

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1407

57th Legislature
2001 Regular Legislative Session

Passed by the House March 9, 2001
Yeas 97 Nays 0

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 12, 2001
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1407** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1407

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Representatives Fisher and Mitchell; by request of Department of Licensing

Read first time 01/25/2001. Referred to Committee on Transportation.

1 AN ACT Relating to the taxation of fuel; and amending RCW
2 82.36.010, 82.36.020, 82.36.026, 82.38.020, 82.36.060, 82.38.030,
3 82.38.035, and 82.38.110.

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

5 **Sec. 1.** RCW 82.36.010 and 1998 c 176 s 6 are each amended to read
6 as follows:

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

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

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

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

1 (4) "Bulk transfer-terminal system" means the motor vehicle fuel
2 distribution system consisting of refineries, pipelines, vessels, and
3 terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or
4 terminal is in the bulk transfer-terminal system. Motor vehicle fuel
5 in the fuel tank of an engine, motor vehicle, or in a railcar, trailer,
6 truck, or other equipment suitable for ground transportation is not in
7 the bulk transfer-terminal system.

8 (5) "Dealer" means a person engaged in the retail sale of motor
9 vehicle fuel.

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

11 (7) "Director" means the director of licensing.

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

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

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

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

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

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

26 (12) "Licensee" means a person holding a license issued under this
27 chapter.

28 (13) "Marine fuel dealer" means a person engaged in the retail sale
29 of motor vehicle fuel whose place of business and/or sale outlet is
30 located upon a navigable waterway.

31 (14) "Motor vehicle fuel blender" means a person who produces
32 blended motor fuel outside the bulk transfer-terminal system.

33 (15) "Motor vehicle fuel distributor" means a person who acquires
34 motor vehicle fuel from a supplier, distributor, or licensee for
35 subsequent sale and distribution.

36 (16) "Motor vehicle fuel exporter" means a person who purchases
37 motor vehicle fuel in this state and directly exports the fuel by a
38 means other than the bulk transfer-terminal system to a destination
39 outside of the state. If the exporter of record is acting as an agent,

1 the person for whom the agent is acting is the exporter. If there is
2 no exporter of record, the owner of the motor fuel at the time of
3 exportation is the exporter.

4 (17) "Motor vehicle fuel importer" means a person who imports motor
5 vehicle fuel into the state by a means other than the bulk transfer-
6 terminal system. If the importer of record is acting as an agent, the
7 person for whom the agent is acting is the importer. If there is no
8 importer of record, the owner of the motor vehicle fuel at the time of
9 importation is the importer.

10 (18) "Motor vehicle fuel supplier" means a person who (~~owns and~~
11 ~~stores motor vehicle fuel in a terminal facility or who refines and~~
12 ~~stores motor vehicle fuel at a refinery~~) holds a federal certificate
13 of registry that is issued under the internal revenue code and
14 authorizes the person to enter into federal tax-free transactions on
15 motor vehicle fuel in the bulk transfer-terminal system.

16 (19) "Motor vehicle" means a self-propelled vehicle designed for
17 operation upon land utilizing motor vehicle fuel as the means of
18 propulsion.

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

23 (21) "Person" means a natural person, fiduciary, association, or
24 corporation. The term "person" as applied to an association means and
25 includes the partners or members thereof, and as applied to
26 corporations, the officers thereof.

27 (22) "Position holder" means a person who holds the inventory
28 position in motor vehicle fuel, as reflected by the records of the
29 terminal operator. A person holds the inventory position in motor
30 vehicle fuel if the person has a contractual agreement with the
31 terminal for the use of storage facilities and terminating services at
32 a terminal with respect to motor vehicle fuel. "Position holder"
33 includes a terminal operator that owns motor vehicle fuel in their
34 terminal.

35 (23) "Rack" means a mechanism for delivering motor vehicle fuel
36 from a refinery or terminal into a truck, trailer, railcar, or other
37 means of nonbulk transfer.

38 (24) "Refiner" means a person who owns, operates, or otherwise
39 controls a refinery.

