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HOUSE BILL 2893

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State of Washington

54th Legislature

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By Representatives Blanton, K. Schmidt, Dyer, Mitchell, Ballasiotes, Hankins, Hickel, Robertson, Benton and Koster

Read first time 01/24/96. Referred to Committee on Transportation.

1 AN ACT Relating to fuel tax evasion; amending RCW 82.36.030,  
2 82.36.045, 82.36.060, 82.36.070, 82.36.160, 82.36.390, 82.36.400,  
3 82.38.030, 82.38.110, 82.38.120, 82.38.140, 82.38.150, 82.38.170,  
4 82.42.020, 82.42.040, and 82.42.080; creating new sections; and  
5 prescribing penalties.

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

7 **Sec. 1.** RCW 82.36.030 and 1994 c 262 s 18 are each amended to read  
8 as follows:

9 Every distributor shall on or before the twenty-fifth day of each  
10 calendar month file, on forms furnished by the department, a statement  
11 signed by the distributor or his or her authorized agent showing the  
12 total number of gallons of motor vehicle fuel sold, distributed, or  
13 used by such distributor within this state during the preceding  
14 calendar month and, for counties within which an additional excise tax  
15 on motor vehicle fuel has been levied by that jurisdiction under RCW  
16 82.80.010, showing the total number of gallons of motor vehicle fuel  
17 sold, distributed, or used by the distributor within the boundaries of  
18 the county during the preceding calendar month. As directed by the  
19 department, the distributor shall periodically submit with the

1 statement, on forms furnished by the department, updated license  
2 information.

3 **Sec. 2.** RCW 82.36.045 and 1991 c 339 s 1 are each amended to read  
4 as follows:

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

9 (2) If a distributor, whether licensed or not licensed as such,  
10 fails, neglects, or refuses to file a motor vehicle fuel tax report the  
11 department shall, on the basis of information available to it,  
12 determine the tax liability of the distributor for the period during  
13 which no report was filed. The department shall add the penalty  
14 provided in subsection (1) of this section to the tax. An assessment  
15 made by the department under this subsection or subsection (1) of this  
16 section is presumed to be correct. In any case, where the validity of  
17 the assessment is questioned, the burden is on the person who  
18 challenges the assessment to establish by a fair preponderance of  
19 evidence that it is erroneous or excessive, as the case may be.

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

25 (4) Motor vehicle fuel tax, penalties, and interest payable under  
26 this chapter bears interest at the rate of one percent per month, or  
27 fraction thereof, from the first day of the calendar month after the  
28 amount or any portion of it should have been paid until the date of  
29 payment. If a distributor establishes by a fair preponderance of  
30 evidence that the failure to pay the amount of tax due was attributable  
31 to reasonable cause and was not intentional or willful, the department  
32 may waive the penalty. The department may waive the interest when it  
33 determines the cost of processing or collection of the interest exceeds  
34 the amount of interest due.

35 (5) Except in the case of a fraudulent report, neglect or refusal  
36 to make a report, or failure to pay or to pay the proper amount, the  
37 department shall assess the deficiency under subsection (1) or (2) of  
38 this section within (~~three~~) five years from the last day of the

1 succeeding calendar month after the reporting period for which the  
2 amount is proposed to be determined or within (~~three~~) five years  
3 after the return is filed, whichever period expires later.

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

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

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

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

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

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

1       (10) The tax required by this chapter, to be collected by the  
2 seller, is held in trust by the seller until paid to the department,  
3 and a seller who appropriates or converts the tax collected to his or  
4 her own use or to any use other than the payment of the tax to the  
5 extent that the money required to be collected is not available for  
6 payment on the due date as prescribed in this chapter is guilty of a  
7 crime as defined in RCW 9A.56.020. A person, partnership, corporation,  
8 or corporate officer who fails to collect the tax imposed by this  
9 section, or who has collected the tax and fails to pay it to the  
10 department in the manner prescribed by this chapter, is personally  
11 liable to the state for the amount of the tax.

12       **Sec. 3.** RCW 82.36.060 and 1994 c 262 s 19 are each amended to read  
13 as follows:

14       Every person, before becoming a distributor or continuing in  
15 business as a distributor, shall make an application to the department  
16 for a license authorizing the applicant to engage in business as a  
17 distributor. Applications for such licenses shall be made to the  
18 department on forms to be furnished by the department.

