

SB 5272 - H AMD TO TR COMM AMD (H-3096.2/07) 935
By Representative Clibborn

WITHDRAWN 04/21/2007

1 Beginning on page 1, after line 2 of the amendment, strike the
2 remainder of the amendment and insert the 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 distributor, or international
19 fuel tax agreement license issued under this chapter.
20 (13) (~~"Marine fuel dealer" means a person engaged in the retail~~
21 ~~sale of motor vehicle fuel whose place of business and/or sale outlet~~
22 ~~is 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+)) (14) "Motor vehicle fuel distributor" means a person who
26 acquires motor vehicle fuel from a supplier, distributor, or licensee
27 for subsequent sale and distribution.
28 ((+16+)) (15) "Motor vehicle fuel exporter" means a person who
29 purchases motor vehicle fuel in this state and directly exports the
30 fuel by a means other than the bulk transfer-terminal system to a
31 destination outside of the state. If the exporter of record is acting
32 as an agent, the person for whom the agent is acting is the exporter.
33 If there is no exporter of record, the owner of the motor fuel at the
34 time of exportation is the exporter.
35 ((+17+)) (16) "Motor vehicle fuel importer" means a person who
36 imports motor vehicle fuel into the state by a means other than the
37 bulk transfer-terminal system. If the importer of record is acting as

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

4 ~~((18))~~ (17) "Motor vehicle fuel supplier" means a person who
5 holds a federal certificate of registry that is issued under the
6 internal revenue code and authorizes the person to enter into federal
7 tax-free transactions on motor vehicle fuel in the bulk transfer-
8 terminal system.

9 ~~((19))~~ (18) "Motor vehicle" means a self-propelled vehicle
10 designed for operation upon land utilizing motor vehicle fuel as the
11 means of propulsion.

12 ~~((20))~~ (19) "Motor vehicle fuel" means gasoline and any other
13 inflammable gas or liquid, by whatsoever name the gasoline, gas, or
14 liquid may be known or sold, the chief use of which is as fuel for the
15 propulsion of motor vehicles or motorboats.

16 ~~((21))~~ (20) "Person" means a natural person, fiduciary,
17 association, or corporation. The term "person" as applied to an
18 association means and includes the partners or members thereof, and as
19 applied to corporations, the officers thereof.

20 ~~((22))~~ (21) "Position holder" means a person who holds the
21 inventory position in motor vehicle fuel, as reflected by the records
22 of the terminal operator. A person holds the inventory position in
23 motor 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))~~ (22) "Rack" means a mechanism for delivering motor vehicle
29 fuel from a refinery or terminal into a truck, trailer, railcar, or
30 other means of nonbulk transfer.

31 ~~((24))~~ (23) "Refiner" means a person who owns, operates, or
32 otherwise controls a refinery.

33 ~~((25))~~ (24) "Removal" means a physical transfer of motor vehicle
34 fuel other than by evaporation, loss, or destruction.

35 ~~((26))~~ (25) "Terminal" means a motor vehicle fuel storage and
36 distribution facility that has been assigned a terminal control number
37 by the internal revenue service, is supplied by pipeline or vessel, and
38 from which reportable motor vehicle fuel is removed at a rack.

1 ((+27)) (26) "Terminal operator" means a person who owns,
2 operates, or otherwise controls a terminal.

3 ((+28)) (27) "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, other than motor vehicle fuel distributors, a tax
14 at the rate computed in the manner provided in RCW 82.36.025 on each
15 gallon of motor vehicle fuel.

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

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

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

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

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

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

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

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

35 (d) Motor vehicle fuel is sold or removed in this state to an
36 unlicensed entity unless there was a prior taxable removal, entry, or
37 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, other than motor
19 vehicle fuel distributors.

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

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

31 (4) Beginning July 1, 2006, an additional and cumulative motor
32 vehicle fuel tax rate of three cents per gallon ~~((applies to the sale,~~
33 ~~distribution, or use of))~~ on motor vehicle fuel shall be imposed on
34 motor vehicle fuel licensees, other than motor vehicle fuel
35 distributors.

36 (5) Beginning July 1, 2007, an additional and cumulative motor
37 vehicle fuel tax rate of two cents per gallon ~~((applies to the sale,~~

1 ~~distribution, or use of))~~ on motor vehicle fuel shall be imposed on
2 motor vehicle fuel licensees, other than motor vehicle fuel
3 distributors.

4 (6) Beginning July 1, 2008, an additional and cumulative motor
5 vehicle fuel tax rate of one and one-half cents per gallon (~~applies to~~
6 ~~the sale, distribution, or use of))~~ on motor vehicle fuel shall be
7 imposed on motor vehicle fuel licensees, other than motor vehicle fuel
8 distributors.

