

---

**SUBSTITUTE HOUSE BILL 2816**

---

**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Transportation (originally sponsored by Representatives Morris, Moeller, Chase, Kessler, Jacks, and Nelson)

READ FIRST TIME 02/09/10.

1            AN ACT Relating to fuel taxes on exported fuel; amending RCW  
2 82.36.020, 82.36.010, 82.36.026, 82.36.060, 82.36.080, 82.36.230,  
3 82.36.300, 82.38.020, 82.38.030, 82.38.035, 82.38.080, 82.38.090,  
4 82.38.110, 82.38.180, 82.36.045, 82.38.170, and 82.38.290; reenacting  
5 and amending RCW 43.84.092; adding new sections to chapter 82.36 RCW;  
6 adding new sections to chapter 82.38 RCW; adding a new section to  
7 chapter 46.68 RCW; creating a new section; and providing an effective  
8 date.

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

10            NEW SECTION.    **Sec. 1.**    The legislature finds that investing in  
11 projects, such as the Washington state ferry system, which move people  
12 and goods efficiently in the region along with promoting tourism  
13 opportunities, helps to maintain a strong northwest economy. The state  
14 is a regional producer of many products that have positive impacts on  
15 the region's economy, but that also affect the infrastructure of the  
16 region's transportation systems.

17            **Sec. 2.**    RCW 82.36.020 and 2007 c 515 s 2 are each amended to read  
18 as follows:

1 (1) There is (~~hereby~~) levied and imposed upon motor vehicle fuel  
2 licensees, other than crude oil importers or motor vehicle fuel  
3 distributors, a tax at the rate computed in the manner provided in RCW  
4 82.36.025 on each gallon of motor vehicle fuel.

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

7 (a) Motor vehicle fuel is removed in this state from a terminal  
8 (~~if the motor vehicle fuel is removed at the rack~~) unless the removal  
9 is to a licensed supplier or exporter for direct delivery to a  
10 destination outside of the state;

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

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

16 (ii) The removal is at the refinery rack or by bulk transfer unless  
17 the removal is to a licensed refiner, supplier, or exporter for direct  
18 delivery to a destination outside of the state;

19 (c) Motor vehicle fuel enters into this state if either of the  
20 following applies:

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

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

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

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

33 (f) Motor vehicle fuel is sold by a licensed motor vehicle fuel  
34 supplier to a motor vehicle fuel distributor, motor vehicle fuel  
35 importer, motor vehicle fuel exporter, motor vehicle fuel blender, or  
36 international fuel tax agreement licensee and the motor vehicle fuel is  
37 not removed from the bulk transfer-terminal system;

38 (g) Motor vehicle fuel is physically removed from this state.

1       (3) It is the intent of this chapter to impose a tax only once with  
2 respect to motor vehicle fuel that is entered, removed, or sold.

3       (4) The proceeds of the motor vehicle fuel excise tax ((shall))  
4 must be distributed as provided in RCW 46.68.090, except for funds  
5 received from exported fuel sold less the credit allowed under section  
6 8 of this act with respect to the fuel. These funds must be  
7 distributed as follows:

8       (a) Fifty-five percent must be distributed to the Puget Sound  
9 capital construction account, created in RCW 47.60.505, to be used for  
10 the construction and preservation of the Washington state ferry system;

11       (b) Thirty-five percent must be distributed to the significant  
12 regional transportation projects account created in section 24 of this  
13 act to be used for the construction of the Columbia river crossing;

14       (c) Five percent must be distributed to the significant regional  
15 transportation projects account created in section 24 of this act to be  
16 used for the construction of the north Spokane corridor; and

17       (d) Five percent must be distributed to the significant regional  
18 transportation projects account created in section 24 of this act to be  
19 used for the construction of the 520 bridge.

20       **Sec. 3.** RCW 82.36.010 and 2007 c 515 s 1 are each amended to read  
21 as follows:

22       The definitions in this section apply throughout this chapter  
23 unless the context clearly requires otherwise.

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

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

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

34       (4) "Bulk transfer-terminal system" means the motor vehicle fuel  
35 distribution system consisting of refineries, pipelines, vessels, and  
36 terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or  
37 terminal is in the bulk transfer-terminal system. Motor vehicle fuel

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

4 (5) "Crude oil" means a naturally occurring, flammable liquid  
5 consisting of a complex mixture of hydrocarbons of various molecular  
6 weights, and other organic compounds, that is found in geologic  
7 formations beneath the earth's surface.

8 (6) "Crude oil importer" means a person who imports crude oil into  
9 the state.

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

11 ((+6)) (8) "Director" means the director of licensing.

12 ((+7)) (9) "Evasion" or "evade" means to diminish or avoid the  
13 computation, assessment, or payment of authorized taxes or fees  
14 through:

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

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

19 ((+8)) (10) "Export" means to obtain motor vehicle fuel in this  
20 state for sales or distribution outside the state.

21 ((+9)) (11) "Highway" means every way or place open to the use of  
22 the public, as a matter of right, for the purpose of vehicular travel.

23 ((+10)) (12) "Import" means to bring motor vehicle fuel into this  
24 state by a means of conveyance other than the fuel supply tank of a  
25 motor vehicle.

26 ((+11)) (13) "International fuel tax agreement licensee" means a  
27 motor vehicle fuel user operating qualified motor vehicles in  
28 interstate commerce and licensed by the department under the  
29 international fuel tax agreement.

30 ((+12)) (14) "Licensee" means a person holding a refiner, crude  
31 oil importer, motor vehicle fuel supplier, motor vehicle fuel importer,  
32 motor vehicle fuel exporter, motor vehicle fuel blender, motor vehicle  
33 distributor, or international fuel tax agreement license issued under  
34 this chapter.

35 ((+13)) (15) "Motor vehicle fuel blender" means a person who  
36 produces blended motor fuel outside the bulk transfer-terminal system.

37 ((+14)) (16) "Motor vehicle fuel distributor" means a person who

1 acquires motor vehicle fuel from a supplier, distributor, or licensee  
2 for subsequent sale and distribution.

3 ~~((+15+))~~ (17) "Motor vehicle fuel exporter" means a person who  
4 purchases motor vehicle fuel in this state and directly exports the  
5 fuel by a means other than the bulk transfer-terminal system to a  
6 destination outside of the state. If the exporter of record is acting  
7 as an agent, the person for whom the agent is acting is the exporter.  
8 If there is no exporter of record, the owner of the motor fuel at the  
9 time of exportation is the exporter.

10 ~~((+16+))~~ (18) "Motor vehicle fuel importer" means a person who  
11 imports motor vehicle fuel into the state by a means other than the  
12 bulk transfer-terminal system. If the importer of record is acting as  
13 an agent, the person for whom the agent is acting is the importer. If  
14 there is no importer of record, the owner of the motor vehicle fuel at  
15 the time of importation is the importer.

16 ~~((+17+))~~ (19) "Motor vehicle fuel supplier" means a person who  
17 holds a federal certificate of registry that is issued under the  
18 internal revenue code and authorizes the person to enter into federal  
19 tax-free transactions on motor vehicle fuel in the bulk transfer-  
20 terminal system.

21 ~~((+18+))~~ (20) "Motor vehicle" means a self-propelled vehicle  
22 designed for operation upon land utilizing motor vehicle fuel as the  
23 means of propulsion.

24 ~~((+19+))~~ (21) "Motor vehicle fuel" means gasoline and any other  
25 inflammable gas or liquid, by whatsoever name the gasoline, gas, or  
26 liquid may be known or sold, the chief use of which is as fuel for the  
27 propulsion of motor vehicles or motorboats.

28 ~~((+20+))~~ (22) "Person" means a natural person, fiduciary,  
29 association, or corporation. The term "person" as applied to an  
30 association means and includes the partners or members thereof, and as  
31 applied to corporations, the officers thereof.

32 ~~((+21+))~~ (23) "Position holder" means a person who holds the  
33 inventory position in motor vehicle fuel, as reflected by the records  
34 of the terminal operator. A person holds the inventory position in  
35 motor vehicle fuel if the person has a contractual agreement with the  
36 terminal for the use of storage facilities and terminating services at  
37 a terminal with respect to motor vehicle fuel. "Position holder"

1 includes a terminal operator that owns motor vehicle fuel in their  
2 terminal.

3 ~~((+22+))~~ (24) "Rack" means a mechanism for delivering motor vehicle  
4 fuel from a refinery or terminal into a truck, trailer, railcar, or  
5 other means of nonbulk transfer.

6 ~~((+23+))~~ (25) "Refiner" means a person who owns, operates, or  
7 otherwise controls a refinery.

8 ~~((+24+))~~ (26) "Refinery" means an industrial process plant where  
9 crude oil is processed and may be refined into, but not limited to,  
10 motor fuel (gasoline/petrol), diesel fuel, asphalt base, kerosene,  
11 diesel oil, liquefied petroleum gases (LPG), jet aircraft fuel, heating  
12 fuel oils, chemicals, lubricating oils, and petroleum coke.