19       Every application for a distributor's license must contain the  
20 following information to the extent it applies to the applicant:

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

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

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

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

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

1 After receipt of an application for a license, the director may  
2 conduct an investigation to determine whether the facts set forth are  
3 true. The director may require a fingerprint record check of the  
4 applicant through the Washington state patrol criminal identification  
5 system and the federal bureau of investigation before issuance of a  
6 license. The results of the background investigation including  
7 criminal history information may be released to authorized department  
8 personnel as the director deems necessary.

9 An applicant who makes a false statement of a material fact on the  
10 application may be prosecuted for perjury as defined by RCW 9A.72.030.

11 Before granting any license authorizing any person to engage in  
12 business as a distributor, the department shall require applicant to  
13 file with the department, in such form as shall be prescribed by the  
14 department, a corporate surety bond duly executed by the applicant as  
15 principal, payable to the state and conditioned for faithful  
16 performance of all the requirements of this chapter, including the  
17 payment of all taxes, penalties, and other obligations arising out of  
18 this chapter. The total amount of the bond or bonds, required of any  
19 distributor shall be fixed by the department and may be increased or  
20 reduced by the department at any time subject to the limitations herein  
21 provided. In fixing the total amount of the bond or bonds required of  
22 any distributor, the department shall require a bond or bonds  
23 equivalent in total amount to twice the estimated monthly excise tax  
24 determined in such manner as the department may deem proper. If at any  
25 time the estimated excise tax to become due during the succeeding month  
26 amounts to more than fifty percent of the established bond, the  
27 department shall require additional bonds or securities to maintain the  
28 marginal ratio herein specified or shall demand excise tax payments to  
29 be made weekly or semimonthly to meet the requirements hereof.

30 ~~((In lieu of a bond in excess of five thousand dollars the~~  
31 ~~distributor may file with the department a property statement setting~~  
32 ~~forth a complete description of all his property and the values~~  
33 ~~thereof, and showing the amount of any indebtedness or encumbrance~~  
34 ~~thereon to the end that the department may ascertain whether or not the~~  
35 ~~distributor can be compelled to respond in twice the amount of the~~  
36 ~~taxes due or to become due hereunder. If the department determines~~  
37 ~~that the distributor can be compelled to respond in twice the amount of~~  
38 ~~the tax the department may accept such statement in lieu of a bond in~~  
39 ~~excess of five thousand dollars. The department may at any time demand~~

1 ~~from the distributor a new property statement and may at any time if~~  
2 ~~the department deems the property of the distributor insufficient to~~  
3 ~~secure the payment of twice the amount of the taxes require the~~  
4 ~~distributor to furnish a bond in such amount as will secure the payment~~  
5 ~~of twice the amount of the taxes.))~~

6 The total amount of the bond or bonds required of any distributor  
7 shall never be less than five thousand dollars nor more than fifty  
8 thousand dollars.

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

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

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

35 The department may require a distributor to give a new or  
36 additional surety bond or to deposit additional securities of the  
37 character specified in this section if, in its opinion, the security of  
38 the surety bond theretofore filed by such distributor, or the market  
39 value of the properties deposited as security by the distributor, shall

1 become impaired or inadequate; and upon the failure of the distributor  
2 to give such new or additional surety bond or to deposit additional  
3 securities within thirty days after being requested so to do by the  
4 department, the department shall forthwith cancel his or her license.

5 **Sec. 4.** RCW 82.36.070 and 1994 c 262 s 20 are each amended to read  
6 as follows:

7 The application in proper form having been accepted for filing, the  
8 filing fee paid, and the bond or other security having been accepted  
9 and approved, the department shall issue to the applicant a license to  
10 transact business as a distributor in the state, and such license shall  
11 be valid until canceled or revoked.

12 The license so issued by the department shall not be assignable,  
13 and shall be valid only for the distributor in whose name issued.

14 The department shall keep and file all applications and bonds with  
15 an alphabetical index thereof, together with a record of all licensed  
16 distributors.