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

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

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

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

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

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

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

30 International fuel tax agreement licensees, or persons operating
31 motor vehicles under other reciprocity agreements entered into with the
32 state of Washington, are liable for and must pay the tax under RCW
33 82.36.020 to the department on motor vehicle fuel used to operate motor
34 vehicles on the highways of this state. This provision does not apply
35 if the tax under RCW 82.36.020 has previously been imposed and paid by

1 the international fuel tax agreement licensee or if the use of such
2 fuel is exempt from the tax under this chapter.

3 **Sec. 6.** RCW 82.36.027 and 1998 c 176 s 9 are each amended to read
4 as follows:

5 A terminal operator is jointly and severally liable for
6 ~~((remitting))~~ payment of the tax imposed under RCW 82.36.020(1) if, at
7 the time of removal:

8 (1) The position holder with respect to the motor vehicle fuel is
9 a person other than the terminal operator and is not a licensee;

10 (2) The terminal operator is not a licensee;

11 (3) The position holder has an expired internal revenue service
12 notification certificate issued under 26 C.F.R. Part 48; or

13 (4) The terminal operator had reason to believe that information on
14 the notification certificate was false.

15 **Sec. 7.** RCW 82.36.029 and 1998 c 176 s 10 are each amended to read
16 as follows:

17 Upon the taxable removal of motor vehicle fuel by a licensed
18 supplier and upon importation by a licensed importer, the licensee who
19 acquired or removed the motor vehicle fuel, other than a motor vehicle
20 fuel exporter, shall be entitled to a deduction from the tax liability
21 on the gallonage of taxable motor vehicle fuel removed or imported in
22 order to account for handling losses, as follows: For a motor vehicle
23 fuel supplier ~~((acting as a distributor))~~, one-quarter of one percent;
24 and for ~~((all other licensees))~~ a licensed importer, thirty one-
25 hundredths of one percent. For those licensees required to file tax
26 reports, the handling loss deduction shall be reported on tax reports
27 filed with the department. ~~((For motor vehicle fuel distributors, the
28 handling loss deduction shall be shown on the invoice provided to the
29 motor vehicle fuel distributor by the seller.))~~

30 **Sec. 8.** RCW 82.36.031 and 1998 c 176 s 11 are each amended to read
31 as follows:

32 For the purpose of determining the amount of liability for the tax
33 imposed under this chapter, and to periodically update license
34 information, each licensee, other than a motor vehicle fuel distributor
35 or an international fuel tax agreement licensee, shall file monthly tax

1 reports with the department, on a form prescribed by the department.
2 An international fuel tax licensee shall file quarterly tax reports
3 with the department, on a form prescribed by the department.

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

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

20 **Sec. 9.** RCW 82.36.045 and 1998 c 176 s 16 are each amended to read
21 as follows:

22 (1) If the department determines that the tax reported by a
23 licensee is deficient, the department shall assess the deficiency on
24 the basis of information available to it, and shall add a penalty of
25 two percent of the amount of the deficiency.

26 (2) If a licensee, or person acting as such, fails, neglects, or
27 refuses to file a motor vehicle fuel tax report the department shall,
28 on the basis of information available to it, determine the tax
29 liability of the licensee or person for the period during which no
30 report was filed. The department shall add the penalty provided in
31 subsection (1) of this section to the tax. An assessment made by the
32 department under this subsection or subsection (1) of this section is
33 presumed to be correct. In any case, where the validity of the
34 assessment is questioned, the burden is on the person who challenges
35 the assessment to establish by a fair preponderance of evidence that it
36 is erroneous or excessive, as the case may be.

1 (3) If a licensee or person acting as such files a false or
2 fraudulent report with intent to evade the tax imposed by this chapter,
3 the department shall add to the amount of deficiency a penalty equal to
4 twenty-five percent of the deficiency, in addition to the penalty
5 provided in subsections (1) and (2) of this section and all other
6 penalties prescribed by law.

7 (4) Motor vehicle fuel tax, penalties, and interest payable under
8 this chapter bears interest at the rate of one percent per month, or
9 fraction thereof, from the first day of the calendar month after the
10 amount or any portion of it should have been paid until the date of
11 payment. If a licensee or person acting as such establishes by a fair
12 preponderance of evidence that the failure to pay the amount of tax due
13 was attributable to reasonable cause and was not intentional or
14 willful, the department may waive the penalty. The department may
15 waive the interest when it determines the cost of processing or
16 collection of the interest exceeds the amount of interest due.

17 (5) Except in the case of a fraudulent report, neglect or refusal
18 to make a report, or failure to pay or to pay the proper amount, the
19 department shall assess the deficiency under subsection (1) or (2) of
20 this section within five years from the last day of the succeeding
21 calendar month after the reporting period for which the amount is
22 proposed to be determined or within five years after the return is
23 filed, whichever period expires later.

24 (6) Except in the case of violations of filing a false or
25 fraudulent report, if the department deems mitigation of penalties and
26 interest to be reasonable and in the best interest of carrying out the
27 purpose of this chapter, it may mitigate such assessments upon whatever
28 terms the department deems proper, giving consideration to the degree
29 and extent of the lack of records and reporting errors. The department
30 may ascertain the facts regarding recordkeeping and payment penalties
31 in lieu of more elaborate proceedings under this chapter.