1 (25) "Removal" means a physical transfer of motor vehicle fuel
2 other than by evaporation, loss, or destruction.

3 (26) "Terminal" means a motor vehicle fuel storage and distribution
4 facility that has been assigned a terminal control number by the
5 internal revenue service, is supplied by pipeline or vessel, and from
6 which reportable motor vehicle fuel is removed at a rack.

7 (27) "Terminal operator" means a person who owns, operates, or
8 otherwise controls a terminal.

9 (28) "Two-party exchange" or "buy-sell agreement" means a
10 transaction in which taxable motor vehicle fuel is transferred from one
11 licensed supplier to another licensed supplier under an exchange or
12 buy-sell agreement whereby the supplier that is the position holder
13 agrees to deliver taxable motor vehicle fuel to the other supplier or
14 the other supplier's customer at the rack of the terminal at which the
15 delivering supplier is the position holder.

16 **Sec. 2.** RCW 82.36.020 and 2000 c 103 s 13 are each amended to read
17 as follows:

18 (1) There is hereby levied and imposed upon motor vehicle fuel
19 users a tax at the rate computed in the manner provided in RCW
20 82.36.025 on each gallon of motor vehicle fuel.

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

23 (a) Motor vehicle fuel is removed in this state from a terminal if
24 the motor vehicle fuel is removed at the rack unless the removal is to
25 a licensed exporter for direct delivery to a destination outside of the
26 state;

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

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

32 (ii) The removal is at the refinery rack unless the removal is to
33 a licensed exporter for direct delivery to a destination outside of the
34 state;

35 (c) Motor vehicle fuel enters into this state for sale,
36 consumption, use, or storage if either of the following applies:

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

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

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

5 (e) Blended motor vehicle fuel is removed or sold in this state by
6 the blender of the fuel. The number of gallons of blended motor
7 vehicle fuel subject to the tax is the difference between the total
8 number of gallons of blended motor vehicle fuel removed or sold and the
9 number of gallons of previously taxed motor vehicle fuel used to
10 produce the blended motor vehicle fuel;

11 (f) Motor vehicle fuel is sold by a licensed motor vehicle fuel
12 supplier to a motor vehicle fuel distributor, motor vehicle fuel
13 importer, or motor vehicle fuel blender and the motor vehicle fuel is
14 not removed from the bulk transfer-terminal system.

15 (3) The proceeds of the motor vehicle fuel excise tax shall be
16 distributed as provided in RCW 46.68.090.

17 **Sec. 3.** RCW 82.36.026 and 1998 c 176 s 8 are each amended to read
18 as follows:

19 (1) A (~~position holder~~) licensed supplier shall remit tax to the
20 department (~~on motor vehicle fuel removed from a terminal~~) as
21 provided in RCW 82.36.020(~~(+2)(a)~~). On a two-party exchange, or buy-
22 sell agreement between two licensed suppliers, the receiving exchange
23 partner or buyer(~~(, becomes the position holder,)~~) who shall remit the
24 tax.

25 (2) A refiner shall remit tax to the department on motor vehicle
26 fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

27 (3) An importer shall remit tax to the department on motor vehicle
28 fuel imported into this state as provided in RCW 82.36.020(2)(c).

29 (4) A blender shall remit tax to the department on the removal or
30 sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

31 **Sec. 4.** RCW 82.38.020 and 1998 c 176 s 50 are each amended to read
32 as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

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

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

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

8 (4) "Bulk transfer-terminal system" means the special fuel
9 distribution system consisting of refineries, pipelines, vessels, and
10 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
11 is in the bulk transfer-terminal system. Special fuel in the fuel tank
12 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
13 equipment suitable for ground transportation is not in the bulk
14 transfer-terminal system.

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

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

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

20 (8) "Dyed special fuel user" means a person authorized by the
21 internal revenue code to operate a motor vehicle on the highway using
22 dyed special fuel, in which the use is not exempt from the special fuel
23 tax.

24 (9) "Evasion" or "evade" means to diminish or avoid the
25 computation, assessment, or payment of authorized taxes or fees
26 through:

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

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

31 (10) "Export" means to obtain special fuel in this state for sales
32 or distribution outside the state.

