
HOUSE BILL 2819

State of Washington 54th Legislature 1996 Regular Session

By Representatives K. Schmidt, R. Fisher and Mitchell

Read first time 01/22/96. Referred to Committee on Transportation.

1 AN ACT Relating to taxation of special fuel; amending RCW
2 82.38.020, 82.38.030, 82.38.080, 82.38.090, 82.38.100, 82.38.110,
3 82.38.120, 82.38.130, 82.38.140, 82.38.150, 82.38.160, 82.38.170,
4 82.38.190, 82.38.210, 82.38.220, 82.38.230, 82.38.235, 82.38.240, and
5 82.38.260; adding new sections to chapter 82.38 RCW; creating a new
6 section; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

9 (1) The health, safety, and welfare of the people of the state of
10 Washington are dependent on the state's ability to properly collect the
11 taxes enacted by this legislature.

12 (2) The current system for collecting special fuel taxes has
13 allowed many parties to fraudulently evade paying the special fuel
14 taxes due the state.

15 (3) By changing the point of collection of special fuel taxes from
16 dealers to suppliers, the department of licensing will have fewer
17 parties to collect tax from and enforcement will be enhanced, thus
18 leading to greater revenues for the state.

1 (4) It is the intent of the legislature that this act will not
2 apply to the extent its provisions are contrary to any provisions in
3 any agreement currently in effect or which may be negotiated between
4 the state of Washington and Native American Nations.

5 **Sec. 2.** RCW 82.38.020 and 1995 c 287 s 3 are each amended to read
6 as follows:

7 As used in this chapter:

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

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

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

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

17 (5) "Special fuel" means and includes all combustible gases and
18 liquids suitable for the generation of power for propulsion of motor
19 vehicles, except that it does not include motor vehicle fuel as defined
20 in chapter 82.36 RCW.

21 (6) "Bulk storage" means the placing of special fuel by a special
22 fuel ~~((dealer))~~ user into a receptacle other than the fuel supply tank
23 of a motor vehicle.

24 ~~((("Special fuel dealer" means any person engaged in the
25 business of delivering special fuel into the fuel supply tank or tanks
26 of a motor vehicle not then owned or controlled by him, or into bulk
27 storage facilities for subsequent use in a motor vehicle. For this
28 purpose the term "fuel supply tank or tanks" does not include cargo
29 tanks even though fuel is withdrawn directly therefrom for propulsion
30 of the vehicle.))~~ "Bulk transfer" means a transfer of special fuel by
31 pipeline or vessel.

32 (8) "Special fuel user" means any person ~~((purchasing special fuel
33 into bulk storage without payment of the special fuel tax for
34 subsequent use in a motor vehicle, or any person))~~ engaged in
35 interstate commercial operation of motor vehicles any part of which is
36 within this state or who engages in taxable uses of dyed diesel or
37 purchases special fuel for bulk storage for subsequent use in motor
38 vehicles.

1 (9) (~~"Service station" means any location at which fueling of~~
2 ~~motor vehicles is offered to the general public.~~) "Bulk
3 transfer/terminal system" means the special fuel distribution system
4 consisting of refineries, pipelines, vessels, and terminals. Special
5 fuel in a refinery, pipeline, vessel, or terminal is in the bulk
6 transfer/terminal system. Special fuel in the fuel tank of an engine,
7 or in a railcar, trailer, truck, or other equipment suitable for ground
8 transportation is not in the bulk transfer/terminal system.

9 (10) (~~"Unbonded service station" means any service station at~~
10 ~~which an unbonded special fuel dealer regularly makes sales of special~~
11 ~~fuel by means of delivery thereof into the fuel supply tanks of motor~~
12 ~~vehicles.~~) "Blender" includes any person who produces blended special
13 fuel outside the bulk transfer/terminal system.

14 (11) "Bond" means: (a) A bond duly executed by (~~such special fuel~~
15 ~~dealer or special fuel user~~) a licensee as principal with a corporate
16 surety qualified under the provisions of chapter 48.28 RCW which bond
17 shall be payable to the state of Washington conditioned upon faithful
18 performance of all requirements of this chapter, including the payment
19 of all taxes, penalties, and other obligations of (~~such dealer~~) the
20 licensee, arising out of this chapter; or (b) a deposit with the state
21 treasurer by the (~~special fuel dealer or special fuel user~~) licensee,
22 under such terms and conditions as the department may prescribe, a like
23 amount of lawful money of the United States or bonds or other
24 obligations of the United States, the state of Washington, or any
25 county of said state, of an actual market value not less than the
26 amount so fixed by the department; or (c) such other instruments as the
27 department may determine and prescribe by rule to protect the interests
28 of the state and to insure compliance of the requirements of this
29 chapter.

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

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

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

4 (15) "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, misrepresentation of fact, or
8 other act of deception; or

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

11 (16) "Importer" includes any person who is the importer of record
12 under federal customs law with respect to special fuel. If the
13 importer of record is acting as an agent, the person for whom the agent
14 is acting is the importer. If there is no importer of record of
15 special fuel entered into this state, the owner of the special fuel at
16 the time it is brought into this state is the importer.

17 (17) "Position holder" includes any person that holds the inventory
18 position in the special fuel, as reflected on the records of the
19 terminal operator. A person holds the inventory position in special
20 fuel when that person has a contractual agreement with the terminal
21 operator for the use of storage facilities and terminating services at
22 a terminal with respect to the special fuel. "Position holder"
23 includes a terminal operator that owns special fuel in its terminal.

24 (18) "Refiner" includes any person who owns, operates, or otherwise
25 controls a refinery.

26 (19) "Terminal operator" includes any person who owns, operates, or
27 otherwise controls a terminal.

28 (20) "Approved terminal or refinery" means a terminal or refinery
29 that is operated, respectively, by a licensee that is a terminal
30 operator, or by a licensee that is a refiner.

31 (21) "Throughputter" means a person who owns special fuel with the
32 bulk transfer/terminal system, other than in a terminal, or is a
33 position holder.

34 (22) "Rack" means a deck platform or open bay consisting of a
35 series of metered pipes and hoses for delivering special fuel from a
36 refinery or terminal into a motor vehicle, railcar, or vessel.

37 (23) "Removal" means any physical transfer of special fuel, and any
38 use of special fuel other than as a material in the production of

1 special fuel. However, special fuel is not removed when it evaporates
2 or is otherwise lost or destroyed.

3 (24) "Special fuel supplier" includes any person who is any of the
4 following: A blender, an importer, a position holder, a refiner, or a
5 throughputter.

6 (25) "Licensee" means a special fuel user, special fuel supplier,
7 or importer.