32 (7) A licensee or person acting as such against whom an assessment
33 is made under subsection (1) or (2) of this section may petition for a
34 reassessment within thirty days after service upon the licensee of
35 notice of the assessment. If the petition is not filed within the
36 thirty-day period, the amount of the assessment becomes final at the
37 expiration of that period.

1 If a petition for reassessment is filed within the thirty-day
2 period, the department shall reconsider the assessment and, if the
3 petitioner has so requested in its petition, shall grant the petitioner
4 an oral hearing and give the petitioner twenty days' notice of the time
5 and place of the hearing. The department may continue the hearing from
6 time to time. The decision of the department upon a petition for
7 reassessment becomes final thirty days after service of notice upon the
8 petitioner.

9 An assessment made by the department becomes due and payable when
10 it becomes final. If it is not paid to the department when due and
11 payable, the department shall add a penalty of ten percent of the
12 amount of the tax.

13 (8) In a suit brought to enforce the rights of the state under this
14 chapter, the assessment showing the amount of taxes, penalties,
15 interest, and cost unpaid to the state is prima facie evidence of the
16 facts as shown.

17 (9) A notice of assessment required by this section must be served
18 personally or by certified or registered mail. If it is served by
19 mail, service shall be made by deposit of the notice in the United
20 States mail, postage prepaid, addressed to the respondent at the most
21 current address furnished to the department.

22 ~~((10) The tax imposed by this chapter, if required to be collected
23 by the seller, is held in trust by the licensee until paid to the
24 department, and a licensee who appropriates or converts the tax
25 collected to his or her own use or to any use other than the payment of
26 the tax to the extent that the money required to be collected is not
27 available for payment on the due date as prescribed in this chapter is
28 guilty of a felony, or gross misdemeanor in accordance with the theft
29 and anticipatory provisions of Title 9A RCW. A person, partnership,
30 corporation, or corporate officer who fails to collect the tax imposed
31 by this section, or who has collected the tax and fails to pay it to
32 the department in the manner prescribed by this chapter, is personally
33 liable to the state for the amount of the tax.))~~

34 **Sec. 10.** RCW 82.36.060 and 2001 c 270 s 5 are each amended to read
35 as follows:

36 (1) An application for a license issued under this chapter shall be

1 made to the department on forms to be furnished by the department and
2 shall contain such information as the department deems necessary.

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

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

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

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

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

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

23 (3) An applicant for a license as a motor vehicle fuel importer
24 must list on the application each state, province, or country from
25 which the applicant intends to import motor vehicle fuel and, if
26 required by the state, province, or country listed, must be licensed or
27 registered for motor vehicle fuel tax purposes in that state, province,
28 or country.

29 (4) An applicant for a license as a motor vehicle fuel exporter
30 must list on the application each state, province, or country to which
31 the exporter intends to export motor vehicle fuel received in this
32 state by means of a transfer outside of the bulk transfer-terminal
33 system and, if required by the state, province, or country listed, must
34 be licensed or registered for motor vehicle fuel tax purposes in that
35 state, province, or country.

36 (5) An applicant for a license as a motor vehicle fuel supplier
37 must have a federal certificate of registry that is issued under the

1 internal revenue code and authorizes the applicant to enter into
2 federal tax-free transactions on motor vehicle fuel in the terminal
3 transfer system.

4 (6) After receipt of an application for a license, the director may
5 conduct an investigation to determine whether the facts set forth are
6 true. The director shall require a fingerprint record check of the
7 applicant through the Washington state patrol criminal identification
8 system and the federal bureau of investigation before issuance of a
9 license. The results of the background investigation including
10 criminal history information may be released to authorized department
11 personnel as the director deems necessary. The department shall charge
12 a license holder or license applicant a fee of fifty dollars for each
13 background investigation conducted.

14 An applicant who makes a false statement of a material fact on the
15 application may be prosecuted for false swearing as defined by RCW
16 9A.72.040.

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

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

1 No recoveries on any bond or the execution of any new bond shall
2 invalidate any bond and no revocation of any license shall effect the
3 validity of any bond but the total recoveries under any one bond shall
4 not exceed the amount of the bond.

5 In lieu of any such bond or bonds in total amount as herein fixed,
6 a licensee may deposit with the state treasurer, under such terms and
7 conditions as the department may prescribe, a like amount of lawful
8 money of the United States or bonds or other obligations of the United
9 States, the state, or any county of the state, of an actual market
10 value not less than the amount so fixed by the department.

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

27 The department may require a licensee to give a new or additional
28 surety bond or to deposit additional securities of the character
29 specified in this section if, in its opinion, the security of the
30 surety bond theretofore filed by such licensee, or the market value of
31 the properties deposited as security by the licensee, shall become
32 impaired or inadequate; and upon the failure of the licensee to give
33 such new or additional surety bond or to deposit additional securities
34 within thirty days after being requested so to do by the department,
35 the department shall forthwith cancel his or her license.

