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SENATE BILL 6785

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State of Washington                      59th Legislature                      2006 Regular Session

By Senators Jacobsen, Swecker, Haugen and Benson; by request of Department of Transportation and Department of Licensing

Read first time 01/23/2006. Referred to Committee on Transportation.

1            AN ACT Relating to the administration of fuel taxes; amending RCW  
2 82.36.010, 82.36.020, 82.36.026, 82.36.027, 82.36.029, 82.36.031,  
3 82.36.035, 82.36.045, 82.36.060, 82.36.080, 82.36.160, 82.36.180,  
4 82.36.275, 82.36.280, 82.36.285, 82.36.290, 82.36.320, 82.36.340,  
5 82.36.370, 82.36.380, 82.36.450, 82.38.020, 82.38.030, 82.38.032,  
6 82.38.035, 82.38.050, 82.38.090, 82.38.100, 82.38.110, 82.38.140,  
7 82.38.150, 82.38.160, 82.38.180, 82.38.270, 82.38.310, and 82.38.320;  
8 adding new sections to chapter 82.36 RCW; adding a new section to  
9 chapter 82.38 RCW; adding a new section to chapter 47.01 RCW; repealing  
10 RCW 82.36.042, 82.36.044, 82.36.273, 82.36.305, 82.36.360, 82.36.373,  
11 82.36.407, 82.38.070, 82.38.071, 82.38.081, 82.38.165, 82.38.185, and  
12 82.38.285; prescribing penalties; and declaring an emergency.

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

14            **Sec. 1.** RCW 82.36.010 and 2001 c 270 s 1 are each amended to read  
15 as follows:

16            The definitions in this section apply throughout this chapter  
17 unless the context clearly requires otherwise.

18            (1) "Blended fuel" means a mixture of motor vehicle fuel and

1 another liquid, other than a de minimis amount of the liquid, that can  
2 be used as a fuel to propel a motor vehicle.

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

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

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

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

19 ~~(6))~~ "Department" means the department of licensing.

20 ~~((7))~~ (6) "Director" means the director of licensing.

21 ~~((8))~~ (7) "Evasion" or "evade" means to diminish or avoid the  
22 computation, assessment, or payment of authorized taxes or fees  
23 through:

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

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

28 ~~((9))~~ (8) "Export" means to obtain motor vehicle fuel in this  
29 state for sales or distribution outside the state.

30 ~~((10))~~ (9) "Highway" means every way or place open to the use of  
31 the public, as a matter of right, for the purpose of vehicular travel.

32 ~~((11))~~ (10) "Import" means to bring motor vehicle fuel into this  
33 state by a means of conveyance other than the fuel supply tank of a  
34 motor vehicle.

35 (11) "International fuel tax agreement licensee" means a special  
36 fuel user operating qualified motor vehicles in interstate commerce and  
37 licensed by the department under the international fuel tax agreement.

1 (12) "Licensee" means a person holding a motor vehicle fuel  
2 supplier, motor vehicle fuel importer, motor vehicle fuel exporter,  
3 motor vehicle fuel blender, or international fuel tax agreement license  
4 issued under this chapter.

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

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

10 ~~((15) "Motor vehicle fuel distributor" means a person who acquires~~  
11 ~~motor vehicle fuel from a supplier, distributor, or licensee for~~  
12 ~~subsequent sale and distribution.~~

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

20 ~~((17))~~ (15) "Motor vehicle fuel importer" means a person who  
21 imports motor vehicle fuel into the state by a means other than the  
22 bulk transfer-terminal system. If the importer of record is acting as  
23 an agent, the person for whom the agent is acting is the importer. If  
24 there is no importer of record, the owner of the motor vehicle fuel at  
25 the time of importation is the importer.

26 ~~((18))~~ (16) "Motor vehicle fuel supplier" means a person who  
27 holds a federal certificate of registry that is issued under the  
28 internal revenue code and authorizes the person to enter into federal  
29 tax-free transactions on motor vehicle fuel in the bulk transfer-  
30 terminal system.

31 ~~((19))~~ (17) "Motor vehicle" means a self-propelled vehicle  
32 designed for operation upon land utilizing motor vehicle fuel as the  
33 means of propulsion.

34 ~~((20))~~ (18) "Motor vehicle fuel" means gasoline and any other  
35 inflammable gas or liquid, by whatsoever name the gasoline, gas, or  
36 liquid may be known or sold, the chief use of which is as fuel for the  
37 propulsion of motor vehicles or motorboats.

1       (~~(+21)~~) (19) "Person" means a natural person, fiduciary,  
2 association, or corporation. The term "person" as applied to an  
3 association means and includes the partners or members thereof, and as  
4 applied to corporations, the officers thereof.

5       (~~(+22)~~) (20) "Position holder" means a person who holds the  
6 inventory position in motor vehicle fuel, as reflected by the records  
7 of the terminal operator. A person holds the inventory position in  
8 motor vehicle fuel if the person has a contractual agreement with the  
9 terminal for the use of storage facilities and terminating services at  
10 a terminal with respect to motor vehicle fuel. "Position holder"  
11 includes a terminal operator that owns motor vehicle fuel in their  
12 terminal.

13       (~~(+23)~~) (21) "Rack" means a mechanism for delivering motor vehicle  
14 fuel from a refinery or terminal into a truck, trailer, railcar, or  
15 other means of nonbulk transfer.

16       (~~(+24)~~) (22) "Refiner" means a person who owns, operates, or  
17 otherwise controls a refinery.

18       (~~(+25)~~) (23) "Removal" means a physical transfer of motor vehicle  
19 fuel other than by evaporation, loss, or destruction.

20       (~~(+26)~~) (24) "Terminal" means a motor vehicle fuel storage and  
21 distribution facility that has been assigned a terminal control number  
22 by the internal revenue service, is supplied by pipeline or vessel, and  
23 from which reportable motor vehicle fuel is removed at a rack.

24       (~~(+27)~~) (25) "Terminal operator" means a person who owns,  
25 operates, or otherwise controls a terminal.

26       (~~(+28)~~) (26) "Two-party exchange" or "buy-sell agreement" means a  
27 transaction in which taxable motor vehicle fuel is transferred from one  
28 licensed supplier to another licensed supplier under an exchange or  
29 buy-sell agreement whereby the supplier that is the position holder  
30 agrees to deliver taxable motor vehicle fuel to the other supplier or  
31 the other supplier's customer at the rack of the terminal at which the  
32 delivering supplier is the position holder.

33       **Sec. 2.** RCW 82.36.020 and 2001 c 270 s 2 are each amended to read  
34 as follows:

35       (1) There is hereby levied and imposed upon motor vehicle fuel  
36 (~~(users)~~) licensees a tax at the rate computed in the manner provided  
37 in RCW 82.36.025 on each gallon of motor vehicle fuel.

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

3 (a) Motor vehicle fuel is removed in this state from a terminal if  
4 the motor vehicle fuel is removed at the rack unless the removal is to  
5 a licensed exporter for direct delivery to a destination outside of the  
6 state;

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

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

12 (ii) The removal is at the refinery rack unless the removal is to  
13 a licensed exporter for direct delivery to a destination outside of the  
14 state;

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

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

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

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

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

29 (f) Motor vehicle fuel is sold by a licensed motor vehicle fuel  
30 supplier to a (~~motor vehicle fuel distributor,~~) motor vehicle fuel  
31 importer, (~~or~~) motor vehicle fuel blender, or international fuel tax  
32 agreement licensee and the motor vehicle fuel is not removed from the  
33 bulk transfer-terminal system.

34 (3) The proceeds of the motor vehicle fuel excise tax shall be  
35 distributed as provided in RCW 46.68.090.

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.36 RCW  
37 to read as follows:

1 It is the intent and purpose of this chapter that the tax shall be  
2 imposed at the time and place of the first taxable event and upon the  
3 first taxable person within this state. Any person whose activities  
4 would otherwise require payment of the tax imposed by RCW 82.36.020 but  
5 who is exempt from the tax nevertheless has a precollection obligation  
6 for the tax that must be imposed on the first taxable event within this  
7 state. Failure to pay the tax with respect to a taxable event shall  
8 not prevent tax liability from arising by reason of a subsequent  
9 taxable event.