8 **Sec. 3.** RCW 82.38.030 and 1989 c 193 s 3 are each amended to read
9 as follows:

10 (1) There is hereby levied and imposed upon special fuel users a
11 tax at the rate computed in the manner provided in RCW 82.36.025
12 (~~(per)~~) on each gallon or each one hundred cubic feet of compressed
13 natural gas measured at standard pressure and temperature (~~(on the use~~
14 ~~of special fuel in any motor vehicle operated upon the highways of this~~
15 ~~state during the fiscal year for which such rate is applicable)~~).

16 (2) The tax (~~(shall be collected by the special fuel dealer and~~
17 ~~shall be paid over to the department as hereinafter provided:—(a) With~~
18 ~~respect to all special fuel delivered by a special fuel dealer into~~
19 ~~supply tanks of motor vehicles or into storage facilities used for the~~
20 ~~fueling of motor vehicles at unbonded service stations in this state;~~
21 ~~or (b) in all other transactions where the purchaser is not the holder~~
22 ~~of a valid special fuel license issued pursuant to this chapter~~
23 ~~allowing the purchase of untaxed special fuel, except sales of special~~
24 ~~fuel for export. To claim an exemption on account of sales by a~~
25 ~~licensed special fuel dealer for export, the purchaser shall obtain~~
26 ~~from the selling special fuel dealer, and such selling special fuel~~
27 ~~dealer must furnish the purchaser, an invoice giving such details of~~
28 ~~the sale for export as the director may require, copies of which shall~~
29 ~~be furnished the department and the entity of the state or foreign~~
30 ~~jurisdiction of destination which is charged by the laws of that state~~
31 ~~or foreign jurisdiction with the control or monitoring or both, of the~~
32 ~~sales or movement of special fuel in that state or foreign~~
33 ~~jurisdiction.~~

34 (3) The tax shall be paid over to the department by the special
35 fuel user as hereinafter provided with respect to the taxable use of
36 special fuel upon which the tax has not previously been imposed.

37 It is expressly provided that delivery of special fuel may be made
38 without collecting the tax otherwise imposed, when such deliveries are

1 made by a bonded special fuel dealer to special fuel users who are
2 authorized by the department as hereinafter provided, to purchase fuel
3 without payment of tax to the bonded special fuel dealer)) imposed by
4 subsection (1) of this section is imposed on:

5 (a) The removal of special fuel in this state from a terminal if
6 the special fuel is removed at the rack;

7 (b) The removal of special fuel in this state from a refinery if
8 either of the following applies:

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

11 (ii) The removal is at the refinery rack;

12 (c) The entry of special fuel into this state for sale,
13 consumption, use, or warehousing if either of the following applies:

14 (i) The entry is by bulk transfer and the importer is not a
15 licensee;

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

17 (d) The removal of special fuel in this state to an unlicensed
18 entity unless there was a prior taxable removal, entry, or sale of the
19 special fuel;

20 (e) The removal or sale of blended special fuel in this state by
21 the blender of the fuel. The number of gallons of blended special fuel
22 subject to tax is the difference between the total number of gallons of
23 blended special fuel removed or sold and the number of gallons of
24 previously taxed special fuel used to produce the blended special fuel.

25 NEW SECTION. Sec. 4. (1) Every refiner shall pay tax on the
26 removal of special fuel from a refinery as provided in RCW
27 82.38.030(2)(b).

28 (2) Every position holder shall pay the tax on the removal of
29 special fuel from a terminal as provided in RCW 82.38.030(2)(a).

30 (3) Every blender shall pay the tax on the removal or sale of
31 blended special fuel as provided in RCW 82.38.030(2)(e).

32 (4) Every importer shall pay tax on special fuel imported into this
33 state as provided in RCW 82.38.030(2)(c).

34 NEW SECTION. Sec. 5. The terminal operator is jointly and
35 severally liable for the tax imposed under RCW 82.38.030(1) if both of
36 the following apply:

1 (1) The position holder with respect to the diesel fuel is a person
2 other than the terminal operator and is not a diesel fuel licensee;

3 (2) The terminal operator has not met the conditions of section 6
4 of this act.

5 NEW SECTION. **Sec. 6.** A terminal operator is not liable for tax
6 under section 5 of this act if, at the time of the removal, all of the
7 following apply:

8 (1) The terminal operator is a diesel fuel licensee;

9 (2) The terminal operator has an unexpired notification certificate
10 from the position holder as required by the Internal Revenue Service;

11 (3) The terminal operator has no reason to believe that any
12 information in the certificate is false.

13 NEW SECTION. **Sec. 7.** The terminal operator is jointly and
14 severally liable for the tax imposed under RCW 82.38.030(1) if, in
15 connection with the removal of special fuel that is not dyed or marked
16 in accordance with the United States Environmental Protection Agency or
17 Internal Revenue Service requirements, the terminal operator provides
18 any person with a bill of lading, shipping paper, or similar document
19 indicating that the special fuel is dyed or marked in accordance with
20 the United States Environmental Protection Agency or Internal Revenue
21 Service requirements.

22 **Sec. 8.** RCW 82.38.080 and 1993 c 141 s 2 are each amended to read
23 as follows:

24 There is exempted from the tax imposed by this chapter, the use of
25 fuel for:

26 (1) Street and highway construction and maintenance purposes in
27 motor vehicles owned and operated by the state of Washington, or any
28 county or municipality;

29 (2) Publicly owned fire fighting equipment;

30 (3) Special mobile equipment as defined in RCW 46.04.552;

31 (4) Power pumping units or other power take-off equipment of any
32 motor vehicle which is accurately measured by metering devices that
33 have been specifically approved by the department or which is
34 established by either of the following formulae: (a) Pumping propane,
35 or fuel or heating oils or milk picked up from a farm or dairy farm
36 storage tank by a power take-off unit on a delivery truck, at the rate

1 of three-fourths of one gallon for each one thousand gallons of fuel
2 delivered or milk picked up: PROVIDED, That claimant when presenting
3 his or her claim to the department in accordance with the provisions of
4 this chapter, shall provide to said claim, invoices of propane, or fuel
5 or heating oil delivered, or such other appropriate information as may
6 be required by the department to substantiate his or her claim; or (b)
7 operating a power take-off unit on a cement mixer truck or a load
8 compactor on a garbage truck at the rate of twenty-five percent of the
9 total gallons of fuel used in such a truck; and (c) the department is
10 authorized to establish by rule additional formulae for determining
11 fuel usage when operating other types of equipment by means of power
12 take-off units when direct measurement of the fuel used is not
13 feasible. The department is also authorized to adopt rules regarding
14 the usage of on board computers for the production of records required
15 by this chapter;

16 (5) Motor vehicles owned and operated by the United States
17 government;

18 (6) Heating purposes;

