

SSB 6785 - H AMD TO TR COMM AMD (H-5449.2/06) **1130**  
By Representative Woods

1       Strike everything after line 2 of the amendment and insert the  
2 following:

3       "**Sec. 1.** RCW 82.36.010 and 2001 c 270 s 1 are each amended to read  
4 as follows:

5       The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

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

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

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

17       (4) "Bulk transfer-terminal system" means the motor vehicle fuel  
18 distribution system consisting of refineries, pipelines, vessels, and  
19 terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or  
20 terminal is in the bulk transfer-terminal system. Motor vehicle fuel  
21 in the fuel tank of an engine, motor vehicle, or in a railcar, trailer,  
22 truck, or other equipment suitable for ground transportation is not in  
23 the bulk transfer-terminal system.

24       (5) (~~"Dealer" means a person engaged in the retail sale of motor~~  
25 ~~vehicle fuel.~~

26       (+6)) "Department" means the department of licensing.

27       ((+7)) (6) "Director" means the director of licensing.

28       ((+8)) (7) "Evasion" or "evade" means to diminish or avoid the  
29 computation, assessment, or payment of authorized taxes or fees  
30 through:

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

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

5 ~~((+9))~~ (8) "Export" means to obtain motor vehicle fuel in this  
6 state for sales or distribution outside the state.

7 ~~((+10))~~ (9) "Highway" means every way or place open to the use of  
8 the public, as a matter of right, for the purpose of vehicular travel.

9 ~~((+11))~~ (10) "Import" means to bring motor vehicle fuel into this  
10 state by a means of conveyance other than the fuel supply tank of a  
11 motor vehicle.

12 (11) "International fuel tax agreement licensee" means a motor  
13 vehicle fuel user operating qualified motor vehicles in interstate  
14 commerce and licensed by the department under the international fuel  
15 tax agreement.

16 (12) "Licensee" means a person holding a motor vehicle fuel  
17 supplier, motor vehicle fuel importer, motor vehicle fuel exporter,  
18 motor vehicle fuel blender, motor vehicle fuel distributor, or  
19 international fuel tax agreement license issued under this chapter.

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

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

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

28 (16) "Motor vehicle fuel exporter" means a person who purchases  
29 motor vehicle fuel in this state and directly exports the fuel by a  
30 means other than the bulk transfer-terminal system to a destination  
31 outside of the state. If the exporter of record is acting as an agent,  
32 the person for whom the agent is acting is the exporter. If there is  
33 no exporter of record, the owner of the motor fuel at the time of  
34 exportation is the exporter.

35 (17) "Motor vehicle fuel importer" means a person who imports motor  
36 vehicle fuel into the state by a means other than the bulk transfer-  
37 terminal system. If the importer of record is acting as an agent, the

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

4 (18) "Motor vehicle fuel supplier" means a person who holds a  
5 federal certificate of registry that is issued under the internal  
6 revenue code and authorizes the person to enter into federal tax-free  
7 transactions on motor vehicle fuel in the bulk transfer-terminal  
8 system.

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

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

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

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

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

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

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

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

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

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

10 **Sec. 2.** RCW 82.36.020 and 2001 c 270 s 2 are each amended to read  
11 as follows:

12 (1) There is hereby levied and imposed upon motor vehicle fuel  
13 (~~users~~) licensees a tax at the rate computed in the manner provided  
14 in RCW 82.36.025 on each gallon of motor vehicle fuel.

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

17 (a) Motor vehicle fuel is removed in this state from a terminal if  
18 the motor vehicle fuel is removed at the rack unless the removal is to  
19 a licensed exporter for direct delivery to a destination outside of the  
20 state;

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

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

26 (ii) The removal is at the refinery rack unless the removal is to  
27 a licensed exporter for direct delivery to a destination outside of the  
28 state;

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

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

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

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

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

7 (f) Motor vehicle fuel is sold by a licensed motor vehicle fuel  
8 supplier to a motor vehicle fuel distributor, motor vehicle fuel  
9 importer, ~~((or))~~ motor vehicle fuel blender, or international fuel tax  
10 agreement licensee and the motor vehicle fuel is not removed from the  
11 bulk transfer-terminal system.

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

14 **Sec. 3.** RCW 82.36.025 and 2005 c 314 s 101 are each amended to  
15 read as follows:

16 (1) A motor vehicle fuel tax rate of twenty-three cents per gallon  
17 ~~((applies to the sale, distribution, or use of))~~ on motor vehicle fuel  
18 shall be imposed on motor vehicle fuel licensees.

19 (2) Beginning July 1, 2003, an additional and cumulative motor  
20 vehicle fuel tax rate of five cents per gallon ~~((applies to the sale,~~  
21 ~~distribution, or use of))~~ on motor vehicle fuel shall be imposed on  
22 motor vehicle fuel licensees. This subsection (2) expires when the  
23 bonds issued for transportation 2003 projects are retired.