10 Should the licensee be exempt from the tax's imposition as a matter  
11 of federal law by virtue of its status as a federally recognized Indian  
12 tribe or member of such tribe, such supplier shall not bear the tax's  
13 legal incidence and must pass the tax through as part of the fuel's  
14 selling price. Such supplier shall retain the administrative  
15 obligation to remit the tax, and such obligation shall accrue upon  
16 occurrence of the events in RCW 82.36.020.

17 Should a retailer otherwise subject to the tax imposed under this  
18 section be exempt from the tax's imposition as a matter of federal law  
19 by virtue of its status as a federally recognized Indian tribe or  
20 member of such tribe, the retailer shall not bear the tax's legal  
21 incidence and must pass the tax through as part of the fuel's selling  
22 price to the consumer unless such consumer is exempt from imposition of  
23 the tax as a matter of federal law by virtue of its status as a  
24 federally recognized Indian tribe or membership in such tribe, and the  
25 retailer shall be entitled to claim a credit against taxes otherwise  
26 due and owing under this chapter or a tax refund, together with  
27 interest, attributable to the fuel purchased by such consumer.

28 **Sec. 4.** RCW 82.36.026 and 2001 c 270 s 3 are each amended to read  
29 as follows:

30 (1) A licensed supplier shall (~~remit~~) be liable for and pay tax  
31 to the department as provided in RCW 82.36.020. On a two-party  
32 exchange, or buy-sell agreement between two licensed suppliers, the  
33 receiving exchange partner or buyer (~~who~~) shall (~~{buyer shall}~~  
34 ~~remit~~) be liable for any pay the tax.

35 (2) A licensed refiner shall (~~remit~~) be liable for and pay tax to  
36 the department on motor vehicle fuel removed from a refinery as  
37 provided in RCW 82.36.020(2)(b).

1 (3) ~~((An))~~ A licensed importer shall ~~((remit))~~ be liable for and  
2 pay tax to the department on motor vehicle fuel imported into this  
3 state as provided in RCW 82.36.020(2)(c).

4 (4) A licensed blender shall ~~((remit))~~ be liable for and pay tax to  
5 the department on the removal or sale of blended motor vehicle fuel as  
6 provided in RCW 82.36.020(2)(e).

7 (5) Nothing in this chapter shall prohibit the licensee for payment  
8 of the tax under this chapter from including as a part of the selling  
9 price an amount equal to the tax.

10 NEW SECTION. Sec. 5. A new section is added to chapter 82.36 RCW  
11 to read as follows:

12 International fuel tax agreement licensees, or persons operating  
13 motor vehicles under other reciprocity agreements entered into with the  
14 state of Washington, are liable for and must pay the tax under RCW  
15 82.36.020 to the department on motor vehicle fuel used to operate motor  
16 vehicles on the highways of this state. This provision does not apply  
17 if the tax under RCW 82.36.020 has previously been imposed and paid by  
18 the international fuel tax agreement licensee or if the use of such  
19 fuel is exempt from the tax under this chapter.

20 **Sec. 6.** RCW 82.36.027 and 1998 c 176 s 9 are each amended to read  
21 as follows:

22 A terminal operator is jointly and severally liable for  
23 ~~((remitting))~~ payment of the tax imposed under RCW 82.36.020(1) if, at  
24 the time of removal:

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

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

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

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

32 **Sec. 7.** RCW 82.36.029 and 1998 c 176 s 10 are each amended to read  
33 as follows:

34 Upon the taxable removal of motor vehicle fuel by a licensed  
35 supplier and upon importation by a licensed importer, the licensee who

1 acquired or removed the motor vehicle fuel, other than a motor vehicle  
2 fuel exporter, shall be entitled to a deduction from the tax liability  
3 on the gallonage of taxable motor vehicle fuel removed or imported in  
4 order to account for handling losses, as follows: For a motor vehicle  
5 fuel supplier (~~(acting as a distributor)~~), one-quarter of one percent;  
6 and for (~~(all other licensees)~~) a licensed importer, thirty one-  
7 hundredths of one percent. For those licensees required to file tax  
8 reports, the handling loss deduction shall be reported on tax reports  
9 filed with the department. (~~(For motor vehicle fuel distributors, the~~  
10 ~~handling loss deduction shall be shown on the invoice provided to the~~  
11 ~~motor vehicle fuel distributor by the seller.)~~)

12 **Sec. 8.** RCW 82.36.031 and 1998 c 176 s 11 are each amended to read  
13 as follows:

14 For the purpose of determining the amount of liability for the tax  
15 imposed under this chapter, and to periodically update license  
16 information, each licensee(~~(, other than a motor vehicle fuel~~  
17 ~~distributor,)~~) shall file monthly tax reports with the department, on  
18 a form prescribed by the department.

19 A report shall be filed with the department even though no motor  
20 vehicle fuel tax is due for the reporting period. Each tax report  
21 shall contain a declaration by the person making the same, to the  
22 effect that the statements contained therein are true and made under  
23 penalties of perjury, which declaration has the same force and effect  
24 as a verification of the report and is in lieu of the verification.  
25 The report shall show information as the department may require for the  
26 proper administration and enforcement of this chapter. Tax reports  
27 shall be filed on or before the twenty-fifth day of the next succeeding  
28 calendar month following the period to which the reports relate. If  
29 the final filing date falls on a Saturday, Sunday, or legal holiday the  
30 next secular or business day shall be the final filing date.

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

35 **Sec. 9.** RCW 82.36.035 and 2005 c 260 s 1 are each amended to read  
36 as follows:



1 (1) The tax imposed by this chapter shall be computed by  
2 multiplying the tax rate per gallon provided in this chapter by the  
3 number of gallons of motor vehicle fuel subject to the motor vehicle  
4 fuel tax.

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

9 (3) If the tax is paid by electronic funds transfer, the tax shall  
10 be paid on or before the twenty-sixth calendar day of the month  
11 immediately following the reporting period. If the payment due date  
12 falls on a Saturday, Sunday, or legal holiday the next business day  
13 will be the payment date.

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

16 ~~((5) A motor vehicle fuel distributor shall remit tax on motor  
17 vehicle fuel purchased from a motor vehicle fuel supplier, and due to  
18 the state for that reporting period, to the motor vehicle fuel  
19 supplier.~~

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

32 **Sec. 10.** RCW 82.36.045 and 1998 c 176 s 16 are each amended to  
33 read as follows:

34 (1) If the department determines that the tax reported by a  
35 licensee is deficient, the department shall assess the deficiency on  
36 the basis of information available to it, and shall add a penalty of  
37 two percent of the amount of the deficiency.

1           (2) If a licensee, or person acting as such, fails, neglects, or  
2 refuses to file a motor vehicle fuel tax report the department shall,  
3 on the basis of information available to it, determine the tax  
4 liability of the licensee or person for the period during which no  
5 report was filed. The department shall add the penalty provided in  
6 subsection (1) of this section to the tax. An assessment made by the  
7 department under this subsection or subsection (1) of this section is  
8 presumed to be correct. In any case, where the validity of the  
9 assessment is questioned, the burden is on the person who challenges  
10 the assessment to establish by a fair preponderance of evidence that it  
11 is erroneous or excessive, as the case may be.

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

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

28           (5) Except in the case of a fraudulent report, neglect or refusal  
29 to make a report, or failure to pay or to pay the proper amount, the  
30 department shall assess the deficiency under subsection (1) or (2) of  
31 this section within five years from the last day of the succeeding  
32 calendar month after the reporting period for which the amount is  
33 proposed to be determined or within five years after the return is  
34 filed, whichever period expires later.