19 (7) Moving a motor vehicle on a public highway between two pieces
20 of private property when said moving is incidental to the primary use
21 of the motor vehicle;

22 (8) Transit services for only elderly or handicapped persons, or
23 both, by a private, nonprofit transportation provider certified under
24 chapter 81.66 RCW; (~~and~~)

25 (9) Notwithstanding any provision of law to the contrary, every
26 urban passenger transportation system and carriers as defined by
27 chapters 81.68 and 81.70 RCW shall be exempt from the provisions of
28 this chapter requiring the payment of special fuel taxes. For the
29 purposes of this section "urban passenger transportation system" means
30 every transportation system, publicly or privately owned, having as its
31 principal source of revenue the income from transporting persons for
32 compensation by means of motor vehicles and/or trackless trolleys, each
33 having a seating capacity for over fifteen persons over prescribed
34 routes in such a manner that the routes of such motor vehicles and/or
35 trackless trolleys, either alone or in conjunction with routes of other
36 such motor vehicles and/or trackless trolleys subject to routing by the
37 same transportation system, shall not extend for a distance exceeding
38 twenty-five road miles beyond the corporate limits of the county in
39 which the original starting points of such motor vehicles are located:

1 PROVIDED, That no refunds or credits shall be granted on fuel used by
2 any urban transportation vehicle or vehicle operated pursuant to
3 chapters 81.68 and 81.70 RCW on any trip where any portion of said trip
4 is more than twenty-five road miles beyond the corporate limits of the
5 county in which said trip originated;

6 (10) The removal from a terminal or refinery of, or the entry or
7 sale of, any special fuel if all of the following apply:

8 (a) The person otherwise liable for tax is a licensee;

9 (b) In the case of a removal from a terminal, the terminal is an
10 approved terminal;

11 (c) The special fuel satisfies the dyeing and marking requirements
12 of section 10 of this act;

13 (11) Any entry or removal from a terminal or refinery of taxable
14 special fuel transferred in bulk to a refinery or terminal if the
15 persons involved, including the terminal operator, are licensed;

16 (12) The removal of special fuel if all of the following apply:

17 (a) The special fuel is removed by railroad car from an approved
18 terminal and is received at an approved terminal;

19 (b) The refinery and the terminal are operated by the same
20 licensee;

21 (c) The refinery is not served by a vessel or a pipeline, other
22 than a pipeline for the receipt of crude oil;

23 (13)(a) Special fuel that under the contract of sale, is required
24 to be shipped and is shipped to a point outside this state by a
25 supplier by means of any of the following:

26 (i) Facilities operated by the supplier;

27 (ii) Delivery by the supplier to a carrier, customs broker, or
28 forwarding agent, whether hired by the purchaser or not, for shipment
29 to the out-of-state point;

30 (iii) Delivery by the supplier to a vessel clearing from a port of
31 this state for a port outside this state and actually exported from
32 this state in the vessel.

33 (b) For purposes of this subsection:

34 (i) "Carrier" means a person or firm engaged in the business of
35 transporting for compensation property owned by other persons, and
36 includes both common and contract carriers.

37 (ii) "Forwarding agent" means a person or firm engaged in the
38 business of preparing property for shipment or arranging for its
39 shipment.

1 **Sec. 9.** RCW 82.38.090 and 1995 c 20 s 13 are each amended to read
2 as follows:

3 It shall be unlawful for any person to act as a (~~special fuel~~
4 ~~dealer or a~~) special fuel user in this state unless such person is the
5 holder of an uncanceled (~~special fuel dealer's or a~~) special fuel
6 user's license issued to him or her by the department.

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

19 A special fuel user's license authorizes a person to purchase
20 special fuel into bulk storage for use in motor vehicles either on or
21 off the public highways of this state without payment of the special
22 fuel tax at time of purchase. Holders of special fuel licenses are all
23 subject to the bonding, reporting, tax payment, and record-keeping
24 provisions of this chapter. All purchases of special fuel by a
25 licensed special fuel user directly into the fuel supply tank of a
26 motor vehicle are subject to the special fuel tax at time of purchase.
27 Special authorization may be given to farmers, logging companies, and
28 construction companies to purchase special fuel directly into the
29 supply tanks of nonhighway equipment or into portable slip tanks for
30 nonhighway use without payment of the special fuel tax.

31 Special fuel users operating motor vehicles in interstate commerce
32 having two axles and a gross vehicle weight or registered gross vehicle
33 weight not exceeding twenty-six thousand pounds are not required to be
34 licensed. Special fuel users operating motor vehicles in interstate
35 commerce having two axles and a gross vehicle weight or registered
36 gross vehicle weight exceeding twenty-six thousand pounds, or having
37 three or more axles regardless of weight, or a combination of vehicles,
38 when the combination exceeds twenty-six thousand pounds gross vehicle
39 weight, must comply with the licensing and reporting requirements of

1 this chapter. A copy of the license must be carried in each motor
2 vehicle entering this state from another state or province.

3 NEW SECTION. **Sec. 10.** (1) Special fuel that is required to be
4 dyed satisfies the dyeing requirement of this chapter if it meets the
5 dyeing requirements of the United States Environmental Protection
6 Agency and the Internal Revenue Service, including, but not limited to,
7 requirements respecting type, dosage, and timing.

8 (2) Marking must meet the marking requirements of the Internal
9 Revenue Service.

10 (3) No person may operate or maintain a motor vehicle on a public
11 highway in this state with dyed special fuel in the fuel supply tank.
12 This subsection does not apply to uses of dyed special fuel on the
13 highway that are lawful under the Internal Revenue Code or regulations
14 adopted thereunder, if the person is registered as a highway vehicle
15 operator or government entity under this chapter.

16 NEW SECTION. **Sec. 11.** Notice is required with respect to dyed
17 special fuel. In general, a notice stating "DYED SPECIAL FUEL,
18 NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

19 (1) Provided by the terminal operator to a person who receives dyed
20 special fuel at a terminal rack of that terminal operator;

21 (2) Provided by a seller of dyed special fuel to its buyer if the
22 special fuel is located outside the bulk transfer/terminal system and
23 is not sold from a retail pump posted in accordance with the
24 requirements of subsection (3) of this section;

25 (3) Posted by a seller on any retail pump where it sells dyed
26 special fuel for use by its buyer.

27 **Sec. 12.** RCW 82.38.100 and 1983 c 78 s 1 are each amended to read
28 as follows:

29 (1) Any special fuel user operating a motor vehicle into this state
30 for commercial purposes may make application for a trip permit in lieu
31 of a special fuel user's license required in RCW 82.38.090 and
32 82.38.120 which shall be good for a period of three consecutive days
33 beginning and ending on the dates specified on the face of the permit
34 issued, and only for the vehicle for which it is issued.

