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HOUSE BILL 1704

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Cooper, Betrozoff and R. Johnson; by request of Department of Licensing.

Read first time February 6, 1991.                      Referred to Committee on Transportation.

1            AN ACT Relating to motor vehicles; amending RCW 82.36.040,  
2 82.36.120, 82.38.090, 82.38.170, 46.87.070, and 46.87.140; adding new  
3 sections to chapter 82.36 RCW; adding a new section to chapter 46.87  
4 RCW; and adding a new section to chapter 82.42 RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 82.36 RCW  
7 to read as follows:

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

12            (2) If a distributor, whether licensed or not licensed as such,  
13 fails, neglects, or refuses to file a motor vehicle fuel tax report the  
14 department shall, on the basis of information available to it,  
15 determine the tax liability of the distributor for the period during

1 which no report was filed. The department shall add the penalty  
2 provided in subsection (1) of this section to the tax. An assessment  
3 made by the department under this subsection or subsection (1) of this  
4 section is presumed to be correct. In any case, where the validity of  
5 the assessment is questioned, the burden is on the person who  
6 challenges the assessment to establish by a fair preponderance of  
7 evidence that it is erroneous or excessive, as the case may be.

8 (3) If a distributor files a false or fraudulent report with intent  
9 to evade the tax imposed by this chapter, the department shall add to  
10 the amount of deficiency a penalty equal to twenty-five percent of the  
11 deficiency, in addition to the penalty provided in subsections (1) and  
12 (2) of this section and all other penalties prescribed by law.

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

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

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

9 (7) A distributor against whom an assessment is made under  
10 subsection (1) or (2) of this section may petition for a reassessment  
11 within thirty days after service upon the distributor of notice of the  
12 assessment. If the petition is not filed within the thirty-day period,  
13 the amount of the assessment becomes final at the expiration of that  
14 period.

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

23 An assessment made by the department becomes due and payable when  
24 it becomes final. If it is not paid to the department when due and  
25 payable, the department shall add a penalty of ten percent of the  
26 amount of the tax.

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

1 (9) A notice of assessment required by this section must be served  
2 personally or by mail. If it is served by mail, service shall be made  
3 by deposit of the notice in the United States mail, postage prepaid,  
4 addressed to the distributor at the most current address furnished to  
5 the department.

6 **Sec. 2.** RCW 82.36.040 and 1989 c 378 s 24 are each amended to read  
7 as follows:

8 If payment of any tax due is not received by the due date, there  
9 shall be assessed a penalty of two percent of the amount of the tax.  
10 ~~((If any distributor establishes by a fair preponderance of evidence  
11 that the distributor's failure to pay the amount of tax due by the due  
12 date was attributable to reasonable cause and was not intentional or  
13 willful, the department may waive the penalty imposed by this section.~~

14 ~~Any motor vehicle fuel tax, penalties, and interest payable under  
15 the provisions of this chapter shall bear interest at the rate of one  
16 percent per month, or fraction thereof, from the first day of the  
17 calendar month after the close of the monthly period for which the  
18 amount or any portion thereof should have been paid until the date of  
19 payment. The department may waive the interest when the department  
20 determines that the cost of processing the collection of the interest  
21 exceeds the amount of interest due.~~

22 ~~In any suit brought to enforce the rights of the state under this  
23 chapter, the certificate of the director showing the amount of taxes,  
24 penalties, interest and cost unpaid by any distributor and that the  
25 same are due and unpaid to the state shall be prima facie evidence of  
26 the facts as shown.))~~

27 **Sec. 3.** RCW 82.36.120 and 1961 c 15 s 82.36.120 are each amended  
28 to read as follows:

1       (~~In the event any~~) If a distributor is delinquent in the payment  
2 of (~~his excise tax hereunder, the director~~) an obligation imposed  
3 under this chapter, the department may give notice of the amount  
4 (~~thereof~~) of the delinquency by registered or certified mail to all  
5 persons having in their possession or under their control any credits  
6 or other personal property belonging to such distributor, or owing any  
7 debts to such distributor at the time of receipt by them of such  
8 notice(~~, and thereafter the persons~~). A person so notified shall  
9 neither transfer nor make any other disposition of such credits,  
10 (~~other~~) personal property, or debts(~~,~~) until (~~twenty days have~~  
11 elapsed from and after receipt of such notice unless the director has  
12 given his consent to a previous transfer,) the department consents to  
13 a transfer or other disposition. All persons so notified must, within  
14 (~~five~~) twenty days after receipt of the notice, advise the  
15 (~~director~~) department of any and all such credits, (~~other~~) personal  
16 property, or debts in their possession, under their control or owing by  
17 them, as the case may be, and shall deliver upon demand the credits,  
18 personal property, or debts to the department or its duly authorized  
19 representative to be applied to the indebtedness involved.

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

26       NEW SECTION. Sec. 4. A new section is added to chapter 82.36 RCW  
27 to read as follows:

28       When an assessment becomes final in accordance with this chapter,  
29 the department may file with the clerk of any county within the state

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

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.87 RCW  
18 to read as follows:

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

27 **Sec. 6.** RCW 82.38.090 and 1990 c 250 s 84 are each amended to read  
28 as follows:

1       It shall be unlawful for any person to act as a special fuel  
2 dealer, a special fuel supplier or a special fuel user in this state  
3 unless such person is the holder of an uncanceled special fuel  
4 dealer's, a special fuel supplier's or a special fuel user's license  
5 issued to him by the department. A special fuel supplier's license  
6 authorizes a person to sell special fuel without collecting the special  
7 fuel tax to other suppliers and dealers holding valid special fuel  
8 licenses.

9       A special fuel dealer's license authorizes a person to deliver  
10 previously untaxed special fuel into the fuel supply tanks of motor  
11 vehicles, collect the special fuel tax on behalf of the state at the  
12 time of delivery, and remit the taxes collected to the state as  
13 provided herein. A licensed special fuel dealer may also deliver  
14 untaxed special fuel into bulk storage facilities of a licensed special  
15 fuel user without collecting the special fuel tax. Special fuel  
16 dealers and suppliers, when making deliveries of special fuel into bulk  
17 storage to any person not holding a valid special fuel license must  
18 collect the special fuel tax at time of delivery, unless the person to  
19 whom the delivery is made is specifically exempted from the tax as  
20 provided herein.

21       A special fuel user's license authorizes a person to purchase  
22 special fuel into bulk storage for use in motor vehicles either on or  
23 off the public highways of this state without payment of the special  
24 fuel tax at time of purchase. Holders of special fuel licenses are all  
25 subject to the bonding, reporting, tax payment, and record-keeping  
26 provisions of this chapter. All purchases of special fuel by a  
27 licensed special fuel user directly into the fuel supply tank of a  
28 motor vehicle are subject to the special fuel tax at time of purchase  
29 unless the purchase is made from an unattended keylock metered pump,

1 cardtrol, or such similar dispensing devices. Persons utilizing  
2 special fuel for heating purposes only are not required to be licensed.

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

14 **Sec. 7.** RCW 82.38.170 and 1987 c 174 s 6 are each amended to read  
15 as follows:

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

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

26 (3) If any special fuel dealer or special fuel user, whether or not  
27 he or she is licensed as such, fails, neglects, or refuses to file a  
28 special fuel tax report, the department shall, on the basis of  
29 information available to it, determine the tax liability of the special

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

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

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

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

29 (7) Except in the case of violations of filing a false or  
30 fraudulent report, if the department deems mitigation of penalties and

1 interest to be reasonable and in the best interests of carrying out the  
2 purpose of this chapter, it may mitigate such assessments upon whatever  
3 terms the department deems proper, giving consideration to the degree  
4 and extent of the lack of records and reporting errors. The department  
5 may ascertain the facts regarding recordkeeping and payment penalties  
6 in lieu of more elaborate proceedings under this chapter.

