
SUBSTITUTE SENATE BILL 6193

State of Washington 64th Legislature 2016 Regular Session

By Senate Transportation (originally sponsored by Senator King)

READ FIRST TIME 02/04/16.

1 AN ACT Relating to clarifying the collection of fuel taxes within
2 tribal jurisdictions; amending RCW 82.36.022, 82.36.026, 82.38.031,
3 82.38.035, and 82.38.035; adding a new section to chapter 82.36 RCW;
4 adding a new section to chapter 82.38 RCW; creating a new section;
5 providing an effective date; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** It is the legislature's intent to honor
8 the treaty rights of the Yakama Nation, while protecting the state's
9 interest in collecting and enforcing its fuel taxes.

10 **Sec. 2.** RCW 82.36.022 and 2007 c 515 s 20 are each amended to
11 read as follows:

12 (1) It is the intent and purpose of this chapter that the tax
13 shall be imposed at the time and place of the first taxable event and
14 upon the first taxable person within this state. Any person whose
15 activities would otherwise require payment of the tax imposed by RCW
16 82.36.020 but who is exempt from the tax nevertheless has a
17 precollection obligation for the tax that must be imposed on the
18 first taxable event within this state. Failure to pay the tax with
19 respect to a taxable event (~~shall~~) does not prevent tax liability
20 from arising by reason of a subsequent taxable event.

1 (2) It is the intent of the legislature that, in the absence of a
2 tribal fuel tax agreement, as referenced in RCW 82.36.450, applicable
3 taxes imposed by this chapter be collected on motor vehicle fuel sold
4 by a business licensed by an Indian tribal organization to any person
5 who is not an enrolled member of the federally recognized Indian
6 tribe within whose jurisdiction the sale takes place consistent with
7 collection of these taxes generally within the state. The legislature
8 finds that applicable collection and enforcement measures under this
9 chapter are reasonably necessary to prevent fraudulent transactions
10 and place a minimal burden on the Indian tribal organization pursuant
11 to the United States supreme court's decision in *Washington v.*
12 *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134
13 (1980). For the purposes of this subsection: "Indian tribal
14 organization" means a federally recognized Indian tribe, or tribal
15 entity, and includes an Indian wholesaler or retailer that is owned
16 by an Indian who is an enrolled tribal member conducting business
17 under tribal license or similar tribal approval within Indian
18 country; and "Indian country" is defined in the manner set forth in
19 18 U.S.C. Sec. 1151.

20 **Sec. 3.** RCW 82.36.026 and 2007 c 515 s 4 are each amended to
21 read as follows:

22 (1) A licensed supplier (~~(shall be)~~) is liable for and must pay
23 tax to the department as provided in RCW 82.36.020. On a two-party
24 exchange, or buy-sell agreement between two licensed suppliers, the
25 receiving exchange partner or buyer (~~(shall be)~~) is liable for and
26 must pay the tax.

27 (2) A refiner (~~(shall be)~~) is liable for and must pay tax to the
28 department on motor vehicle fuel removed from a refinery as provided
29 in RCW 82.36.020(2)(b).

30 (3) A licensed importer (~~(shall be)~~) is liable for and must pay
31 tax to the department on motor vehicle fuel imported into this state
32 as provided in RCW 82.36.020(2)(c).

33 (4) A licensed blender (~~(shall be)~~) is liable for and must pay
34 tax to the department on the removal or sale of blended motor vehicle
35 fuel as provided in RCW 82.36.020(2)(e).

36 (5) Nothing in this chapter (~~(shall)~~) prohibits the licensee
37 liable for payment of the tax under this chapter from including as a
38 part of the selling price an amount equal to the tax.

1 (6) Any person who purchases motor vehicle fuel from a business
2 licensed by an Indian tribal organization that does not have a fuel
3 tax agreement with the state, as referenced in RCW 82.36.450, and who
4 is not an enrolled member of the federally recognized Indian tribe
5 within whose jurisdiction the sale takes place, is liable for the
6 applicable taxes imposed by this chapter if those taxes have not been
7 paid by any of the entities listed under subsections (1) through (4)
8 of this section. For the purposes of this subsection: "Indian tribal
9 organization" means a federally recognized Indian tribe, or tribal
10 entity, and includes an Indian wholesaler or retailer that is owned
11 by an Indian who is an enrolled tribal member conducting business
12 under tribal license or similar tribal approval within Indian
13 country; and "Indian country" is defined in the manner set forth in
14 18 U.S.C. Sec. 1151.