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

35 (12) "Import" means to bring special fuel into this state by a
36 means of conveyance other than the fuel supply tank of a motor vehicle.

37 (13) "International fuel tax agreement licensee" means a special
38 fuel user operating qualified motor vehicles in interstate commerce and
39 licensed by the department under the international fuel tax agreement.

1 (14) "Lessor" means a person: (a) Whose principal business is the
2 bona fide leasing or renting of motor vehicles without drivers for
3 compensation to the general public; and (b) who maintains established
4 places of business and whose lease or rental contracts require the
5 motor vehicles to be returned to the established places of business.

6 (15) "Licensee" means a person holding a license issued under this
7 chapter.

8 (16) "Motor vehicle" means a self-propelled vehicle designed for
9 operation upon land utilizing special fuel as the means of propulsion.

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

13 (18) "Person" means a natural person, fiduciary, association, or
14 corporation. The term "person" as applied to an association means and
15 includes the partners or members thereof, and as applied to
16 corporations, the officers thereof.

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

24 (20) "Rack" means a mechanism for delivering special fuel from a
25 refinery or terminal into a truck, trailer, railcar, or other means of
26 nonbulk transfer.

27 (21) "Refiner" means a person who owns, operates, or otherwise
28 controls a refinery.

29 (22) "Removal" means a physical transfer of special fuel other than
30 by evaporation, loss, or destruction.

31 (23) "Special fuel" means and includes all combustible gases and
32 liquids suitable for the generation of power for propulsion of motor
33 vehicles, except that it does not include motor vehicle fuel as defined
34 in chapter 82.36 RCW, nor does it include dyed special fuel as defined
35 by federal regulations. However, if the federal regulations authorize
36 dyed special fuel to be used in highway vehicles, that usage is
37 considered taxable under this chapter, unless otherwise exempted.

1 (24) "Special fuel distributor" means a person who acquires special
2 fuel from a supplier, distributor, or licensee for subsequent sale and
3 distribution.

4 (25) "Special fuel exporter" means a person who purchases special
5 fuel in this state and directly exports the fuel by a means other than
6 the bulk transfer-terminal system to a destination outside of the
7 state.

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

14 (27) "Special fuel supplier" means a person who (~~owns and stores~~
15 ~~special fuel in a terminal facility or who refines and stores special~~
16 ~~fuel at a refinery~~) holds a federal certificate issued under the
17 internal revenue code and authorizes the person to tax-free
18 transactions on special fuel in the bulk transfer-terminal system.

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

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

26 (30) "Terminal operator" means a person who owns, operates, or
27 otherwise controls a terminal.

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

35 **Sec. 5.** RCW 82.36.060 and 1998 c 176 s 18 are each amended to read
36 as follows:

1 (1) An application for a license issued under this chapter shall be
2 made to the department on forms to be furnished by the department and
3 shall contain such information as the department deems necessary.

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

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

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

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

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

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

24 (3) An applicant for a license as a motor vehicle fuel importer
25 must list on the application each state, province, or country from
26 which the applicant intends to import motor vehicle fuel and, if
27 required by the state, province, or country listed, must be licensed or
28 registered for motor vehicle fuel tax purposes in that state, province,
29 or country.

30 (4) An applicant for a license as a motor vehicle fuel exporter
31 must list on the application each state, province, or country to which
32 the exporter intends to export motor vehicle fuel received in this
33 state by means of a transfer outside of the bulk transfer-terminal
34 system and, if required by the state, province, or country listed, must
35 be licensed or registered for motor vehicle fuel tax purposes in that
36 state, province, or country.

37 (5) An applicant for a license as a motor vehicle fuel supplier
38 must have a federal certificate of registry that is issued under the
39 internal revenue code and authorizes the applicant to enter into

1 federal tax-free transactions on motor vehicle fuel in the terminal
2 transfer system.

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

13 An applicant who makes a false statement of a material fact on the
14 application may be prosecuted for false swearing as defined by RCW
15 9A.72.040.