24 (3) Beginning July 1, 2005, an additional and cumulative motor  
25 vehicle fuel tax rate of three cents per gallon ~~((applies to the sale,~~  
26 ~~distribution, or use of))~~ on motor vehicle fuel shall be imposed on  
27 motor vehicle fuel licensees.

28 (4) Beginning July 1, 2006, an additional and cumulative motor  
29 vehicle fuel tax rate of three cents per gallon ~~((applies to the sale,~~  
30 ~~distribution, or use of))~~ on motor vehicle fuel shall be imposed on  
31 motor vehicle fuel licensees.

32 (5) Beginning July 1, 2007, an additional and cumulative motor  
33 vehicle fuel tax rate of two cents per gallon ~~((applies to the sale,~~  
34 ~~distribution, or use of))~~ on motor vehicle fuel shall be imposed on  
35 motor vehicle fuel licensees.

36 (6) Beginning July 1, 2008, an additional and cumulative motor

1 vehicle fuel tax rate of one and one-half cents per gallon (~~applies to~~  
2 ~~the sale, distribution, or use of~~) on motor vehicle fuel shall be  
3 imposed on motor vehicle fuel licensees.

4 **Sec. 4.** RCW 82.36.026 and 2001 c 270 s 3 are each amended to read  
5 as follows:

6 (1) A licensed supplier shall (~~remit~~) be liable for and pay tax  
7 to the department as provided in RCW 82.36.020. On a two-party  
8 exchange, or buy-sell agreement between two licensed suppliers, the  
9 receiving exchange partner or buyer (~~who~~) shall (~~the buyer shall~~  
10 ~~remit~~) be liable for and pay the tax.

11 (2) A licensed refiner shall (~~remit~~) be liable for and pay tax to  
12 the department on motor vehicle fuel removed from a refinery as  
13 provided in RCW 82.36.020(2)(b).

14 (3) (~~An~~) A licensed importer shall (~~remit~~) be liable for and  
15 pay tax to the department on motor vehicle fuel imported into this  
16 state as provided in RCW 82.36.020(2)(c).

17 (4) A licensed blender shall (~~remit~~) be liable for and pay tax to  
18 the department on the removal or sale of blended motor vehicle fuel as  
19 provided in RCW 82.36.020(2)(e).

20 (5) Nothing in this chapter shall prohibit the licensee for payment  
21 of the tax under this chapter from including as a part of the selling  
22 price an amount equal to the tax.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 82.36 RCW  
24 to read as follows:

25 International fuel tax agreement licensees, or persons operating  
26 motor vehicles under other reciprocity agreements entered into with the  
27 state of Washington, are liable for and must pay the tax under RCW  
28 82.36.020 to the department on motor vehicle fuel used to operate motor  
29 vehicles on the highways of this state. This provision does not apply  
30 if the tax under RCW 82.36.020 has previously been imposed and paid by  
31 the international fuel tax agreement licensee or if the use of such  
32 fuel is exempt from the tax under this chapter.

33 **Sec. 6.** RCW 82.36.031 and 1998 c 176 s 11 are each amended to read  
34 as follows:

35 For the purpose of determining the amount of liability for the tax

1 imposed under this chapter, and to periodically update license  
2 information, each licensee, other than a motor vehicle fuel distributor  
3 and an international fuel tax agreement licensee, shall file monthly  
4 tax reports with the department, on a form prescribed by the  
5 department.

6 A report shall be filed with the department. An international fuel  
7 tax agreement licensee shall file tax reports quarterly even though no  
8 motor vehicle fuel tax is due for the reporting period. Each tax  
9 report shall contain a declaration by the person making the same, to  
10 the effect that the statements contained therein are true and made  
11 under penalties of perjury, which declaration has the same force and  
12 effect as a verification of the report and is in lieu of the  
13 verification. The report shall show information as the department may  
14 require for the proper administration and enforcement of this chapter.  
15 Tax reports shall be filed on or before the twenty-fifth day of the  
16 next succeeding calendar month following the period to which the  
17 reports relate. If the final filing date falls on a Saturday, Sunday,  
18 or legal holiday the next secular or business day shall be the final  
19 filing date.

20 The department, if it deems it necessary in order to ensure payment  
21 of the tax imposed under this chapter, or to facilitate the  
22 administration of this chapter, may require the filing of reports and  
23 tax remittances at shorter intervals than one month.

24 **Sec. 7.** RCW 82.36.060 and 2001 c 270 s 5 are each amended to read  
25 as follows:

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

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

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

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

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

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

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

13 (3) An applicant for a license as a motor vehicle fuel importer  
14 must list on the application each state, province, or country from  
15 which the applicant intends to import motor vehicle fuel and, if  
16 required by the state, province, or country listed, must be licensed or  
17 registered for motor vehicle fuel tax purposes in that state, province,  
18 or country.