35 (2) Every permit shall identify, as the department may require, the
36 vehicle for which it is issued and shall be completed in its entirety,

1 signed, and dated by the (~~operator~~) special fuel user before
2 operation of the vehicle on the public highways of this state.
3 Correction of data on the permit such as dates, vehicle license number,
4 or vehicle identification number invalidates the permit. A violation
5 of, or a failure to comply with, this subsection is a gross
6 misdemeanor.

7 (3) For each permit issued, there shall be collected a filing fee
8 of one dollar, an administrative fee of ten dollars, and an excise tax
9 of nine dollars. Such fees and tax shall be in lieu of the special
10 fuel tax otherwise assessable against the permit holder for importing
11 and using special fuel in a motor vehicle on the public highways of
12 this state and no report of mileage shall be required with respect to
13 such vehicle. Trip permits will not be issued if the applicant has
14 outstanding fuel taxes, penalties or interest owing to the state or has
15 had a special fuel license revoked for cause and the cause has not been
16 removed.

17 (4) Blank permits may be obtained from field offices of the
18 department of transportation, Washington state patrol, department of
19 licensing, or other agents appointed by the department. The department
20 may appoint county auditors or businesses as agents for the purpose of
21 selling trip permits to the public. County auditors or businesses so
22 appointed may retain the filing fee collected for each trip permit to
23 defray expenses incurred in handling and selling the permits.

24 (5) All fees and excise taxes collected by the department for trip
25 permits shall be credited and deposited in the same manner as the
26 special fuel tax collected under this chapter and shall not be subject
27 to exchange, refund, or credit.

28 **Sec. 13.** RCW 82.38.110 and 1988 c 122 s 2 are each amended to read
29 as follows:

30 Application for a (~~special fuel dealer's license~~) special fuel
31 supplier's license(~~)~~) or a special fuel user's license shall be made
32 to the department. The application shall be filed upon a form prepared
33 and furnished by the department and shall contain such information as
34 the department deems necessary.

35 No special fuel (~~dealer's~~) supplier's license may be issued to
36 any person or continued in force unless such person has furnished bond,
37 as defined in RCW 82.38.020, in such amount as provided in this
38 section, and in such form as the department may require, to secure his

1 or her compliance with this chapter, and the payment of any and all
2 taxes, interest, and penalties due and to become due hereunder. The
3 requirement of furnishing a bond shall be waived for special fuel
4 ~~((dealers))~~ suppliers who only deliver special fuel into the fuel tanks
5 of marine vessels.

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

14 The total amount of the bond or bonds required of any special fuel
15 ~~((dealer))~~ supplier or special fuel user shall be equivalent to three
16 times the estimated monthly fuel tax, determined in such manner as the
17 department may deem proper(~~(:— PROVIDED, That those special fuel~~
18 ~~dealers having held a special fuel license))~~). However, the department
19 may impose the minimum bond on special fuel suppliers who have operated
20 in this state for five or more years without ~~((having said license~~
21 ~~suspended or revoked by the department shall be permitted to reduce the~~
22 ~~amount of their bond to twice the estimated monthly tax liability:~~
23 ~~PROVIDED FURTHER, That))~~ a default in the payment of tax due this
24 state. The total amount of the bond or bonds shall never be less than
25 five hundred dollars nor more than fifty thousand dollars.

26 **Sec. 14.** RCW 82.38.120 and 1995 c 274 s 21 are each amended to
27 read as follows:

28 Upon receipt and approval of an application and bond, if required,
29 the department shall issue to the applicant a license to act as a
30 special fuel ~~((dealer))~~ supplier or a special fuel user. However, the
31 department may refuse to issue a special fuel ~~((dealer's))~~ supplier's
32 license or a special fuel user's license to any person: (1) Who
33 formerly held either type of license which, prior to the time of filing
34 for application, has been revoked for cause; (2) who is a subterfuge
35 for the real party in interest whose license prior to the time of
36 filing for application, has been revoked for cause; (3) who, as an
37 individual licensee, or officer, director, owner, or managing employee
38 of a nonindividual licensee, has had a special fuel license revoked for

1 cause; (4) who has an unsatisfied debt to the state assessed under
2 either chapter 82.36, 82.38, or 46.87 RCW; or (5) upon other sufficient
3 cause being shown. Before such refusal, the department shall grant the
4 applicant a hearing and shall grant the applicant at least five days
5 written notice of the time and place thereof.

6 The department shall determine from the information shown in the
7 application or other investigation the kind and class of license to be
8 issued.

9 All licenses shall be posted in a conspicuous place or kept
10 available for inspection at the principal place of business of the
11 owner thereof. License holders shall reproduce the license by
12 photostat or other method and keep a copy on display for ready
13 inspection at each additional place of business or other place of
14 storage from which special fuel is sold, delivered or used and in each
15 motor vehicle used by the license holder to transport special fuel
16 purchased by him or her for resale, delivery or use. Every licensed
17 special fuel user operating a motor vehicle registered in a
18 jurisdiction other than this state shall reproduce the license and
19 carry a photocopy thereof with each motor vehicle being operated upon
20 the highways of this state.

21 A special fuel (~~dealer~~) supplier may use special fuel in motor
22 vehicles owned or operated by the (~~dealer~~) supplier without securing
23 a license as a special fuel user but the (~~dealer~~) supplier is subject
24 to all other conditions, requirements, and liabilities imposed herein
25 upon a special fuel user.

26 Each special fuel (~~dealer's~~) supplier's license and special fuel
27 user's license shall be valid until the expiration date if shown on the
28 license, or until suspended or revoked for cause or otherwise canceled.

29 No special fuel (~~dealer's~~) supplier's license or special fuel
30 user's license shall be transferable.

31 **Sec. 15.** RCW 82.38.130 and 1994 c 262 s 24 are each amended to
32 read as follows:

33 The department may revoke the license of any special fuel
34 (~~dealer~~) supplier or special fuel user for any of the grounds
35 constituting cause for denial of a license set forth in RCW 82.38.120
36 or for other reasonable cause. Before revoking such license the
37 department shall notify the licensee to show cause within twenty days
38 of the date of the notice why the license should not be revoked:

1 PROVIDED, That at any time prior to and pending such hearing the
2 department may, in the exercise of reasonable discretion, suspend such
3 license.

4 The department shall cancel any license to act as a special fuel
5 (~~dealer~~) supplier or a special fuel user immediately upon surrender
6 thereof by the holder.