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

14 ((+8+)) (9) Any special fuel dealer or special fuel user against  
15 whom an assessment is made under the provisions of subsections (2) or  
16 (3) of this section may petition for a reassessment thereof within  
17 thirty days after service upon the special fuel dealer or special fuel  
18 user of notice thereof. If such petition is not filed within such  
19 thirty day period, the amount of the assessment becomes final at the  
20 expiration thereof.

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

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

5 ~~((9))~~ (10) Any notice of assessment required by this section  
6 shall be served personally or by mail; if by mail, service shall be  
7 made by depositing such notice in the United States mail, postage  
8 prepaid addressed to the special fuel dealer or special fuel user at  
9 his or her address as the same appears in the records of the  
10 department.

11 ~~((10))~~ (11) Any licensee who has had their special fuel user  
12 license, special fuel dealer license, special fuel supplier license, or  
13 combination thereof revoked shall pay a one hundred dollar penalty  
14 prior to the issuance of a new license.

15 ~~((11))~~ (12) Any person who, upon audit or investigation by the  
16 department, is found to have not paid special fuel taxes as required by  
17 this chapter shall be subject to cancellation of all vehicle  
18 registrations for vehicles utilizing special fuel as a means of  
19 propulsion. Any unexpired Washington tonnage on the vehicles in  
20 question may be transferred to a purchaser of the vehicles upon  
21 application to the department who shall hold such tonnage in its  
22 custody until a sale of the vehicle is made or the tonnage has expired.

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.42 RCW  
24 to read as follows:

25 Except in the case of violations of filing a false or fraudulent  
26 report, if the department deems mitigation of penalties and interest to  
27 be reasonable and in the best interests of carrying out the purpose of  
28 this chapter, it may mitigate such assessments upon whatever terms the  
29 department deems proper, giving consideration to the degree and extent

1 of the lack of records and reporting errors. The department may  
2 ascertain the facts regarding recordkeeping and payment penalties in  
3 lieu of more elaborate proceedings under this chapter.

4 **Sec. 9.** RCW 46.87.070 and 1990 c 42 s 112 are each amended to read  
5 as follows:

6 (1) Washington-based trailers, semitrailers, converter gears  
7 (auxiliary axles), or pole trailers shall be ~~((fully))~~ licensed in this  
8 state under the provisions of chapter 46.16 RCW except as herein  
9 provided. If these vehicles are being operated in jurisdictions that  
10 require the registration of such vehicles, the applicable vehicles may  
11 be considered as apportionable or commercial vehicles for the purpose  
12 of registration in those jurisdictions and this state. ~~((The prorate  
13 percentage for which registration fees and taxes were paid to such  
14 jurisdictions for each nonmotor vehicle of the fleet may be credited  
15 toward the one hundred percent of registration fees and taxes due this  
16 state for full licensing of each such vehicle.))~~

17 (2) Trailers, semitrailers, converter gears (auxiliary axles), and  
18 pole trailers which are properly based in jurisdictions other than  
19 Washington, and which display currently registered license plates from  
20 such jurisdictions will be granted vehicle license reciprocity in this  
21 state without the need of further vehicle license registration. If  
22 converter gears (auxiliary axles) or pole trailers are not required to  
23 be licensed separately by a member jurisdiction, such vehicles may be  
24 operated in this state without displaying a current base license plate.