19 (4) An applicant for a license as a motor vehicle fuel exporter  
20 must list on the application each state, province, or country to which  
21 the exporter intends to export motor vehicle fuel received in this  
22 state by means of a transfer outside of the bulk transfer-terminal  
23 system and, if required by the state, province, or country listed, must  
24 be licensed or registered for motor vehicle fuel tax purposes in that  
25 state, province, or country.

26 (5) An applicant for a license as a motor vehicle fuel supplier  
27 must have a federal certificate of registry that is issued under the  
28 internal revenue code and authorizes the applicant to enter into  
29 federal tax-free transactions on motor vehicle fuel in the terminal  
30 transfer system.

31 (6) After receipt of an application for a license, the director may  
32 conduct an investigation to determine whether the facts set forth are  
33 true. The director shall require a fingerprint record check of the  
34 applicant through the Washington state patrol criminal identification  
35 system and the federal bureau of investigation before issuance of a  
36 license. The results of the background investigation including  
37 criminal history information may be released to authorized department



1 personnel as the director deems necessary. The department shall charge  
2 a license holder or license applicant a fee of fifty dollars for each  
3 background investigation conducted.

4 An applicant who makes a false statement of a material fact on the  
5 application may be prosecuted for false swearing as defined by RCW  
6 9A.72.040.

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

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

29 No recoveries on any bond or the execution of any new bond shall  
30 invalidate any bond and no revocation of any license shall effect the  
31 validity of any bond but the total recoveries under any one bond shall  
32 not exceed the amount of the bond.

33 In lieu of any such bond or bonds in total amount as herein fixed,  
34 a licensee may deposit with the state treasurer, under such terms and  
35 conditions as the department may prescribe, a like amount of lawful  
36 money of the United States or bonds or other obligations of the United  
37 States, the state, or any county of the state, of an actual market  
38 value not less than the amount so fixed by the department.

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

17 The department may require a licensee to give a new or additional  
18 surety bond or to deposit additional securities of the character  
19 specified in this section if, in its opinion, the security of the  
20 surety bond theretofore filed by such licensee, or the market value of  
21 the properties deposited as security by the licensee, shall become  
22 impaired or inadequate; and upon the failure of the licensee to give  
23 such new or additional surety bond or to deposit additional securities  
24 within thirty days after being requested so to do by the department,  
25 the department shall forthwith cancel his or her license.

26 (8) The department may waive the requirements of subsection (7) of  
27 this section for licensed distributors if, upon determination by the  
28 department, the licensed distributor has sufficient resources, assets,  
29 other financial instruments, or other means, to adequately make  
30 payments on the estimated monthly motor vehicle fuel tax payments,  
31 penalties, and interest arising out of this chapter. The department  
32 shall adopt rules to administer this subsection.

33 (9) An application for an international fuel tax agreement license  
34 must be made to the department. The application must be filed upon a  
35 form prescribed by the department and contain such information as the  
36 department may require. The department shall charge a fee of ten  
37 dollars per set of international fuel tax agreement decals issued to

1 each applicant or licensee. The department shall transmit the fee to  
2 the state treasurer for deposit in the motor vehicle fund.

3 **Sec. 8.** RCW 82.36.080 and 1998 c 176 s 20 are each amended to read  
4 as follows:

5 (1) It shall be unlawful for any person to engage in business in  
6 this state as any of the following unless the person is the holder of  
7 an uncanceled license issued by the department authorizing the person  
8 to engage in that business:

- 9 (a) Motor vehicle fuel supplier;
- 10 (b) Motor vehicle fuel distributor;
- 11 (c) Motor vehicle fuel exporter;
- 12 (d) Motor vehicle fuel importer; (~~or~~)
- 13 (e) Motor vehicle fuel blender; or
- 14 (f) International fuel tax agreement licensee.

15 (2) A person engaged in more than one activity for which a license  
16 is required must have a separate license classification for each  
17 activity, but a motor vehicle fuel supplier is not required to obtain  
18 a separate license classification for any other activity for which a  
19 license is required.

20 (3) If any person acts as a licensee without first securing the  
21 license required herein the excise tax shall be immediately due and  
22 payable on account of all motor vehicle fuel distributed or used by the  
23 person. The director shall proceed forthwith to determine from the  
24 best available sources, the amount of the tax, and the director shall  
25 immediately assess the tax in the amount found due, together with a  
26 penalty of one hundred percent of the tax, and shall make a certificate  
27 of such assessment and penalty. In any suit or proceeding to collect  
28 the tax or penalty, or both, such certificate shall be prima facie  
29 evidence that the person therein named is indebted to the state in the  
30 amount of the tax and penalty therein stated. Any tax or penalty so  
31 assessed may be collected in the manner prescribed in this chapter with  
32 reference to delinquency in payment of the tax or by an action at law,  
33 which the attorney general shall commence and prosecute to final  
34 determination at the request of the director. The foregoing remedies  
35 of the state shall be cumulative and no action taken pursuant to this  
36 section shall relieve any person from the penal provisions of this  
37 chapter.

