

HOUSE BILL 2658

State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Skinner, R. Fisher and Cairnes; by request of Department of Licensing

Read first time 01/16/96. Referred to Committee on Transportation.

1            AN ACT Relating to administration and enforcement of tax exemptions  
2 for nonhighway use of special fuel; amending RCW 82.38.020, 82.38.090,  
3 82.38.140, 82.38.150, and 82.38.170; prescribing penalties; and  
4 providing an effective date.

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

6            **Sec. 1.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read  
7 as follows:

8            As used in this chapter:

9            (1) "Person" means every natural person, fiduciary, association, or  
10 corporation. The term "person" as applied to an association means and  
11 includes the partners or members thereof, and as applied to  
12 corporations, the officers thereof.

13            (2) "Department" means the department of licensing.

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

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

18            (5) "Special fuel" means and includes all combustible gases and  
19 liquids suitable for the generation of power for propulsion of motor

1 vehicles, except that it does not include motor vehicle fuel as defined  
2 in chapter 82.36 RCW, nor does it include dyed diesel as defined by  
3 federal regulations; but if the federal regulations authorize dyed  
4 diesel to be used in highway vehicles that usage will be considered  
5 taxable under this chapter, unless otherwise exempted.

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

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14 though fuel is withdrawn directly therefrom for propulsion of the  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

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

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

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

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

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

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

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

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

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

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

19 (b) An intentional: Omission, failure to file a return or report,  
20 or other act of deception.

21 **Sec. 2.** RCW 82.38.090 and 1995 c 20 s 13 are each amended to read  
22 as follows:

23 It shall be unlawful for any person to act as a special fuel dealer  
24 or a special fuel user in this state unless such person is the holder  
25 of an uncanceled special fuel dealer's or a special fuel user's license  
26 issued to him or her by the department.

27 A special fuel dealer's license authorizes a person to deliver  
28 previously untaxed special fuel into the fuel supply tanks of motor  
29 vehicles, collect the special fuel tax on behalf of the state at the  
30 time of delivery, and remit the taxes collected to the state as  
31 provided herein. A licensed special fuel dealer may also deliver  
32 untaxed special fuel into bulk storage facilities of a licensed special  
33 fuel user or dealer without collecting the special fuel tax. Special  
34 fuel dealers, when making deliveries of special fuel into bulk storage  
35 to any person not holding a valid special fuel license, must collect  
36 the special fuel tax at time of delivery, unless the person to whom the  
37 delivery is made is specifically exempted from the tax as provided  
38 herein.

1 A special fuel user's license authorizes a person to purchase  
2 special fuel into bulk storage for use in motor vehicles either on or  
3 off the public highways of this state without payment of the special  
4 fuel tax at time of purchase. Holders of special fuel licenses are all  
5 subject to the bonding, reporting, tax payment, and record-keeping  
6 provisions of this chapter. All purchases of special fuel by a  
7 licensed special fuel user directly into the fuel supply tank of a  
8 motor vehicle are subject to the special fuel tax at time of purchase.  
9 (~~Special authorization may be given to farmers, logging companies, and~~  
10 ~~construction companies to purchase special fuel directly into the~~  
11 ~~supply tanks of nonhighway equipment or into portable slip tanks for~~  
12 ~~nonhighway use without payment of the special fuel tax.))~~

13 Special fuel users operating motor vehicles in interstate commerce  
14 having two axles and a gross vehicle weight or registered gross vehicle  
15 weight not exceeding twenty-six thousand pounds are not required to be  
16 licensed. Special fuel users operating motor vehicles in interstate  
17 commerce having two axles and a gross vehicle weight or registered  
18 gross vehicle weight exceeding twenty-six thousand pounds, or having  
19 three or more axles regardless of weight, or a combination of vehicles,  
20 when the combination exceeds twenty-six thousand pounds gross vehicle  
21 weight, must comply with the licensing and reporting requirements of  
22 this chapter. A copy of the license must be carried in each motor  
23 vehicle entering this state from another state or province.

24 **Sec. 3.** RCW 82.38.140 and 1995 c 274 s 22 are each amended to read  
25 as follows:

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

34 (a) The date of each receipt;

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

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

- 1 (d) The date of each sale or delivery;
- 2 (e) The number of gallons sold, delivered, or used for taxable  
3 purposes;
- 4 (f) The number of gallons sold, delivered, or used for any purpose  
5 not subject to the tax imposed herein;
- 6 (g) The name, address, and special fuel license number of the  
7 purchaser if the special fuel tax is not collected on the sale or  
8 delivery;
- 9 (h) The inventories of special fuel on hand at each place of  
10 business at the end of each month.

11 (2)(a) All special fuel users using special fuel in vehicles  
12 licensed for highway operation shall maintain detailed mileage records  
13 on an individual vehicle basis.

