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ENGROSSED SENATE BILL 5411

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State of Washington

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By Senators Vognild, Prince, Prentice, Drew, Sheldon and Sellar; by request of Department of Licensing

Read first time 01/27/93. Referred to Committee on Transportation.

1 AN ACT Relating to fuel taxes; and amending RCW 82.36.010,  
2 82.36.030, 82.36.110, 82.36.230, 82.37.020, 82.38.090, and 46.10.170.

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

4 **Sec. 1.** RCW 82.36.010 and 1991 c 339 s 13 are each amended to read  
5 as follows:

6 For the purposes of this chapter:

7 (1) "Motor vehicle" means every vehicle that is in itself a self-  
8 propelled unit, equipped with solid rubber, hollow-cushion rubber, or  
9 pneumatic rubber tires and capable of being moved or operated upon a  
10 public highway, except motor vehicles used as motive power for or in  
11 conjunction with farm implements and machines or implements of  
12 husbandry;

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

17 (3) "Distributor" means every person who refines, manufactures,  
18 produces, or compounds motor vehicle fuel and sells, distributes, or in  
19 any manner uses it in this state; also every person engaged in business

1 as a bona fide wholesale merchant dealing in motor vehicle fuel who  
2 either acquires it within the state from any person refining it within  
3 or importing it into the state, on which the tax has not been paid, or  
4 imports it into this state and sells, distributes, or in any manner  
5 uses it in this state; also every person who acquires motor vehicle  
6 fuel, on which the tax has not been paid, and exports it by commercial  
7 motor vehicle as defined in RCW 82.37.020 to a location outside the  
8 state. For the purposes of liability for a county fuel tax,  
9 "distributor" has that meaning defined in the county ordinance imposing  
10 the tax;

11 (4) "Service station" means a place operated for the purpose of  
12 delivering motor vehicle fuel into the fuel tanks of motor vehicles;

13 (5) "Department" means the department of licensing;

14 (6) "Director" means the director of licensing;

15 (7) "Dealer" means any person engaged in the retail sale of liquid  
16 motor vehicle fuels;

17 (8) "Person" means every natural person, firm, partnership,  
18 association, or private or public corporation;

19 (9) "Highway" means every way or place open to the use of the  
20 public, as a matter of right, for purposes of vehicular travel;

21 (10) "Broker" means every person, other than a distributor, engaged  
22 in business as a broker, jobber, or wholesale merchant dealing in motor  
23 vehicle fuel or other petroleum products used or usable in propelling  
24 motor vehicles, or in other petroleum products which may be used in  
25 blending, compounding, or manufacturing of motor vehicle fuel;

26 (11) "Producer" means every person, other than a distributor,  
27 engaged in the business of producing motor vehicle fuel or other  
28 petroleum products used in, or which may be used in, the blending,  
29 compounding, or manufacturing of motor vehicle fuel;

30 (12) "Distribution" means all withdrawals of motor vehicle fuel for  
31 delivery to others, to retail service stations, or to unlicensed bulk  
32 storage plants;

33 (13) "Bulk storage plant" means, pursuant to the licensing  
34 provisions of RCW 82.36.070, any plant, under the control of the  
35 distributor, used for the storage of motor vehicle fuel to which no  
36 retail outlets are directly connected by pipe lines;

37 (14) "Marine fuel dealer" means any person engaged in the retail  
38 sale of liquid motor vehicle fuel whose place of business and or sale  
39 outlet is located upon a navigable waterway;

1 (15) "Alcohol" means alcohol that is produced from renewable  
2 resources;

3 (16) "Electronic funds transfer" means any transfer of funds, other  
4 than a transaction originated by check, draft, or similar paper  
5 instrument, which is initiated through an electronic terminal,  
6 telephonic instrument, or computer or magnetic tape so as to order,  
7 instruct, or authorize a financial institution to debit or credit an  
8 account.