7 Any surety on a bond furnished by a special fuel (~~dealer~~)
8 supplier or special fuel user as provided herein shall be released and
9 discharged from any and all liability to the state accruing on such
10 bond after the expiration of forty-five days from the date which such
11 surety shall have lodged with the department a written request to be
12 released and discharged, but this provision shall not operate to
13 relieve, release, or discharge the surety from any liability already
14 accrued or which shall accrue before the expiration of the forty-five
15 day period. The department shall promptly, upon receiving any such
16 request, notify the special fuel (~~dealer~~) supplier or special fuel
17 user who furnished the bond, and unless the special fuel (~~dealer~~)
18 supplier or special fuel user (~~shall~~), on or before the expiration of
19 the forty-five day period, files a new bond, in accordance with the
20 requirements of this section, or makes a deposit in lieu thereof as
21 provided in RCW 82.38.020(11), the department forthwith shall cancel
22 the special fuel (~~dealer's~~) supplier's or special fuel user's
23 license.

24 The department may require a special fuel (~~dealer~~) supplier or
25 special fuel user to give a new or additional surety bond or to deposit
26 additional securities of the character specified in RCW 82.38.020(11)
27 if, in its opinion, the security of the surety bond therefor filed by
28 such special fuel (~~dealer~~) supplier or special fuel user, or the
29 market value of the properties deposited as security by such special
30 fuel (~~dealer~~) supplier or special fuel user, (~~shall~~) becomes
31 impaired or inadequate. Upon failure of the special fuel (~~dealer~~)
32 supplier or special fuel user to give such new or additional surety
33 bond or to deposit additional securities within forty-five days after
34 being requested to do so by the department, or after he (~~shall~~) or
35 she fails or refuses to file reports and remit or pay taxes at the
36 intervals fixed by the department, the department forthwith shall
37 cancel his or her license.

1 **Sec. 16.** RCW 82.38.140 and 1995 c 274 s 22 are each amended to
2 read as follows:

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

11 (a) The date of each receipt;

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

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

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

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

19 (f) The number of gallons sold, delivered, or used for any purpose
20 not subject to the tax imposed herein;

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

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

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

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

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

33 (4) Invoices shall be prepared for sales and deliveries of special
34 fuel in the manner and containing such information as may be prescribed
35 by the department.

36 Every special fuel (~~dealer~~) supplier or special fuel user making
37 such sales or deliveries of special fuel and every person so receiving
38 and purchasing special fuel must each retain one copy of each such

1 invoice as part of the ((dealer's)) supplier's permanent records for
2 the time and purposes above provided.

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

8 (6) Subsections (1)(f), (2)(b), and (5) of this section do not
9 apply to special fuel users when the special fuel is used off-highway
10 in farming, construction, or logging operations. Upon filing a special
11 fuel user tax report, every such special fuel user shall certify and
12 bear the burden of proof as to the number of gallons of special fuel
13 used off-highway.

14 **Sec. 17.** RCW 82.38.150 and 1995 c 274 s 23 are each amended to
15 read as follows:

16 For the purpose of determining the amount of liability for the tax
17 herein imposed each special fuel ((dealer)) supplier and each special
18 fuel user shall file tax reports with the department, on forms
19 prescribed by the department. Special fuel ((dealers)) suppliers shall
20 file the reports at the intervals as shown in the following schedule:

21	Estimated Yearly	
22	Tax Liability	Reporting Frequency
23	\$ 0 - \$100	Yearly
24	\$101 - 250	Semi-yearly
25	\$251 - 499	Quarterly
26	\$500 and over	Monthly

27 Special fuel users whose estimated yearly tax liability is two
28 hundred fifty dollars or less, shall file a report yearly, and special
29 fuel users whose estimated yearly tax liability is more than two
30 hundred fifty dollars, shall file reports quarterly.

31 The department shall establish the reporting frequency for each
32 ((applicant)) special fuel user at the time the special fuel license is
33 issued. If it becomes apparent that any special fuel ((licensee)) user
34 is not reporting in accordance with the above schedule, the department
35 shall change the licensee's reporting frequency by giving thirty days'
36 notice to the licensee by mail to the licensee's address of record. A
37 report shall be filed with the department even though no special fuel

1 was used, or tax is due, for the reporting period. Each tax report
2 shall contain a declaration by the person making the same, to the
3 effect that the statements contained therein are true and are made
4 under penalties of perjury, which declaration shall have the same force
5 and effect as a verification of the report and is in lieu of such
6 verification. The report shall show such information as the department
7 may reasonably require for the proper administration and enforcement of
8 this chapter. (~~For counties within which an additional excise tax on
9 special fuel has been levied by that jurisdiction under RCW 82.80.010,
10 the report must show the quantities of special fuel sold, distributed,
11 or withdrawn from bulk storage by the reporting dealer or user within
12 the county's boundaries and the tax liability from its levy.~~) The
13 special fuel ((dealer)) supplier or special fuel user shall file the
14 report on or before the twenty-fifth day of the next succeeding
15 calendar month following the period to which it relates.

16 Subject to the written approval of the department, tax reports may
17 cover a period ending on a day other than the last day of the calendar
18 month. Taxpayers granted approval to file reports in this manner will
19 file such reports on or before the twenty-fifth day following the end
20 of the reporting period. No change to this reporting period will be
21 made without the written authorization of the department.

22 If the final filing date falls on a Saturday, Sunday, or legal
23 holiday the next secular or business day shall be the final filing
24 date. Such reports shall be considered filed or received on the date
25 shown by the post office cancellation mark stamped upon an envelope
26 containing such report properly addressed to the department, or on the
27 date it was mailed if proof satisfactory to the department is available
28 to establish the date it was mailed.

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

34 The department may permit any special fuel user whose sole use of
35 special fuel is in motor vehicles or equipment exempt from tax as
36 provided in RCW 82.38.075 and 82.38.080 (1), (2), (3), (8), and (9), in
37 lieu of the reports required in this section, to submit reports
38 annually or as requested by the department, in such form as the
39 department may require.

1 A special fuel user whose sole use of special fuel is for purposes
2 other than the propulsion of motor vehicles upon the public highways of
3 this state shall not be required to submit the reports required in this
4 section.

5 **Sec. 18.** RCW 82.38.160 and 1987 c 174 s 5 are each amended to read
6 as follows:

7 (1) The tax imposed by this chapter shall be computed as follows:

8 (a) With respect to special fuel upon which the tax has been collected
9 by the seller thereof as a special fuel ~~((dealer))~~ supplier, by
10 multiplying the tax rate per gallon provided in this chapter by the
11 number of gallons of special fuel delivered subject to the special fuel
12 tax; (b) with respect to special fuel ~~((on which the tax has not been
13 paid to a special fuel dealer in this state and which))~~ that has been
14 consumed by the purchaser thereof as a special fuel user, by
15 multiplying the tax rate per gallon provided in this chapter by the
16 number of gallons of special fuel consumed by him or her in the
17 propulsion of a motor vehicle on the highways of this state.