13 (27) "Removal" means a physical transfer of motor vehicle fuel  
14 other than by evaporation, loss, or destruction.

15 ~~((+25+))~~ (28) "Terminal" means a motor vehicle fuel storage and  
16 distribution facility that has been assigned a terminal control number  
17 by the internal revenue service, is supplied by pipeline or vessel, and  
18 from which reportable motor vehicle fuel is removed at a rack.

19 ~~((+26+))~~ (29) "Terminal operator" means a person who owns,  
20 operates, or otherwise controls a terminal.

21 ~~((+27+))~~ (30) "Two-party exchange" or "buy-sell agreement" means a  
22 transaction in which taxable motor vehicle fuel is transferred from one  
23 licensed supplier to another licensed supplier under an exchange or  
24 buy-sell agreement whereby the supplier that is the position holder  
25 agrees to deliver taxable motor vehicle fuel to the other supplier or  
26 the other supplier's customer at the rack of the terminal at which the  
27 delivering supplier is the position holder.

28 (31) "United States" means the federal constitutional republic  
29 comprising the fifty states and a federal district known as the United  
30 States of America.

31 **Sec. 4.** RCW 82.36.026 and 2007 c 515 s 4 are each amended to read  
32 as follows:

33 (1) A licensed supplier (~~shall be~~) is liable for and must pay tax  
34 to the department as provided in RCW 82.36.020. On a two-party  
35 exchange, or buy-sell agreement between two licensed suppliers, the  
36 receiving exchange partner or buyer (~~shall be~~) is liable for and must  
37 pay the tax.

1 (2) A refiner (~~shall be~~) is liable for and must pay tax to the  
2 department on motor vehicle fuel removed from a refinery as provided in  
3 RCW 82.36.020(2)(b).

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

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

10 (5) A licensed refiner, supplier, or exporter is liable for and  
11 must pay tax to the department on motor vehicle fuel for export as  
12 provided in RCW 82.36.020(2)(g). The net amount of tax due must be  
13 calculated to consider the credit in section 8 of this act.

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

17 **Sec. 5.** RCW 82.36.060 and 2007 c 515 s 10 are each amended to read  
18 as follows:

19 (1) An application for a license issued under this chapter  
20 (~~shall~~) must be made to the department on forms to be furnished by  
21 the department and (~~shall~~) must contain such information as the  
22 department deems necessary.

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

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

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

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

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

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

7 (3) An applicant for a license as a motor vehicle fuel importer  
8 must list on the application each state, province, or country from  
9 which the applicant intends to import motor vehicle fuel and, if  
10 required by the state, province, or country listed, must be licensed or  
11 registered for motor vehicle fuel tax purposes in that state, province,  
12 or country.

13 (4) An applicant for a license as a motor vehicle fuel exporter  
14 must list on the application each state, province, or country to which  
15 the exporter intends to export motor vehicle fuel received in this  
16 state by means of a transfer outside of the bulk transfer-terminal  
17 system and, if required by the state, province, or country listed, must  
18 be licensed or registered for motor vehicle fuel tax purposes in that  
19 state, province, or country.

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

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

35 An applicant who makes a false statement of a material fact on the  
36 application may be prosecuted for false swearing as defined by RCW  
37 9A.72.040.



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

21           (b) The total amount of the bond or bonds required of any licensee  
22 (~~shall~~) may never be less than five thousand dollars nor more than  
23 one hundred thousand dollars.

24           (c) No recoveries on any bond or the execution of any new bond  
25 (~~shall~~) invalidates any bond and no revocation of any license  
26 (~~shall~~) effects the validity of any bond but the total recoveries  
27 under any one bond (~~shall~~) may not exceed the amount of the bond.

28           (d) In lieu of any such bond or bonds in total amount as herein  
29 fixed, a licensee may deposit with the state treasurer, under such  
30 terms and conditions as the department may prescribe, a like amount of  
31 lawful money of the United States or bonds or other obligations of the  
32 United States, the state, or any county of the state, of an actual  
33 market value not less than the amount so fixed by the department.

34           (e) Any surety on a bond furnished by a licensee as provided herein  
35 (~~shall~~) must be released and discharged from any and all liability to  
36 the state accruing on such bond after the expiration of thirty days  
37 from the date upon which such surety has lodged with the department a  
38 written request to be released and discharged, but this provision

1 (~~shall~~) does not operate to relieve, release, or discharge the surety  
2 from any liability already accrued or which (~~shall~~) will accrue  
3 before the expiration of the thirty day period. The department  
4 (~~shall~~) must promptly, upon receiving any such request, notify the  
5 licensee who furnished the bond; and unless the licensee, on or before  
6 the expiration of the thirty day period, files a new bond, or makes a  
7 deposit in accordance with the requirements of this section, the  
8 department (~~shall forthwith~~) must cancel the license. Whenever a new  
9 bond is furnished by a licensee, the department (~~shall~~) must cancel  
10 the old bond as soon as the department and the attorney general are  
11 satisfied that all liability under the old bond has been fully  
12 discharged.

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

23 (8) The department may waive the requirements of subsection (7) of  
24 this section for licensed refiners, crude oil importers, or  
25 distributors if, upon determination by the department, the licensed  
26 refiner, crude oil importer, or distributor has sufficient resources,  
27 assets, other financial instruments, or other means, to adequately make  
28 payments on the estimated monthly motor vehicle fuel tax payments,  
29 penalties, and interest arising out of this chapter. The department  
30 (~~shall~~) must adopt rules to administer this subsection.

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

1       **Sec. 6.** RCW 82.36.080 and 2007 c 515 s 11 are each amended to read  
2 as follows:

3       (1) It (~~shall be~~) is unlawful for any person to engage in  
4 business in this state as any of the following unless the person is the  
5 holder of an uncanceled license issued by the department authorizing  
6 the person to engage in that business:

7       (a) Motor vehicle fuel supplier;

8       (b) Motor vehicle fuel distributor;

9       (c) Motor vehicle fuel exporter;

10       (d) Motor vehicle fuel importer;

11       (e) Motor vehicle fuel blender; (~~or~~)

12       (f) International fuel tax agreement licensee;

13       (g) Refiner; or

14       (h) Crude oil importer.

15       (2) A person engaged in more than one activity for which a license  
16 is required must have a separate license classification for each  
17 activity, but a motor vehicle fuel supplier is not required to obtain  
18 a separate license classification for any other activity for which a  
19 license is required.

20       (3) If any person acts as a licensee without first securing the  
21 license required herein the excise tax (~~shall be~~) is immediately due  
22 and payable on account of all motor vehicle fuel distributed or used by  
23 the person. The director (~~shall~~) must proceed (~~forthwith~~) to  
24 determine from the best available sources, the amount of the tax, and  
25 (~~the director shall~~) must immediately assess the tax in the amount  
26 found due, together with a penalty of one hundred percent of the tax,  
27 and (~~shall~~) must make a certificate of such assessment and penalty.  
28 In any suit or proceeding to collect the tax or penalty, or both, such  
29 certificate (~~shall be~~) is prima facie evidence that the person  
30 therein named is indebted to the state in the amount of the tax and  
31 penalty therein stated. Any tax or penalty so assessed may be  
32 collected in the manner prescribed in this chapter with reference to  
33 delinquency in payment of the tax or by an action at law, which the  
34 attorney general (~~shall~~) must commence and prosecute to final  
35 determination at the request of the director. The foregoing remedies  
36 of the state (~~shall be~~) are cumulative and no action taken pursuant  
37 to this section (~~shall~~) relieves any person from the penal provisions  
38 of this chapter.

1           **Sec. 7.** RCW 82.36.230 and 1998 c 176 s 34 are each amended to read  
2 as follows:

3           (~~The provisions of this chapter requiring the payment of taxes do~~  
4 ~~not apply to motor vehicle fuel imported into the state in interstate~~  
5 ~~or foreign commerce and intended to be sold while in interstate or~~  
6 ~~foreign commerce, nor to motor vehicle fuel exported from this state by~~  
7 ~~a licensee nor to any motor vehicle fuel sold by a licensee to the~~  
8 ~~armed forces of the United States or to the national guard for use~~  
9 ~~exclusively in ships or for export from this state. The)) (1) A  
10 licensee (~~shall~~) receiving an exemption under section 9 of this act  
11 or claiming the credit under section 8 of this act must report such  
12 imports, exports (~~and~~), credits or sales to the department at such  
13 times, on such forms, and in such detail as the department may require,  
14 otherwise the exemption granted in (~~this~~) section 9 of this act or  
15 the credit allowed under section 8 of this act is null and void, and  
16 all fuel (~~shall~~) must be considered distributed in this state fully  
17 subject to the provisions of this chapter. Each invoice covering  
18 exempt sales (~~shall~~) must have the statement "Ex Washington Motor  
19 Vehicle Fuel Tax" clearly marked thereon.~~

20           (2) To claim any exemption from taxes under (~~this~~) section 9 of  
21 this act or a credit under section 8 of this act on account of sales by  
22 a licensee of motor vehicle fuel for export, the purchaser (~~shall~~)  
23 must obtain from the selling licensee, and such selling licensee must  
24 furnish to the purchaser, an invoice giving such details of the sale  
25 for export as the department may require, copies of which (~~shall~~)  
26 must be furnished to the department and the entity of the state or  
27 foreign jurisdiction of destination which is charged by the laws of  
28 that state or foreign jurisdiction with the control or monitoring, or  
29 both, of the sales or movement of motor vehicle fuel in that state or  
30 foreign jurisdiction. For the purposes of (~~this~~) section 9 of this  
31 act, motor vehicle fuel distributed to a federally recognized Indian  
32 tribal reservation located within the state of Washington is not  
33 considered exported outside this state.