1       **Sec. 9.** RCW 82.36.160 and 1998 c 176 s 27 are each amended to read  
2 as follows:

3       Every licensee shall maintain in the office of his or her principal  
4 place of business in this state, for a period of five years, records of  
5 motor vehicle fuel received, sold, distributed, or used by the  
6 licensee, in such form as the director may prescribe, together with  
7 invoices, bills of lading, and other pertinent papers as may be  
8 required under the provisions of this chapter.

9       ~~((Every dealer purchasing motor vehicle fuel taxable under this  
10 chapter for the purpose of resale, shall maintain within this state,  
11 for a period of two years a record of motor vehicle fuels received, the  
12 amount of tax paid to the licensee as part of the purchase price,  
13 together with delivery tickets, invoices, and bills of lading, and such  
14 other records as the director shall require.))~~

15       **Sec. 10.** RCW 82.36.180 and 1998 c 176 s 30 are each amended to  
16 read as follows:

17       The director, or duly authorized agents, may make such examinations  
18 of the records, stocks, facilities, and equipment of any licensee,  
19 ~~((and service stations,))~~ and make such other investigations as deemed  
20 necessary in carrying out the provisions of this chapter. If such  
21 examinations or investigations disclose that any reports of licensees  
22 theretofore filed with the director pursuant to the requirements of  
23 this chapter have shown incorrectly the gallonage of motor vehicle fuel  
24 distributed or the tax ~~((accruing))~~ liability thereon, the director may  
25 make such changes in subsequent reports and payments of such licensees  
26 as deemed necessary to correct the errors disclosed.

27       Every such licensee or such other person not maintaining records in  
28 this state so that an audit of such records may be made by the director  
29 or a duly authorized representative shall be required to make the  
30 necessary records available to the director upon request and at a  
31 designated office within this state; or, in lieu thereof, the director  
32 or a duly authorized representative shall proceed to any out-of-state  
33 office at which the records are prepared and maintained to make such  
34 examination.

35       **Sec. 11.** RCW 82.36.305 and 1965 ex.s. c 79 s 12 are each amended  
36 to read as follows:

1           Any dealer who delivers motor vehicle fuel exclusively for marine  
2 use into the fuel tanks connected to the engine of any marine vessel  
3 (excluding any amphibious vehicle) owned or operated by the purchaser  
4 of the fuel, said dealer having paid the tax on such fuel levied or  
5 directed to be paid as provided in this chapter, (~~either directly by~~  
6 ~~the collection of such tax by the vendor from the dealer or~~)  
7 indirectly by the adding of the amount of the tax to the price of such  
8 fuel, shall be entitled to and shall be refunded the amount of the tax  
9 so paid. The refund shall be applicable only if the person to whom the  
10 dealer sold the fuel holds a permit issued pursuant to the provisions  
11 of RCW 82.36.270 at the time of sale. Each invoice covering such sale  
12 shall have the statement, "Ex Washington Motor Vehicle Fuel Tax,"  
13 clearly marked thereon.

14           In addition to the claim to be filed under RCW 82.36.310 the dealer  
15 shall also file a certificate supporting such refund in such form and  
16 detail as the director may require. The certificate shall contain a  
17 statement signed by the purchaser of the fuel to the effect that the  
18 fuel so purchased will be used solely for marine use. The dealer may  
19 either file a separate certificate obtained from the purchaser for each  
20 delivery of fuel thereto or he may file one certificate covering all  
21 deliveries made to such purchaser during any given calendar month.

22           **Sec. 12.** RCW 82.36.370 and 1998 c 176 s 42 are each amended to  
23 read as follows:

24           (1) A refund shall be made in the manner provided in this chapter  
25 or a credit given to a licensee allowing for the excise tax paid or  
26 accrued on all motor vehicle fuel which is lost or destroyed, while  
27 (~~applicant shall be the owner thereof~~) the licensee was the owner,  
28 through fire, lightning, flood, wind storm, or explosion.

29           (2) A refund shall be made in the manner provided in this chapter  
30 or a credit given allowing for the excise tax paid or accrued on all  
31 motor vehicle fuel of five hundred gallons or more which is lost or  
32 destroyed, while applicant shall be the owner thereof, through leakage  
33 or other casualty except evaporation, shrinkage or unknown causes:  
34 PROVIDED, That the director shall be notified in writing as to the full  
35 circumstances surrounding such loss or destruction and the amount of  
36 the loss or destruction within thirty days from the day of discovery of  
37 such loss or destruction.