18 (2) Except as provided in subsection (3) of this section, the tax
19 return shall be accompanied by a remittance payable to the state
20 treasurer covering the tax moneys collected by the special fuel
21 ~~((dealer))~~ supplier or the amount determined to be due hereunder by
22 licensed users of special fuels during the preceding reporting period.

23 (3) If the tax is paid by electronic funds transfer and the
24 reporting period ends on the last day of a calendar month, the ~~((tax))~~
25 special fuel supplier shall ~~((be paid))~~ pay the tax on or before the
26 state business day immediately preceding the last state business day of
27 the month following the end of the reporting period. If the tax is
28 paid by electronic funds transfer and the reporting period ends on a
29 day other than the last day of a calendar month as provided in RCW
30 82.38.150, the special fuel supplier shall pay the tax ~~((shall be
31 paid))~~ on or before the state business day immediately preceding the
32 last state business day of the thirty-day period following the end of
33 the reporting period.

34 (4) The special fuel supplier shall pay the tax ~~((shall be paid))~~
35 by electronic funds transfer whenever the amount due is fifty thousand
36 dollars or more.

1 NEW SECTION. **Sec. 19.** (1) A supplier who sells taxable special
2 fuel shall collect from the purchaser the special fuel tax imposed
3 under RCW 82.38.030. At the election of the supplier, the payment of
4 the special fuel tax owed on every gallon of special fuel purchased
5 from a supplier shall be remitted to the supplier on terms agreed upon
6 between the purchaser and the supplier or on or before ten working days
7 before the last day of the calendar month after the monthly period to
8 which it relates. This election is subject to a condition that the
9 purchaser's remittances of all amounts of tax due to the seller shall
10 be paid by electronic funds transfer. This section does not apply
11 where the purchaser is required by a supplier to pay cash or cash
12 equivalent for special fuel purchases.

13 **Sec. 20.** RCW 82.38.170 and 1995 c 274 s 24 are each amended to
14 read as follows:

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

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

25 (3) If any special fuel (~~dealer~~) supplier or special fuel user,
26 whether or not he or she is licensed as such, fails, neglects, or
27 refuses to file a special fuel tax report, the department may, on the
28 basis of information available to it, determine the tax liability of
29 the special fuel (~~dealer~~) supplier or the special fuel user for the
30 period during which no report was filed, and to the tax as thus
31 determined, the department shall add the penalty and interest provided
32 in subsection (2) of this section. An assessment made by the
33 department pursuant to this subsection or to subsection (2) of this
34 section shall be presumed to be correct, and in any case where the
35 validity of the assessment is drawn in question, the burden shall be on
36 the person who challenges the assessment to establish by a fair
37 preponderance of the evidence that it is erroneous or excessive as the
38 case may be.

1 (4) If any special fuel ((dealer)) supplier or special fuel user
2 shall establish by a fair preponderance of evidence that his or her
3 failure to file a report or pay the proper amount of tax within the
4 time prescribed was due to reasonable cause and was not intentional or
5 willful, the department may waive the penalty prescribed in subsections
6 (1), (2), and (3) of this section.

7 (5) If any special fuel ((dealer)) supplier or special fuel user
8 shall file a false or fraudulent report with intent to evade the tax
9 imposed by this chapter, there shall be added to the amount of
10 deficiency determined by the department a penalty equal to twenty-five
11 percent of the deficiency, in addition to the penalty provided in
12 subsection (2) of this section and all other penalties prescribed by
13 law.

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

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

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

36 (9) Any special fuel ((dealer)) supplier or special fuel user
37 against whom an assessment is made under the provisions of subsections
38 (2) or (3) of this section may petition for a reassessment thereof
39 within thirty days after service upon the special fuel ((dealer))

1 supplier or special fuel user of notice thereof. If such petition is
2 not filed within such thirty day period, the amount of the assessment
3 becomes final at the expiration thereof.

4 If a petition for reassessment is filed within the thirty day
5 period, the department shall reconsider the assessment and, if the
6 special fuel ((~~dealer~~)) supplier or special fuel user has so requested
7 in his or her petition, shall grant such special fuel ((~~dealer~~))
8 supplier or special fuel user an oral hearing and give the special fuel
9 ((~~dealer~~)) supplier or special fuel user ten days' notice of the time
10 and place thereof. The department may continue the hearing from time
11 to time. The decision of the department upon a petition for
12 reassessment shall become final thirty days after service upon the
13 special fuel ((~~dealer~~)) supplier or special fuel user of notice
14 thereof.

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

19 (10) Any notice of assessment required by this section shall be
20 served personally or by mail; if by mail, service shall be made by
21 depositing such notice in the United States mail, postage prepaid
22 addressed to the special fuel ((~~dealer~~)) supplier or special fuel user
23 at his or her address as the same appears in the records of the
24 department.

25 (11) Any licensee who has had either ((~~their~~)) his or her special
26 fuel user license or special fuel ((~~dealer~~)) supplier license, or both,
27 revoked shall pay a one hundred dollar penalty prior to the issuance of
28 a new license.

29 (12) Any person who, upon audit or investigation by the department,
30 is found to have not paid special fuel taxes as required by this
31 chapter shall be subject to cancellation of all vehicle registrations
32 for vehicles utilizing special fuel as a means of propulsion. Any
33 unexpired Washington tonnage on the vehicles in question may be
34 transferred to a purchaser of the vehicles upon application to the
35 department who shall hold such tonnage in its custody until a sale of
36 the vehicle is made or the tonnage has expired.

37 **Sec. 21.** RCW 82.38.190 and 1979 c 40 s 14 are each amended to read
38 as follows:

1 (1) Claims under RCW 82.38.180 shall be filed with the department
2 on forms prescribed by the department and shall show the date of filing
3 and the period covered in the claim, the number of gallons of special
4 fuel used for purposes subject to tax refund, and such other facts and
5 information as may be required. Every such claim shall be supported by
6 an invoice or invoices issued to or by the claimant, as may be
7 prescribed by the department, and such other information as the
8 department may require.

9 (2) Any amount determined to be refundable by the department under
10 RCW 82.38.180 shall first be credited on any amounts then due and
11 payable from the special fuel (~~dealer~~) supplier or special fuel user
12 or to any person to whom the refund is due, and the department shall
13 then certify the balance thereof to the state treasurer, who shall
14 thereupon draw his or her warrant for such certified amount to such
15 special fuel (~~dealer~~) supplier or special fuel user or any person:
16 PROVIDED, HOWEVER, That the department shall deduct fifty cents from
17 all such refunds as a filing fee, which fee shall be deducted from the
18 warrant issued in payment of such refund to defray expenses in
19 furnishing the claim forms and other forms provided for in this
20 chapter.