35           (6) Except in the case of violations of filing a false or  
36 fraudulent report, if the department deems mitigation of penalties and  
37 interest to be reasonable and in the best interest of carrying out the  
38 purpose of this chapter, it may mitigate such assessments upon whatever

1 terms the department deems proper, giving consideration to the degree  
2 and extent of the lack of records and reporting errors. The department  
3 may ascertain the facts regarding recordkeeping and payment penalties  
4 in lieu of more elaborate proceedings under this chapter.

5 (7) A licensee or person acting as such against whom an assessment  
6 is made under subsection (1) or (2) of this section may petition for a  
7 reassessment within thirty days after service upon the licensee of  
8 notice of the assessment. If the petition is not filed within the  
9 thirty-day period, the amount of the assessment becomes final at the  
10 expiration of that period.

11 If a petition for reassessment is filed within the thirty-day  
12 period, the department shall reconsider the assessment and, if the  
13 petitioner has so requested in its petition, shall grant the petitioner  
14 an oral hearing and give the petitioner twenty days' notice of the time  
15 and place of the hearing. The department may continue the hearing from  
16 time to time. The decision of the department upon a petition for  
17 reassessment becomes final thirty days after service of notice upon the  
18 petitioner.

19 An assessment made by the department becomes due and payable when  
20 it becomes final. If it is not paid to the department when due and  
21 payable, the department shall add a penalty of ten percent of the  
22 amount of the tax.

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

27 (9) A notice of assessment required by this section must be served  
28 personally or by certified or registered mail. If it is served by  
29 mail, service shall be made by deposit of the notice in the United  
30 States mail, postage prepaid, addressed to the respondent at the most  
31 current address furnished to the department.

32 ~~((10) The tax imposed by this chapter, if required to be collected~~  
33 ~~by the seller, is held in trust by the licensee until paid to the~~  
34 ~~department, and a licensee who appropriates or converts the tax~~  
35 ~~collected to his or her own use or to any use other than the payment of~~  
36 ~~the tax to the extent that the money required to be collected is not~~  
37 ~~available for payment on the due date as prescribed in this chapter is~~  
38 ~~guilty of a felony, or gross misdemeanor in accordance with the theft~~

1 ~~and anticipatory provisions of Title 9A RCW. A person, partnership,~~  
2 ~~corporation, or corporate officer who fails to collect the tax imposed~~  
3 ~~by this section, or who has collected the tax and fails to pay it to~~  
4 ~~the department in the manner prescribed by this chapter, is personally~~  
5 ~~liable to the state for the amount of the tax.))~~

6 **Sec. 11.** RCW 82.36.060 and 2001 c 270 s 5 are each amended to read  
7 as follows:

8 (1) An application for a license issued under this chapter shall be  
9 made to the department on forms to be furnished by the department and  
10 shall contain such information as the department deems necessary.

11 (2) Every application for a license must contain the following  
12 information to the extent it applies to the applicant:

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

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

19 (c) The qualification and business history of the applicant and any  
20 partner, officer, or director;

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

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

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

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

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

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

23 An applicant who makes a false statement of a material fact on the  
24 application may be prosecuted for false swearing as defined by RCW  
25 9A.72.040.

26 (7) Except as provided by subsection (8) of this section, before  
27 granting any license issued under this chapter, the department shall  
28 require applicant to file with the department, in such form as shall be  
29 prescribed by the department, a corporate surety bond duly executed by  
30 the applicant as principal, payable to the state and conditioned for  
31 faithful performance of all the requirements of this chapter, including  
32 the payment of all taxes, penalties, and other obligations arising out  
33 of this chapter. The total amount of the bond or bonds shall be fixed  
34 by the department and may be increased or reduced by the department at  
35 any time subject to the limitations herein provided. In fixing the  
36 total amount of the bond or bonds, the department shall require a bond  
37 or bonds equivalent in total amount to twice the estimated monthly  
38 excise tax determined in such manner as the department may deem proper.

1 If at any time the estimated excise tax to become due during the  
2 succeeding month amounts to more than fifty percent of the established  
3 bond, the department shall require additional bonds or securities to  
4 maintain the marginal ratio herein specified or shall demand excise tax  
5 payments to be made weekly or semimonthly to meet the requirements  
6 hereof.

7 The total amount of the bond or bonds required of any licensee  
8 shall never be less than five thousand dollars nor more than one  
9 hundred thousand dollars.

10 No recoveries on any bond or the execution of any new bond shall  
11 invalidate any bond and no revocation of any license shall effect the  
12 validity of any bond but the total recoveries under any one bond shall  
13 not exceed the amount of the bond.

14 In lieu of any such bond or bonds in total amount as herein fixed,  
15 a licensee may deposit with the state treasurer, under such terms and  
16 conditions as the department may prescribe, a like amount of lawful  
17 money of the United States or bonds or other obligations of the United  
18 States, the state, or any county of the state, of an actual market  
19 value not less than the amount so fixed by the department.

20 Any surety on a bond furnished by a licensee as provided herein  
21 shall be released and discharged from any and all liability to the  
22 state accruing on such bond after the expiration of thirty days from  
23 the date upon which such surety has lodged with the department a  
24 written request to be released and discharged, but this provision shall  
25 not operate to relieve, release, or discharge the surety from any  
26 liability already accrued or which shall accrue before the expiration  
27 of the thirty day period. The department shall promptly, upon  
28 receiving any such request, notify the licensee who furnished the bond;  
29 and unless the licensee, on or before the expiration of the thirty day  
30 period, files a new bond, or makes a deposit in accordance with the  
31 requirements of this section, the department shall forthwith cancel the  
32 license. Whenever a new bond is furnished by a licensee, the  
33 department shall cancel the old bond as soon as the department and the  
34 attorney general are satisfied that all liability under the old bond  
35 has been fully discharged.

36 The department may require a licensee to give a new or additional  
37 surety bond or to deposit additional securities of the character  
38 specified in this section if, in its opinion, the security of the

1 surety bond theretofore filed by such licensee, or the market value of  
2 the properties deposited as security by the licensee, shall become  
3 impaired or inadequate; and upon the failure of the licensee to give  
4 such new or additional surety bond or to deposit additional securities  
5 within thirty days after being requested so to do by the department,  
6 the department shall forthwith cancel his or her license.

7 ~~(8) ((The department may waive the requirements of subsection (7)~~  
8 ~~of this section for licensed distributors if, upon determination by the~~  
9 ~~department, the licensed distributor has sufficient resources, assets,~~  
10 ~~other financial instruments, or other means, to adequately make~~  
11 ~~payments on the estimated monthly motor vehicle fuel tax payments,~~  
12 ~~penalties, and interest arising out of this chapter. The department~~  
13 ~~shall adopt rules to administer this subsection))~~ An application for an  
14 international fuel tax agreement license must be made to the  
15 department. The application must be filed upon a form prescribed by  
16 the department and contain such information as the department may  
17 require. The department shall charge a fee of ten dollars per set of  
18 international fuel tax agreement decals issued to each applicant or  
19 licensee. The department shall transmit the fee to the state treasurer  
20 for deposit in the motor vehicle fund.

21 **Sec. 12.** RCW 82.36.080 and 1998 c 176 s 20 are each amended to  
22 read as follows:

23 (1) It shall be unlawful for any person to engage in business in  
24 this state as any of the following unless the person is the holder of  
25 an uncanceled license issued by the department authorizing the person  
26 to engage in that business:

27 (a) Motor vehicle fuel supplier;

28 (b) ~~((Motor vehicle fuel distributor;~~

29 ~~(c))~~ Motor vehicle fuel exporter;

30 ~~((d))~~ (c) Motor vehicle fuel importer; ~~((e~~

31 ~~(f))~~ (d) Motor vehicle fuel blender; or

32 (e) International fuel tax agreement licensee.