1 (3) Recovery for such loss or destruction under either subsection  
2 (1) or (2) must be susceptible to positive proof thereby enabling the  
3 director to conduct such investigation and require such information as  
4 the director may deem necessary.

5 In the event that the director is not satisfied that the fuel was  
6 lost or destroyed as claimed, wherefore required information or proof  
7 as required hereunder is not sufficient to substantiate the accuracy of  
8 the claim, the director may deem as sufficient cause the denial of all  
9 right relating to the refund or credit for the excise tax on motor  
10 vehicle fuel alleged to be lost or destroyed.

11 **Sec. 13.** RCW 82.36.450 and 1995 c 320 s 2 are each amended to read  
12 as follows:

13 ~~((The department of licensing may enter into an agreement with any  
14 federally recognized Indian tribe located on a reservation within this  
15 state regarding the imposition, collection, and use of this state's  
16 motor vehicle fuel tax, or the budgeting or use of moneys in lieu  
17 thereof, upon terms substantially the same as those in the consent  
18 decree entered by the federal district court (Eastern District of  
19 Washington) in *Confederated Tribes of the Colville Reservation v. DOL,*  
20 *et al.*, District Court No. *CY 92-248 JLO.*))~~ (1) The governor may enter  
21 into an agreement with any federally recognized Indian tribe located on  
22 a reservation within this state regarding payment of motor vehicle fuel  
23 taxes included in the price of fuel delivered to a retail station owned  
24 and operated by a tribe, tribal enterprise, or tribal member licensed  
25 by the tribe to operate a retail station located on reservation or  
26 trust property. The agreement must be between the governor and the  
27 tribe, and must provide that:

28 (a) The tribal retailer will pass on to the retail customer one  
29 hundred percent of any state fuel tax included in the price of the  
30 motor vehicle fuel;

31 (b) The tribal retailer will acquire all motor vehicle fuel only  
32 from persons or companies who are properly licensed in Washington state  
33 as a motor vehicle fuel distributor, supplier, or importer in  
34 accordance with this chapter, or a tribal distributor, supplier, or  
35 importer lawfully doing business in Indian country;

36 (c) The provisions of this section do not repeal existing  
37 state/tribal fuel tax agreements or consent decrees in existence on the

1 effective date of this act, but the state and the tribe may agree to  
2 substitute a compact negotiated under this section for an existing  
3 agreement or consent decree.

4 (2) Any new compact agreements shall be approved by the legislature  
5 prior to enactment.

6 **Sec. 14.** RCW 82.38.030 and 2005 c 314 s 102 are each amended to  
7 read as follows:

8 (1) There is hereby levied and imposed upon special fuel (~~(users)~~)  
9 licensees a tax at the rate of twenty-three cents per gallon of special  
10 fuel, or each one hundred cubic feet of compressed natural gas,  
11 measured at standard pressure and temperature.

12 (2) Beginning July 1, 2003, an additional and cumulative tax rate  
13 of five cents per gallon of special fuel, or each one hundred cubic  
14 feet of compressed natural gas, measured at standard pressure and  
15 temperature shall be imposed on special fuel (~~(users)~~) licensees. This  
16 subsection (2) expires when the bonds issued for transportation 2003  
17 projects are retired.

18 (3) Beginning July 1, 2005, an additional and cumulative tax rate  
19 of three cents per gallon of special fuel, or each one hundred cubic  
20 feet of compressed natural gas, measured at standard pressure and  
21 temperature shall be imposed on special fuel (~~(users)~~) licensees.

22 (4) Beginning July 1, 2006, an additional and cumulative tax rate  
23 of three cents per gallon of special fuel, or each one hundred cubic  
24 feet of compressed natural gas, measured at standard pressure and  
25 temperature shall be imposed on special fuel (~~(users)~~) licensees.

26 (5) Beginning July 1, 2007, an additional and cumulative tax rate  
27 of two cents per gallon of special fuel, or each one hundred cubic feet  
28 of compressed natural gas, measured at standard pressure and  
29 temperature shall be imposed on special fuel (~~(users)~~) licensees.

30 (6) Beginning July 1, 2008, an additional and cumulative tax rate  
31 of one and one-half cents per gallon of special fuel, or each one  
32 hundred cubic feet of compressed natural gas, measured at standard  
33 pressure and temperature shall be imposed on special fuel (~~(users)~~)  
34 licensees.

