
ENGROSSED HOUSE BILL 1407

State of Washington

57th Legislature

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By Representatives Fisher and Mitchell; by request of Department of Licensing

Read first time 01/25/2001. Referred to Committee on Transportation.

1 AN ACT Relating to the taxation of fuel; and amending RCW
2 82.36.010, 82.36.020, 82.36.026, 82.38.020, 82.38.030, and 82.38.035.

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

4 **Sec. 1.** RCW 82.36.010 and 1998 c 176 s 6 are each amended to read
5 as follows:

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

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

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

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

18 (4) "Bulk transfer-terminal system" means the motor vehicle fuel
19 distribution system consisting of refineries, pipelines, vessels, and

1 terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or
2 terminal is in the bulk transfer-terminal system. Motor vehicle fuel
3 in the fuel tank of an engine, motor vehicle, or in a railcar, trailer,
4 truck, or other equipment suitable for ground transportation is not in
5 the bulk transfer-terminal system.

6 (5) "Dealer" means a person engaged in the retail sale of motor
7 vehicle fuel.

8 (6) "Department" means the department of licensing.

9 (7) "Director" means the director of licensing.

10 (8) "Evasion" or "evade" means to diminish or avoid the
11 computation, assessment, or payment of authorized taxes or fees
12 through:

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

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

17 (9) "Export" means to obtain motor vehicle fuel in this state for
18 sales or distribution outside the state.

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

21 (11) "Import" means to bring motor vehicle fuel into this state by
22 a means of conveyance other than the fuel supply tank of a motor
23 vehicle.

24 (12) "Licensee" means a person holding a license issued under this
25 chapter.

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

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

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

34 (16) "Motor vehicle fuel exporter" means a person who purchases
35 motor vehicle fuel in this state and directly exports the fuel by a
36 means other than the bulk transfer-terminal system to a destination
37 outside of the state. If the exporter of record is acting as an agent,
38 the person for whom the agent is acting is the exporter. If there is

1 no exporter of record, the owner of the motor fuel at the time of
2 exportation is the exporter.

3 (17) "Motor vehicle fuel importer" means a person who imports motor
4 vehicle fuel into the state by a means other than the bulk transfer-
5 terminal system. If the importer of record is acting as an agent, the
6 person for whom the agent is acting is the importer. If there is no
7 importer of record, the owner of the motor vehicle fuel at the time of
8 importation is the importer.

9 (18) "Motor vehicle fuel supplier" means a person who (~~owns and~~
10 ~~stores motor vehicle fuel in a terminal facility or who refines and~~
11 ~~stores motor vehicle fuel at a refinery~~) holds a federal certificate
12 of registry that is issued under the internal revenue code and
13 authorizes the person to enter into federal tax-free transactions on
14 motor vehicle fuel in the bulk transfer-terminal system.

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

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

22 (21) "Person" means a natural person, fiduciary, association, or
23 corporation. The term "person" as applied to an association means and
24 includes the partners or members thereof, and as applied to
25 corporations, the officers thereof.

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

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

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

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

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

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

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

16 **Sec. 2.** RCW 82.36.020 and 2000 c 103 s 13 are each amended to read
17 as follows:

18 (1) There is hereby levied and imposed upon motor vehicle fuel
19 users a tax at the rate computed in the manner provided in RCW
20 82.36.025 on each gallon of motor vehicle fuel.

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

23 (a) Motor vehicle fuel is removed in this state from a terminal if
24 the motor vehicle fuel is removed at the rack unless the removal is to
25 a licensed exporter for direct delivery to a destination outside of the
26 state;

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

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

32 (ii) The removal is at the refinery rack unless the removal is to
33 a licensed exporter for direct delivery to a destination outside of the
34 state;

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

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

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

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

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

11 (f) Motor vehicle fuel is sold by a licensed motor vehicle fuel
12 supplier to a motor vehicle fuel distributor, motor vehicle fuel
13 importer, or motor vehicle fuel blender and the motor vehicle fuel is
14 not removed from the bulk transfer-terminal system.

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

17 **Sec. 3.** RCW 82.36.026 and 1998 c 176 s 8 are each amended to read
18 as follows:

19 (1) A (~~position holder~~) licensed supplier shall remit tax to the
20 department (~~on motor vehicle fuel removed from a terminal~~) as
21 provided in RCW 82.36.020(~~(+2)(a)~~). On a two-party exchange, or buy-
22 sell agreement between two licensed suppliers, the receiving exchange
23 partner or buyer(~~(, becomes the position holder,)~~) who shall remit the
24 tax.