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

1 (3) If any person acts as a licensee without first securing the  
2 license required herein the excise tax shall be immediately due and  
3 payable on account of all motor vehicle fuel distributed or used by the  
4 person. The director shall proceed forthwith to determine from the  
5 best available sources, the amount of the tax, and the director shall  
6 immediately assess the tax in the amount found due, together with a  
7 penalty of one hundred percent of the tax, and shall make a certificate  
8 of such assessment and penalty. In any suit or proceeding to collect  
9 the tax or penalty, or both, such certificate shall be prima facie  
10 evidence that the person therein named is indebted to the state in the  
11 amount of the tax and penalty therein stated. Any tax or penalty so  
12 assessed may be collected in the manner prescribed in this chapter with  
13 reference to delinquency in payment of the tax or by an action at law,  
14 which the attorney general shall commence and prosecute to final  
15 determination at the request of the director. The foregoing remedies  
16 of the state shall be cumulative and no action taken pursuant to this  
17 section shall relieve any person from the penal provisions of this  
18 chapter.

19 **Sec. 13.** RCW 82.36.160 and 1998 c 176 s 27 are each amended to  
20 read as follows:

21 Every licensee shall maintain in the office of his or her principal  
22 place of business in this state, for a period of five years, records of  
23 motor vehicle fuel received, sold, distributed, or used by the  
24 licensee, in such form as the director may prescribe, together with  
25 invoices, bills of lading, and other pertinent papers as may be  
26 required under the provisions of this chapter.

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

33 **Sec. 14.** RCW 82.36.180 and 1998 c 176 s 30 are each amended to  
34 read as follows:

35 The director, or duly authorized agents, may make such examinations  
36 of the records, stocks, facilities, and equipment of any licensee,



1 ((and service stations,)) and make such other investigations as deemed  
2 necessary in carrying out the provisions of this chapter. If such  
3 examinations or investigations disclose that any reports of licensees  
4 theretofore filed with the director pursuant to the requirements of  
5 this chapter have shown incorrectly the gallonage of motor vehicle fuel  
6 distributed or the tax ((accruing)) liability thereon, the director may  
7 make such changes in subsequent reports and payments of such licensees  
8 as deemed necessary to correct the errors disclosed.

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

17 NEW SECTION. Sec. 15. A new section is added to chapter 82.36 RCW  
18 to read as follows:

19 Motor vehicle fuel that is used exclusively for racing and is  
20 illegal for use on the public highways of this state under state or  
21 federal law is exempt from the tax imposed under this chapter.

22 Sec. 16. RCW 82.36.275 and 1969 ex.s. c 281 s 27 are each amended  
23 to read as follows:

24 Notwithstanding RCW 82.36.240, every urban passenger transportation  
25 system shall receive a refund of the amount of the motor vehicle fuel  
26 tax paid on each gallon of motor vehicle fuel used(~~(, whether such  
27 vehicle fuel tax has been paid either directly to the vendor from whom  
28 the motor vehicle fuel was purchased or indirectly by adding the amount  
29 of such tax to the price of such fuel)~~)).

30 For the purposes of this section "urban passenger transportation  
31 system" means every transportation system, publicly or privately owned,  
32 having as its principal source of revenue the income from transporting  
33 persons for compensation by means of motor vehicles and/or trackless  
34 trolleys, each having a seating capacity for over fifteen persons, over  
35 prescribed routes in such a manner that the routes of such motor  
36 vehicles and/or trackless trolleys (either alone or in conjunction with

1 routes of other such motor vehicles and/or trackless trolleys subject  
2 to routing by the same transportation system) do not extend for a  
3 distance exceeding fifteen road miles beyond the corporate limits of  
4 the city in which the original starting points of such motor vehicles  
5 are located: PROVIDED, That no refunds authorized by this section  
6 shall be granted on fuel used by any urban transportation vehicle on  
7 any trip where any portion of said trip is more than fifteen road miles  
8 beyond the corporate limits of the city in which said trip originated.

9 **Sec. 17.** RCW 82.36.280 and 1998 c 176 s 36 are each amended to  
10 read as follows:

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

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

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

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

1 of fuel oil delivered, or such other appropriate information as may be  
2 required by the department to substantiate his or her claim; or

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

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

13 **Sec. 18.** RCW 82.36.285 and 1996 c 244 s 5 are each amended to read  
14 as follows:

15 A private, nonprofit transportation provider regulated under  
16 chapter 81.66 RCW shall receive a refund of the amount of the motor  
17 vehicle fuel tax paid on each gallon of motor vehicle fuel used to  
18 provide transportation services for persons with special transportation  
19 needs(~~(, whether the vehicle fuel tax has been paid either directly to~~  
20 ~~the vendor from whom the motor vehicle fuel was purchased or indirectly~~  
21 ~~by adding the amount of the tax to the price of the fuel))~~).

22 **Sec. 19.** RCW 82.36.290 and 1961 c 15 s 82.36.290 are each amended  
23 to read as follows:

24 Every person who purchases and uses any motor vehicle fuel as an  
25 ingredient for manufacturing or for cleaning or dyeing or for some  
26 other similar purpose and upon which the motor vehicle fuel excise tax  
27 has been paid shall be entitled to and shall receive a refund of the  
28 amount of the motor vehicle fuel excise tax paid on each gallon of  
29 motor vehicle fuel so used(~~(, whether such motor vehicle excise tax has~~  
30 ~~been paid either directly to the vendor from whom the motor vehicle~~  
31 ~~fuel was purchased or indirectly by adding the amount of such excise~~  
32 ~~tax to the price of such fuel))~~).

33 **Sec. 20.** RCW 82.36.320 and 1961 c 15 s 82.36.320 are each amended  
34 to read as follows:

35 Any person claiming refund on motor vehicle fuel used other than in

1 motor vehicles as herein provided(~~(, and any person purchasing motor~~  
2 ~~vehicle fuel from a dealer who is claiming refund on account of the~~  
3 ~~sale of such fuel under RCW 82.36.305)) may be required by the director~~  
4 to also furnish information regarding the amount of motor vehicle fuel  
5 purchased from other sources or for other purposes during the period  
6 reported for which no refund is claimed.

7 **Sec. 21.** RCW 82.36.340 and 1961 c 15 s 82.36.340 are each amended  
8 to read as follows:

9 The director may in order to establish the validity of any claim  
10 for refund require the claimant(~~(, or, in the case of a dealer filing~~  
11 ~~a claim for refund as provided by RCW 82.36.305, the person to whom~~  
12 ~~such fuel was sold,)) to furnish such additional proof of the validity  
13 of the claim as the director may determine, and may examine the books  
14 and records of the claimant or said person to whom the fuel was sold  
15 for such purpose. The records shall be sufficient to substantiate the  
16 accuracy of the claim and shall be in such form and contain such  
17 information as the director may require. The failure to maintain such  
18 records or to accede to a demand for an examination of such records may  
19 be deemed by the director as sufficient cause for denial of all right  
20 to the refund claimed on account of the transaction in question.~~

21 **Sec. 22.** RCW 82.36.370 and 1998 c 176 s 42 are each amended to  
22 read as follows:

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

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

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

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

11 **Sec. 23.** RCW 82.36.380 and 2003 c 358 s 13 are each amended to  
12 read as follows:

13 (1) It is unlawful for a person or corporation to:

14 (a) Evade a tax or fee imposed under this chapter;

15 (b) File a false statement of a material fact on a motor fuel  
16 license application or motor fuel refund application;

17 (c) Act as a motor fuel importer, motor fuel blender, or motor fuel  
18 supplier unless the person holds an uncanceled motor fuel license  
19 issued by the department authorizing the person to engage in that  
20 business;

21 (d) Knowingly assist another person to evade a tax or fee imposed  
22 by this chapter;

23 (e) Knowingly operate a conveyance for the purpose of hauling,  
24 transporting, or delivering motor vehicle fuel in bulk and not possess  
25 an invoice, bill of sale, or other statement showing the name, address,  
26 and tax license number of the seller or consignor, the destination, the  
27 name, address, and tax license number of the purchaser or consignee,  
28 and the number of gallons.

29 (2) A violation of subsection (1) of this section is a class C  
30 felony under chapter 9A.20 RCW. In addition to other penalties and  
31 remedies provided by law, the court shall order a person or corporation  
32 found guilty of violating subsection (1) of this section to:

33 (a) Pay the tax or fee evaded plus interest, commencing at the date  
34 the tax or fee was first due, at the rate of twelve percent per year,  
35 compounded monthly; and

36 (b) Pay a penalty of one hundred percent of the tax evaded, to the  
37 multimodal transportation account of the state.