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

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

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

21 Every special fuel dealer or special fuel user making such sales or  
22 deliveries of special fuel and every person so receiving and purchasing  
23 special fuel must each retain one copy of each such invoice as part of  
24 the dealer's permanent records for the time and purposes above  
25 provided.

26 ~~((+5))~~ (4) Every special fuel user shall keep, in addition to the  
27 dealer's records of deliveries into motor vehicles, a complete record  
28 as prescribed by the department of the total gallons of special fuel  
29 used for other purposes during each month and the purposes for which  
30 said special fuel was used.

31 ~~((6) Subsections (1)(f), (2)(b), and (5) of this section do not  
32 apply to special fuel users when the special fuel is used off-highway  
33 in farming, construction, or logging operations. Upon filing a special  
34 fuel user tax report, every such special fuel user shall certify and  
35 bear the burden of proof as to the number of gallons of special fuel  
36 used off-highway.))~~

37 **Sec. 4.** RCW 82.38.150 and 1995 c 274 s 23 are each amended to read  
38 as follows:

1 For the purpose of determining the amount of liability for the tax  
2 herein imposed each special fuel dealer and each special fuel user  
3 shall file tax reports with the department, on forms prescribed by the  
4 department. Special fuel dealers shall file the reports at the  
5 intervals as shown in the following schedule:

6	Estimated Yearly	
7	Tax Liability	Reporting Frequency
8	\$ 0 - \$100	Yearly
9	\$101 - 250	Semi-yearly
10	\$251 - 499	Quarterly
11	\$500 and over	Monthly

12 Special fuel users whose estimated yearly tax liability is two  
13 hundred fifty dollars or less, shall file a report yearly, and special  
14 fuel users whose estimated yearly tax liability is more than two  
15 hundred fifty dollars, shall file reports quarterly.

16 The department shall establish the reporting frequency for each  
17 applicant at the time the special fuel license is issued. If it  
18 becomes apparent that any special fuel licensee is not reporting in  
19 accordance with the above schedule, the department shall change the  
20 licensee's reporting frequency by giving thirty days' notice to the  
21 licensee by mail to the licensee's address of record. A report shall  
22 be filed with the department even though no special fuel was used, or  
23 tax is due, for the reporting period. Each tax report shall contain a  
24 declaration by the person making the same, to the effect that the  
25 statements contained therein are true and are made under penalties of  
26 perjury, which declaration shall have the same force and effect as a  
27 verification of the report and is in lieu of such verification. The  
28 report shall show such information as the department may reasonably  
29 require for the proper administration and enforcement of this chapter.  
30 For counties within which an additional excise tax on special fuel has  
31 been levied by that jurisdiction under RCW 82.80.010, the report must  
32 show the quantities of special fuel sold, distributed, or withdrawn  
33 from bulk storage by the reporting dealer or user within the county's  
34 boundaries and the tax liability from its levy. The special fuel  
35 dealer or special fuel user shall file the report on or before the  
36 twenty-fifth day of the next succeeding calendar month following the  
37 period to which it relates.

1 Subject to the written approval of the department, tax reports may  
2 cover a period ending on a day other than the last day of the calendar  
3 month. Taxpayers granted approval to file reports in this manner will  
4 file such reports on or before the twenty-fifth day following the end  
5 of the reporting period. No change to this reporting period will be  
6 made without the written authorization of the department.

7 If the final filing date falls on a Saturday, Sunday, or legal  
8 holiday the next secular or business day shall be the final filing  
9 date. Such reports shall be considered filed or received on the date  
10 shown by the post office cancellation mark stamped upon an envelope  
11 containing such report properly addressed to the department, or on the  
12 date it was mailed if proof satisfactory to the department is available  
13 to establish the date it was mailed.

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

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

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

29 **Sec. 5.** RCW 82.38.170 and 1995 c 274 s 24 are each amended to read  
30 as follows:

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

36 (2) If it be determined by the department that the tax reported by  
37 any special fuel dealer or special fuel user is deficient it may  
38 proceed to assess the deficiency on the basis of information available

1 to it and there shall be added to this deficiency a penalty of ten  
2 percent of the amount of the deficiency.

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

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

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

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

35 (7) 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  
39 terms the department deems proper, giving consideration to the degree



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

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

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

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

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

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

37 (11) Any licensee who has had either their special fuel user  
38 license or special fuel dealer license, or both, revoked shall pay a  
39 one hundred dollar penalty prior to the issuance of a new license.

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

9 (13) Unless expressly authorized by federal regulations, a person  
10 using dyed special fuel in the propulsion of a motor vehicle upon the  
11 highways of this state is subject to a civil penalty of ten dollars for  
12 each gallon of dyed special fuel placed into the supply tank of the  
13 motor vehicle. The penalties will be collected and administered under  
14 this chapter.

15 NEW SECTION. Sec. 6. This act takes effect July 1, 1996.

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