34           (3) To claim any refund of taxes previously paid on account of  
35 sales of motor vehicle fuel to the armed forces of the United States or  
36 to the national guard, the licensee (~~shall be~~) is required to execute  
37 an exemption certificate in (~~such~~) the form (~~as shall be~~) furnished  
38 by the department, containing a certified statement by an authorized

1 officer of the armed forces having actual knowledge of the purpose for  
2 which the exemption is claimed. The provisions of (~~this~~) section 9  
3 of this act exempting motor vehicle fuel sold to the armed forces of  
4 the United States or to the national guard from the tax imposed  
5 (~~hereunder~~) under this chapter do not apply to any motor vehicle fuel  
6 sold to contractors purchasing such fuel either for their own account  
7 or as the agents of the United States or the national guard for use in  
8 the performance of contracts with the armed forces of the United States  
9 or the national guard.

10 (4) The department may at any time require of any licensee any  
11 information the department deems necessary to determine the validity of  
12 the (~~claimed~~) exemption taken under section 9 of this act or the  
13 credit taken under section 8 of this act, and failure to supply such  
14 data will constitute a waiver of all right to the exemption or credit  
15 claimed. The department is hereby empowered with full authority to  
16 promulgate rules and regulations and to prescribe forms to be used by  
17 licensees in reporting to the department so as to prevent evasion of  
18 the tax imposed by this chapter.

19 (5) Upon request from the officials to whom are entrusted the  
20 enforcement of the motor vehicle fuel tax law of any other state, the  
21 District of Columbia, the United States, its territories and  
22 possessions, the provinces, or the Dominion of Canada, the department  
23 may forward to such officials any information which the department may  
24 have relative to the import or export of any motor vehicle fuel by any  
25 licensee(~~:- PROVIDED, That~~), if such governmental unit is authorized  
26 to furnish like information to this state.

27 NEW SECTION. Sec. 8. A new section is added to chapter 82.36 RCW  
28 to read as follows:

29 (1) In computing the tax imposed under this chapter, a credit is  
30 allowed for motor vehicle fuel exported from the state. Except as  
31 provided in subsection (2) of this section, the credit is equal to the  
32 number of gallons of fuel exported multiplied by the total rate of tax  
33 imposed under this chapter, less 2.5 cents per gallon.

34 (2) If the total rate of motor vehicle fuel tax imposed by the  
35 importing state exceeds the total rate of tax imposed under this  
36 chapter less 2.5 cents per gallon, the credit is equal to the number of

1 gallons of fuel exported multiplied by the total rate of tax imposed by  
2 the importing state.

3 (3) The amount of credit earned under this section may not exceed  
4 the tax otherwise due under this chapter with respect to the fuel  
5 exported.

6 (4) This credit under this section is subject to the provisions of  
7 RCW 82.36.230.

8 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.36 RCW  
9 to read as follows:

10 (1) The provisions of this chapter requiring the payment of taxes  
11 do not apply to motor vehicle fuel imported into the state in  
12 interstate or foreign commerce and intended to be sold while in  
13 interstate or foreign commerce, nor to motor vehicle fuel exported from  
14 this state to a destination outside the United States, nor to any motor  
15 vehicle fuel sold by a licensee to the armed forces of the United  
16 States or to the national guard for use exclusively in ships or for  
17 export from this state.

18 (2) The exemption under this section is subject to the provisions  
19 of RCW 82.36.230.

20 NEW SECTION. **Sec. 10.** A new section is added to chapter 82.36 RCW  
21 to read as follows:

22 In computing the tax imposed under this chapter, a credit is  
23 allowed against tax due on the entry, removal, or sale of fuel and is  
24 equal to tax imposed under this chapter that has already been paid with  
25 respect to the same fuel. The department may require the taxpayer to  
26 provide proof of prior tax payments with respect to the fuel. The  
27 credit may be claimed as provided in RCW 82.36.310.

28 **Sec. 11.** RCW 82.36.300 and 1998 c 176 s 37 are each amended to  
29 read as follows:

30 Every person who (~~shall~~) exports any motor vehicle fuel for use  
31 outside of this state and who has paid the motor vehicle fuel excise  
32 tax upon such motor vehicle fuel (~~shall be~~) imposed in RCW 82.36.020  
33 is entitled to and (~~shall~~) must receive a refund of the amount of the  
34 motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel  
35 so exported less the credit taken in section 8 of this act. For the

1 purposes of this section, motor vehicle fuel distributed to a federally  
2 recognized Indian tribal reservation located within the state of  
3 Washington is not considered exported outside this state.

4 **Sec. 12.** RCW 82.38.020 and 2002 c 183 s 1 are each amended to read  
5 as follows:

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

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

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

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

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

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

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

29 (7) "Crude oil" means a naturally occurring, flammable liquid  
30 consisting of a complex mixture of hydrocarbons of various molecular  
31 weights, and other organic compounds, that is found in geologic  
32 formations beneath the earth's surface.

33 (8) "Crude oil importer" means a person who imports crude oil into  
34 the state.

35 (9) "Department" means the department of licensing.

36 ((+8)) (10) "Dyed special fuel user" means a person authorized by

1 the internal revenue code to operate a motor vehicle on the highway  
2 using dyed special fuel, in which the use is not exempt from the  
3 special fuel tax.

4 ~~((+9))~~ (11) "Evasion" or "evade" means to diminish or avoid the  
5 computation, assessment, or payment of authorized taxes or fees  
6 through:

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

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

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

12 ~~((+10))~~ (12) "Export" means to obtain special fuel in this state  
13 for sales or distribution outside the state.

14 ~~((+11))~~ (13) "Highway" means every way or place open to the use of  
15 the public, as a matter of right, for the purpose of vehicular travel.

16 ~~((+12))~~ (14) "Import" means to bring special fuel into this state  
17 by a means of conveyance other than the fuel supply tank of a motor  
18 vehicle.

19 ~~((+13))~~ (15) "International fuel tax agreement authorization  
20 licensee" means an international fuel tax agreement licensee that is  
21 authorized to purchase bulk tax-deferred special fuel when at least  
22 twenty percent of their fuel is consumed outside the state.

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

26 ~~((+14))~~ (17) "Lessor" means a person: (a) Whose principal  
27 business is the bona fide leasing or renting of motor vehicles without  
28 drivers for compensation to the general public; and (b) who maintains  
29 established places of business and whose lease or rental contracts  
30 require the motor vehicles to be returned to the established places of  
31 business.

32 ~~((+15))~~ (18) "Licensee" means a person holding a refiner, crude  
33 oil importer, special fuel supplier, special fuel importer, special  
34 fuel exporter, special fuel blender, special fuel distributor, dyed  
35 special fuel user, international fuel tax agreement authorization, or  
36 international fuel tax agreement license issued under this chapter.

37 ~~((+16))~~ (19) "Motor vehicle" means a self-propelled vehicle



1 designed for operation upon land utilizing special fuel as the means of  
2 propulsion.

3 ~~((+17))~~ (20) "Natural gas" means naturally occurring mixtures of  
4 hydrocarbon gases and vapors consisting principally of methane, whether  
5 in gaseous or liquid form.

6 ~~((+18))~~ (21) "Person" means a natural person, fiduciary,  
7 association, or corporation. The term "person" as applied to an  
8 association means and includes the partners or members thereof, and as  
9 applied to corporations, the officers thereof.

10 ~~((+19))~~ (22) "Position holder" means a person who holds the  
11 inventory position in special fuel, as reflected by the records of the  
12 terminal operator. A person holds the inventory position in special  
13 fuel if the person has a contractual agreement with the terminal for  
14 the use of storage facilities and terminating services at a terminal  
15 with respect to special fuel. "Position holder" includes a terminal  
16 operator that owns special fuel in their terminal.