1       (3) The tax imposed by this chapter is held in trust by the  
2 licensee until paid to the department, and a licensee who appropriates  
3 the tax to his or her own use or to any use other than the payment of  
4 the tax on the due date as prescribed in this chapter is guilty of a  
5 felony or gross misdemeanor in accordance with the theft and  
6 anticipatory provisions of Title 9A RCW. A person, partnership,  
7 corporation, or corporate officer who fails to pay to the department  
8 the tax imposed by this chapter is personally liable to the state for  
9 the amount of the tax.

10       **Sec. 24.** RCW 82.36.450 and 1995 c 320 s 2 are each amended to read  
11 as follows:

12       ~~((The department of licensing may enter into an agreement with any~~  
13 ~~federally recognized Indian tribe located on a reservation within this~~  
14 ~~state regarding the imposition, collection, and use of this state's~~  
15 ~~motor vehicle fuel tax, or the budgeting or use of moneys in lieu~~  
16 ~~thereof, upon terms substantially the same as those in the consent~~  
17 ~~decree entered by the federal district court (Eastern District of~~  
18 ~~Washington) in *Confederated Tribes of the Colville Reservation v. DOL,*~~  
19 ~~*et al.*, District Court No. CY 92 248 JLO.))~~ The department of  
20 licensing, within one year after the effective date of this act, or  
21 within one year after the opening of the first tribally licensed retail  
22 station, may enter into an agreement with any federally recognized  
23 Indian tribe located on a reservation in this state regarding payment  
24 of fuel taxes included on fuel delivered to a retail station owned and  
25 operated by a tribe, tribal enterprise, or tribal member licensed by  
26 the tribe to operate a retail station located on reservation or trust  
27 property. The agreement must be between the department and the tribe,  
28 and be based on a formula incorporating the average gallons of fuel  
29 used annually by drivers in Washington, the number of enrolled tribal  
30 members living on or near the reservation, and the current gas tax  
31 amount. The formula may be adjusted annually for changes in the  
32 enrolled tribal population and as required by changes to the amount of  
33 the fuel tax. The provisions of this act do not repeal existing  
34 state/tribal fuel tax compacts in existence on the effective date of  
35 this act.

1           **Sec. 25.** RCW 82.38.020 and 2002 c 183 s 1 are each amended to read  
2 as follows:

3           The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

36           (b) An intentional: Failure to file a return or report; or other  
37 act of deception; or

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

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

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

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

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

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

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

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

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

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

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

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

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



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

3 (23) "Special fuel" means and includes all combustible gases and  
4 liquids suitable for the generation of power for propulsion of motor  
5 vehicles, except that it does not include motor vehicle fuel as defined  
6 in chapter 82.36 RCW, nor does it include dyed special fuel as defined  
7 by federal regulations, unless the use is in violation of this chapter.  
8 If a person holds for sale, sells, purchases, or uses any dyed special  
9 fuel in violation of this chapter, all dyed special fuel held for sale,  
10 sold, purchased, stored, or used by that person is considered special  
11 fuel, and the person is subject to all presumptions, reporting, and  
12 recordkeeping requirements and other obligations which apply to special  
13 fuel, along with payment of any applicable taxes, penalties, or  
14 interest for illegal use.

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

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

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

28 ~~((+27))~~ (27) "Special fuel supplier" means a person who holds a  
29 federal certificate issued under the internal revenue code and  
30 authorizes the person to tax-free transactions on special fuel in the  
31 bulk transfer-terminal system.

32 ~~((+28))~~ (28) "Special fuel user" means a person engaged in uses of  
33 special fuel that are not specifically exempted from the special fuel  
34 tax imposed under this chapter.

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

1       (~~(30)~~) (29) "Terminal operator" means a person who owns,  
2 operates, or otherwise controls a terminal.

3       (~~(31)~~) (30) "Two-party exchange" or "buy-sell agreement" means a  
4 transaction in which taxable special fuel is transferred from one  
5 licensed supplier to another licensed supplier under an exchange or  
6 buy-sell agreement whereby the supplier that is the position holder  
7 agrees to deliver taxable special fuel to the other supplier or the  
8 other supplier's customer at the rack of the terminal at which the  
9 delivering supplier is the position holder.

10       **Sec. 26.** RCW 82.38.030 and 2005 c 314 s 102 are each amended to  
11 read as follows:

12       (1) There is hereby levied and imposed upon special fuel (~~(users)~~)  
13 licensees a tax at the rate of twenty-three cents per gallon of special  
14 fuel, or each one hundred cubic feet of compressed natural gas,  
15 measured at standard pressure and temperature.

16       (2) Beginning July 1, 2003, an additional and cumulative tax rate  
17 of five cents per gallon of special fuel, or each one hundred cubic  
18 feet of compressed natural gas, measured at standard pressure and  
19 temperature shall be imposed on special fuel (~~(users)~~) licensees. This  
20 subsection (2) expires when the bonds issued for transportation 2003  
21 projects are retired.

22       (3) Beginning July 1, 2005, an additional and cumulative tax rate  
23 of three cents per gallon of special fuel, or each one hundred cubic  
24 feet of compressed natural gas, measured at standard pressure and  
25 temperature shall be imposed on special fuel (~~(users)~~) licensees.

26       (4) Beginning July 1, 2006, an additional and cumulative tax rate  
27 of three cents per gallon of special fuel, or each one hundred cubic  
28 feet of compressed natural gas, measured at standard pressure and  
29 temperature shall be imposed on special fuel (~~(users)~~) licensees.

30       (5) Beginning July 1, 2007, an additional and cumulative tax rate  
31 of two cents per gallon of special fuel, or each one hundred cubic feet  
32 of compressed natural gas, measured at standard pressure and  
33 temperature shall be imposed on special fuel (~~(users)~~) licensees.

34       (6) Beginning July 1, 2008, an additional and cumulative tax rate  
35 of one and one-half cents per gallon of special fuel, or each one  
36 hundred cubic feet of compressed natural gas, measured at standard

1 pressure and temperature shall be imposed on special fuel (~~((users))~~)  
2 licensees.

3 (7) Taxes are imposed when:

4 (a) Special fuel is removed in this state from a terminal if the  
5 special fuel is removed at the rack unless the removal is to a licensed  
6 exporter for direct delivery to a destination outside of the state, or  
7 the removal is (~~((to))~~) by a special fuel ((distributor)) supplier for  
8 direct delivery to an international fuel tax agreement licensee under  
9 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,~~  
20 ~~use, or storage))~~), unless the fuel enters this state for direct  
21 delivery to an international fuel tax agreement licensee under RCW  
22 82.38.320, if either of the following applies:

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

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

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

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

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

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

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

3 (i) Special fuel is sold by a licensed special fuel supplier to a  
4 (~~special fuel distributor,~~) special fuel importer(~~(7)~~) or special  
5 fuel blender and the special fuel is not removed from the bulk  
6 transfer-terminal system.

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

19 NEW SECTION. **Sec. 27.** A new section is added to chapter 82.38 RCW  
20 to read as follows:

21 It is the intent and purpose of this chapter that the tax shall be  
22 imposed at the time and place of the first taxable event and upon the  
23 first taxable person within this state. Any person whose activities  
24 would otherwise require payment of the tax imposed by RCW 82.36.020 but  
25 who is exempt from the tax nevertheless has a precollection obligation  
26 for the tax that must be imposed on the first taxable event within this  
27 state. Failure to pay the tax with respect to a taxable event shall  
28 not prevent tax liability from arising by reason of a subsequent  
29 taxable event.

30 Should the licensee be exempt from the tax's imposition as a matter  
31 of federal law by virtue of its status as a federally recognized Indian  
32 tribe or member of such tribe, such supplier shall not bear the tax's  
33 legal incidence and must pass the tax through as part of the fuel's  
34 selling price. Such supplier shall retain the administrative  
35 obligation to remit the tax, and such obligation shall accrue upon  
36 occurrence of the events in RCW 82.36.020.