36 (8) The department may waive the requirements of subsection (7) of
37 this section for licensed distributors if, upon determination by the
38 department, the licensed distributor has sufficient resources, assets,

1 other financial instruments, or other means, to adequately make
2 payments on the estimated monthly motor vehicle fuel tax payments,
3 penalties, and interest arising out of this chapter. The department
4 shall adopt rules to administer this subsection. An application for an
5 international fuel tax agreement license must be made to the
6 department. The application must be filed upon a form prescribed by
7 the department and contain such information as the department may
8 require. The department shall charge a fee of ten dollars per set of
9 international fuel tax agreement decals issued to each applicant or
10 licensee. The department shall transmit the fee to the state treasurer
11 for deposit in the motor vehicle fund.

12 **Sec. 11.** RCW 82.36.080 and 1998 c 176 s 20 are each amended to
13 read as follows:

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

- 18 (a) Motor vehicle fuel supplier;
- 19 (b) Motor vehicle fuel distributor;
- 20 (c) Motor vehicle fuel exporter;
- 21 (d) Motor vehicle fuel importer; (~~or~~)
- 22 (e) Motor vehicle fuel blender; or
- 23 (f) International fuel tax agreement licensee.

24 (2) A person engaged in more than one activity for which a license
25 is required must have a separate license classification for each
26 activity, but a motor vehicle fuel supplier is not required to obtain
27 a separate license classification for any other activity for which a
28 license is required.

29 (3) If any person acts as a licensee without first securing the
30 license required herein the excise tax shall be immediately due and
31 payable on account of all motor vehicle fuel distributed or used by the
32 person. The director shall proceed forthwith to determine from the
33 best available sources, the amount of the tax, and the director shall
34 immediately assess the tax in the amount found due, together with a
35 penalty of one hundred percent of the tax, and shall make a certificate
36 of such assessment and penalty. In any suit or proceeding to collect
37 the tax or penalty, or both, such certificate shall be prima facie

1 evidence that the person therein named is indebted to the state in the
2 amount of the tax and penalty therein stated. Any tax or penalty so
3 assessed may be collected in the manner prescribed in this chapter with
4 reference to delinquency in payment of the tax or by an action at law,
5 which the attorney general shall commence and prosecute to final
6 determination at the request of the director. The foregoing remedies
7 of the state shall be cumulative and no action taken pursuant to this
8 section shall relieve any person from the penal provisions of this
9 chapter.

10 **Sec. 12.** RCW 82.36.160 and 1998 c 176 s 27 are each amended to
11 read as follows:

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

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

24 **Sec. 13.** RCW 82.36.180 and 1998 c 176 s 30 are each amended to
25 read as follows:

26 The director, or duly authorized agents, may make such examinations
27 of the records, stocks, facilities, and equipment of any licensee,
28 ~~((and service stations,))~~ and make such other investigations as deemed
29 necessary in carrying out the provisions of this chapter. If such
30 examinations or investigations disclose that any reports of licensees
31 theretofore filed with the director pursuant to the requirements of
32 this chapter have shown incorrectly the gallonage of motor vehicle fuel
33 distributed or the tax ~~((accruing))~~ liability thereon, the director may
34 make such changes in subsequent reports and payments of such licensees
35 as deemed necessary to correct the errors disclosed.

1 Every such licensee or such other person not maintaining records in
2 this state so that an audit of such records may be made by the director
3 or a duly authorized representative shall be required to make the
4 necessary records available to the director upon request and at a
5 designated office within this state; or, in lieu thereof, the director
6 or a duly authorized representative shall proceed to any out-of-state
7 office at which the records are prepared and maintained to make such
8 examination.

9 NEW SECTION. **Sec. 14.** A new section is added to chapter 82.36 RCW
10 to read as follows:

11 Motor vehicle fuel that is used exclusively for racing and is
12 illegal for use on the public highways of this state under state or
13 federal law is exempt from the tax imposed under this chapter.

14 **Sec. 15.** RCW 82.36.320 and 1961 c 15 s 82.36.320 are each amended
15 to read as follows:

16 Any person claiming refund on motor vehicle fuel used other than in
17 motor vehicles as herein provided(~~(, and any person purchasing motor~~
18 ~~vehicle fuel from a dealer who is claiming refund on account of the~~
19 ~~sale of such fuel under RCW 82.36.305)) may be required by the director
20 to also furnish information regarding the amount of motor vehicle fuel
21 purchased from other sources or for other purposes during the period
22 reported for which no refund is claimed.~~

23 **Sec. 16.** RCW 82.36.340 and 1961 c 15 s 82.36.340 are each amended
24 to read as follows:

25 The director may in order to establish the validity of any claim
26 for refund require the claimant(~~(, or, in the case of a dealer filing~~
27 ~~a claim for refund as provided by RCW 82.36.305, the person to whom~~
28 ~~such fuel was sold,)) to furnish such additional proof of the validity
29 of the claim as the director may determine, and may examine the books
30 and records of the claimant or said person to whom the fuel was sold
31 for such purpose. The records shall be sufficient to substantiate the
32 accuracy of the claim and shall be in such form and contain such
33 information as the director may require. The failure to maintain such
34 records or to accede to a demand for an examination of such records may~~

1 be deemed by the director as sufficient cause for denial of all right
2 to the refund claimed on account of the transaction in question.