25 (2) A refiner shall remit tax to the department on motor vehicle
26 fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

27 (3) An importer shall remit tax to the department on motor vehicle
28 fuel imported into this state as provided in RCW 82.36.020(2)(c).

29 (4) A blender shall remit tax to the department on the removal or
30 sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

31 **Sec. 4.** RCW 82.38.020 and 1998 c 176 s 50 are each amended to read
32 as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Blended special fuel" means a mixture of undyed diesel fuel
36 and another liquid, other than a de minimus amount of the liquid, that
37 can be used as a fuel to propel a motor vehicle.

1 (2) "Blender" means a person who produces blended special fuel
2 outside the bulk transfer-terminal system.

3 (3) "Bond" means a bond duly executed with a corporate surety
4 qualified under chapter 48.28 RCW, which bond is payable to the state
5 of Washington conditioned upon faithful performance of all requirements
6 of this chapter, including the payment of all taxes, penalties, and
7 other obligations arising out of this chapter.

8 (4) "Bulk transfer-terminal system" means the special fuel
9 distribution system consisting of refineries, pipelines, vessels, and
10 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
11 is in the bulk transfer-terminal system. Special fuel in the fuel tank
12 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
13 equipment suitable for ground transportation is not in the bulk
14 transfer-terminal system.

15 (5) "Bulk transfer" means a transfer of special fuel by pipeline or
16 vessel.

17 (6) "Bulk storage" means the placing of special fuel into a
18 receptacle other than the fuel supply tank of a motor vehicle.

19 (7) "Department" means the department of licensing.

20 (8) "Dyed special fuel user" means a person authorized by the
21 internal revenue code to operate a motor vehicle on the highway using
22 dyed special fuel, in which the use is not exempt from the special fuel
23 tax.

24 (9) "Evasion" or "evade" means to diminish or avoid the
25 computation, assessment, or payment of authorized taxes or fees
26 through:

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

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

31 (10) "Export" means to obtain special fuel in this state for sales
32 or distribution outside the state.

33 (11) "Highway" means every way or place open to the use of the
34 public, as a matter of right, for the purpose of vehicular travel.

35 (12) "Import" means to bring special fuel into this state by a
36 means of conveyance other than the fuel supply tank of a motor vehicle.

37 (13) "International fuel tax agreement licensee" means a special
38 fuel user operating qualified motor vehicles in interstate commerce and
39 licensed by the department under the international fuel tax agreement.

1 (14) "Lessor" means a person: (a) Whose principal business is the
2 bona fide leasing or renting of motor vehicles without drivers for
3 compensation to the general public; and (b) who maintains established
4 places of business and whose lease or rental contracts require the
5 motor vehicles to be returned to the established places of business.

6 (15) "Licensee" means a person holding a license issued under this
7 chapter.

8 (16) "Motor vehicle" means a self-propelled vehicle designed for
9 operation upon land utilizing special fuel as the means of propulsion.

10 (17) "Natural gas" means naturally occurring mixtures of
11 hydrocarbon gases and vapors consisting principally of methane, whether
12 in gaseous or liquid form.

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

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

24 (20) "Rack" means a mechanism for delivering special fuel from a
25 refinery or terminal into a truck, trailer, railcar, or other means of
26 nonbulk transfer.

27 (21) "Refiner" means a person who owns, operates, or otherwise
28 controls a refinery.

29 (22) "Removal" means a physical transfer of special fuel other than
30 by evaporation, loss, or destruction.

31 (23) "Special fuel" means and includes all combustible gases and
32 liquids suitable for the generation of power for propulsion of motor
33 vehicles, except that it does not include motor vehicle fuel as defined
34 in chapter 82.36 RCW, nor does it include dyed special fuel as defined
35 by federal regulations. However, if the federal regulations authorize
36 dyed special fuel to be used in highway vehicles, that usage is
37 considered taxable under this chapter, unless otherwise exempted.

1 (24) "Special fuel distributor" means a person who acquires special
2 fuel from a supplier, distributor, or licensee for subsequent sale and
3 distribution.

4 (25) "Special fuel exporter" means a person who purchases special
5 fuel in this state and directly exports the fuel by a means other than
6 the bulk transfer-terminal system to a destination outside of the
7 state.