1           Should a retailer otherwise subject to the tax imposed under this  
2 section be exempt from the tax's imposition as a matter of federal law  
3 by virtue of its status as a federally recognized Indian tribe or  
4 member of such tribe, the retailer shall not bear the tax's legal  
5 incidence and must pass the tax through as part of the fuel's selling  
6 price to the consumer unless such consumer is exempt from imposition of  
7 the tax as a matter of federal law by virtue of its status as a  
8 federally recognized Indian tribe or membership in such tribe, and the  
9 retailer shall be entitled to claim a credit against taxes otherwise  
10 due and owing under this chapter or a tax refund, together with  
11 interest, attributable to the fuel purchased by such consumer.

12           **Sec. 28.** RCW 82.38.032 and 1998 c 176 s 52 are each amended to  
13 read as follows:

14           (~~The tax under RCW 82.38.030, if not previously imposed and paid,~~  
15 ~~must be paid over to the department by special fuel users and persons~~  
16 ~~licensed under the international fuel tax agreement or other fuel tax~~  
17 ~~reciprocity agreements entered into with the state of Washington, on~~  
18 ~~the use of special fuel to operate motor vehicles on the highways of~~  
19 ~~this state, unless the use is exempt from the tax under this chapter.))  
20 International fuel tax agreement licensees, or persons operating motor  
21 vehicles under other reciprocity agreements entered into with the state  
22 of Washington, are liable for and must pay the tax under RCW 82.38.020  
23 to the department on special fuel used to operate motor vehicles on the  
24 highways of this state. This provision does not apply if the tax under  
25 RCW 82.38.020 has previously been imposed and paid by the international  
26 fuel tax agreement licensee or if the use of such fuel is exempt from  
27 the tax under this chapter.~~

28           **Sec. 29.** RCW 82.38.035 and 2005 c 314 s 107 are each amended to  
29 read as follows:

30           (1) A licensed supplier shall (~~remit~~) be liable for and pay tax  
31 on special fuel to the department as provided in RCW 82.38.030(7)(a).  
32 On a two-party exchange, or buy-sell agreement between two licensed  
33 suppliers, the receiving exchange partner or buyer shall (~~remit~~) be  
34 liable for and pay the tax.

35           (2) A licensed refiner shall (~~remit~~) be liable for and pay tax to

1 the department on special fuel removed from a refinery as provided in  
2 RCW 82.38.030(7)(b).

3 (3) ~~((An))~~ A licensed importer shall ~~((remit))~~ be liable for and  
4 pay tax to the department on special fuel imported into this state as  
5 provided in RCW 82.38.030(7)(c).

6 (4) A licensed blender shall ~~((remit))~~ be liable for and pay tax to  
7 the department on the removal or sale of blended special fuel as  
8 provided in RCW 82.38.030(7)(e).

9 (5) A licensed dyed special fuel user shall ~~((remit))~~ be liable for  
10 and pay tax to the department on the use of dyed special fuel as  
11 provided in RCW 82.38.030(7)(f).

12 (6) Nothing in this chapter prohibits the licensee liable for  
13 payment of the tax under this chapter from including as a part of the  
14 selling price an amount equal to such tax.

15 **Sec. 30.** RCW 82.38.050 and 1990 c 250 s 82 are each amended to  
16 read as follows:

17 ~~((Except as otherwise provided in this chapter, every special fuel~~  
18 ~~user shall be liable for the tax on special fuel used in motor vehicles~~  
19 ~~leased to the user for thirty days or more and operated on the highways~~  
20 ~~of this state to the same extent and in the same manner as special fuel~~  
21 ~~used in his own motor vehicles and operated on the highways of this~~  
22 ~~state:—PROVIDED, That))~~ A lessor who is engaged regularly in the  
23 business of leasing or renting for compensation motor vehicles and  
24 equipment he owns without drivers to carriers or other lessees for  
25 interstate operation, may be deemed to be the special fuel user when he  
26 supplies or pays for the special fuel consumed in such vehicles, and  
27 such lessor may be issued ~~((a))~~ an international fuel tax agreement  
28 license ~~((as a special fuel user))~~ when application and bond have been  
29 properly filed with and approved by the department for such license.  
30 Any lessee may exclude motor vehicles of which he or she is the lessee  
31 from reports and liabilities pursuant to this chapter, but only if the  
32 motor vehicles in question have been leased from a lessor holding a  
33 valid ~~((special fuel user's))~~ international fuel tax agreement license.

34 ~~((Every such lessor shall file with the application for a special~~  
35 ~~fuel user's license one copy of the lease form or service contract the~~  
36 ~~lessor enters into with the various lessees of the lessor's motor~~  
37 ~~vehicles.))~~ When the ~~((special fuel user's))~~ license has been secured,

1 such lessor shall make and assign to each motor vehicle leased for  
2 interstate operation a photocopy of such license to be carried in the  
3 cab compartment of the motor vehicle and on which shall be typed or  
4 printed on the back the unit or motor number of the motor vehicle to  
5 which it is assigned and the name of the lessee. Such lessor shall be  
6 responsible for the proper use of such photocopy of the license issued  
7 and its return to the lessor with the motor vehicle to which it is  
8 assigned.

9 The lessor shall be responsible for fuel tax licensing and  
10 reporting, as required by this chapter, on the operation of all motor  
11 vehicles leased to others for less than thirty days.

12 **Sec. 31.** RCW 82.38.090 and 1998 c 176 s 61 are each amended to  
13 read as follows:

14 (1) It shall be unlawful for any person to engage in business in  
15 this state as any of the following unless the person is the holder of  
16 an uncanceled license issued to him or her by the department  
17 authorizing the person to engage in that business:

18 (a) Special fuel supplier;

19 (b) ~~((Special fuel distributor;~~

20 ~~(e)))~~ Special fuel exporter;

21 ~~((d)))~~ (c) Special fuel importer;

22 ~~((e)))~~ (d) Special fuel blender;

23 ~~((f)))~~ (e) Dyed special fuel user; or

24 ~~((g)))~~ (f) International fuel tax agreement licensee.

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

30 (3) Special fuel users operating motor vehicles in interstate  
31 commerce having two axles and a gross vehicle weight or registered  
32 gross vehicle weight not exceeding twenty-six thousand pounds are not  
33 required to be licensed. Special fuel users operating motor vehicles  
34 in interstate commerce having two axles and a gross vehicle weight or  
35 registered gross vehicle weight exceeding twenty-six thousand pounds,  
36 or having three or more axles regardless of weight, or a combination of  
37 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. 32.** RCW 82.38.100 and 1999 c 270 s 2 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 that  
8 shall be good for a period of three consecutive days beginning and  
9 ending on the dates specified on the face of the permit issued, and  
10 only for the vehicle for which it is issued.

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

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

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

36 (5) A surcharge of five dollars is imposed on the issuance of trip  
37 permits. The portion of the surcharge paid by motor carriers must be



1 deposited in the motor vehicle fund for the purpose of supporting  
2 vehicle weigh stations, weigh-in-motion programs, and the commercial  
3 vehicle information systems and networks program. The remaining  
4 portion of the surcharge must be deposited in the motor vehicle fund  
5 for the purpose of supporting congestion relief programs. All other  
6 fees and excise taxes collected by the department for trip permits  
7 shall be credited and deposited in the same manner as the special fuel  
8 tax collected under this chapter and shall not be subject to exchange,  
9 refund, or credit.