35 (7) Taxes are imposed when:

36 (a) Special fuel is removed in this state from a terminal if the  
37 special fuel is removed at the rack unless the removal is to a licensed

1 exporter for direct delivery to a destination outside of the state, or  
2 the removal is to a special fuel distributor for direct delivery to an  
3 international fuel tax agreement licensee under RCW 82.38.320;

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

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

8 (ii) The removal is at the refinery rack unless the removal is to  
9 a licensed exporter for direct delivery to a destination outside of the  
10 state, or the removal is to a special fuel distributor for direct  
11 delivery to an international fuel tax agreement licensee under RCW  
12 82.38.320;

13 (c) Special fuel enters into this state (~~for sale, consumption,~~  
14 ~~use, or storage~~), unless the fuel enters this state for direct  
15 delivery to an international fuel tax agreement licensee under RCW  
16 82.38.320, if either of the following applies:

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

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

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

23 (e) Blended special fuel is removed or sold in this state by the  
24 blender of the fuel. The number of gallons of blended special fuel  
25 subject to tax is the difference between the total number of gallons of  
26 blended special fuel removed or sold and the number of gallons of  
27 previously taxed special fuel used to produce the blended special fuel;

28 (f) Dyed special fuel is used on a highway, as authorized by the  
29 internal revenue code, unless the use is exempt from the special fuel  
30 tax;

31 (g) Dyed special fuel is held for sale, sold, used, or is intended  
32 to be used in violation of this chapter;

33 (h) Special fuel purchased by an international fuel tax agreement  
34 licensee under RCW 82.38.320 is used on a highway; and

35 (i) Special fuel is sold by a licensed special fuel supplier to a  
36 special fuel distributor, special fuel importer, or special fuel  
37 blender and the special fuel is not removed from the bulk transfer-  
38 terminal system.



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

13 **Sec. 15.** RCW 82.38.032 and 1998 c 176 s 52 are each amended to  
14 read as follows:

15 The tax under RCW 82.38.030, if not previously imposed and paid,  
16 must be paid over to the department by special fuel (~~((users))~~) licensees  
17 and persons (~~((licensed under the international fuel tax agreement or))~~)  
18 operating motor vehicles under other fuel tax reciprocity agreements  
19 entered into with the state of Washington, on the use of special fuel  
20 to operate motor vehicles on the highways of this state, unless the use  
21 is exempt from the tax under this chapter.

22 **Sec. 16.** RCW 82.38.035 and 2005 c 314 s 107 are each amended to  
23 read as follows:

24 (1) A licensed supplier shall (~~((remit))~~) be liable for and pay tax  
25 on special fuel to the department as provided in RCW 82.38.030(7)(a).  
26 On a two-party exchange, or buy-sell agreement between two licensed  
27 suppliers, the receiving exchange partner or buyer shall (~~((remit))~~) be  
28 liable for and pay the tax.

29 (2) A licensed refiner shall (~~((remit))~~) be liable for and pay tax to  
30 the department on special fuel removed from a refinery as provided in  
31 RCW 82.38.030(7)(b).

32 (3) (~~((An))~~) A licensed importer shall (~~((remit))~~) be liable for and  
33 pay tax to the department on special fuel imported into this state as  
34 provided in RCW 82.38.030(7)(c).

35 (4) A licensed blender shall (~~((remit))~~) be liable for and pay tax to

1 the department on the removal or sale of blended special fuel as  
2 provided in RCW 82.38.030(7)(e).

3 (5) A licensed dyed special fuel user shall (~~remit~~) be liable for  
4 and pay tax to the department on the use of dyed special fuel as  
5 provided in RCW 82.38.030(7)(f).

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

9 **Sec. 17.** RCW 82.38.070 and 1998 c 176 s 58 are each amended to  
10 read as follows:

11 A special fuel supplier is entitled to a credit of the tax paid  
12 over to the department on those sales of special fuel for which the  
13 supplier has received no consideration from or on behalf of the  
14 purchaser licensee. The amount of the tax credit shall not exceed the  
15 amount of tax imposed by this chapter on such sales. If a credit has  
16 been granted under this section, any amounts collected for application  
17 against the accounts on which such a credit is based shall be reported  
18 on a subsequent return filed after such collection, and the amount of  
19 credit received by the supplier based upon the collected amount shall  
20 be returned to the department. In the event the credit has not been  
21 paid, the amount of the credit requested by the supplier shall be  
22 adjusted by the department to reflect the decrease in the amount on  
23 which the claim is based.

24 **Sec. 18.** RCW 82.38.130 and 1998 c 176 s 65 are each amended to  
25 read as follows:

26 The department may revoke the license of any licensee for any of  
27 the grounds constituting cause for denial of a license set forth in RCW  
28 82.38.120 or for other reasonable cause. Before revoking such license  
29 the department shall notify the licensee to show cause within twenty  
30 days of the date of the notice why the license should not be revoked:  
31 PROVIDED, That at any time prior to and pending such hearing the  
32 department may, in the exercise of reasonable discretion, suspend such  
33 license.