21 (3) No refund or credit shall be approved by the department unless
22 a written claim for refund or credit stating the specific grounds upon
23 which the claim is founded is filed with the department:

24 (a) Within thirteen months from the date of purchase or from the
25 last day of the month following the close of the reporting period for
26 which the refundable amount or credit is due with respect to refunds or
27 credits allowable under RCW 82.38.180(~~(7-subsections)~~) (1), (2), (4),
28 and (5), and if not filed within this period the right to refund shall
29 be forever barred.

30 (b) Within three years from the last day of the month following the
31 close of the reporting period for which the overpayment is due with
32 respect to the refunds or credits allowable under RCW 82.38.180(3).

33 (4) Within thirty days after disallowing any claim in whole or in
34 part, the department shall serve written notice of its action on the
35 claimant.

36 (5) Interest shall be paid upon any refundable amount or credit due
37 under RCW 82.38.180(3) at the rate of one percent per month from the
38 last day of the calendar month following the reporting period for which
39 the refundable amount or credit is due.

1 The interest shall be paid:

2 (a) In the case of a refund, to the last day of the calendar month
3 following the date upon which the person making the overpayment, if he
4 or she has not already filed a claim, is notified by the department
5 that a claim may be filed or the date upon which the claim is approved
6 by the department, whichever date is earlier.

7 (b) In the case of a credit, to the same date as that to which
8 interest is computed on the tax or amount against which the credit is
9 applied.

10 If the department determines that any overpayment has been made
11 intentionally or by reason of carelessness, it shall not allow any
12 interest thereon.

13 (6) No injunction or writ of mandate or other legal or equitable
14 process shall issue in any suit, action or proceeding in any court
15 against this state or against any officer of the state to prevent or
16 enjoin the collection under this chapter of any tax or any amount of
17 tax required to be collected.

18 **Sec. 22.** RCW 82.38.210 and 1979 c 40 s 15 are each amended to read
19 as follows:

20 If any special fuel ((dealer~~r~~)) supplier((~~r~~)) or user liable for
21 the remittance of tax imposed by this chapter fails to pay the same,
22 the amount thereof, including any interest, penalty, or addition to
23 such tax, together with any costs that may accrue in addition thereto,
24 shall be a lien in favor of the state upon all franchises, property,
25 and rights to property, whether real or personal, then belonging to or
26 thereafter acquired by such person, whether such property is employed
27 by such person for personal or business use or is in the hands of a
28 trustee, or receiver, or assignee for the benefit of creditors, from
29 the date the taxes were due and payable, until the amount of the lien
30 is paid or the property sold in payment thereof. The lien shall have
31 priority over any lien or encumbrance whatsoever, except the lien of
32 other state taxes having priority by law, and except that such lien
33 shall not be valid as against any bona fide mortgagee, pledgee,
34 judgment creditor, or purchaser whose rights have attached prior to the
35 time the department has filed and recorded notice of such lien as
36 hereinafter provided.

37 In order to avail itself of the lien hereby created, the department
38 shall file with any county auditor a statement of claim and lien

1 specifying the amount of delinquent taxes, penalties, and interest
2 claimed by the department. From the time of filing for record, the
3 amount required to be paid shall constitute a lien upon all franchises,
4 property, and rights to property, whether real or personal, then
5 belonging to or thereafter acquired by such person in the county. Any
6 lien as provided in this section may also be filed in the office of the
7 secretary of state. Filing in the office of the secretary of state
8 shall be of no effect, however, until the lien or copy thereof shall
9 have been filed with the county auditor in the county where the
10 property is located. When a lien is filed in compliance herewith and
11 with the secretary of state, such filing shall have the same effect as
12 if the lien had been duly filed for record in the office of the auditor
13 in each county of this state.

14 **Sec. 23.** RCW 82.38.220 and 1994 c 262 s 26 are each amended to
15 read as follows:

16 In the event any special fuel user or special fuel (~~dealer~~)
17 supplier is delinquent in the payment of any obligation imposed under
18 this chapter, the department may give notice of the amount of such
19 delinquency by registered or certified mail to all persons having in
20 their possession or under their control any credits or other personal
21 property belonging to such user or (~~dealer~~) supplier or owing any
22 debts to such user or (~~dealer~~) supplier, at the time of the receipt
23 by them of such notice. Any person so notified shall neither transfer
24 nor make other disposition of such credits, personal property, or debts
25 until the department consents to a transfer or other disposition. All
26 persons so notified must, within twenty days after receipt of the
27 notice, advise the department of any and all such credits, personal
28 property, or debts in their possession, under their control or owing by
29 them, as the case may be, and shall immediately deliver such credits,
30 personal property, or debts to the department or its duly authorized
31 representative to be applied to the indebtedness involved.

32 Upon service, the notice and order to withhold and deliver
33 constitutes a continuing lien on property of the taxpayer. The
34 department shall include in the caption of the notice to withhold and
35 deliver "continuing lien." The effective date of a notice to withhold
36 and deliver served under this section is the date of service of the
37 notice.

1 If a person fails to answer the notice within the time prescribed
2 by this section, it is lawful for the court, upon application of the
3 department and after the time to answer the notice has expired, to
4 render judgment by default against the party named in the notice to
5 withhold and deliver for the full amount claimed by the department in
6 the notice to withhold and deliver, together with costs.

7 **Sec. 24.** RCW 82.38.230 and 1979 c 40 s 17 are each amended to read
8 as follows:

9 Whenever any special fuel user((~~τ~~)) or supplier ((~~or-dealer~~)) is
10 delinquent in the payment of any obligation imposed hereunder, and such
11 delinquency continues after notice and demand for payment by the
12 department, the department shall proceed to collect the amount due from
13 the user((~~τ~~)) or supplier ((~~or-dealer~~)) in the following manner: The
14 department shall seize any property subject to the lien of said excise
15 tax, penalty, and interest and thereafter sell it at public auction to
16 pay said obligation and any and all costs that may have been incurred
17 on account of the seizure and sale. Notice of such intended sale and
18 the time and place thereof shall be given to such delinquent user((~~τ~~))
19 or supplier ((~~or-dealer~~)) and to all persons appearing of record to
20 have an interest in such property. The notice shall be given in
21 writing at least ten days before the date set for the sale by enclosing
22 it in an envelope addressed to such user((~~τ~~)) or supplier ((~~or-dealer~~))
23 at his or her address as the same appears in the records of the
24 department and, in the case of any person appearing of record to have
25 an interest in such property, addressed to such person at his or her
26 last known residence or place of business, and depositing such envelope
27 in the United States mail, postage prepaid. In addition, the notice
28 shall be published for at least ten days before the date set for the
29 sale in a newspaper of general circulation published in the county in
30 which the property seized is to be sold. If there is no newspaper of
31 general circulation in such county, the notice shall be posted in three
32 public places in the county for a period of ten days. The notice shall
33 contain a description of the property to be sold, together with a
34 statement of the amount due hereunder, the name of the user((~~τ~~)) or
35 supplier ((~~or-dealer~~)) and the further statement that unless such
36 amount is paid on or before the time fixed in the notice the property
37 will be sold in accordance with law.