10 **Sec. 33.** RCW 82.38.110 and 2002 c 352 s 26 are each amended to  
11 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (8) A special fuel license may not be issued to any person or  
33 continued in force unless such person has furnished bond, as defined in  
34 RCW 82.38.020, in such form as the department may require, to secure  
35 his or her compliance with this chapter, and the payment of any and all  
36 taxes, interest, and penalties due and to become due hereunder. The  
37 requirement of furnishing a bond may be waived: (a) ~~((For special fuel~~  
38 ~~distributors who only deliver special fuel into the fuel tanks of~~

1 ~~marine vessels; (b)) For dyed special fuel users; ((+e)) and (b) for~~  
2 ~~persons issued licenses under the international fuel tax agreement((+)~~  
3 ~~or (d) for licensed special fuel distributors who, upon determination~~  
4 ~~by the department, have sufficient resources, assets, other financial~~  
5 ~~instruments, or other means to adequately make payments on the~~  
6 ~~estimated monthly motor vehicle fuel tax payments, penalties, and~~  
7 ~~interest arising out of this chapter. The department shall adopt rules~~  
8 ~~to administer this section)).~~

9 (9) The department may require a licensee to post a bond if the  
10 licensee, after having been licensed, has failed to file timely reports  
11 or has failed to remit taxes due, or when an investigation or audit  
12 indicates problems severe enough that the department, in its  
13 discretion, determines that a bond is required to protect the interests  
14 of the state. The department may also adopt rules prescribing  
15 conditions that, in the department's discretion, require a bond to  
16 protect the interests of the state.

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

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

30 (12) An application for an international fuel tax agreement license  
31 must be made to the department. The application must be filed upon a  
32 form prescribed by the department and contain such information as the  
33 department may require. The department shall charge a fee of ten  
34 dollars per set of International Fuel Tax Agreement decals issued to  
35 each applicant or licensee. The department shall transmit the fee to  
36 the state treasurer for deposit in the motor vehicle fund.

1       **Sec. 34.** RCW 82.38.140 and 1998 c 176 s 66 are each amended to  
2 read as follows:

3       (1) Every licensee and every person importing, manufacturing,  
4 refining, (~~dealing in,~~) transporting, blending, or storing special  
5 fuel in this state shall keep for a period of not less than five years  
6 open to inspection at all times during the business hours of the day to  
7 the department or its authorized representatives, a complete record of  
8 all special fuel purchased or received and all of such products sold,  
9 delivered, or used by them. Such records shall show:

10       (a) The date of each receipt;

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

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

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

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

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

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

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

25       (2)(a) All international fuel tax agreement licensees and dyed  
26 special fuel users authorized to use dyed special fuel on highway in  
27 vehicles licensed for highway operation shall maintain detailed mileage  
28 records on an individual vehicle basis.

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

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

34       (3) The department may require a person other than a licensee  
35 engaged in the business of selling, purchasing, distributing, storing,  
36 transporting, or delivering special fuel to submit periodic reports to  
37 the department regarding the disposition of the fuel. The reports must

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

3 (4) Every person operating any conveyance for the purpose of  
4 hauling, transporting, or delivering special fuel in bulk shall have  
5 and possess during the entire time the person is hauling special fuel,  
6 an invoice, bill of sale, or other statement showing the name, address,  
7 and license number of the seller or consigner, the destination, name,  
8 and address of the purchaser or consignee, license number, if  
9 applicable, and the number of gallons. The person hauling such special  
10 fuel shall at the request of any law enforcement officer or authorized  
11 representative of the department, or other person authorized by law to  
12 inquire into, or investigate those types of matters, produce for  
13 inspection such invoice, bill of sale, or other statement and shall  
14 permit such official to inspect and gauge the contents of the vehicle.

15 **Sec. 35.** RCW 82.38.150 and 1998 c 176 s 67 are each amended to  
16 read as follows:

17 For the purpose of determining the amount of liability for the tax  
18 herein imposed, and to periodically update license information, each  
19 licensee, other than ((~~a special fuel distributor,~~)) an international  
20 fuel tax agreement licensee((~~,~~)) or a dyed special fuel user, shall  
21 file monthly tax reports with the department, on forms prescribed by  
22 the department.

23 Dyed special fuel users whose estimated yearly tax liability is two  
24 hundred fifty dollars or less, shall file a report yearly, and dyed  
25 special fuel users whose estimated yearly tax liability is more than  
26 two hundred fifty dollars, shall file reports quarterly. Special fuel  
27 users licensed under the international fuel tax agreement shall file  
28 reports quarterly. ((~~Special fuel distributors~~)) Heating oil dealers  
29 subject to the pollution liability insurance agency fee and reporting  
30 requirements shall remit pollution liability insurance agency returns  
31 and any associated payment due to the department annually.

32 The department shall establish the reporting frequency for each  
33 applicant at the time the special fuel license is issued. If it  
34 becomes apparent that any licensee is not reporting in accordance with  
35 the above schedule, the department shall change the licensee's  
36 reporting frequency by giving thirty days' notice to the licensee by  
37 mail to the licensee's address of record. A report shall be filed with

1 the department even though no special fuel was used, or tax is due, for  
2 the reporting period. Each tax report shall contain a declaration by  
3 the person making the same, to the effect that the statements contained  
4 therein are true and are made under penalties of perjury, which  
5 declaration shall have the same force and effect as a verification of  
6 the report and is in lieu of such verification. The report shall show  
7 such information as the department may reasonably require for the  
8 proper administration and enforcement of this chapter. (~~For counties~~  
9 ~~within which an additional excise tax on special fuel has been levied~~  
10 ~~by that jurisdiction under RCW 82.80.010, the report must show the~~  
11 ~~quantities of special fuel sold, distributed, or withdrawn from bulk~~  
12 ~~storage by the reporting dealer or user within the county's boundaries~~  
13 ~~and the tax liability from its levy.)) A licensee shall file 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 **Sec. 36.** RCW 82.38.160 and 2005 c 260 s 2 are each amended to read  
35 as follows:

36 (1) The tax imposed by this chapter shall be computed by

1 multiplying the tax rate per gallon provided in this chapter by the  
2 number of gallons of special fuel subject to the special fuel tax.

3 ~~(2) ((A special fuel distributor shall remit tax on special fuel  
4 purchased from a special fuel supplier, and due to the state for that  
5 reporting period, to the special fuel supplier.~~

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

18 ~~(4))~~ Except as provided in subsection ~~((+5))~~ (3) of this section,  
19 the tax return shall be accompanied by a remittance payable to the  
20 state treasurer covering the tax amount determined to be due for the  
21 reporting period.

22 ~~((+5))~~ (3) If the tax is paid by electronic funds transfer, the  
23 tax shall be paid on or before the twenty-sixth calendar day of the  
24 month immediately following the reporting period. If the payment due  
25 date falls on a Saturday, Sunday, or legal holiday the next business  
26 day will be the payment date. If the tax is paid by electronic funds  
27 transfer and the reporting period ends on a day other than the last day  
28 of a calendar month as provided in RCW 82.38.150, the tax shall be paid  
29 on or before the last state business day of the thirty-day period  
30 following the end of the reporting period.

31 ~~((+6))~~ (4) The tax shall be paid by electronic funds transfer  
32 whenever the amount due is fifty thousand dollars or more.

33 **Sec. 37.** RCW 82.38.180 and 1998 c 176 s 71 are each amended to  
34 read as follows:

35 Any person who has purchased special fuel on which tax has been  
36 paid ~~((a special fuel tax either directly or to the vendor from whom it~~

1 ~~was purchased~~) may file a claim with the department for a refund of  
2 the tax (~~so paid and shall be reimbursed and repaid the amount of~~)  
3 for:

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

7 (2) (~~Any~~) Taxes previously paid on special fuel exported for use  
8 outside of this state. Special fuel carried from this state in the  
9 fuel tank of a motor vehicle is deemed to be exported from this state.  
10 Special fuel distributed to a federally recognized Indian tribal  
11 reservation located within the state of Washington is not considered  
12 exported outside this state.

13 (3) (~~Any~~) Tax, penalty, or interest erroneously or illegally  
14 collected or paid.

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

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

22 (6) (~~Any~~) Taxes previously paid on special fuel that is  
23 inadvertently mixed with dyed special fuel.

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

34 No refund or claim for credit shall be approved by the department  
35 unless the gallons of special fuel claimed as nontaxable satisfy the  
36 conditions specifically set forth in this section and the nontaxable  
37 event or use occurred during the period covered by the refund claim.