16 (7) Except as provided by subsection (8) of this section, before
17 granting any license issued under this chapter, the department shall
18 require applicant to file with the department, in such form as shall be
19 prescribed by the department, a corporate surety bond duly executed by
20 the applicant as principal, payable to the state and conditioned for
21 faithful performance of all the requirements of this chapter, including
22 the payment of all taxes, penalties, and other obligations arising out
23 of this chapter. The total amount of the bond or bonds shall be fixed
24 by the department and may be increased or reduced by the department at
25 any time subject to the limitations herein provided. In fixing the
26 total amount of the bond or bonds, the department shall require a bond
27 or bonds equivalent in total amount to twice the estimated monthly
28 excise tax determined in such manner as the department may deem proper.
29 If at any time the estimated excise tax to become due during the
30 succeeding month amounts to more than fifty percent of the established
31 bond, the department shall require additional bonds or securities to
32 maintain the marginal ratio herein specified or shall demand excise tax
33 payments to be made weekly or semimonthly to meet the requirements
34 hereof.

35 The total amount of the bond or bonds required of any licensee
36 shall never be less than five thousand dollars nor more than one
37 hundred thousand dollars.

38 No recoveries on any bond or the execution of any new bond shall
39 invalidate any bond and no revocation of any license shall effect the

1 validity of any bond but the total recoveries under any one bond shall
2 not exceed the amount of the bond.

3 In lieu of any such bond or bonds in total amount as herein fixed,
4 a licensee may deposit with the state treasurer, under such terms and
5 conditions as the department may prescribe, a like amount of lawful
6 money of the United States or bonds or other obligations of the United
7 States, the state, or any county of the state, of an actual market
8 value not less than the amount so fixed by the department.

9 Any surety on a bond furnished by a licensee as provided herein
10 shall be released and discharged from any and all liability to the
11 state accruing on such bond after the expiration of thirty days from
12 the date upon which such surety has lodged with the department a
13 written request to be released and discharged, but this provision shall
14 not operate to relieve, release, or discharge the surety from any
15 liability already accrued or which shall accrue before the expiration
16 of the thirty day period. The department shall promptly, upon
17 receiving any such request, notify the licensee who furnished the bond;
18 and unless the licensee, on or before the expiration of the thirty day
19 period, files a new bond, or makes a deposit in accordance with the
20 requirements of this section, the department shall forthwith cancel the
21 license. Whenever a new bond is furnished by a licensee, the
22 department shall cancel the old bond as soon as the department and the
23 attorney general are satisfied that all liability under the old bond
24 has been fully discharged.

25 The department may require a licensee to give a new or additional
26 surety bond or to deposit additional securities of the character
27 specified in this section if, in its opinion, the security of the
28 surety bond theretofore filed by such licensee, or the market value of
29 the properties deposited as security by the licensee, shall become
30 impaired or inadequate; and upon the failure of the licensee to give
31 such new or additional surety bond or to deposit additional securities
32 within thirty days after being requested so to do by the department,
33 the department shall forthwith cancel his or her license.

34 (8) The department may waive the requirements of subsection (7) of
35 this section for licensed distributors if, upon determination by the
36 department, the licensed distributor has sufficient resources, assets,
37 other financial instruments, or other means, to adequately make
38 payments on the estimated monthly motor vehicle fuel tax payments,

1 penalties, and interest arising out of this chapter. The department
2 shall adopt rules to administer this subsection.

3 **Sec. 6.** RCW 82.38.030 and 1998 c 176 s 51 are each amended to read
4 as follows:

5 (1) There is hereby levied and imposed upon special fuel users a
6 tax at the rate computed in the manner provided in RCW 82.36.025 on
7 each gallon of special fuel, or each one hundred cubic feet of
8 compressed natural gas, measured at standard pressure and temperature.

