S-4346.1

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**SUBSTITUTE SENATE BILL 6193**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Transportation (originally sponsored by Senator King)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) It is the intent of the legislature that, in the absence of a tribal fuel tax agreement, as referenced in RCW 82.38.310, applicable taxes imposed by this chapter be collected on motor vehicle fuel sold by a business licensed by an Indian tribal organization to any person who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place consistent with collection of these taxes generally within the state. The legislature finds that applicable collection and enforcement measures under this chapter are reasonably necessary to prevent fraudulent transactions and place a minimal burden on the Indian tribal organization pursuant to the United States supreme court's decision in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). For the purposes of this subsection: "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country; and "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The terminal operator is not a licensee;

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

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

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

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

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

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

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

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

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

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

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

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

**--- END ---**