17 Each distributor shall be assigned a license number upon qualifying  
18 for a license hereunder, and the department shall issue to each such  
19 licensee a license certificate which shall be displayed conspicuously  
20 by the distributor at his or her principal place of business. The  
21 department may refuse to issue or may revoke a motor vehicle fuel  
22 distributor license, to a person:

23 (1) Who formerly held a motor vehicle fuel distributor's license  
24 that, before the time of filing for application, has been revoked or  
25 canceled for cause;

26 (2) Who is a subterfuge for the real party in interest whose  
27 license has been revoked or canceled for cause;

28 (3) Who, as an individual licensee or officer, director, owner, or  
29 managing employee of a nonindividual licensee, has had a motor vehicle  
30 fuel distributor license revoked or canceled for cause;

31 (4) Who has an unsatisfied debt to the state assessed under either  
32 chapter 82.36, 82.37, 82.38, 82.42, or 46.87 RCW; (~~or~~)

33 (5) Who formerly held as an individual, officer, director, owner,  
34 managing employee of a nonindividual licensee, or subterfuge for a real  
35 party in interest, a license issued by the federal government or a  
36 state that allowed a person to buy or sell untaxed motor vehicle or  
37 special fuel, which license, before the time of filing for application,  
38 has been revoked for cause;

1       (6) Who pled guilty to or was convicted as an individual, corporate  
2 officer, director, owner, or managing employee in this or any other  
3 state or in any federal jurisdiction of a gross misdemeanor or felony  
4 crime in which fraud is an element, notwithstanding chapter 9.96A RCW;  
5 or

6       (7) Upon other sufficient cause being shown.

7       Before such a refusal or revocation, the department shall grant the  
8 applicant a hearing and shall give the applicant at least twenty days'  
9 written notice of the time and place of the hearing.

10       For the purpose of considering an application for a distributor's  
11 license, the department may inspect, cause an inspection, investigate,  
12 or cause an investigation of the records of this or any other state or  
13 of the federal government to ascertain the veracity of the information  
14 on the application form and the applicant's criminal and licensing  
15 history.

16       The department may, in the exercise of reasonable discretion,  
17 suspend a motor vehicle distributor license at any time before and  
18 pending such a hearing for unpaid taxes or reasonable cause.

19       **Sec. 5.** RCW 82.36.160 and 1961 c 15 s 82.36.160 are each amended  
20 to read as follows:

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

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

33       **Sec. 6.** RCW 82.36.390 and 1961 c 15 s 82.36.390 are each amended  
34 to read as follows:

35       Any person who, through false statement, trick, or device, or  
36 otherwise, obtains motor vehicle fuel for export and fails to export  
37 the same or any portion thereof, or causes such motor vehicle fuel or



1 any thereof not to be exported, or who diverts said motor vehicle fuel  
2 or any thereof or who causes it to be diverted from interstate or  
3 foreign transit begun in this state, or who unlawfully returns such  
4 fuel or any thereof to this state and sells or uses it or any thereof  
5 in this state or causes it or any thereof to be used or sold in this  
6 state and fails to notify the distributor from whom such motor vehicle  
7 fuel was originally purchased of his or her act, and any distributor or  
8 other person who conspires with any person to withhold from export, or  
9 divert from interstate or foreign transit begun in this state, or to  
10 return motor vehicle fuel to this state for sale or use with intent to  
11 avoid any of the taxes imposed by this chapter, (~~shall be~~) is guilty  
12 of a (~~gross misdemeanor, and upon conviction thereof shall be punished~~  
13 ~~by a fine of not less than five hundred dollars nor more than five~~  
14 ~~thousand dollars, or by imprisonment in the county jail not exceeding~~  
15 ~~one year, or by both such fine and imprisonment~~) crime as defined by  
16 RCW 9A.56.020. Each shipment illegally diverted or illegally returned  
17 shall be a separate offense, and the unit of each shipment shall be the  
18 cargo of one vessel, or one railroad carload, or one automobile truck  
19 load, or such truck and trailer load, or one drum, or one barrel, or  
20 one case or one can.

