

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5411

53rd Legislature
1993 Regular Session

Passed by the Senate March 17, 1993
YEAS 49 NAYS 0

President of the Senate

Passed by the House April 8, 1993
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5411** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5411

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

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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