15 **Sec. 4.** RCW 82.38.031 and 2007 c 515 s 33 are each amended to
16 read as follows:

17 (1) It is the intent and purpose of this chapter that the tax
18 ((shall)) **must** be imposed at the time and place of the first taxable
19 event and upon the first taxable person within this state. Any person
20 whose activities would otherwise require payment of the tax imposed
21 by RCW 82.38.030 but who is exempt from the tax nevertheless has a
22 precollection obligation for the tax that must be imposed on the
23 first taxable event within this state. Failure to pay the tax with
24 respect to a taxable event ((shall)) **does** not prevent tax liability
25 from arising by reason of a subsequent taxable event.

26 (2) It is the intent of the legislature that, in the absence of a
27 tribal fuel tax agreement, as referenced in RCW 82.38.310, applicable
28 taxes imposed by this chapter be collected on motor vehicle fuel sold
29 by a business licensed by an Indian tribal organization to any person
30 who is not an enrolled member of the federally recognized Indian
31 tribe within whose jurisdiction the sale takes place consistent with
32 collection of these taxes generally within the state. The legislature
33 finds that applicable collection and enforcement measures under this
34 chapter are reasonably necessary to prevent fraudulent transactions
35 and place a minimal burden on the Indian tribal organization pursuant
36 to the United States supreme court's decision in *Washington v.*
37 *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134
38 (1980). For the purposes of this subsection: "Indian tribal
39 organization" means a federally recognized Indian tribe, or tribal

1 entity, and includes an Indian wholesaler or retailer that is owned
2 by an Indian who is an enrolled tribal member conducting business
3 under tribal license or similar tribal approval within Indian
4 country; and "Indian country" is defined in the manner set forth in
5 18 U.S.C. Sec. 1151.

6 **Sec. 5.** RCW 82.38.035 and 2007 c 515 s 23 are each amended to
7 read as follows:

8 (1) A licensed supplier (~~((shall be))~~) is liable for and must pay
9 tax on special fuel to the department as provided in RCW
10 82.38.030(~~((+7))~~) (9)(a). On a two-party exchange, or buy-sell
11 agreement between two licensed suppliers, the receiving exchange
12 partner or buyer (~~((shall be))~~) is liable for and must pay the tax.

13 (2) A refiner (~~((shall be))~~) is liable for and must pay tax to the
14 department on special fuel removed from a refinery as provided in RCW
15 82.38.030(~~((+7))~~) (9)(b).

16 (3) A licensed importer (~~((shall be))~~) is liable for and must pay
17 tax to the department on special fuel imported into this state as
18 provided in RCW 82.38.030(~~((+7))~~) (9)(c).

19 (4) A licensed blender (~~((shall be))~~) is liable for and must pay
20 tax to the department on the removal or sale of blended special fuel
21 as provided in RCW 82.38.030(~~((+7))~~) (9)(e).

22 (5) A licensed dyed special fuel user (~~((shall be))~~) is liable for
23 and must pay tax to the department on the use of dyed special fuel as
24 provided in RCW 82.38.030(~~((+7))~~) (9)(f).

25 (6) Nothing in this chapter prohibits the licensee liable for
26 payment of the tax under this chapter from including as a part of the
27 selling price an amount equal to such tax.

28 (7) Any person who purchases motor vehicle fuel from a business
29 licensed by an Indian tribal organization that does not have a fuel
30 tax agreement with the state, as referenced in RCW 82.38.310, and who
31 is not an enrolled member of the federally recognized Indian tribe
32 within whose jurisdiction the sale takes place, is liable for the
33 applicable taxes imposed by this chapter if those taxes have not been
34 paid by any of the entities listed under subsections (1) through (4)
35 of this section. For the purposes of this subsection: "Indian tribal
36 organization" means a federally recognized Indian tribe, or tribal
37 entity, and includes an Indian wholesaler or retailer that is owned
38 by an Indian who is an enrolled tribal member conducting business
39 under tribal license or similar tribal approval within Indian

1 country; and "Indian country" is defined in the manner set forth in
2 18 U.S.C. Sec. 1151.