25 **Sec. 10.** RCW 46.87.140 and 1990 c 42 s 114 are each amended to  
26 read as follows:

27 (1) Any owner engaged in interstate operations of one or more  
28 fleets of apportionable or commercial vehicles may, in lieu of

1 registration of the vehicles under chapter 46.16 RCW, register and  
2 license the vehicles of each fleet under this chapter by filing a  
3 proportional registration application for each fleet with the  
4 department. The nonmotor vehicles of Washington-based fleets which are  
5 operated in IRP jurisdictions that require registration of such  
6 vehicles may be proportionally registered for operation in those  
7 jurisdictions as herein provided. The application shall contain the  
8 following information and such other information pertinent to vehicle  
9 registration as the department may require:

10 (a) A description and identification of each vehicle of the fleet.  
11 Motor vehicles and nonpower units shall be placed in separate fleets.

12 (b) If registering under the provisions of the IRP, the registrant  
13 shall also indicate member jurisdictions in which registration is  
14 desired and furnish such other information as those member  
15 jurisdictions require.

16 (c) An original or renewal application shall also be accompanied by  
17 a mileage schedule for each fleet.

18 (2) Each application shall, at the time and in the manner required  
19 by the department, be supported by payment of a fee computed as  
20 follows:

21 (a) Divide the in-jurisdiction miles by the total miles and carry  
22 the answer to the nearest thousandth of a percent (three places beyond  
23 the decimal, e.g. 10.543%). This factor is known as the prorate  
24 percentage.

25 (b) Determine the total proratable fees and taxes required for each  
26 vehicle in the fleet for which registration is requested, based on the  
27 regular annual fees and taxes or applicable fees and taxes for the  
28 unexpired portion of the registration year under the laws of each  
29 jurisdiction for which fees or taxes are to be calculated.

1 Washington-based (~~(nonpower)~~) nonmotor vehicles shall normally be  
2 fully licensed(~~(, by paying full registration fees and taxes, in this~~  
3 ~~state)~~) under the provisions of chapter 46.16 RCW. If these vehicles  
4 are being operated in jurisdictions that require the registration of  
5 such vehicles, the applicable vehicles may be considered as  
6 apportionable vehicles for the purpose of registration in those  
7 jurisdictions and this state. The prorate percentage for which  
8 registration fees and taxes were paid to such jurisdictions may be  
9 credited toward the one hundred percent of registration fees and taxes  
10 due this state for full licensing. Applicable fees and taxes for  
11 vehicles of Washington-based fleets are those prescribed under RCW  
12 46.16.070, 46.16.085, 82.38.075, and 82.44.020, as applicable.

13 (c) Multiply the total, proratable fees or taxes for each motor  
14 vehicle by the prorate percentage applicable to the desired  
15 jurisdiction and round the results to the nearest cent. Fees and taxes  
16 for nonmotor vehicles being prorated will be calculated as indicated in  
17 (b) of this subsection.

18 (d) Add the total fees and taxes determined in (~~(subsection~~  
19 ~~(2))~~)(c) of this (~~(section)~~) subsection for each vehicle to the  
20 nonproratable fees required under the laws of the jurisdiction for  
21 which fees are being calculated. Nonproratable fees required for  
22 vehicles of Washington-based fleets are the administrative fee required  
23 by RCW 82.38.075, if applicable, and the vehicle transaction fee  
24 pursuant to the provisions of RCW 46.87.130.

25 (e) Add the total fees and taxes determined in (~~(subsection~~  
26 ~~(2))~~)(d) of this (~~(section)~~) subsection for each vehicle listed on the  
27 application. Assuming the fees and taxes calculated were for  
28 Washington, this would be the amount due and payable for the  
29 application under the provisions of the Western Compact. Under the  
30 provisions of the IRP, the amount due and payable for the application

1 would be the sum of the fees and taxes referred to in ((subsection  
2 {2})) (d) of this ((section)) subsection, calculated for each member  
3 jurisdiction in which registration of the fleet is desired.

4 (3) All assessments for proportional registration fees are due and  
5 payable in United States funds on the date presented or mailed to the  
6 registrant at the address listed in the proportional registration  
7 records of the department. The registrant may petition for  
8 reassessment of the fees or taxes due under this section within thirty  
9 days of the date of original service as provided for in this chapter.