1 Refunds or claims for credit (~~by sellers or users of special fuel~~)  
2 shall not be allowed for anticipated nontaxable use or events.

3 **Sec. 38.** RCW 82.38.270 and 2003 c 358 s 14 are each amended to  
4 read as follows:

5 (1) It is unlawful for a person or corporation to:

6 (a) Have dyed diesel in the fuel supply tank of a vehicle that is  
7 licensed or required to be licensed for highway use or maintain dyed  
8 diesel in bulk storage for highway use, unless the person or  
9 corporation maintains an uncanceled dyed diesel user license or is  
10 otherwise exempted by this chapter;

11 (b) Evade a tax or fee imposed under this chapter;

12 (c) File a false statement of a material fact on a special fuel  
13 license application or special fuel refund application;

14 (d) Act as a special fuel importer, special fuel blender, or  
15 special fuel supplier unless the person holds an uncanceled special  
16 fuel license issued by the department authorizing the person to engage  
17 in that business;

18 (e) Knowingly assist another person to evade a tax or fee imposed  
19 by this chapter;

20 (f) Knowingly operate a conveyance for the purpose of hauling,  
21 transporting, or delivering special fuel in bulk and not possess an  
22 invoice, bill of sale, or other statement showing the name, address,  
23 and tax license number of the seller or consignor, the destination, the  
24 name, address, and tax license number of the purchaser or consignee,  
25 and the number of gallons.

26 (2)(a) A single violation of subsection (1)(a) of this section is  
27 a gross misdemeanor under chapter 9A.20 RCW.

28 (b) Multiple violations of subsection (1)(a) of this section and  
29 violations of subsection (1)(b) through (f) of this section are a class  
30 C felony under chapter 9A.20 RCW.

31 (3) In addition to other penalties and remedies provided by law,  
32 the court shall order a person or corporation found guilty of violating  
33 subsection (1)(b) through (f) of this section to:

34 (a) Pay the tax or fee evaded plus interest, commencing at the date  
35 the tax or fee was first due, at the rate of twelve percent per year,  
36 compounded monthly; and

1 (b) Pay a penalty of one hundred percent of the tax evaded, to the  
2 multimodal transportation account of the state.

3 (4) The tax imposed by this chapter is held in trust by the  
4 licensee until paid to the department, and a licensee who appropriates  
5 the tax to his or her own use or to any use other than the payment of  
6 the tax on the due date as prescribed in this chapter is guilty of a  
7 felony or gross misdemeanor in accordance with the theft and  
8 anticipatory provisions of Title 9A RCW. A person, partnership,  
9 corporation, or corporate officer who fails to pay to the department  
10 the tax imposed by this chapter is personally liable to the state for  
11 the amount of the tax.

12 **Sec. 39.** RCW 82.38.310 and 1995 c 320 s 3 are each amended to read  
13 as follows:

14 ~~((The department of licensing may enter into an agreement with any~~  
15 ~~federally recognized Indian tribe located on a reservation within this~~  
16 ~~state regarding the imposition, collection, and use of this state's~~  
17 ~~special fuel tax, or the budgeting or use of moneys in lieu thereof,~~  
18 ~~upon terms substantially the same as those in the consent decree~~  
19 ~~entered by the federal district court (Eastern District of Washington)~~  
20 ~~in *Confederated Tribes of the Colville Reservation v. DOL, et al.*,~~  
21 ~~District Court No. CY 92 248 JLO.))~~ The department of licensing, within  
22 one year after the effective date of this act, or within one year after  
23 the opening of the first tribally licensed retail station, may enter  
24 into an agreement with any federally recognized Indian tribe located on  
25 a reservation in this state regarding payment of fuel taxes included on  
26 fuel delivered to a retail station owned and operated by a tribe,  
27 tribal enterprise, or tribal member licensed by the tribe to operate a  
28 retail station located on reservation or trust property. The agreement  
29 must be between the department and the tribe, and be based on a formula  
30 incorporating the average gallons of fuel used annually by drivers in  
31 Washington, the number of enrolled tribal members living on or near the  
32 reservation, and the current gas tax amount. The formula may be  
33 adjusted annually for changes in the enrolled tribal population and as  
34 required by changes to the amount of the fuel tax. The provisions of  
35 this act do not repeal existing state/tribal fuel tax compacts in  
36 existence on the effective date of this act.

1           **Sec. 40.** RCW 82.38.320 and 1998 c 176 s 83 are each amended to  
2 read as follows:

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

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

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

33           (b) The licensee must have been licensed under the provisions of  
34 the international fuel tax agreement during each of the four  
35 consecutive calendar quarters immediately preceding the fourth calendar  
36 quarter of the previous year; and

37           (c) The licensee has not violated the reporting requirements of  
38 this section.

1       (3) Only a licensed special fuel supplier or special fuel importer  
2 may sell special fuel to a special authorization holder in the manner  
3 prescribed by this section.

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

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

18       (5) ~~An international fuel tax agreement licensee who qualifies for~~  
19 ~~a special authorization under this section for calendar year 1999 is~~  
20 ~~not subject to the special fuel user requirements of RCW 82.38.289.)~~

21       NEW SECTION. Sec. 41. A new section is added to chapter 47.01 RCW  
22 to read as follows:

23       The department shall implement the tribal transportation planning  
24 grant program. All federally recognized Indian tribes within the state  
25 of Washington are eligible to participate. The grants shall be  
26 provided for tribal transportation planning assistance.

27       NEW SECTION. Sec. 42. The following acts or parts of acts are  
28 each repealed:

29       (1) RCW 82.36.042 (Notice by supplier of distributor's failure to  
30 pay tax--License suspension--Notice to suppliers--Revocation or  
31 suspension upon continued noncompliance) and 1998 c 176 s 14;

32       (2) RCW 82.36.044 (Credit for worthless accounts receivable--  
33 Report--Adjustment) and 1998 c 176 s 15;

34       (3) RCW 82.36.273 (Refunds to licensee for fuel purchased by exempt  
35 person--Exception--Invoice or proof) and 1998 c 176 s 35;

- 1 (4) RCW 82.36.305 (Refunds to dealer delivering fuel exclusively  
2 for marine use--Limitations--Supporting certificate) and 1965 ex.s. c  
3 79 s 12 & 1961 c 15 s 82.36.305;
- 4 (5) RCW 82.36.360 (Separate invoices for nontaxed fuel) and 1961 c  
5 15 s 82.36.360;
- 6 (6) RCW 82.36.373 (Refund for worthless accounts receivable--  
7 Rules--Apportionment after receipt) and 1998 c 176 s 43;
- 8 (7) RCW 82.36.407 (Tax liability of user--Payment--Exceptions) and  
9 1998 c 176 s 48;
- 10 (8) RCW 82.38.070 (Credit for sales for which no consideration was  
11 received--Report--Adjustment) and 1998 c 176 s 58, 1990 c 250 s 83, &  
12 1971 ex.s. c 175 s 8;
- 13 (9) RCW 82.38.071 (Refund for worthless accounts receivable--  
14 Rules--Apportionment after receipt) and 1998 c 176 s 59;
- 15 (10) RCW 82.38.081 (Exemptions--Motor vehicle fuel used for racing)  
16 and 1998 c 115 s 6;
- 17 (11) RCW 82.38.165 (Notice by supplier of distributor's failure to  
18 pay tax--License suspension--Notice to suppliers--Revocation or  
19 suspension upon continued noncompliance) and 1998 c 176 s 69;
- 20 (12) RCW 82.38.185 (Refunds--Tax paid purchased by exempt person--  
21 Application) and 1998 c 176 s 73; and
- 22 (13) RCW 82.38.285 (Tax liability of user--Exceptions) and 1998 c  
23 176 s 81.

24 NEW SECTION. **Sec. 43.** This act is necessary for the immediate  
25 preservation of the public peace, health, or safety, or support of the  
26 state government and its existing public institutions, and takes effect  
27 immediately.

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