3 **Sec. 17.** RCW 82.36.370 and 1998 c 176 s 42 are each amended to
4 read as follows:

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

10 (2) A refund shall be made in the manner provided in this chapter
11 or a credit given allowing for the excise tax paid or accrued on all
12 motor vehicle fuel of five hundred gallons or more which is lost or
13 destroyed, while (~~applicant shall be~~) the licensee was the owner
14 thereof, through leakage or other casualty except evaporation,
15 shrinkage or unknown causes: PROVIDED, That the director shall be
16 notified in writing as to the full circumstances surrounding such loss
17 or destruction and the amount of the loss or destruction within thirty
18 days from the day of discovery of such loss or destruction.

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

23 In the event that the director is not satisfied that the fuel was
24 lost or destroyed as claimed, wherefore required information or proof
25 as required hereunder is not sufficient to substantiate the accuracy of
26 the claim, the director may deem as sufficient cause the denial of all
27 right relating to the refund or credit for the excise tax on motor
28 vehicle fuel alleged to be lost or destroyed.

29 **Sec. 18.** RCW 82.36.380 and 2003 c 358 s 13 are each amended to
30 read as follows:

31 (1) It is unlawful for a person or corporation to:

32 (a) Evade a tax or fee imposed under this chapter;

33 (b) File a false statement of a material fact on a motor fuel
34 license application or motor fuel refund application;

35 (c) Act as a motor fuel importer, motor fuel blender, or motor fuel

1 supplier unless the person holds an uncanceled motor fuel license
2 issued by the department authorizing the person to engage in that
3 business;

4 (d) Knowingly assist another person to evade a tax or fee imposed
5 by this chapter;

6 (e) Knowingly operate a conveyance for the purpose of hauling,
7 transporting, or delivering motor vehicle fuel in bulk and not possess
8 an invoice, bill of sale, or other statement showing the name, address,
9 and tax license number of the seller or consignor, the destination, the
10 name, address, and tax license number of the purchaser or consignee,
11 and the number of gallons.

12 (2) A violation of subsection (1) of this section is a class C
13 felony under chapter 9A.20 RCW. In addition to other penalties and
14 remedies provided by law, the court shall order a person or corporation
15 found guilty of violating subsection (1) of this section to:

16 (a) Pay the tax or fee evaded plus interest, commencing at the date
17 the tax or fee was first due, at the rate of twelve percent per year,
18 compounded monthly; and

19 (b) Pay a penalty of one hundred percent of the tax evaded, to the
20 multimodal transportation account of the state.

21 (3) The tax imposed by this chapter is held in trust by the
22 licensee until paid to the department, and a licensee who appropriates
23 the tax to his or her own use or to any use other than the payment of
24 the tax on the due date as prescribed in this chapter is guilty of a
25 felony or gross misdemeanor in accordance with the theft and
26 anticipatory provisions of Title 9A RCW. A person, partnership,
27 corporation, or corporate officer who fails to pay to the department
28 the tax imposed by this chapter is personally liable to the state for
29 the amount of the tax.

30 **Sec. 19.** RCW 82.36.450 and 1995 c 320 s 2 are each amended to read
31 as follows:

32 ~~((The department of licensing may enter into an agreement with any~~
33 ~~federally recognized Indian tribe located on a reservation within this~~
34 ~~state regarding the imposition, collection, and use of this state's~~
35 ~~motor vehicle fuel tax, or the budgeting or use of moneys in lieu~~
36 ~~thereof, upon terms substantially the same as those in the consent~~
37 ~~decree entered by the federal district court (Eastern District of~~

1 ~~Washington) in *Confederated Tribes of the Colville Reservation v. DOL,*~~
2 ~~*et al.*, District Court No. *CY 92 248 JLO.*)~~) (1) The governor may enter
3 into an agreement with any federally recognized Indian tribe located on
4 a reservation within this state regarding motor vehicle fuel taxes
5 included in the price of fuel delivered to a retail station wholly
6 owned and operated by a tribe, tribal enterprise, or tribal member
7 licensed by the tribe to operate a retail station located on
8 reservation or trust property. The agreement may provide mutually
9 agreeable means to address any tribal immunities or any preemption of
10 the state motor vehicle fuel tax.