21 **Sec. 7.** RCW 82.36.400 and 1971 ex.s. c 156 s 3 are each amended to  
22 read as follows:

23 It shall be unlawful for any person to commit any of the following  
24 acts:

25 (1) To display, or cause to permit to be displayed, or to have in  
26 possession, any motor vehicle fuel distributor's license knowing the  
27 same to be fictitious or to have been suspended, canceled, revoked or  
28 altered;

29 (2) To lend to, or knowingly permit the use of, by one not entitled  
30 thereto, any motor vehicle fuel distributor's license issued to the  
31 person lending it or permitting it to be used;

32 (3) To display or to represent as one's own any motor vehicle fuel  
33 distributor's license not issued to the person displaying the same;

34 (4) To use a false or fictitious name or give a false or fictitious  
35 address in any application or form required under the provisions of  
36 this chapter, or otherwise commit a fraud in any application, record,  
37 or report;

1 (5) To refuse to permit the director, or any agent appointed by  
2 (~~him~~) the director in writing, to examine his or her books, records,  
3 papers, storage tanks, or other equipment pertaining to the use or sale  
4 and delivery of motor vehicle fuels within the state.

5 Except as otherwise provided, any person violating any of the  
6 provisions of this chapter (~~shall be~~) is guilty of a (~~gross~~  
7 ~~misdemeanor and shall, upon conviction thereof, be sentenced to pay a~~  
8 ~~fine of not less than five hundred dollars nor more than one thousand~~  
9 ~~dollars and costs of prosecution, or imprisonment for not more than one~~  
10 ~~year, or both~~) crime as defined by RCW 9A.56.020.

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

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

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

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

4 It is expressly provided that delivery of special fuel may be made  
5 without collecting the tax otherwise imposed, when such deliveries are  
6 made by a bonded special fuel dealer to special fuel users who are  
7 authorized by the department as hereinafter provided, to purchase fuel  
8 without payment of tax to the bonded special fuel dealer.

9 (4) The tax required by this chapter, to be collected by the  
10 seller, is held in trust by the seller until paid to the department,  
11 and a seller who appropriates or converts the tax collected to his or  
12 her own use or to any use other than the payment of the tax to the  
13 extent that the money required to be collected is not available for  
14 payment on the due date as prescribed in this chapter is guilty of a  
15 crime as defined in RCW 9A.56.020. A person, partnership, corporation,  
16 or corporate officer who fails to collect the tax imposed by this  
17 section, or who has collected the tax and fails to pay it to the  
18 department in the manner prescribed by this chapter, is personally  
19 liable to the state for the amount of the tax.

20 **Sec. 9.** RCW 82.38.110 and 1988 c 122 s 2 are each amended to read  
21 as follows:

22 Application for a special fuel dealer's license(~~(, special fuel~~  
23 ~~supplier's license,)) or a special fuel user's license shall be made to~~  
24 the department. The application shall be filed upon a form prepared  
25 and furnished by the department and shall contain such information as  
26 the department deems necessary.

27 Every application for a special fuel dealer's license must contain  
28 the following information to the extent it applies to the applicant:

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

32 (2) The applicant's form and place of organization including proof  
33 that the individual, partnership, or corporation is licensed to do  
34 business in this state;

35 (3) The qualification and business history of the applicant and any  
36 partner, officer, or director;

37 (4) The applicant's financial condition or history including a bank  
38 reference and whether the applicant or any partner, officer, or

1 director has ever been adjudged bankrupt or has an unsatisfied judgment  
2 in a federal or state court;

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

9 After receipt of an application for a license, the director may  
10 conduct an investigation to determine whether the facts set forth are  
11 true. The director may require a fingerprint record check of the  
12 applicant through the Washington state patrol criminal identification  
13 system and the federal bureau of investigation before issuance of a  
14 license. The results of the background investigation including  
15 criminal history information may be released to authorized department  
16 personnel as the director deems necessary.

17 An applicant who makes a false statement of a material fact on the  
18 application may be prosecuted for perjury as defined by RCW 9A.72.030.

19 No special fuel dealer's license may be issued to any person or  
20 continued in force unless such person has furnished bond, as defined in  
21 RCW 82.38.020, in such form as the department may require, to secure  
22 his or her compliance with this chapter, and the payment of any and all  
23 taxes, interest, and penalties due and to become due hereunder. The  
24 requirement of furnishing a bond shall be waived for special fuel  
25 dealers who only deliver special fuel into the fuel tanks of marine  
26 vessels.

27 The department may require a special fuel user to post a bond if  
28 the special fuel user, after having been licensed, has failed to file  
29 timely reports or has failed to remit taxes due, or when an  
30 investigation or audit indicates problems severe enough that the  
31 department, in its discretion, determines that a bond is required to  
32 protect the interests of the state. The department may also adopt  
33 rules prescribing conditions that, in the department's discretion,  
34 require a bond to protect the interests of the state.