3 **Sec. 6.** RCW 82.38.035 and 2013 c 225 s 105 are each amended to
4 read as follows:

5 (1) A licensed supplier is liable for and must pay tax on fuel as
6 provided in RCW 82.38.030(~~((7))~~) (9) (a) and (i). On a two-party
7 exchange, or buy-sell agreement between two licensed suppliers, the
8 receiving exchange partner or buyer (~~(shall be)~~) is liable for and
9 pay the tax.

10 (2) A refiner is liable for and must pay tax on fuel removed from
11 a refinery as provided in RCW 82.38.030(~~((7))~~) (9)(b).

12 (3) A licensed distributor is liable for and must pay tax on fuel
13 as provided in RCW 82.38.030(~~((7))~~) (9)(c).

14 (4) A licensed blender is liable for and must pay tax on fuel as
15 provided in RCW 82.38.030(~~((7))~~) (9)(f).

16 (5) A licensed dyed special fuel user is liable for and must pay
17 tax on fuel as provided in RCW 82.38.030(~~((7))~~) (9)(g).

18 (6) A terminal operator is jointly and severally liable for and
19 must pay tax on fuel if, at the time of removal:

20 (a) The position holder of the fuel is a person other than the
21 terminal operator and is not a licensee;

22 (b) The terminal operator is not a licensee;

23 (c) The position holder has an expired internal revenue
24 notification certificate;

25 (d) The terminal operator has reason to believe that information
26 on the internal revenue notification certificate is false.

27 (7) A terminal operator is jointly and severally liable for and
28 must pay tax on special fuel if the special fuel is removed and is
29 not dyed or marked in accordance with internal revenue service
30 requirements, and the terminal operator provides a person with a bill
31 of lading, shipping paper, or similar document indicating the special
32 fuel is dyed or marked in accordance with internal revenue service
33 requirements.

34 (8) International fuel tax agreement licensees, or persons
35 operating motor vehicles under other reciprocity agreements entered
36 into with the state of Washington, are liable for and must pay tax on
37 fuel used to operate motor vehicles on state highways.

1 (9) Dyed special fuel users are liable for and must pay tax on
2 dyed special fuel used on state highways unless the use of the fuel
3 is exempt from the tax.

4 (10) Any person who purchases fuel from a business licensed by an
5 Indian tribal organization that does not have a fuel tax agreement
6 with the state, as referenced in RCW 82.38.310, and who is not an
7 enrolled member of the federally recognized Indian tribe within whose
8 jurisdiction the sale takes place, is liable for the applicable taxes
9 imposed by this chapter if those taxes have not been paid by any of
10 the entities listed under subsections (1) through (4) of this
11 section. For the purposes of this subsection: "Indian tribal
12 organization" means a federally recognized Indian tribe, or tribal
13 entity, and includes an Indian wholesaler or retailer that is owned
14 by an Indian who is an enrolled tribal member conducting business
15 under tribal license or similar tribal approval within Indian
16 country; and "Indian country" is defined in the manner set forth in
17 18 U.S.C. Sec. 1151.

18 NEW SECTION. Sec. 7. A new section is added to chapter 82.36
19 RCW to read as follows:

20 The department, in conjunction with the state patrol, must adopt
21 rules to develop enforcement mechanisms for the collection of taxes
22 owed under RCW 82.36.026(7).

23 NEW SECTION. Sec. 8. A new section is added to chapter 82.38
24 RCW to read as follows:

25 The department, in conjunction with the state patrol, must adopt
26 rules to develop enforcement mechanisms for the collection of taxes
27 owed under RCW 82.38.035(10).

28 NEW SECTION. Sec. 9. Sections 6 and 8 of this act take effect
29 July 1, 2016.

30 NEW SECTION. Sec. 10. Sections 2, 3, 5, and 7 of this act
31 expire July 1, 2016.

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