17 ~~((+20))~~ (23) "Rack" means a mechanism for delivering special fuel  
18 from a refinery or terminal into a truck, trailer, railcar, or other  
19 means of nonbulk transfer.

20 ~~((+21))~~ (24) "Refiner" means a person who owns, operates, or  
21 otherwise controls a refinery.

22 ~~((+22))~~ (25) "Refinery" means an industrial process plant where  
23 crude oil is processed and may be refined into, but not limited to,  
24 motor fuel (gasoline/petrol), diesel fuel, asphalt base, kerosene,  
25 diesel oil, liquefied petroleum gases (LPG), jet aircraft fuel, heating  
26 fuel oils, chemicals, lubricating oils, and petroleum coke.

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

29 ~~((+23))~~ (27) "Special fuel" means and includes all combustible  
30 gases and liquids suitable for the generation of power for propulsion  
31 of motor vehicles, except that it does not include motor vehicle fuel  
32 as defined in chapter 82.36 RCW, nor does it include dyed special fuel  
33 as defined by federal regulations, unless the use is in violation of  
34 this chapter. If a person holds for sale, sells, purchases, or uses  
35 any dyed special fuel in violation of this chapter, all dyed special  
36 fuel held for sale, sold, purchased, stored, or used by that person is  
37 considered special fuel, and the person is subject to all presumptions,

1 reporting, and recordkeeping requirements and other obligations which  
2 apply to special fuel, along with payment of any applicable taxes,  
3 penalties, or interest for illegal use.

4 ~~((+24+))~~ (28) "Special fuel distributor" means a person who  
5 acquires special fuel from a supplier, distributor, or licensee for  
6 subsequent sale and distribution.

7 ~~((+25+))~~ (29) "Special fuel exporter" means a person who purchases  
8 special fuel in this state and directly exports the fuel by a means  
9 other than the bulk transfer-terminal system to a destination outside  
10 of the state.

11 ~~((+26+))~~ (30) "Special fuel importer" means a person who imports  
12 special fuel into the state by a means other than the bulk transfer-  
13 terminal system. If the importer of record is acting as an agent, the  
14 person for whom the agent is acting is the importer. If there is no  
15 importer of record, the owner of the special fuel at the time of  
16 importation is the importer.

17 ~~((+27+))~~ (31) "Special fuel supplier" means a person who holds a  
18 federal certificate issued under the internal revenue code and  
19 authorizes the person to tax-free transactions on special fuel in the  
20 bulk transfer-terminal system.

21 ~~((+28+))~~ (32) "Special fuel user" means a person engaged in uses of  
22 special fuel that are not specifically exempted from the special fuel  
23 tax imposed under this chapter.

24 ~~((+29+))~~ (33) "Terminal" means a special fuel storage and  
25 distribution facility that has been assigned a terminal control number  
26 by the internal revenue service, is supplied by pipeline or vessel, and  
27 from which reportable special fuel is removed at a rack.

28 ~~((+30+))~~ (34) "Terminal operator" means a person who owns,  
29 operates, or otherwise controls a terminal.

30 ~~((+31+))~~ (35) "Two-party exchange" or "buy-sell agreement" means a  
31 transaction in which taxable special fuel is transferred from one  
32 licensed supplier to another licensed supplier under an exchange or  
33 buy-sell agreement whereby the supplier that is the position holder  
34 agrees to deliver taxable special fuel to the other supplier or the  
35 other supplier's customer at the rack of the terminal at which the  
36 delivering supplier is the position holder.

37 (36) "United States" means the federal constitutional republic

1 comprising the fifty states and a federal district known as the United  
2 States of America.

3 **Sec. 13.** RCW 82.38.030 and 2007 c 515 s 21 are each amended to  
4 read as follows:

5 (1) There is (~~hereby~~) levied and imposed upon special fuel  
6 licensees, other than crude oil importers or special fuel distributors,  
7 a tax at the rate of twenty-three cents per gallon of special fuel, or  
8 each one hundred cubic feet of compressed natural gas, measured at  
9 standard pressure and temperature.

10 (2) Beginning July 1, 2003, an additional and cumulative tax rate  
11 of five cents per gallon of special fuel, or each one hundred cubic  
12 feet of compressed natural gas, measured at standard pressure and  
13 temperature (~~shall be~~) is imposed on special fuel licensees, other  
14 than special fuel distributors. This subsection (2) expires when the  
15 bonds issued for transportation 2003 projects are retired.

16 (3) Beginning July 1, 2005, an additional and cumulative tax rate  
17 of three 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~~) is imposed on special fuel licensees, other  
20 than special fuel distributors.

21 (4) Beginning July 1, 2006, an additional and cumulative tax rate  
22 of three cents per gallon of special fuel, or each one hundred cubic  
23 feet of compressed natural gas, measured at standard pressure and  
24 temperature (~~shall be~~) is imposed on special fuel licensees, other  
25 than special fuel distributors.

26 (5) Beginning July 1, 2007, an additional and cumulative tax rate  
27 of two cents per gallon of special fuel, or each one hundred cubic feet  
28 of compressed natural gas, measured at standard pressure and  
29 temperature (~~shall be~~) is imposed on special fuel licensees, other  
30 than special fuel distributors.

31 (6) Beginning July 1, 2008, an additional and cumulative tax rate  
32 of one and one-half cents per gallon of special fuel, or each one  
33 hundred cubic feet of compressed natural gas, measured at standard  
34 pressure and temperature (~~shall be~~) is imposed on special fuel  
35 licensees, other than special fuel distributors.

36 (7) Taxes are imposed when:

1 (a) Special fuel is removed in this state from a terminal if the  
2 special fuel is removed at the rack unless the removal is to a licensed  
3 supplier or exporter for direct delivery to a destination outside of  
4 the state, or ~~((the removal is by))~~ to a special fuel supplier for  
5 direct delivery to an international fuel tax agreement licensee under  
6 RCW 82.38.320;

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

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

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

16 (c) Special fuel enters into this state for sale, consumption, use,  
17 or storage, unless the fuel enters this state for direct delivery to an  
18 international fuel tax agreement licensee under RCW 82.38.320, if  
19 either of the following applies:

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

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

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

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

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

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

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

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

5 (j) Special fuel is physically removed from this state.

6 (8) A tax under this chapter may only be imposed once with respect  
7 to special fuel that is entered, removed, or sold.

8 **Sec. 14.** RCW 82.38.035 and 2007 c 515 s 23 are each amended to  
9 read as follows:

10 (1) A licensed supplier (~~((shall be))~~) is liable for and must pay tax  
11 on special fuel to the department as provided in RCW 82.38.030(7)(a).  
12 On a two-party exchange, or buy-sell agreement between two licensed  
13 suppliers, the receiving exchange partner or buyer (~~((shall be))~~) is  
14 liable for and must pay the tax.

15 (2) A refiner (~~((shall be))~~) is liable for and must pay tax to the  
16 department on special fuel removed from a refinery as provided in RCW  
17 82.38.030(7)(b).

18 (3) A licensed importer (~~((shall be))~~) is liable for and must pay tax  
19 to the department on special fuel imported into this state as provided  
20 in RCW 82.38.030(7)(c).

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

24 (5) A licensed dyed special fuel user (~~((shall be))~~) is liable for  
25 and must pay tax to the department on the use of dyed special fuel as  
26 provided in RCW 82.38.030(7)(f).

27 (6) A licensed refiner, supplier, or exporter is liable for and  
28 must pay tax to the department on motor vehicle fuel for export as  
29 provided in RCW 82.38.030(7)(j). The net amount of tax due must be  
30 calculated to consider the credit in section 16 of this act.

31 (7) Nothing in this chapter prohibits the licensee liable for  
32 payment of the tax under this chapter from including as a part of the  
33 selling price an amount equal to such tax.

34 **Sec. 15.** RCW 82.38.080 and 2009 c 352 s 1 are each amended to read  
35 as follows:

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

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

6 (b) Publicly owned firefighting equipment;

7 (c) Special mobile equipment as defined in RCW 46.04.552;

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

12 (i) Pumping propane, or fuel or heating oils or milk picked up from  
13 a farm or dairy farm storage tank by a power take-off unit on a  
14 delivery truck, at a rate determined by the department(~~(:—PROVIDED,~~  
15 ~~That)).~~ However, a claimant when presenting his or her claim to the  
16 department in accordance with this chapter, (~~shall~~) must provide (~~to~~  
17 ~~the claim,~~) invoices of propane, or fuel or heating oil delivered, or  
18 such other appropriate information as may be required by the department  
19 to substantiate his or her claim;

20 (ii) Operating a power take-off unit on a cement mixer truck or a  
21 load compactor on a garbage truck at the rate of twenty-five percent of  
22 the total gallons of fuel used in such a truck; or

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

29 (e) Motor vehicles owned and operated by the United States  
30 government;

31 (f) Heating purposes;

32 (g) Moving a motor vehicle on a public highway between two pieces  
33 of private property when said moving is incidental to the primary use  
34 of the motor vehicle;

35 (h) Transportation services for persons with special transportation  
36 needs by a private, nonprofit transportation provider regulated under  
37 chapter 81.66 RCW;

1 (i) Vehicle refrigeration units, mixing units, or other equipment  
2 powered by separate motors from separate fuel tanks;

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

11 (k) Waste vegetable oil as defined under RCW 82.08.0205 if the oil  
12 is used to manufacture biodiesel.