34 The department shall cancel any special fuel license immediately  
35 upon surrender thereof by the holder.

1 Any surety on a bond furnished by a licensee as provided in this  
2 chapter shall be released and discharged from any and all liability to  
3 the state accruing on such bond after the expiration of forty-five days  
4 from the date which such surety shall have lodged with the department  
5 a written request to be released and discharged, but this provision  
6 shall not operate to relieve, release, or discharge the surety from any  
7 liability already accrued or which shall accrue before the expiration  
8 of the forty-five day period. The department shall promptly, upon  
9 receiving any such request, notify the licensee who furnished the bond,  
10 and unless the licensee, on or before the expiration of the forty-five  
11 day period, files a new bond, in accordance with this section, the  
12 department ((forthwith)) shall cancel the ((~~special fuel dealer's or~~  
13 ~~special fuel user's~~)) license.

14 The department may require a new or additional surety bond of the  
15 character specified in RCW 82.38.020(3) if, in its opinion, the  
16 security of the surety bond therefor filed by such licensee, shall  
17 become impaired or inadequate. Upon failure of the licensee to give  
18 such new or additional surety bond within forty-five days after being  
19 requested to do so by the department, or after he or she shall fail or  
20 refuse to file reports and remit or pay taxes at the intervals fixed by  
21 the department, the department forthwith shall cancel his or her  
22 license.

23 **Sec. 19.** RCW 82.38.140 and 1998 c 176 s 66 are each amended to  
24 read as follows:

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

32 (a) The date of each receipt;

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

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

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

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

3 (f) The number of gallons sold, delivered, or used for any purpose  
4 not subject to the tax imposed in this chapter;

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

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

10 (2)(a) All international fuel tax agreement licensees and dyed  
11 special fuel users authorized to use dyed special fuel on highway in  
12 vehicles licensed for highway operation shall maintain detailed mileage  
13 records on an individual vehicle basis.

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

16 (c) In the absence of operating records that show both on-highway  
17 and off-highway usage of special fuel on a daily basis for each  
18 vehicle, fuel consumption must be computed under RCW 82.38.060.

19 (3) The department may require a person other than a licensee  
20 engaged in the business of selling, purchasing, distributing, storing,  
21 transporting, or delivering special fuel to submit periodic reports to  
22 the department regarding the disposition of the fuel. The reports must  
23 be on forms prescribed by the department and must contain such  
24 information as the department may require.

25 (4) Every person operating any conveyance for the purpose of  
26 hauling, transporting, or delivering special fuel in bulk shall have  
27 and possess during the entire time the person is hauling special fuel,  
28 an invoice, bill of sale, or other statement showing the name, address,  
29 and license number of the seller or consigner, the destination, name,  
30 and address of the purchaser or consignee, license number, if  
31 applicable, and the number of gallons. The person hauling such special  
32 fuel shall at the request of any law enforcement officer or authorized  
33 representative of the department, or other person authorized by law to  
34 inquire into, or investigate those types of matters, produce for  
35 inspection such invoice, bill of sale, or other statement and shall  
36 permit such official to inspect and gauge the contents of the vehicle.

1       **Sec. 20.** RCW 82.38.180 and 1998 c 176 s 71 are each amended to  
2 read as follows:

3       Any person who has purchased special fuel on which tax has been  
4 paid (~~(a special fuel tax either directly or to the vendor from whom it~~  
5 ~~was purchased)) may file a claim with the department for a refund of  
6 the tax (~~(so paid and shall be reimbursed and repaid the amount of)~~)  
7 for:~~

8       (1) (~~(Any)~~) Taxes previously paid on special fuel used for purposes  
9 other than for the propulsion of motor vehicles upon the public  
10 highways in this state.

11       (2) (~~(Any)~~) Taxes previously paid on special fuel exported for use  
12 outside of this state. Special fuel carried from this state in the  
13 fuel tank of a motor vehicle is deemed to be exported from this state.  
14 Special fuel distributed to a federally recognized Indian tribal  
15 reservation located within the state of Washington is not considered  
16 exported outside this state.

17       (3) (~~(Any)~~) Tax, penalty, or interest erroneously or illegally  
18 collected or paid.

19       (4) (~~(Any)~~) Taxes previously paid on all special fuel which is lost  
20 or destroyed, while applicant shall be the owner thereof, through fire,  
21 lightning, flood, wind storm, or explosion.

22       (5) (~~(Any)~~) Taxes previously paid on all special fuel of five  
23 hundred gallons or more which is lost or destroyed while applicant  
24 shall be the owner thereof, through leakage or other casualty except  
25 evaporation, shrinkage, or unknown causes.

26       (6) (~~(Any)~~) Taxes previously paid on special fuel that is  
27 inadvertently mixed with dyed special fuel.

28       Recovery for such loss or destruction under either subsection (4),  
29 (5), or (6) of this section must be susceptible to positive proof  
30 thereby enabling the department to conduct such investigation and  
31 require such information as (~~(they)~~) it may deem necessary. In the  
32 event that the department is not satisfied that the fuel was lost,  
33 destroyed, or contaminated as claimed because information or proof as  
34 required hereunder is not sufficient to substantiate the accuracy of  
35 the claim, (~~(they)~~) it may deem such as sufficient cause to deny all  
36 right relating to the refund or credit for the excise tax paid on  
37 special fuel alleged to be lost or destroyed.