11 (2) The provisions of this section do not repeal existing
12 state/tribal fuel tax agreements or consent decrees in existence on the
13 effective date of this act. The state and the tribe may agree to
14 substitute an agreement negotiated under this section for an existing
15 agreement or consent decree, or to enter into an agreement using a
16 methodology similar to the state/tribal fuel tax agreements in effect
17 on the effective date of this act.

18 (3) If a new agreement is negotiated, the agreement must:

19 (a) Require that the tribe or the tribal retailer acquire all motor
20 vehicle fuel only from persons or companies operating lawfully in
21 accordance with this chapter as a motor vehicle fuel distributor,
22 supplier, importer, or blender, or from a tribal distributor, supplier,
23 importer, or blender lawfully doing business according to all
24 applicable laws;

25 (b) Provide that the tribe will expend fuel tax proceeds or
26 equivalent amounts on: Planning, construction, and maintenance of
27 roads, bridges, and boat ramps; transit services and facilities;
28 transportation planning; police services; and other highway-related
29 purposes;

30 (c) Include provisions for audits or other means of ensuring
31 compliance to certify the number of gallons of motor vehicle fuel
32 purchased by the tribe for resale at tribal retail stations, and the
33 use of fuel tax proceeds or their equivalent for the purposes
34 identified in (b) of this subsection. Compliance reports must be
35 delivered to the director of the department of licensing.

36 (4) Information from the tribe or tribal retailers received by the
37 state or open to state review under the terms of an agreement shall be

1 deemed to be personal information under RCW 42.56.230(3)(b) and exempt
2 from public inspection and copying.

3 (5) The governor may delegate the power to negotiate fuel tax
4 agreements to the department of licensing.

5 (6) The department of licensing shall prepare and submit an annual
6 report to the legislature on the status of existing agreements and any
7 ongoing negotiations with tribes.

8 NEW SECTION. Sec. 20. A new section is added to chapter 82.36 RCW
9 to read as follows:

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

19 **Sec. 21.** RCW 82.38.030 and 2005 c 314 s 102 are each amended to
20 read as follows:

21 (1) There is hereby levied and imposed upon special fuel (~~((users))~~)
22 licensees, other than special fuel distributors, a tax at the rate of
23 twenty-three cents per gallon of special fuel, or each one hundred
24 cubic feet of compressed natural gas, measured at standard pressure and
25 temperature.

26 (2) Beginning July 1, 2003, an additional and cumulative tax rate
27 of five cents per gallon of special fuel, or each one hundred cubic
28 feet of compressed natural gas, measured at standard pressure and
29 temperature shall be imposed on special fuel (~~((users))~~) licensees, other
30 than special fuel distributors. This subsection (2) expires when the
31 bonds issued for transportation 2003 projects are retired.

32 (3) Beginning July 1, 2005, an additional and cumulative tax rate
33 of three cents per gallon of special fuel, or each one hundred cubic
34 feet of compressed natural gas, measured at standard pressure and
35 temperature shall be imposed on special fuel (~~((users))~~) licensees, other
36 than special fuel distributors.

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

6 (5) Beginning July 1, 2007, an additional and cumulative tax rate
7 of two cents per gallon of special fuel, or each one hundred cubic feet
8 of compressed natural gas, measured at standard pressure and
9 temperature shall be imposed on special fuel (~~((users))~~) licensees, other
10 than special fuel distributors.

11 (6) Beginning July 1, 2008, an additional and cumulative tax rate
12 of one and one-half cents per gallon of special fuel, or each one
13 hundred cubic feet of compressed natural gas, measured at standard
14 pressure and temperature shall be imposed on special fuel (~~((users))~~)
15 licensees, other than special fuel distributors.

16 (7) Taxes are imposed when:

17 (a) Special fuel is removed in this state from a terminal if the
18 special fuel is removed at the rack unless the removal is to a licensed
19 exporter for direct delivery to a destination outside of the state, or
20 the removal is (~~((to))~~) by a special fuel (~~((distributor))~~) supplier for
21 direct delivery to an international fuel tax agreement licensee under
22 RCW 82.38.320;

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

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

27 (ii) The removal is at the refinery rack unless the removal is to
28 a licensed exporter for direct delivery to a destination outside of the
29 state, or the removal is to a special fuel (~~((distributor))~~) supplier for
30 direct delivery to an international fuel tax agreement licensee under
31 RCW 82.38.320;

32 (c) Special fuel enters into this state for sale, consumption, use,
33 or storage, unless the fuel enters this state for direct delivery to an
34 international fuel tax agreement licensee under RCW 82.38.320, if
35 either of the following applies:

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

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

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

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

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

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

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

16 (i) Special fuel is sold by a licensed special fuel supplier to a
17 special fuel distributor, special fuel importer, or special fuel
18 blender and the special fuel is not removed from the bulk transfer-
19 terminal system.