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

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

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

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

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

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

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

32 (A) Facilities operated by the supplier;

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

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

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

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

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

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

29 (b) Every publicly owned and operated urban passenger  
30 transportation system is exempt from the provisions of this chapter  
31 that require the payment of special fuel taxes. For the purposes of  
32 this subsection, "publicly owned and operated urban passenger  
33 transportation systems" include public transportation benefit areas  
34 under chapter 36.57A RCW, metropolitan municipal corporations under  
35 chapter 36.56 RCW, city-owned transit systems under chapter 35.58 RCW,  
36 county public transportation authorities under chapter 36.57 RCW,  
37 unincorporated transportation benefit areas under chapter 36.57 RCW,  
38 and regional transit authorities under chapter 81.112 RCW.



1        NEW SECTION.    **Sec. 16.** A new section is added to chapter 82.38 RCW  
2 to read as follows:

3        (1) In computing the tax imposed under this chapter, a credit is  
4 allowed for special fuel or compressed natural gas exported from the  
5 state. Except as provided in subsection (2) of this section, for  
6 special fuel, the credit is equal to the number of gallons of fuel  
7 exported multiplied by the total rate of tax imposed under this  
8 chapter, less 2.5 cents per gallon.

9        (2) If the total rate of special fuel tax imposed by the importing  
10 state exceeds the total rate of tax imposed under this chapter less 2.5  
11 cents per gallon for special fuel or 2.5 cents per hundred cubic feet  
12 of compressed natural gas, the credit is equal to the number of gallons  
13 of special fuel or number of hundred cubic feet of compressed natural  
14 gas exported multiplied by the total rate of tax imposed by the  
15 importing state.

16        (3) The amount of credit earned under this section may not exceed  
17 the tax otherwise due under this chapter with respect to the special  
18 fuel or compressed natural gas exported.

19        (4) This credit under this section is subject to the provisions of  
20 section 17 of this act.

21        NEW SECTION.    **Sec. 17.** A new section is added to chapter 82.38 RCW  
22 to read as follows:

23        To claim a credit against tax under section 16 of this act relating  
24 to a sale by a licensee of special fuel for export, the purchaser must  
25 obtain from the selling licensee, and such selling licensee must  
26 furnish to the purchaser, an invoice giving such details of the sale  
27 for export as the department may require, copies of which must be  
28 furnished to the department and the entity of the state of destination  
29 which is charged by the laws of that state with the control or  
30 monitoring, or both, of the sales or movement of special fuel in that  
31 state.

32        NEW SECTION.    **Sec. 18.** A new section is added to chapter 82.38 RCW  
33 to read as follows:

34        In computing the tax imposed under this chapter, a credit is  
35 allowed against tax due on the entry, removal, or sale of fuel and is  
36 equal to tax imposed under this chapter that has already been paid with

1 respect to the same fuel. The department may require the taxpayer to  
2 provide proof of prior tax payments with respect to the fuel. The  
3 credit may be claimed as provided in RCW 82.38.190.

4 **Sec. 19.** RCW 82.38.090 and 1998 c 176 s 61 are each amended to  
5 read as follows:

6 (1) It (~~shall be~~) is unlawful for any person to engage in  
7 business in this state as any of the following unless the person is the  
8 holder of an uncanceled license issued to him or her by the department  
9 authorizing the person to engage in that business:

- 10 (a) Special fuel supplier;  
11 (b) Special fuel distributor;  
12 (c) Special fuel exporter;  
13 (d) Special fuel importer;  
14 (e) Special fuel blender;  
15 (f) Dyed special fuel user; (~~or~~)  
16 (g) International fuel tax agreement licensee;  
17 (h) Refiner; or  
18 (i) Crude oil importer.

19 (2) A person engaged in more than one activity for which a license  
20 is required must have a separate license classification for each  
21 activity, but a special fuel supplier is not required to obtain a  
22 separate license classification for any other activity for which a  
23 license is required.

24 (3) Special fuel users operating motor vehicles in interstate  
25 commerce having two axles and a gross vehicle weight or registered  
26 gross vehicle weight not exceeding twenty-six thousand pounds are not  
27 required to be licensed. Special fuel users operating motor vehicles  
28 in interstate commerce having two axles and a gross vehicle weight or  
29 registered gross vehicle weight exceeding twenty-six thousand pounds,  
30 or having three or more axles regardless of weight, or a combination of  
31 vehicles, when the combination exceeds twenty-six thousand pounds gross  
32 vehicle weight, must comply with the licensing and reporting  
33 requirements of this chapter. A copy of the license must be carried in  
34 each motor vehicle entering this state from another state or province.

35 **Sec. 20.** RCW 82.38.110 and 2002 c 352 s 26 are each amended to  
36 read as follows:

1 (1) Application for a license issued under this chapter (~~shall~~)  
2 must be made to the department. The application (~~shall~~) must be  
3 filed upon a form prepared and furnished by the department and  
4 (~~shall~~) must contain such information as the department deems  
5 necessary.

6 (2) Every application for a special fuel license, other than an  
7 application for a dyed special fuel user or international fuel tax  
8 agreement license, must contain the following information to the extent  
9 it applies to the applicant:

10 (a) Proof as required by the department (~~shall—require~~)  
11 concerning the applicant's identity, including but not limited to his  
12 or her fingerprints or those of the officers of a corporation making  
13 the application;

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

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

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

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

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

34 (4) An applicant for a license as a special fuel exporter must list  
35 on the application each state, province, or country to which the  
36 exporter intends to export special fuel received in this state by means  
37 of a transfer outside the bulk transfer-terminal system and, if

1 required by the state, province, or country listed, must be licensed or  
2 registered for special fuel tax purposes in that state, province, or  
3 country.

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

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

18 (7) An applicant who makes a false statement of a material fact on  
19 the application may be prosecuted for false swearing as defined by RCW  
20 9A.72.040.

21 (8) A special fuel license may not be issued to any person or  
22 continued in force unless such person has furnished bond, as defined in  
23 RCW 82.38.020, in such form as the department may require, to secure  
24 his or her compliance with this chapter, and the payment of any and all  
25 taxes, interest, and penalties due and to become due hereunder. The  
26 requirement of furnishing a bond may be waived: (a) For refiners,  
27 crude oil importers, or special fuel distributors who only deliver  
28 special fuel into the fuel tanks of marine vessels; (b) for dyed  
29 special fuel users; (c) for persons issued licenses under the  
30 international fuel tax agreement; or (d) for licensed special fuel  
31 distributors who, upon determination by the department, have sufficient  
32 resources, assets, other financial instruments, or other means to  
33 adequately make payments on the estimated monthly motor vehicle fuel  
34 tax payments, penalties, and interest arising out of this chapter. The  
35 department (~~shall~~) must adopt rules to administer this section.

36 (9) The department may require a licensee to post a bond if the  
37 licensee, after having been licensed, has failed to file timely reports  
38 or has failed to remit taxes due, or when an investigation or audit

1 indicates problems severe enough that the department, in its  
2 discretion, determines that a bond is required to protect the interests  
3 of the state. The department may also adopt rules prescribing  
4 conditions that, in the department's discretion, require a bond to  
5 protect the interests of the state.

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

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

20 (12) An application for an international fuel tax agreement license  
21 must be made to the department. The application must be filed upon a  
22 form prescribed by the department and contain such information as the  
23 department may require. The department (~~shall~~) must charge a fee of  
24 ten dollars per set of International Fuel Tax Agreement decals issued  
25 to each applicant or licensee. The department (~~shall~~) must transmit  
26 the fee to the state treasurer for deposit in the motor vehicle fund.

27 **Sec. 21.** RCW 82.38.180 and 2007 c 515 s 29 are each amended to  
28 read as follows:

29 (1) Any person who has purchased special fuel on which tax has been  
30 paid may file a claim with the department for a refund of the tax for:

31 (~~(+1)~~) (a) Taxes previously paid on special fuel used for purposes  
32 other than for the propulsion of motor vehicles upon the public  
33 highways in this state.

34 (~~(+2)~~) (b) Taxes previously paid on special fuel imposed in RCW  
35 82.38.030(7)(j) exported for use outside of this state(~~(+ Special fuel  
36 carried from this state in the fuel tank of a motor vehicle is deemed  
37 to be exported from this state)~~), less any credit taken under section

1 16 of this act. Special fuel distributed to a federally recognized  
2 Indian tribal reservation located within the state of Washington is not  
3 considered exported outside this state.