1 No refund or claim for credit shall be approved by the department  
2 unless the gallons of special fuel claimed as nontaxable satisfy the  
3 conditions specifically set forth in this section and the nontaxable  
4 event or use occurred during the period covered by the refund claim.  
5 Refunds or claims for credit (~~by sellers or users of special fuel~~)  
6 shall not be allowed for anticipated nontaxable use or events.

7 **Sec. 21.** RCW 82.38.310 and 1995 c 320 s 3 are each amended to read  
8 as follows:

9 ~~((The department of licensing may enter into an agreement with any  
10 federally recognized Indian tribe located on a reservation within this  
11 state regarding the imposition, collection, and use of this state's  
12 special fuel tax, or the budgeting or use of moneys in lieu thereof,  
13 upon terms substantially the same as those in the consent decree  
14 entered by the federal district court (Eastern District of Washington)  
15 in *Confederated Tribes of the Colville Reservation v. DOL, et al.*,  
16 District Court No. CY 92-248-JLO.))~~ (1) The governor may enter into an  
17 agreement with any federally recognized Indian tribe located on a  
18 reservation within this state regarding payment of special fuel taxes  
19 included in the price of fuel delivered to a retail station owned and  
20 operated by a tribe, tribal enterprise, or tribal member licensed by  
21 the tribe to operate a retail station located on reservation or trust  
22 property. The agreement must be between the governor and the tribe,  
23 and must provide that:

24 (a) The tribal retailer will pass on to the retail customer one  
25 hundred percent of any state fuel tax included in the price of the  
26 special fuel;

27 (b) The tribal retailer will acquire all special fuel only from  
28 persons or companies who are properly licensed in Washington state as  
29 a special fuel distributor, supplier, or importer in accordance with  
30 this chapter, or a tribal distributor, supplier, or importer lawfully  
31 doing business in Indian country;

32 (c) The provisions of this section do not repeal existing  
33 state/tribal fuel tax agreements or consent decrees in existence on the  
34 effective date of this act, but the state and the tribe may agree to  
35 substitute a compact negotiated under this section for an existing  
36 agreement or consent decree.

1       (2) Any new compact agreements shall be approved by the legislature  
2 prior to enactment.

3       NEW SECTION. Sec. 22. (1) The Washington state senate and house  
4 of representatives shall form a work group to study and recommend  
5 changes to the fuel tax collection statutes, chapters 82.36 and 82.38  
6 RCW. The work group recommendations shall include, but not be limited  
7 to, a review of the existing gas tax collection scheme as it compares  
8 to other states, particularly Kansas, as well as a review of the  
9 existing gas tax payment methodology and recommend changes, if any are  
10 necessary.

11       (2) The work group shall include the following: At least two  
12 members from each of the house of representatives and the senate,  
13 including representatives from both political parties in both bodies,  
14 representatives from the office of financial management, the department  
15 of licensing, the Washington oil marketers association, and the western  
16 states petroleum association.

17       (3) The work group shall report its findings to the transportation  
18 committees of the legislature by December 1, 2006.

19       NEW SECTION. Sec. 23. The following acts or parts of acts are  
20 each repealed:

21       (1) RCW 82.36.044 (Credit for worthless accounts receivable--  
22 Report--Adjustment) and 1998 c 176 s 15;

23       (2) RCW 82.36.373 (Refund for worthless accounts receivable--  
24 Rules--Apportionment after receipt) and 1998 c 176 s 43;

25       (3) RCW 82.36.407 (Tax liability of user--Payment--Exceptions) and  
26 1998 c 176 s 48;

27       (4) RCW 82.38.070 (Credit for sales for which no consideration was  
28 received--Report--Adjustment) and 1998 c 176 s 58, 1990 c 250 s 83, &  
29 1971 ex.s. c 175 s 8;

30       (5) RCW 82.38.071 (Refund for worthless accounts receivable--  
31 Rules--Apportionment after receipt) and 1998 c 176 s 59; and

32       (6) RCW 82.38.285 (Tax liability of user--Exceptions) and 1998 c  
33 176 s 81.

34       NEW SECTION. Sec. 24. If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 25.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of the  
6 state government and its existing public institutions, and takes effect  
7 immediately."

8 Correct the title.

EFFECT: Restores the fuel tax law, as it currently exists,  
regarding distributors, except repeals bad debt provisions for all  
licensees. Modifies tribal compacting language by removing requirement  
that tribes must spend fuel tax proceeds on essential government  
services; removing the annual report requirement; and requiring compact  
agreements to be approved by the legislature. Removes technical clean-  
up provisions unrelated to the purpose of bill.

--- END ---