20 ~~((8) The tax imposed by this chapter, if required to be collected
21 by the licensee, is held in trust by the licensee until paid to the
22 department, and a licensee who appropriates or converts the tax
23 collected to his or her own use or to any use other than the payment of
24 the tax to the extent that the money required to be collected is not
25 available for payment on the due date as prescribed in this chapter is
26 guilty of a felony, or gross misdemeanor in accordance with the theft
27 and anticipatory provisions of Title 9A RCW. A person, partnership,
28 corporation, or corporate officer who fails to collect the tax imposed
29 by this section, or who has collected the tax and fails to pay it to
30 the department in the manner prescribed by this chapter, is personally
31 liable to the state for the amount of the tax.))~~

32 **Sec. 22.** RCW 82.38.032 and 1998 c 176 s 52 are each amended to
33 read as follows:

34 ~~((The tax under RCW 82.38.030, if not previously imposed and paid,
35 must be paid over to the department by special fuel users and persons
36 licensed under the international fuel tax agreement or other fuel tax
37 reciprocity agreements entered into with the state of Washington, on~~

1 ~~the use of special fuel to operate motor vehicles on the highways of~~
2 ~~this state, unless the use is exempt from the tax under this chapter.))~~
3 International fuel tax agreement licensees, or persons operating motor
4 vehicles under other reciprocity agreements entered into with the state
5 of Washington, are liable for and must pay the tax under RCW 82.38.030
6 to the department on special fuel used to operate motor vehicles on the
7 highways of this state. This provision does not apply if the tax under
8 RCW 82.38.030 has previously been imposed and paid by the international
9 fuel tax agreement licensee or if the use of such fuel is exempt from
10 the tax under this chapter.

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

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

18 (2) A refiner shall (~~remit~~) be liable for and pay tax to the
19 department on special fuel removed from a refinery as provided in RCW
20 82.38.030(7)(b).

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

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

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

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

33 **Sec. 24.** RCW 82.38.050 and 1990 c 250 s 82 are each amended to
34 read as follows:

35 (~~Except as otherwise provided in this chapter, every special fuel~~
36 ~~user shall be liable for the tax on special fuel used in motor vehicles~~

1 leased to the user for thirty days or more and operated on the highways
2 of this state to the same extent and in the same manner as special fuel
3 used in his own motor vehicles and operated on the highways of this
4 state: ~~PROVIDED, That~~) A lessor who is engaged regularly in the
5 business of leasing or renting for compensation motor vehicles and
6 equipment he owns without drivers to carriers or other lessees for
7 interstate operation, may be deemed to be the special fuel user when he
8 supplies or pays for the special fuel consumed in such vehicles, and
9 such lessor may be issued ((a)) an international fuel tax agreement
10 license ((as a special fuel user)) when application and bond have been
11 properly filed with and approved by the department for such license.
12 Any lessee may exclude motor vehicles of which he or she is the lessee
13 from reports and liabilities pursuant to this chapter, but only if the
14 motor vehicles in question have been leased from a lessor holding a
15 valid ((special fuel user's)) international fuel tax agreement license.

16 ((Every such lessor shall file with the application for a special
17 fuel user's license one copy of the lease form or service contract the
18 lessor enters into with the various lessees of the lessor's motor
19 vehicles.)) When the ((special fuel user's)) license has been secured,
20 such lessor shall make and assign to each motor vehicle leased for
21 interstate operation a photocopy of such license to be carried in the
22 cab compartment of the motor vehicle and on which shall be typed or
23 printed on the back the unit or motor number of the motor vehicle to
24 which it is assigned and the name of the lessee. Such lessor shall be
25 responsible for the proper use of such photocopy of the license issued
26 and its return to the lessor with the motor vehicle to which it is
27 assigned.

28 The lessor shall be responsible for fuel tax licensing and
29 reporting, as required by this chapter, on the operation of all motor
30 vehicles leased to others for less than thirty days.

31 **Sec. 25.** RCW 82.38.100 and 1999 c 270 s 2 are each amended to read
32 as follows:

33 (1) Any special fuel user operating a motor vehicle into this state
34 for commercial purposes may make application for a trip permit that
35 shall be good for a period of three consecutive days beginning and
36 ending on the dates specified on the face of the permit issued, and
37 only for the vehicle for which it is issued.

1 (2) Every permit shall identify, as the department may require, the
2 vehicle for which it is issued and shall be completed in its entirety,
3 signed, and dated by the operator before operation of the vehicle on
4 the public highways of this state. Correction of data on the permit
5 such as dates, vehicle license number, or vehicle identification number
6 invalidates the permit. A violation of, or a failure to comply with,
7 this subsection is a gross misdemeanor.

8 (3) For each permit issued, there shall be collected a filing fee
9 of one dollar, an administrative fee of ten dollars, and an excise tax
10 of nine dollars. Such fees and tax shall be in lieu of the special
11 fuel tax otherwise assessable against the permit holder for importing
12 and using special fuel in a motor vehicle on the public highways of
13 this state, and no report of mileage shall be required with respect to
14 such vehicle. Trip permits will not be issued if the applicant has
15 outstanding fuel taxes, penalties, or interest owing to the state or
16 has had a special fuel license revoked for cause and the cause has not
17 been removed.