35 The total amount of the bond or bonds required of any special fuel  
36 dealer or special fuel user shall be equivalent to three times the  
37 estimated monthly fuel tax, determined in such manner as the department  
38 may deem proper: PROVIDED, That those special fuel dealers having held  
39 a special fuel license for five or more years without having said

1 license suspended or revoked by the department shall be permitted to  
2 reduce the amount of their bond to twice the estimated monthly tax  
3 liability: PROVIDED FURTHER, That the total amount of the bond or  
4 bonds shall never be less than five hundred dollars nor more than fifty  
5 thousand dollars.

6 **Sec. 10.** RCW 82.38.120 and 1995 c 274 s 21 are each amended to  
7 read as follows:

8 Upon receipt and approval of an application and bond, if required,  
9 the department shall issue to the applicant a license to act as a  
10 special fuel dealer or a special fuel user. However, the department  
11 may refuse to issue a special fuel dealer's license or a special fuel  
12 user's license to any person:

13 (1) Who formerly held either type of license which, prior to the  
14 time of filing for application, has been revoked for cause;

15 (2) Who is a subterfuge for the real party in interest whose  
16 license prior to the time of filing for application, has been revoked  
17 for cause;

18 (3) Who, as an individual licensee, or officer, director, owner, or  
19 managing employee of a nonindividual licensee, has had a special fuel  
20 license revoked for cause;

21 (4) Who has an unsatisfied debt to the state assessed under either  
22 chapter 82.36, 82.38, or 46.87 RCW; ((or))

23 (5) Who formerly held as an individual, officer, director, owner,  
24 managing employee of a nonindividual licensee, or subterfuge for a real  
25 party in interest, a license issued by the federal government or a  
26 state that allowed a person to buy or sell untaxed motor vehicle or  
27 special fuel, which license, before the time of filing for application,  
28 has been revoked for cause;

29 (6) Who pled guilty to or was convicted as an individual, officer,  
30 director, owner, or managing employee of a nonindividual licensee in  
31 this or any other state or in any federal jurisdiction of a gross  
32 misdemeanor or felony crime in which fraud is an element,  
33 notwithstanding chapter 9.96A RCW; or

34 (7) Upon other sufficient cause being shown.

35 Before such refusal, the department shall grant the applicant a  
36 hearing and shall grant the applicant at least ((five)) twenty days  
37 written notice of the time and place thereof.

1 The department shall determine from the information shown in the  
2 application or other investigation the kind and class of license to be  
3 issued. For the purpose of considering any application for a special  
4 fuel dealer's license, the department may inspect, cause an inspection,  
5 investigate, or cause an investigation of the records of this or any  
6 other state or of the federal government to ascertain the veracity of  
7 the information on the application form and the applicant's criminal  
8 and licensing history.

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

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

28 No special fuel dealer's license or special fuel user's license  
29 shall be transferable.

30 **Sec. 11.** RCW 82.38.140 and 1995 c 274 s 22 are each amended to  
31 read as follows:

32 (1) Every special fuel dealer, special fuel user, and every person  
33 importing, manufacturing, refining, dealing in, transporting, or  
34 storing special fuel in this state shall keep for a period of not less  
35 than ~~((three))~~ five years open to inspection at all times during the  
36 business hours of the day to the department or its authorized  
37 representatives, a complete record of all special fuel purchased or

1 received and all of such products sold, delivered, or used by them.

2 Such records shall show:

3 (a) The date of each receipt;

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

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

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

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

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

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

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

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

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

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

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

28 Every special fuel dealer or special fuel user making such sales or  
29 deliveries of special fuel and every person so receiving and purchasing  
30 special fuel must each retain one copy of each such invoice as part of  
31 the dealer's permanent records for the time and purposes above  
32 provided.

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

38 (6) Subsections (1)(f), (2)(b), and (5) of this section do not  
39 apply to special fuel users when the special fuel is used off-highway

1 in farming, construction, or logging operations. Upon filing a special  
2 fuel user tax report, every such special fuel user shall certify and  
3 bear the burden of proof as to the number of gallons of special fuel  
4 used off-highway.