9 **Sec. 2.** RCW 82.36.030 and 1991 c 339 s 14 are each amended to read  
10 as follows:

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

21 If any distributor fails to file such report, the (~~director~~)  
22 department shall proceed forthwith to determine from the best available  
23 sources, the amount of motor vehicle fuel sold, distributed, or used by  
24 such distributor for the unreported period, and said determination  
25 shall be presumed to be correct for that period until proved by  
26 competent evidence to be otherwise. The (~~director~~) department shall  
27 immediately assess the excise tax in the amount so determined, adding  
28 thereto a penalty of up to ten percent for failure to report. Such  
29 penalty shall be cumulative of other penalties herein provided. All  
30 statements filed with the (~~director~~) department, as required in this  
31 section, shall be public records.

32 If any distributor establishes by a fair preponderance of evidence  
33 that his or her failure to file a report by the due date was  
34 attributable to reasonable cause and was not intentional or willful,  
35 the department may waive the penalty imposed by this section.

36 **Sec. 3.** RCW 82.36.110 and 1961 c 15 s 82.36.110 are each amended  
37 to read as follows:

1 If any person liable for the tax imposed by this chapter fails to  
2 pay the same, the amount thereof, including any interest, penalty, or  
3 addition to such tax, together with any costs that may accrue in  
4 addition thereto, shall be a lien in favor of the state upon all  
5 franchises, property, and rights to property, whether real or personal,  
6 then belonging to or thereafter acquired by such person, whether such  
7 property is employed by such person in the prosecution of business or  
8 is in the hands of a trustee, or receiver, or assignee for the benefit  
9 of creditors, from the date the taxes were due and payable, until the  
10 amount of the lien is paid or the property sold in payment thereof.

11 The lien shall have priority over any lien or encumbrance  
12 whatsoever, except the lien of other state taxes having priority by  
13 law, and except that such lien shall not be valid as against any bona  
14 fide mortgagee, pledgee, judgment creditor, or purchaser whose rights  
15 have attached prior to the time the ((~~director~~)) department has filed  
16 notice of such lien in the office of the county auditor of the county  
17 in which the principal place of business of the taxpayer is located.

18 The auditor, upon presentation of a notice of lien, and without  
19 requiring the payment of any fee, shall file and index it in the manner  
20 now provided for deeds and other conveyances except that he shall not  
21 be required to include, in the index, any description of the property  
22 affected by the lien. The lien shall continue until the amount of the  
23 tax, together with any penalties and interest subsequently accruing  
24 thereon, is paid. The ((~~director~~)) department may issue a certificate  
25 of release of lien when the amount of the tax, together with any  
26 penalties and interest subsequently accruing thereon, has been  
27 satisfied, and such release may be recorded with the auditor of the  
28 county in which the notice of lien has been filed.

29 The ((~~director~~)) department shall furnish to any person applying  
30 therefor a certificate showing the amount of all liens for motor  
31 vehicle fuel tax, penalties and interest that may be of record in the  
32 files of the ((~~director~~)) department against any person under the  
33 provisions of this chapter.

34 **Sec. 4.** RCW 82.36.230 and 1989 c 193 s 1 are each amended to read  
35 as follows:

36 The provisions of this chapter requiring the payment of taxes do  
37 not apply to motor vehicle fuel imported into the state in interstate  
38 or foreign commerce and intended to be sold while in interstate or

1 foreign commerce, nor to motor vehicle fuel exported from this state by  
2 a qualified distributor(~~(, nor to sales by a distributor of motor~~  
3 ~~vehicle fuel for export to another state or country by the purchaser,))  
4 nor to any motor vehicle fuel sold by a qualified distributor to the  
5 armed forces of the United States or to the national guard for use  
6 exclusively in ships or for export from this state. The distributor  
7 shall report such imports, exports and sales to the ~~((director))~~  
8 department at such times, on such forms, and in such detail as the  
9 ~~((director))~~ department may require, otherwise the exemption granted in  
10 this section is null and void, and all fuel shall be considered  
11 distributed in this state fully subject to the provisions of this  
12 chapter. Each invoice covering exempt sales shall have the statement  
13 "Ex Washington Motor Vehicle Fuel Tax" clearly marked thereon.~~

14 To claim any exemption from taxes under this section on account of  
15 sales by a licensed distributor of motor vehicle fuel for export, the  
16 purchaser shall obtain from the selling distributor, and such selling  
17 distributor must furnish the purchaser, an invoice giving such details  
18 of the sale for export as the ~~((director))~~ department may require,  
19 copies of which shall be furnished the department and the entity of the  
20 state or foreign jurisdiction of destination which is charged by the  
21 laws of that state or foreign jurisdiction with the control or  
22 monitoring, or both, of the sales or movement of motor vehicle fuel in  
23 that state or foreign jurisdiction.