4 ~~((+3))~~ (c) Tax, penalty, or interest erroneously or illegally  
5 collected or paid.

6 ~~((+4))~~ (d) Taxes previously paid on all special fuel which is lost  
7 or destroyed, while the licensee (~~shall be~~) is the owner thereof,  
8 through fire, lightning, flood, wind storm, or explosion.

9 ~~((+5))~~ (e) Taxes previously paid on all special fuel of five  
10 hundred gallons or more which is lost or destroyed while the licensee  
11 (~~shall be~~) is the owner thereof, through leakage or other casualty  
12 except evaporation, shrinkage, or unknown causes.

13 ~~((+6))~~ (f) Taxes previously paid on special fuel that is  
14 inadvertently mixed with dyed special fuel.

15 (2) Recovery for such loss or destruction under either subsection  
16 ~~((+4))~~ (1)(d), ~~((+5))~~ (e), or ~~((+6))~~ (f) of this section must be  
17 susceptible to positive proof thereby enabling the department to  
18 conduct such investigation and require such information as it may deem  
19 necessary. In the event that the department is not satisfied that the  
20 fuel was lost, destroyed, or contaminated as claimed because  
21 information or proof as required hereunder is not sufficient to  
22 substantiate the accuracy of the claim, it may deem such as sufficient  
23 cause to deny all right relating to the refund or credit for the excise  
24 tax paid on special fuel alleged to be lost or destroyed.

25 (3) No refund or claim for credit (~~shall~~) may be approved by the  
26 department unless the gallons of special fuel claimed as nontaxable  
27 satisfy the conditions specifically set forth in this section and the  
28 nontaxable event or use occurred during the period covered by the  
29 refund claim. Refunds or claims for credit (~~shall~~) are not (~~be~~)  
30 allowed for anticipated nontaxable use or events.

31 NEW SECTION. Sec. 22. A new section is added to chapter 82.36 RCW  
32 to read as follows:

33 (1) A licensed crude oil importer must report to the department the  
34 amount of crude oil imported into this state from a state within the  
35 United States in a form and manner as prescribed by the department.  
36 The department must calculate a credit equal to two and one-half cents

1 per gallon of crude oil imported from each state for the following  
2 calendar year. This credit for each state must be reported to all  
3 licensees.

4 (2) The amount of the credit provided in subsection (1) of this  
5 section may not exceed the tax otherwise due under this chapter for the  
6 tax reporting period.

7 (3) A credit calculated for a one calendar year may be carried over  
8 to be credited against taxes incurred in the subsequent calendar year.

9 (4) No refunds may be granted for credits under this section.

10 (5) A credit under this section must be claimed through the tax  
11 reports required under RCW 82.36.031.

12 (6) The credit provided in subsection (1) of this section may only  
13 be applied to the tax due for exported fuel to the state within the  
14 United States from which crude oil was imported.

15 (7) The department must notify licensees when the credit provided  
16 in subsection (1) of this section has been exhausted and no further  
17 credit shall be allowed for that calendar year.

18 NEW SECTION. **Sec. 23.** A new section is added to chapter 82.38 RCW  
19 to read as follows:

20 (1) A licensed crude oil importer must report to the department the  
21 amount of crude oil imported into this state from a state within the  
22 United States in a form and manner as prescribed by the department.  
23 The department must calculate a credit equal to two and one-half cents  
24 per gallon of crude oil imported from each state for the following  
25 calendar year. This credit for each state must be reported to all  
26 licensees.

27 (2) The amount of the credit provided in subsection (1) of this  
28 section may not exceed the tax otherwise due under this chapter for the  
29 tax reporting period.

30 (3) A credit calculated for a one calendar year may be carried over  
31 to be credited against taxes incurred in the subsequent calendar year.

32 (4) No refunds may be granted for credits under this section.

33 (5) A credit under this section must be claimed through the tax  
34 reports required under RCW 82.38.150.

35 (6) The credit provided in subsection (1) of this section may only  
36 be applied to the tax due for exported fuel to the state within the  
37 United States from which crude oil was imported.

1 (7) The department must notify licensees when the credit provided  
2 in subsection (1) of this section has been exhausted and no further  
3 credit is allowed for that calendar year.

4 NEW SECTION. **Sec. 24.** A new section is added to chapter 46.68 RCW  
5 to read as follows:

6 (1) The significant regional transportation projects account is  
7 created in the motor vehicle fund. Money in the account may be spent  
8 only after appropriation. Expenditures from the account must be used  
9 only for projects on the Columbia river crossing between Oregon and  
10 Washington, the north Spokane corridor, the 520 bridge, and to pay the  
11 principal and interest on the bonds authorized for construction or  
12 improvements.

13 (2) Upon completion of the project, moneys deposited in this  
14 account must only be used to pay the principal and interest on the  
15 bonds authorized, and any funds in the account in excess of the amount  
16 necessary to make the principal and interest payments may be used for  
17 other significant regional transportation projects.

18 **Sec. 25.** RCW 43.84.092 and 2009 c 479 s 31, 2009 c 472 s 5, and  
19 2009 c 451 s 8 are each reenacted and amended to read as follows:

20 (1) All earnings of investments of surplus balances in the state  
21 treasury shall be deposited to the treasury income account, which  
22 account is hereby established in the state treasury.

23 (2) The treasury income account shall be utilized to pay or receive  
24 funds associated with federal programs as required by the federal cash  
25 management improvement act of 1990. The treasury income account is  
26 subject in all respects to chapter 43.88 RCW, but no appropriation is  
27 required for refunds or allocations of interest earnings required by  
28 the cash management improvement act. Refunds of interest to the  
29 federal treasury required under the cash management improvement act  
30 fall under RCW 43.88.180 and shall not require appropriation. The  
31 office of financial management shall determine the amounts due to or  
32 from the federal government pursuant to the cash management improvement  
33 act. The office of financial management may direct transfers of funds  
34 between accounts as deemed necessary to implement the provisions of the  
35 cash management improvement act, and this subsection. Refunds or



1 allocations shall occur prior to the distributions of earnings set  
2 forth in subsection (4) of this section.

3 (3) Except for the provisions of RCW 43.84.160, the treasury income  
4 account may be utilized for the payment of purchased banking services  
5 on behalf of treasury funds including, but not limited to, depository,  
6 safekeeping, and disbursement functions for the state treasury and  
7 affected state agencies. The treasury income account is subject in all  
8 respects to chapter 43.88 RCW, but no appropriation is required for  
9 payments to financial institutions. Payments shall occur prior to  
10 distribution of earnings set forth in subsection (4) of this section.

11 (4) Monthly, the state treasurer shall distribute the earnings  
12 credited to the treasury income account. The state treasurer shall  
13 credit the general fund with all the earnings credited to the treasury  
14 income account except:

15 The following accounts and funds shall receive their proportionate  
16 share of earnings based upon each account's and fund's average daily  
17 balance for the period: The aeronautics account, the aircraft search  
18 and rescue account, the budget stabilization account, the capitol  
19 building construction account, the Cedar River channel construction and  
20 operation account, the Central Washington University capital projects  
21 account, the charitable, educational, penal and reformatory  
22 institutions account, the cleanup settlement account, the Columbia  
23 river basin water supply development account, the common school  
24 construction fund, the county arterial preservation account, the county  
25 criminal justice assistance account, the county sales and use tax  
26 equalization account, the data processing building construction  
27 account, the deferred compensation administrative account, the deferred  
28 compensation principal account, the department of licensing services  
29 account, the department of retirement systems expense account, the  
30 developmental disabilities community trust account, the drinking water  
31 assistance account, the drinking water assistance administrative  
32 account, the drinking water assistance repayment account, the Eastern  
33 Washington University capital projects account, the education  
34 construction fund, the education legacy trust account, the election  
35 account, the energy freedom account, the energy recovery act account,  
36 the essential rail assistance account, The Evergreen State College  
37 capital projects account, the federal forest revolving account, the  
38 ferry bond retirement fund, the freight congestion relief account, the