5 **Sec. 12.** RCW 82.38.150 and 1995 c 274 s 23 are each amended to  
6 read as follows:

7 For the purpose of determining the amount of liability for the tax  
8 herein imposed, and to periodically update license information, each  
9 special fuel dealer and each special fuel user shall file tax reports  
10 with the department, on forms prescribed by the department. Special  
11 fuel dealers shall file the reports at the intervals as shown in the  
12 following schedule:

13	Estimated Yearly	
14	Tax Liability	Reporting Frequency
15	\$ 0 - \$100	Yearly
16	\$101 - 250	Semi-yearly
17	\$251 - 499	Quarterly
18	\$500 and over	Monthly

19 Special fuel users whose estimated yearly tax liability is two  
20 hundred fifty dollars or less, shall file a report yearly, and special  
21 fuel users whose estimated yearly tax liability is more than two  
22 hundred fifty dollars, shall file reports quarterly.

23 The department shall establish the reporting frequency for each  
24 applicant at the time the special fuel license is issued. If it  
25 becomes apparent that any special fuel licensee is not reporting in  
26 accordance with the above schedule, the department shall change the  
27 licensee's reporting frequency by giving thirty days' notice to the  
28 licensee by mail to the licensee's address of record. A report shall  
29 be filed with the department even though no special fuel was used, or  
30 tax is due, for the reporting period. Each tax report shall contain a  
31 declaration by the person making the same, to the effect that the  
32 statements contained therein are true and are made under penalties of  
33 perjury, which declaration shall have the same force and effect as a  
34 verification of the report and is in lieu of such verification. The  
35 report shall show such information as the department may reasonably  
36 require for the proper administration and enforcement of this chapter.  
37 For counties within which an additional excise tax on special fuel has



1 been levied by that jurisdiction under RCW 82.80.010, the report must  
2 show the quantities of special fuel sold, distributed, or withdrawn  
3 from bulk storage by the reporting dealer or user within the county's  
4 boundaries and the tax liability from its levy. The special fuel  
5 dealer or special fuel user shall file the report on or before the  
6 twenty-fifth day of the next succeeding calendar month following the  
7 period to which it relates.

8 Subject to the written approval of the department, tax reports may  
9 cover a period ending on a day other than the last day of the calendar  
10 month. Taxpayers granted approval to file reports in this manner will  
11 file such reports on or before the twenty-fifth day following the end  
12 of the reporting period. No change to this reporting period will be  
13 made without the written authorization of the department.

14 If the final filing date falls on a Saturday, Sunday, or legal  
15 holiday the next secular or business day shall be the final filing  
16 date. Such reports shall be considered filed or received on the date  
17 shown by the post office cancellation mark stamped upon an envelope  
18 containing such report properly addressed to the department, or on the  
19 date it was mailed if proof satisfactory to the department is available  
20 to establish the date it was mailed.

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

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

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

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

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

6 (2) If it be determined by the department that the tax reported by  
7 any special fuel dealer or special fuel user is deficient it may  
8 proceed to assess the deficiency on the basis of information available  
9 to it and there shall be added to this deficiency a penalty of ten  
10 percent of the amount of the deficiency.

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

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

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

36 (6) Any fuel tax, penalties, and interest payable under this  
37 chapter shall bear interest at the rate of one percent per month, or  
38 fraction thereof, from the first day of the calendar month after the  
39 amount or any portion thereof should have been paid until the date of

1 payment: PROVIDED, That the department may waive the interest when it  
2 determines that the cost of processing the collection of the interest  
3 exceeds the amount of interest due.

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

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

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

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

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

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

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

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

17 **Sec. 14.** RCW 82.42.020 and 1982 1st ex.s. c 25 s 2 are each  
18 amended to read as follows:

19 There is hereby levied, and there shall be collected by every  
20 distributor of aircraft fuel, an excise tax at the rate computed under  
21 RCW 82.42.025 on each gallon of aircraft fuel sold, delivered or used  
22 in this state: PROVIDED HOWEVER, That such aircraft fuel excise tax  
23 shall not apply to fuel for aircraft that both operate from a private,  
24 non-state-funded airfield during at least ninety-five percent of the  
25 aircraft's normal use and are used principally for the application of  
26 pesticides, herbicides, or other agricultural chemicals: PROVIDED  
27 FURTHER, That there shall be collected from every consumer or user of  
28 aircraft fuel either the use tax imposed by RCW 82.12.020, as amended,  
29 or the retail sales tax imposed by RCW 82.08.020, as amended,  
30 collection procedure to be as prescribed by law and/or rule or  
31 regulation of the department of revenue. The taxes imposed by this  
32 chapter shall be collected and paid to the state but once in respect to  
33 any aircraft fuel.