24 To claim any exemption from taxes under this section on account of  
25 sales of motor vehicle fuel to the armed forces of the United States or  
26 to the national guard, the distributor shall be required to execute an  
27 exemption certificate in such form as shall be furnished by the  
28 ~~((director))~~ department, containing a certified statement by an  
29 authorized officer of the armed forces having actual knowledge of the  
30 purpose for which the exemption is claimed. Any claim for exemption  
31 based on such sales shall be made by the distributor within six months  
32 of the date of sale. The provisions of this section exempting motor  
33 vehicle fuel sold to the armed forces of the United States or to the  
34 national guard from the tax imposed hereunder do not apply to any motor  
35 vehicle fuel sold to contractors purchasing such fuel either for their  
36 own account or as the agents of the United States or the national guard  
37 for use in the performance of contracts with the armed forces of the  
38 United States or the national guard.

1       The ((director)) department may at any time require of any  
2 distributor any information the ((director)) department deems necessary  
3 to determine the validity of the claimed exemption, and failure to  
4 supply such data will constitute a waiver of all right to the exemption  
5 claimed. The ((director)) department is hereby empowered with full  
6 authority to promulgate rules and regulations and to prescribe forms to  
7 be used by distributors in reporting to the ((director)) department so  
8 as to prevent evasion of the tax imposed by this chapter.

9       Upon request from the officials to whom are entrusted the  
10 enforcement of the motor fuel tax law of any other state, the District  
11 of Columbia, the United States, its territories and possessions, the  
12 provinces, or the Dominion of Canada, the ((director)) department may  
13 forward to such officials any information which the ((director))  
14 department may have relative to the import or export of any motor  
15 vehicle fuel by any distributor: PROVIDED, That such governmental unit  
16 furnish like information to this state.

17       **Sec. 5.** RCW 82.37.020 and 1983 c 3 s 223 are each amended to read  
18 as follows:

19       The following words, terms, and phrases when used in this chapter  
20 have the meanings ascribed to them in this section except where the  
21 context clearly indicates a different meaning:

22       (1) "Commercial motor vehicle" means any motor vehicle used ((or  
23 ~~maintained for the transportation of persons for hire, or any vehicle~~  
24 ~~designed, used or maintained primarily for the transportation of~~  
25 ~~commodities, merchandise, produce, freight and animals)), designed, or  
26 maintained for transportation of persons or property and (a) having two  
27 axles and a gross vehicle weight or registered gross vehicle weight  
28 exceeding twenty-six thousand pounds; or (b) having three or more axles  
29 regardless of weight; or (c) is used in combination, when the weight of  
30 such combination exceeds twenty-six thousand pounds gross vehicle  
31 weight. "Commercial motor vehicle" does not include recreational  
32 vehicles.~~

33       (2) "Motor carrier" means and includes a natural person,  
34 individual, partnership, firm, association, or private or public  
35 corporation, which is engaged in interstate commerce and which operates  
36 or causes to be operated on any highway in this state any commercial  
37 motor vehicle.

1 (3) "Operations", when applied to a motor carrier, means operations  
2 of all commercial motor vehicles, whether loaded or empty, whether for  
3 compensation or not for compensation, and whether owned by or leased to  
4 the motor carrier who operates them or causes them to be operated into  
5 or out of or through this state.

6 (4) "Motor vehicle fuel" means gasoline or any other inflammable  
7 liquids, by whatsoever name such liquid may be known or sold, the use  
8 of which is as fuel for the propulsion of commercial motor vehicles  
9 except fuel as defined in chapter 82.38 RCW.

10 (5) "Use" means and includes the consumption of motor vehicle fuel  
11 by any motor carrier in a commercial motor vehicle for the propulsion  
12 thereof upon the public highways of this state.