8 (26) "Special fuel importer" means a person who imports special
9 fuel into the state by a means other than the bulk transfer-terminal
10 system. If the importer of record is acting as an agent, the person
11 for whom the agent is acting is the importer. If there is no importer
12 of record, the owner of the special fuel at the time of importation is
13 the importer.

14 (27) "Special fuel supplier" means a person who (~~owns and stores~~
15 ~~special fuel in a terminal facility or who refines and stores special~~
16 ~~fuel at a refinery~~) holds a federal certificate issued under the
17 internal revenue code and authorizes the person to tax-free
18 transactions on special fuel in the bulk transfer-terminal system.

19 (28) "Special fuel user" means a person engaged in uses of special
20 fuel that are not specifically exempted from the special fuel tax
21 imposed under this chapter.

22 (29) "Terminal" means a special fuel storage and distribution
23 facility that has been assigned a terminal control number by the
24 internal revenue service, is supplied by pipeline or vessel, and from
25 which reportable special fuel is removed at a rack.

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

28 (31) "Two-party exchange" or "buy-sell agreement" means a
29 transaction in which taxable special fuel is transferred from one
30 licensed supplier to another licensed supplier under an exchange or
31 buy-sell agreement whereby the supplier that is the position holder
32 agrees to deliver taxable special fuel to the other supplier or the
33 other supplier's customer at the rack of the terminal at which the
34 delivering supplier is the position holder.

35 **Sec. 5.** RCW 82.38.030 and 1998 c 176 s 51 are each amended to read
36 as follows:

37 (1) There is hereby levied and imposed upon special fuel users a
38 tax at the rate computed in the manner provided in RCW 82.36.025 on

1 each gallon of special fuel, or each one hundred cubic feet of
2 compressed natural gas, measured at standard pressure and temperature.

3 (2) The tax imposed by subsection (1) of this section is imposed
4 when:

5 (a) Special fuel is removed in this state from a terminal if the
6 special fuel is removed at the rack unless the removal is to a licensed
7 exporter for direct delivery to a destination outside of the state, or
8 the removal is to a special fuel distributor for direct delivery to an
9 international fuel tax agreement licensee under RCW 82.38.320;

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

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

14 (ii) The removal is at the refinery rack unless the removal is to
15 a licensed exporter for direct delivery to a destination outside of the
16 state, or the removal is to a special fuel distributor for direct
17 delivery to an international fuel tax agreement licensee under RCW
18 82.38.320;

19 (c) Special fuel enters into this state for sale, consumption, use,
20 or storage if either of the following applies:

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

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

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

27 (e) Blended special fuel is removed or sold in this state by the
28 blender of the fuel. The number of gallons of blended special fuel
29 subject to tax is the difference between the total number of gallons of
30 blended special fuel removed or sold and the number of gallons of
31 previously taxed special fuel used to (~~produced~~ ~~[produce]~~) produce
32 the blended special fuel;

33 (f) Dyed special fuel is used on a highway, as authorized by the
34 internal revenue code, unless the use is exempt from the special fuel
35 tax; (~~and~~)

36 (g) Special fuel purchased by an international fuel tax agreement
37 licensee under RCW 82.38.320 is used on a highway; and

38 (h) Special fuel is sold by a licensed special fuel supplier to a
39 special fuel distributor, special fuel importer, or special fuel

1 blender and the special fuel is not removed from the bulk transfer-
2 terminal system.

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

15 **Sec. 6.** RCW 82.38.035 and 1998 c 176 s 53 are each amended to read
16 as follows:

17 (1) A (~~position holder~~) licensed supplier shall remit tax on
18 special fuel to the department (~~on special fuel removed from a~~
19 ~~terminal~~) as provided in RCW 82.38.030(2)(a). On a two-party
20 exchange, or buy-sell agreement between two licensed suppliers, the
21 receiving exchange partner or buyer (~~becomes the position holder,~~
22 ~~who~~) shall remit the tax.

23 (2) A refiner shall remit tax to the department on special fuel
24 removed from a refinery as provided in RCW 82.38.030(2)(b).

25 (3) An importer shall remit tax to the department on special fuel
26 imported into this state as provided in RCW 82.38.030(2)(c).

27 (4) A blender shall remit tax to the department on the removal or
28 sale of blended special fuel as provided in RCW 82.38.030(2)(e).

29 (5) A dyed special fuel user shall remit tax to the department on
30 the use of dyed special fuel as provided in RCW 82.38.030(2)(f).

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