1 freight mobility investment account, the freight mobility multimodal  
2 account, the grade crossing protective fund, the public health services  
3 account, the health system capacity account, the personal health  
4 services account, the high capacity transportation account, the state  
5 higher education construction account, the higher education  
6 construction account, the highway bond retirement fund, the highway  
7 infrastructure account, the highway safety account, the high occupancy  
8 toll lanes operations account, the industrial insurance premium refund  
9 account, the judges' retirement account, the judicial retirement  
10 administrative account, the judicial retirement principal account, the  
11 local leasehold excise tax account, the local real estate excise tax  
12 account, the local sales and use tax account, the medical aid account,  
13 the mobile home park relocation fund, the motor vehicle fund, the  
14 motorcycle safety education account, the multimodal transportation  
15 account, the municipal criminal justice assistance account, the  
16 municipal sales and use tax equalization account, the natural resources  
17 deposit account, the oyster reserve land account, the pension funding  
18 stabilization account, the perpetual surveillance and maintenance  
19 account, the public employees' retirement system plan 1 account, the  
20 public employees' retirement system combined plan 2 and plan 3 account,  
21 the public facilities construction loan revolving account beginning  
22 July 1, 2004, the public health supplemental account, the public  
23 transportation systems account, the public works assistance account,  
24 the Puget Sound capital construction account, the Puget Sound ferry  
25 operations account, the Puyallup tribal settlement account, the real  
26 estate appraiser commission account, the recreational vehicle account,  
27 the regional mobility grant program account, the resource management  
28 cost account, the rural arterial trust account, the rural Washington  
29 loan fund, the significant regional transportation projects account,  
30 the site closure account, the small city pavement and sidewalk account,  
31 the special category C account, the special wildlife account, the state  
32 employees' insurance account, the state employees' insurance reserve  
33 account, the state investment board expense account, the state  
34 investment board commingled trust fund accounts, the state patrol  
35 highway account, the state route number 520 corridor account, the  
36 supplemental pension account, the Tacoma Narrows toll bridge account,  
37 the teachers' retirement system plan 1 account, the teachers'  
38 retirement system combined plan 2 and plan 3 account, the tobacco

1 prevention and control account, the tobacco settlement account, the  
2 transportation 2003 account (nickel account), the transportation  
3 equipment fund, the transportation fund, the transportation improvement  
4 account, the transportation improvement board bond retirement account,  
5 the transportation infrastructure account, the transportation  
6 partnership account, the traumatic brain injury account, the tuition  
7 recovery trust fund, the University of Washington bond retirement fund,  
8 the University of Washington building account, the urban arterial trust  
9 account, the volunteer firefighters' and reserve officers' relief and  
10 pension principal fund, the volunteer firefighters' and reserve  
11 officers' administrative fund, the Washington fruit express account,  
12 the Washington judicial retirement system account, the Washington law  
13 enforcement officers' and firefighters' system plan 1 retirement  
14 account, the Washington law enforcement officers' and firefighters'  
15 system plan 2 retirement account, the Washington public safety  
16 employees' plan 2 retirement account, the Washington school employees'  
17 retirement system combined plan 2 and 3 account, the Washington state  
18 health insurance pool account, the Washington state patrol retirement  
19 account, the Washington State University building account, the  
20 Washington State University bond retirement fund, the water pollution  
21 control revolving fund, and the Western Washington University capital  
22 projects account. Earnings derived from investing balances of the  
23 agricultural permanent fund, the normal school permanent fund, the  
24 permanent common school fund, the scientific permanent fund, and the  
25 state university permanent fund shall be allocated to their respective  
26 beneficiary accounts. All earnings to be distributed under this  
27 subsection (4) shall first be reduced by the allocation to the state  
28 treasurer's service fund pursuant to RCW 43.08.190.

29 (5) In conformance with Article II, section 37 of the state  
30 Constitution, no treasury accounts or funds shall be allocated earnings  
31 without the specific affirmative directive of this section.

32 **Sec. 26.** RCW 82.36.045 and 2007 c 515 s 9 are each amended to read  
33 as follows:

34 (1) If a licensee, or person acting as such, fails, neglects, or  
35 refuses to file a return or files an incomplete or incorrectly  
36 formatted tax report:

1 (a) For the first occurrence, the licensee, or person acting as  
2 such, must receive a warning letter from the department. The warning  
3 letter must provide instructions for accurate reporting or notify the  
4 licensee or person how to obtain technical assistance from the  
5 department;

6 (b) For the second occurrence, a penalty of two hundred fifty  
7 dollars is imposed by the department;

8 (c) For the third occurrence, a penalty of five hundred dollars is  
9 imposed by the department; and

10 (d) For the fourth occurrence and for each occurrence thereafter,  
11 a penalty of one thousand dollars is imposed by the department.

12 (2) If the department determines that the tax reported by a  
13 licensee, or person acting as such, is deficient, the department  
14 ((shall)) must assess the deficiency on the basis of information  
15 available to it, and ((shall)) must add a penalty of two percent of the  
16 amount of the deficiency.

17 ((+2)) (3) If a licensee, or person acting as such, fails,  
18 neglects, or refuses to file a motor vehicle fuel tax report the  
19 department ((shall)) must, on the basis of information available to it,  
20 determine the tax liability of the licensee or person for the period  
21 during which no report was filed. The department ((shall)) must add  
22 the penalty provided in subsection ((+1)) (2) of this section to the  
23 tax. An assessment made by the department under this subsection or  
24 subsection ((+1)) (2) of this section is presumed to be correct. In  
25 any case, where the validity of the assessment is questioned, the  
26 burden is on the person who challenges the assessment to establish by  
27 a fair preponderance of evidence that it is erroneous or excessive, as  
28 the case may be.

29 ((+3)) (4) If a licensee or person acting as such files a false or  
30 fraudulent report with intent to evade the tax imposed by this chapter,  
31 the department ((shall)) must add to the amount of deficiency a penalty  
32 equal to twenty-five percent of the deficiency, in addition to the  
33 penalty provided in subsections ((+1)) (2) and ((+2)) (3) of this  
34 section and all other penalties prescribed by law.

35 ((+4)) (5) Motor vehicle fuel tax, penalties, and interest payable  
36 under this chapter bears interest at the rate of one percent per month,  
37 or fraction thereof, from the first day of the calendar month after the  
38 amount or any portion of it should have been paid until the date of

1 payment. If a licensee or person acting as such establishes by a fair  
2 preponderance of evidence that the failure to pay the amount of tax due  
3 was attributable to reasonable cause and was not intentional or  
4 willful, the department may waive the penalty. The department may  
5 waive the interest when it determines the cost of processing or  
6 collection of the interest exceeds the amount of interest due.

7 ~~((+5))~~ (6) Except in the case of a fraudulent report, neglect or  
8 refusal to make a report, or failure to pay or to pay the proper  
9 amount, the department ~~((shall))~~ must assess the deficiency under  
10 subsection ~~((+1))~~ (2) or ~~((+2))~~ (3) of this section within five years  
11 from the last day of the succeeding calendar month after the reporting  
12 period for which the amount is proposed to be determined or within five  
13 years after the return is filed, whichever period expires later.

14 ~~((+6))~~ (7) Except in the case of violations of filing a false or  
15 fraudulent report, if the department deems mitigation of penalties and  
16 interest to be reasonable and in the best interest of carrying out the  
17 purpose of this chapter, it may mitigate such assessments upon whatever  
18 terms the department deems proper, giving consideration to the degree  
19 and extent of the lack of records and reporting errors. The department  
20 may ascertain the facts regarding recordkeeping and payment penalties  
21 in lieu of more elaborate proceedings under this chapter.

22 ~~((+7))~~ (8)(a) A licensee or person acting as such against whom an  
23 assessment is made under subsection ~~((+1))~~ (2) or ~~((+2))~~ (3) of this  
24 section may petition for a reassessment within thirty days after  
25 service upon the licensee of notice of the assessment. If the petition  
26 is not filed within the thirty-day period, the amount of the assessment  
27 becomes final at the expiration of that period.

28 (b) If a petition for reassessment is filed within the thirty-day  
29 period, the department ~~((shall))~~ must reconsider the assessment and, if  
30 the petitioner has so requested in its petition, ~~((shall))~~ must grant  
31 the petitioner an oral hearing and give the petitioner twenty days'  
32 notice of the time and place of the hearing. The department may  
33 continue the hearing from time to time. The decision of the department  
34 upon a petition for reassessment becomes final thirty days after  
35 service of notice upon the petitioner.

36 (c) An assessment made by the department becomes due and payable  
37 when it becomes final. If it is not paid to the department when due

1 and payable, the department (~~shall~~) must add a penalty of ten percent  
2 of the amount of the tax.

3 ~~((+8))~~ (9) In a suit brought to enforce the rights of the state  
4 under this chapter, the assessment showing the amount of taxes,  
5 penalties, interest, and cost unpaid to the state is prima facie  
6 evidence of the facts as shown.

7 ~~((+9))~~ (10) A notice of assessment required by this section must  
8 be served personally or by certified or registered mail. If it is  
9 served by mail, service (~~shall~~) must be made by deposit of the notice  
10 in the United States mail, postage prepaid, addressed to the respondent  
11 at the most current address furnished to the department.