9 (2) The tax imposed by subsection (1) of this section is imposed
10 when:

11 (a) Special fuel is removed in this state from a terminal if the
12 special fuel is removed at the rack unless the removal is to a licensed
13 exporter for direct delivery to a destination outside of the state, or
14 the removal is to a special fuel distributor for direct delivery to an
15 international fuel tax agreement licensee under RCW 82.38.320;

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

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

20 (ii) The removal is at the refinery rack unless the removal is to
21 a licensed exporter for direct delivery to a destination outside of the
22 state, or the removal is to a special fuel distributor for direct
23 delivery to an international fuel tax agreement licensee under RCW
24 82.38.320;

25 (c) Special fuel enters into this state for sale, consumption, use,
26 or storage if either of the following applies:

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

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

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

33 (e) Blended special fuel is removed or sold in this state by the
34 blender of the fuel. The number of gallons of blended special fuel
35 subject to tax is the difference between the total number of gallons of
36 blended special fuel removed or sold and the number of gallons of
37 previously taxed special fuel used to (~~produced~~ ~~[produce]~~) produce
38 the blended special fuel;

1 (f) Dyed special fuel is used on a highway, as authorized by the
2 internal revenue code, unless the use is exempt from the special fuel
3 tax; ~~((and))~~

4 (g) Special fuel purchased by an international fuel tax agreement
5 licensee under RCW 82.38.320 is used on a highway; and

6 (h) Special fuel is sold by a licensed special fuel supplier to a
7 special fuel distributor, special fuel importer, or special fuel
8 blender and the special fuel is not removed from the bulk transfer-
9 terminal system.

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

22 **Sec. 7.** RCW 82.38.035 and 1998 c 176 s 53 are each amended to read
23 as follows:

24 (1) A ~~((position holder))~~ licensed supplier shall remit tax on
25 special fuel to the department ~~((on special fuel removed from a~~
26 ~~terminal))~~ as provided in RCW 82.38.030(2)(a). On a two-party
27 exchange, or buy-sell agreement between two licensed suppliers, the
28 receiving exchange partner or buyer ~~((becomes the position holder,~~
29 ~~who))~~ shall remit the tax.

30 (2) A refiner shall remit tax to the department on special fuel
31 removed from a refinery as provided in RCW 82.38.030(2)(b).

32 (3) An importer shall remit tax to the department on special fuel
33 imported into this state as provided in RCW 82.38.030(2)(c).

34 (4) A blender shall remit tax to the department on the removal or
35 sale of blended special fuel as provided in RCW 82.38.030(2)(e).

36 (5) A dyed special fuel user shall remit tax to the department on
37 the use of dyed special fuel as provided in RCW 82.38.030(2)(f).

1 **Sec. 8.** RCW 82.38.110 and 1998 c 176 s 63 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

1 registered for special fuel tax purposes in that state, province, or
2 country.

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

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

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

20 (8) A special fuel license may not be issued to any person or
21 continued in force unless such person has furnished bond, as defined in
22 RCW 82.38.020, in such form as the department may require, to secure
23 his or her compliance with this chapter, and the payment of any and all
24 taxes, interest, and penalties due and to become due hereunder. The
25 requirement of furnishing a bond may be waived: (a) For special fuel
26 distributors who only deliver special fuel into the fuel tanks of
27 marine vessels((7)); (b) for dyed special fuel users ((and)); (c) for
28 persons issued licenses under the international fuel tax agreement; or
29 (d) for licensed special fuel distributors who, upon determination by
30 the department, have sufficient resources, assets, other financial
31 instruments, or other means to adequately make payments on the
32 estimated monthly motor vehicle fuel tax payments, penalties, and
33 interest arising out of this chapter. The department shall adopt rules
34 to administer this section.

35 (9) The department may require a licensee to post a bond if the
36 licensee, after having been licensed, has failed to file timely reports
37 or has failed to remit taxes due, or when an investigation or audit
38 indicates problems severe enough that the department, in its
39 discretion, determines that a bond is required to protect the interests

1 of the state. The department may also adopt rules prescribing
2 conditions that, in the department's discretion, require a bond to
3 protect the interests of the state.

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

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

17 (12) An application for an international fuel tax agreement license
18 must be made to the department. The application must be filed upon a
19 form prescribed by the department and contain such information as the
20 department may require.

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