special fuel in the fuel supply tank (~~(unless)~~) only if the use is
22 authorized by the internal revenue code and the person is either the
23 holder of an uncanceled dyed special fuel user license issued (~~(to him~~
24 ~~or her by the department)~~) or the use is exempt from the special fuel
25 tax. A person may maintain dyed special fuel for a taxable use in bulk
26 storage if the person is the holder of an uncanceled dyed special fuel
27 user license issued under this chapter. The special fuel tax set forth
28 in RCW 82.38.030 is imposed on users of dyed special fuel authorized by
29 the internal revenue code to operate on-highway motor vehicles using
30 dyed special fuel, unless the use is exempt from the special fuel tax.
31 It is unlawful for any person to sell, use, hold for sale, or hold for
32 intended use dyed special fuel in a manner in violation of this
33 chapter.

34 **Sec. 4.** RCW 82.38.170 and 1998 c 176 s 70 are each amended to read
35 as follows:

36 (1) If any licensee fails to pay any taxes collected or due the
37 state of Washington within the time prescribed by RCW 82.38.150 and

1 82.38.160, the licensee shall pay in addition to such tax a penalty of
2 ten percent of the amount thereof.

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

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

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

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

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

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

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

15 (9) Any licensee against whom an assessment is made under the
16 provisions of subsection((s)) (2) or (3) of this section may petition
17 for a reassessment thereof within thirty days after service upon the
18 licensee of notice thereof. If such petition is not filed within such
19 thirty day period, the amount of the assessment becomes final at the
20 expiration thereof.

21 If a petition for reassessment is filed within the thirty day
22 period, the department shall reconsider the assessment and, if the
23 licensee has so requested in his or her petition, shall grant such
24 licensee an oral hearing and give the licensee ten days' notice of the
25 time and place thereof. The department may continue the hearing from
26 time to time. The decision of the department upon a petition for
27 reassessment shall become final thirty days after service upon the
28 licensee of notice thereof.

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

33 (10) Any notice of assessment required by this section shall be
34 served personally or by certified or registered mail; if by mail,
35 service shall be made by depositing such notice in the United States
36 mail, postage prepaid addressed to the licensee at his or her address
37 as the same appears in the records of the department.

1 (11) Any licensee who has had the licensee's special fuel license
2 revoked shall pay a one hundred dollar penalty prior to the issuance of
3 a new license.

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

12 (13) Unless the use is exempt from the special fuel tax, or
13 expressly authorized by the internal revenue code and this chapter, a
14 person ((using)) having dyed special fuel in the ((propulsion)) fuel
15 supply tank of a motor vehicle ((upon the highways of this state)) that
16 is licensed or required to be licensed is subject to a civil penalty of
17 ten dollars for each gallon of dyed special fuel placed into the supply
18 tank of the motor vehicle, or one thousand dollars, whichever is
19 greater. The civil penalty collected as a result of this subsection
20 must be deposited in the motor vehicle fund. The penalties must be
21 collected and administered under this chapter.

22 (14) A person who maintains dyed special fuel in bulk storage for
23 an intended sale or use in violation of this chapter is subject to a
24 civil penalty of ten dollars for each gallon of dyed special fuel, or
25 one thousand dollars, whichever is greater, currently or previously
26 maintained in bulk storage by the person. The civil penalty collected
27 as a result of this subsection must be deposited in the motor vehicle
28 fund. The penalties must be collected and administered under this
29 chapter.

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

35 ((+15+)) (16) The Washington state patrol shall, by January 1,
36 1999, develop and implement procedures for collection, analysis, and
37 storage of fuel samples collected under this chapter.

1 (~~(16)~~) (17) RCW 43.05.110 does not apply to the civil penalties
2 imposed under subsection (13) of this section.

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