1 The department shall then proceed to sell the property in
2 accordance with the law and the notice, and shall deliver to the
3 purchaser a bill of sale or deed which shall vest title in the
4 purchaser. If upon any such sale the moneys received exceed the amount
5 due to the state hereunder from the delinquent user((~~7~~)) or supplier
6 ((~~or dealer~~)), the excess shall be returned to such user((~~7~~)) or
7 supplier ((~~or dealer~~)) and his or her receipt obtained therefor. If
8 any person having an interest in or lien upon the property has filed
9 with the department prior to such sale, notice of such interest or
10 lien, the department shall withhold payment of any such excess to such
11 user((~~7~~)) or supplier ((~~or dealer~~)) pending a determination of the
12 rights of the respective parties thereto by a court of competent
13 jurisdiction. If for any reason the receipt of such user((~~7~~)) or
14 supplier ((~~or dealer shall not be~~)) is not available, the department
15 shall deposit such excess with the state treasurer as trustee for such
16 user((~~7~~)) or supplier ((~~or dealer~~)), his or her heirs, successors, or
17 assigns: PROVIDED, That prior to making any seizure of property as
18 herein provided for, the department may first serve upon the
19 user's((~~7~~)) or supplier's((~~7 or dealer's~~)) bondsman a notice of the
20 delinquency, with a demand for the payment of the amount due.

21 **Sec. 25.** RCW 82.38.235 and 1979 c 40 s 22 are each amended to read
22 as follows:

23 Whenever any assessment shall have become final in accordance with
24 the provisions of this chapter, the department may file with the clerk
25 of any county within the state a warrant in the amount of the
26 assessment of taxes, penalties plus interest, and a filing fee of five
27 dollars. The clerk of the county wherein the warrant is filed shall
28 immediately designate a superior court cause number for such warrant,
29 and the clerk shall cause to be entered in the judgment docket under
30 the superior court cause number assigned to the warrant, the name of
31 the special fuel user((~~7~~)) or supplier ((~~or dealer~~)) mentioned in the
32 warrant, the amount of the tax, penalties, interest, and filing fee and
33 the date when such warrant was filed. The aggregate amount of such
34 warrant as docketed shall become a lien upon the title to, and interest
35 in all real and personal property of named person against whom the
36 warrant is issued, the same as a judgment in a civil case duly docketed
37 in the office of such clerk. Such warrant so docketed shall be
38 sufficient to support the issuance of writs of execution and writs of

1 garnishment in favor of the state in the manner provided by law in the
2 case of civil judgment, wholly or partially unsatisfied. The clerk of
3 the court shall be entitled to a filing fee of five dollars, which
4 shall be added to the amount of the warrant.

5 **Sec. 26.** RCW 82.38.240 and 1971 ex.s. c 175 s 25 are each amended
6 to read as follows:

7 Whenever any special fuel user or special fuel ((dealer)) supplier
8 is delinquent in the payment of any obligation hereunder the department
9 may transmit notice of such delinquency to the attorney general who
10 shall at once proceed to collect by appropriate legal action the amount
11 due the state from such user or ((dealer)) supplier. In any suit
12 brought to enforce the rights of the state hereunder, a certificate by
13 the department showing the delinquency shall be prima facie evidence of
14 the amount of the obligation, of the delinquency thereof and of
15 compliance by the department with all provisions of this chapter
16 relating to such obligation.

17 **Sec. 27.** RCW 82.38.260 and 1995 c 274 s 25 are each amended to
18 read as follows:

19 The department shall enforce the provisions of this chapter, and
20 may prescribe, adopt, and enforce reasonable rules and regulations
21 relating to the administration and enforcement thereof. The Washington
22 state patrol and its officers shall aid the department in the
23 enforcement of this chapter, and, for this purpose, are declared to be
24 peace officers, and given police power and authority throughout the
25 state to arrest on sight any person known to have committed a violation
26 of the provisions of this chapter.

27 The department or its authorized representative is hereby empowered
28 to examine the books, papers, records, and equipment of any special
29 fuel ((dealer)) supplier, special fuel user, or any person dealing in,
30 transporting, or storing special fuel as defined in this chapter and to
31 investigate the character of the disposition which any person makes of
32 such special fuel in order to ascertain and determine whether all taxes
33 due hereunder are being properly reported and paid. The fact that such
34 books, papers, records, and equipment are not maintained in this state
35 at the time of demand shall not cause the department to lose any right
36 of such examination under this chapter when and where such records
37 become available.

1 The department or its authorized representative is further
2 empowered to investigate the disposition of special fuel by any person
3 where the department has reason to believe that untaxed special fuel
4 has been diverted to a use subject to the taxes imposed by this chapter
5 without said taxes being paid in accordance with the requirements of
6 this chapter.

7 ~~((For the purpose of enforcing the provisions of this chapter it
8 shall be presumed that all special fuel delivered to service stations
9 as well as all special fuel otherwise received by a special fuel dealer
10 or a special fuel user into storage and dispensing equipment designed
11 to fuel motor vehicles is delivered by the special fuel dealer or
12 special fuel user into the fuel supply tanks of motor vehicles and
13 consumed in the propulsion of motor vehicles on the highways of this
14 state, unless the contrary is established by satisfactory evidence.))~~

15 The department shall, upon request from the officials to whom are
16 entrusted the enforcement of the special fuel tax law of any other
17 state, the District of Columbia, the United States, its territories and
18 possessions, the provinces or the Dominion of Canada, forward to such
19 officials any information which he or she may have relative to the
20 receipt, storage, delivery, sale, use, or other disposition of special
21 fuel by any special fuel ~~((dealer))~~ supplier or special fuel user,
22 provided such other state or states furnish like information to this
23 state.

24 Returns required by this chapter, exclusive of schedules, itemized
25 statements and other supporting evidence annexed thereto, shall at all
26 reasonable times be open to the public.

27 NEW SECTION. **Sec. 28.** Sections 4 through 7, 10, 11, and 19 of
28 this act are added to chapter 82.38 RCW.

29 NEW SECTION. **Sec. 29.** This act takes effect January 1, 1997.

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