13 (6) "Motor vehicle fuel importer for use" means and includes any  
14 motor carrier importing motor vehicle fuel into this state in the fuel  
15 supply tank or tanks of any commercial motor vehicle for use in  
16 propelling said vehicle upon the highways of this state.

17 (7) "Public highways" means and includes every way, lane, road,  
18 street, boulevard, and every way or place open as a matter of right to  
19 public vehicular travel both inside and outside the limits of cities  
20 and towns.

21 (8) "Director" means the director of licensing.

22 **Sec. 6.** RCW 82.38.090 and 1991 c 339 s 6 are each amended to read  
23 as follows:

24 It shall be unlawful for any person to act as a special fuel  
25 dealer, a special fuel supplier or a special fuel user in this state  
26 unless such person is the holder of an uncanceled special fuel  
27 dealer's, a special fuel supplier's or a special fuel user's license  
28 issued to him by the department. A special fuel supplier's license  
29 authorizes a person to sell special fuel without collecting the special  
30 fuel tax to other suppliers and dealers holding valid special fuel  
31 licenses.

32 A special fuel dealer's license authorizes a person to deliver  
33 previously untaxed special fuel into the fuel supply tanks of motor  
34 vehicles, collect the special fuel tax on behalf of the state at the  
35 time of delivery, and remit the taxes collected to the state as  
36 provided herein. A licensed special fuel dealer may also deliver  
37 untaxed special fuel into bulk storage facilities of a licensed special  
38 fuel user without collecting the special fuel tax. Special fuel

1 dealers and suppliers, when making deliveries of special fuel into bulk  
2 storage to any person not holding a valid special fuel license must  
3 collect the special fuel tax at time of delivery, unless the person to  
4 whom the delivery is made is specifically exempted from the tax as  
5 provided herein.

6 A special fuel user's license authorizes a person to purchase  
7 special fuel into bulk storage for use in motor vehicles either on or  
8 off the public highways of this state without payment of the special  
9 fuel tax at time of purchase. Holders of special fuel licenses are all  
10 subject to the bonding, reporting, tax payment, and record-keeping  
11 provisions of this chapter. All purchases of special fuel by a  
12 licensed special fuel user directly into the fuel supply tank of a  
13 motor vehicle are subject to the special fuel tax at time of purchase  
14 (~~unless the purchase is made from an unattended keylock metered pump,~~  
15 ~~cardtrol, or such similar dispensing devices~~). Special authorization  
16 may be given to farmers, logging companies, and construction companies  
17 to purchase special fuel directly into the supply tanks of nonhighway  
18 equipment or into portable slip tanks for nonhighway use without  
19 payment of the special fuel tax. Persons utilizing special fuel for  
20 heating purposes only are not required to be licensed.

21 Special fuel users operating motor vehicles in interstate commerce  
22 having two axles and a gross vehicle weight or registered gross vehicle  
23 weight not exceeding twenty-six thousand pounds are not required to be  
24 licensed. Special fuel users operating motor vehicles in interstate  
25 commerce having two axles and a gross vehicle weight or registered  
26 gross vehicle weight exceeding twenty-six thousand pounds, or having  
27 three or more axles regardless of weight, or a combination of vehicles,  
28 when the combination exceeds twenty-six thousand pounds gross vehicle  
29 weight, must comply with the licensing and reporting requirements of  
30 this chapter. A copy of the license must be carried in each motor  
31 vehicle entering this state from another state or province.

32 **Sec. 7.** RCW 46.10.170 and 1990 c 42 s 117 are each amended to read  
33 as follows:

34 From time to time, but at least once each (~~biennium~~) four years,  
35 the department shall determine the amount or proportion of moneys paid  
36 to it as motor vehicle fuel tax, based on the tax rate in effect  
37 January 1, 1990, which is tax on snowmobile fuel. Such determination  
38 may be made in any manner which is, in the judgment of the director,



1 reasonable, but the manner used to make such determination shall be  
2 reported at the end of each (~~biennium~~) four-year period to the  
3 legislature. To offset the actual cost of making such determination  
4 the treasurer shall retain in, and the department is authorized to  
5 expend from, the motor vehicle fund a sum equal to such actual cost.

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