34 The tax required by this chapter, to be collected by the seller, is  
35 held in trust by the seller until paid to the department, and a seller  
36 who appropriates or converts the tax collected to his or her own use or  
37 to any use other than the payment of the tax to the extent that the  
38 money required to be collected is not available for payment on the due

1 date as prescribed in this chapter is guilty of a crime as defined in  
2 RCW 9A.56.020. A person, partnership, corporation, or corporate  
3 officer who fails to collect the tax imposed by this section, or who  
4 has collected the tax and fails to pay it to the department in the  
5 manner prescribed by this chapter, is personally liable to the state  
6 for the amount of the tax.

7 **Sec. 15.** RCW 82.42.040 and 1982 1st ex.s. c 25 s 5 are each  
8 amended to read as follows:

9 The director shall by rule and regulation adopted as provided in  
10 chapter 34.05 RCW (Administrative Procedure Act) set up the necessary  
11 administrative procedure for collection by the department of the  
12 aircraft fuel excise tax as provided for in RCW 82.42.020, placing the  
13 responsibility of collection of said tax upon every distributor of  
14 aircraft fuel within the state; he may require the licensing of every  
15 distributor of aircraft fuel and shall require such a corporate surety  
16 bond or security of any distributor or person not otherwise bonded  
17 under provisions of chapter 82.36 RCW as is provided for distributors  
18 of motor vehicle fuel under RCW 82.36.060; he shall provide such forms  
19 and may require such reports or statements as in his determination  
20 shall be necessary for the proper administration of this chapter. The  
21 director may require such records to be kept, and for such periods of  
22 time, as deemed necessary for the administration of this chapter, which  
23 records shall be available at all times for the director or his  
24 representative who may require a statement under oath as to the  
25 contents thereof.

26 Every application for a distributor's license must contain the  
27 following information to the extent it applies to the applicant:

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

31 (2) The applicant's form and place of organization including proof  
32 that the individual, partnership, or corporation is licensed to do  
33 business in this state;

34 (3) The qualification and business history of the applicant and any  
35 partner, officer, or director;

36 (4) The applicant's financial condition or history including a bank  
37 reference and whether the applicant or any partner, officer, or

1 director has ever been adjudged bankrupt or has an unsatisfied judgment  
2 in a federal or state court;

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

9 After receipt of an application for a license, the director may  
10 conduct an investigation to determine whether the facts set forth are  
11 true. The director may require a fingerprint record check of the  
12 applicant through the Washington state patrol criminal identification  
13 system and the federal bureau of investigation before issuance of a  
14 license. The results of the background investigation including  
15 criminal history information may be released to authorized department  
16 personnel as the director deems necessary.

17 An applicant who makes a false statement of a material fact on the  
18 application may be prosecuted for perjury as defined by RCW 9A.72.030.

19 **Sec. 16.** RCW 82.42.080 and 1982 1st ex.s. c 25 s 7 are each  
20 amended to read as follows:

21 Any person violating any provision of this chapter or any rule or  
22 regulation of the director promulgated hereunder, or making any false  
23 statement, or concealing any material fact in any report, statement,  
24 record or claim, or who commits any act with intent to avoid payment of  
25 the aircraft fuel excise tax imposed by this chapter, or who conspires  
26 with another person with intent to interfere with the orderly  
27 collection of such tax due and owing under this chapter, (~~shall be~~)  
28 is guilty of a (~~misdemeanor~~) crime as defined by RCW 9A.56.020.

29 NEW SECTION. **Sec. 17.** By December 31, 1996, the department of  
30 licensing shall implement a PC or server-based data base of fuel dealer  
31 and distributor license application information.

32 NEW SECTION. **Sec. 18.** By July 1, 1996, the department of  
33 licensing shall establish a fuel tax advisory group comprised of state  
34 agency and petroleum industry representatives to develop or recommend  
35 audit and investigation techniques, changes to fuel tax statutes and  
36 rules, information protocols that allow sharing of information with

- 1 other states, and other tools that improve fuel tax administration or
- 2 combat fuel tax evasion.

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