12 **Sec. 27.** RCW 82.38.170 and 2002 c 183 s 4 are each amended to read  
13 as follows:

14 (1) If a licensee, or person acting as such, fails, neglects, or  
15 refuses to file a return or files an incomplete or incorrectly  
16 formatted tax report:

17 (a) For the first occurrence, the licensee, or person acting as  
18 such, must receive a warning letter from the department. The warning  
19 letter must provide instructions for accurate reporting or notify the  
20 licensee or person how to obtain technical assistance from the  
21 department;

22 (b) For the second occurrence, a penalty of two hundred fifty  
23 dollars is imposed by the department;

24 (c) For the third occurrence, a penalty of five hundred dollars is  
25 imposed by the department; and

26 (d) For the fourth occurrence and for each occurrence thereafter,  
27 a penalty of one thousand dollars is imposed by the department.

28 (2) If any licensee, or person acting as such, fails to pay any  
29 taxes collected or due the state of Washington within the time  
30 prescribed by RCW 82.38.150 and 82.38.160, the licensee (~~shall~~) must  
31 pay in addition to such tax a penalty of ten percent of the amount  
32 thereof.

33 ~~((+2))~~ (3) If it be determined by the department that the tax  
34 reported by any licensee, or person acting as such, is deficient it may  
35 proceed to assess the deficiency on the basis of information available  
36 to it and there (~~shall~~) must be added to this deficiency a penalty of  
37 ten percent of the amount of the deficiency.

1        ~~((+3))~~ (4) If any licensee, ~~((whether or not he or she is~~  
2 ~~licensed))~~ or person acting as such, fails, neglects, or refuses to  
3 file a special fuel tax report required under this chapter, the  
4 department may, on the basis of information available to it, determine  
5 the tax liability of the licensee for the period during which no report  
6 was filed, and to the tax as thus determined, the department ~~((shall))~~  
7 must add the penalty and interest provided in subsection ~~((+2))~~ (3) of  
8 this section. An assessment made by the department pursuant to this  
9 subsection or to subsection ~~((+2))~~ (3) of this section ~~((shall be))~~ is  
10 presumed to be correct, and in any case where the validity of the  
11 assessment is drawn in question, the burden ~~((shall be))~~ is on the  
12 person who challenges the assessment to establish by a fair  
13 preponderance of the evidence that it is erroneous or excessive as the  
14 case may be.

15        ~~((+4))~~ (5) If any licensee, or person acting as such, establishes  
16 by a fair preponderance of evidence that his or her failure to file a  
17 report or pay the proper amount of tax within the time prescribed was  
18 due to reasonable cause and was not intentional or willful, the  
19 department may waive the penalty prescribed in subsections ~~((+1), (2),~~  
20 ~~and (3))~~ (2), (3), and (4) of this section.

21        ~~((+5))~~ (6) If any licensee, or person acting as such, files a  
22 false or fraudulent report with intent to evade the tax imposed by this  
23 chapter, there ~~((shall be))~~ is added to the amount of deficiency  
24 determined by the department a penalty equal to twenty-five percent of  
25 the deficiency, in addition to the penalty provided in subsection  
26 ~~((+2))~~ (3) of this section and all other penalties prescribed by law.

27        ~~((+6))~~ (7) Any special fuel tax, penalties, and interest payable  
28 under this chapter ~~((shall))~~ bear interest at the rate of one percent  
29 per month, or fraction thereof, from the first day of the calendar  
30 month after the amount or any portion thereof should have been paid  
31 until the date of payment ~~((:—PROVIDED, That))~~. However, the  
32 department may waive the interest when it determines that the cost of  
33 processing the collection of the interest exceeds the amount of  
34 interest due.

35        ~~((+7))~~ (8) 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 interests 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 ~~((+8))~~ (9) Except in the case of a fraudulent report or of neglect  
6 or refusal to make a report, every deficiency ~~((shall))~~ must be  
7 assessed under subsection ~~((+2))~~ (3) of this section within five years  
8 from the twenty-fifth day of the next succeeding calendar month  
9 following the reporting period for which the amount is proposed to be  
10 determined or within five years after the return is filed, whichever  
11 period expires the later.

12 ~~((+9))~~ (10)(a) Any licensee, or person acting as such, against  
13 whom an assessment is made under the provisions of subsection ~~((+2))~~  
14 (3) or ~~((+3))~~ (4) of this section may petition for a reassessment  
15 thereof within thirty days after service upon the licensee of notice  
16 thereof. If such petition is not filed within such thirty day period,  
17 the amount of the assessment becomes final at the expiration thereof.

18 (b) If a petition for reassessment is filed within the thirty day  
19 period, the department ~~((shall))~~ must reconsider the assessment and, if  
20 the licensee, or person acting as such, has so requested in his or her  
21 petition, ~~((shall))~~ must grant ~~((such))~~ the licensee, or person acting  
22 as such, an oral hearing and give the licensee, or person acting as  
23 such, ten days' notice of the time and place thereof. The department  
24 may continue the hearing from time to time. The decision of the  
25 department upon a petition for reassessment ~~((shall))~~ becomes final  
26 thirty days after service upon the licensee of notice thereof.

27 (c) Every assessment made by the department ~~((shall))~~ becomes due  
28 and payable at the time it becomes final and if not paid to the  
29 department when due and payable, there ~~((shall-be))~~ is added thereto a  
30 penalty of ten percent of the amount of the tax.

31 ~~((+10))~~ (11) Any notice of assessment required by this section  
32 ~~((shall))~~ must be served personally or by certified or registered mail;  
33 if by mail, service ~~((shall))~~ must be made by depositing such notice in  
34 the United States mail, postage prepaid addressed to the licensee, or  
35 person acting as such, at his or her address as the same appears in the  
36 records of the department.

37 ~~((+11))~~ (12) Any licensee, or person acting as such, who has had



1 the licensee's special fuel license revoked (~~shall~~) must pay a one  
2 hundred dollar penalty prior to the issuance of a new license.

3 (~~(12)~~) (13) Any person who, upon audit or investigation by the  
4 department, is found to have not paid special fuel taxes as required by  
5 this chapter (~~shall be~~) is subject to cancellation of all vehicle  
6 registrations for vehicles utilizing special fuel as a means of  
7 propulsion. Any unexpired Washington tonnage on the vehicles in  
8 question may be transferred to a purchaser of the vehicles upon  
9 application to the department who (~~shall~~) must hold such tonnage in  
10 its custody until a sale of the vehicle is made or the tonnage has  
11 expired.

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

21 (~~(14)~~) (15) A person who maintains dyed special fuel in bulk  
22 storage for an intended sale or use in violation of this chapter is  
23 subject to a civil penalty of ten dollars for each gallon of dyed  
24 special fuel, or one thousand dollars, whichever is greater, currently  
25 or previously maintained in bulk storage by the person. The civil  
26 penalty collected as a result of this subsection must be deposited in  
27 the motor vehicle fund. The penalties must be collected and  
28 administered under this chapter.

29 (~~(15)~~) (16) For the purposes of enforcement of this section, the  
30 Washington state patrol or other commercial vehicle safety alliance-  
31 certified officers may inspect, collect, and secure samples of special  
32 fuel used in the propulsion of a vehicle operated upon the highways of  
33 this state to detect the presence of dye or other chemical compounds.

34 (~~(16)~~) (17) The Washington state patrol (~~shall~~) must, by  
35 January 1, 1999, develop and implement procedures for collection,  
36 analysis, and storage of fuel samples collected under this chapter.

37 (~~(17)~~) (18) RCW 43.05.110 does not apply to the civil penalties  
38 imposed under subsection (~~(13)~~) (14) of this section.

1       **Sec. 28.** RCW 82.38.290 and 1971 ex.s. c 175 s 30 are each amended  
2 to read as follows:

3       All taxes, interest, and penalties collected under this chapter  
4 (~~shall~~) must be credited and deposited in the same manner as are  
5 motor vehicle fuel taxes collected under RCW 82.36.410, except for  
6 funds received from exported fuel sold less the credit allowed under  
7 section 20 of this act with respect to the fuel. These funds must be  
8 distributed as follows:

9       (1) Fifty-five percent must be distributed to the Puget Sound  
10 capital construction account, created in RCW 47.60.505, to be used for  
11 the construction and preservation of the Washington state ferry system;

12       (2) Thirty-five percent must be distributed to the significant  
13 regional transportation projects account created in section 24 of this  
14 act to be used for the construction of the Columbia river crossing;

15       (3) Five percent must be distributed to the significant regional  
16 transportation projects account created in section 24 of this act to be  
17 used for the construction of the north Spokane corridor; and

18       (4) Five percent must be distributed to the significant regional  
19 transportation projects account created in section 24 of this act to be  
20 used for the construction of the 520 bridge.

21       NEW SECTION.   **Sec. 29.** If any provision of this act or its  
22 application to any person or circumstance is held invalid, the  
23 remainder of the act or the application of the provision to other  
24 persons or circumstances is not affected.

25       NEW SECTION.   **Sec. 30.** This act takes effect January 1, 2011.

--- END ---