18 (4) Blank permits may be obtained from field offices of the
19 department of transportation, (~~Washington state patrol,~~) department
20 of licensing, or other agents appointed by the department. The
21 department may appoint county auditors or businesses as agents for the
22 purpose of selling trip permits to the public. County auditors or
23 businesses so appointed may retain the filing fee collected for each
24 trip permit to defray expenses incurred in handling and selling the
25 permits.

26 (5) A surcharge of five dollars is imposed on the issuance of trip
27 permits. The portion of the surcharge paid by motor carriers must be
28 deposited in the motor vehicle fund for the purpose of supporting
29 vehicle weigh stations, weigh-in-motion programs, and the commercial
30 vehicle information systems and networks program. The remaining
31 portion of the surcharge must be deposited in the motor vehicle fund
32 for the purpose of supporting congestion relief programs. All other
33 fees and excise taxes collected by the department for trip permits
34 shall be credited and deposited in the same manner as the special fuel
35 tax collected under this chapter and shall not be subject to exchange,
36 refund, or credit.

1 **Sec. 26.** RCW 82.38.130 and 1998 c 176 s 65 are each amended to
2 read as follows:

3 The department may revoke the license of any licensee for any of
4 the grounds constituting cause for denial of a license set forth in RCW
5 82.38.120 or for other reasonable cause. Before revoking such license
6 the department shall notify the licensee to show cause within twenty
7 days of the date of the notice why the license should not be revoked:
8 PROVIDED, That at any time prior to and pending such hearing the
9 department may, in the exercise of reasonable discretion, suspend such
10 license.

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

13 Any surety on a bond furnished by a licensee as provided in this
14 chapter shall be released and discharged from any and all liability to
15 the state accruing on such bond after the expiration of forty-five days
16 from the date which such surety shall have lodged with the department
17 a written request to be released and discharged, but this provision
18 shall not operate to relieve, release, or discharge the surety from any
19 liability already accrued or which shall accrue before the expiration
20 of the forty-five day period. The department shall promptly, upon
21 receiving any such request, notify the licensee who furnished the bond,
22 and unless the licensee, on or before the expiration of the forty-five
23 day period, files a new bond, in accordance with this section, the
24 department ((forthwith)) shall cancel the ((~~special fuel dealer's or~~
25 ~~special fuel user's~~)) license.

26 The department may require a new or additional surety bond of the
27 character specified in RCW 82.38.020(3) if, in its opinion, the
28 security of the surety bond therefor filed by such licensee, shall
29 become impaired or inadequate. Upon failure of the licensee to give
30 such new or additional surety bond within forty-five days after being
31 requested to do so by the department, or after he or she shall fail or
32 refuse to file reports and remit or pay taxes at the intervals fixed by
33 the department, the department forthwith shall cancel his or her
34 license.

35 **Sec. 27.** RCW 82.38.140 and 1998 c 176 s 66 are each amended to
36 read as follows:

37 (1) Every licensee and every person importing, manufacturing,

1 refining, (~~dealing in,~~) transporting, blending, or storing special
2 fuel in this state shall keep for a period of not less than five years
3 open to inspection at all times during the business hours of the day to
4 the department or its authorized representatives, a complete record of
5 all special fuel purchased or received and all of such products sold,
6 delivered, or used by them. Such records shall show:

7 (a) The date of each receipt;

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

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

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

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

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

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

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

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

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

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

31 (3) The department may require a person other than a licensee
32 engaged in the business of selling, purchasing, distributing, storing,
33 transporting, or delivering special fuel to submit periodic reports to
34 the department regarding the disposition of the fuel. The reports must
35 be on forms prescribed by the department and must contain such
36 information as the department may require.

37 (4) Every person operating any conveyance for the purpose of
38 hauling, transporting, or delivering special fuel in bulk shall have

1 and possess during the entire time the person is hauling special fuel,
2 an invoice, bill of sale, or other statement showing the name, address,
3 and license number of the seller or consigner, the destination, name,
4 and address of the purchaser or consignee, license number, if
5 applicable, and the number of gallons. The person hauling such special
6 fuel shall at the request of any law enforcement officer or authorized
7 representative of the department, or other person authorized by law to
8 inquire into, or investigate those types of matters, produce for
9 inspection such invoice, bill of sale, or other statement and shall
10 permit such official to inspect and gauge the contents of the vehicle.

11 **Sec. 28.** RCW 82.38.150 and 1998 c 176 s 67 are each amended to
12 read as follows:

13 For the purpose of determining the amount of liability for the tax
14 herein imposed, and to periodically update license information, each
15 licensee, other than a special fuel distributor, an international fuel
16 tax agreement licensee, or a dyed special fuel user, shall file monthly
17 tax reports with the department, on forms prescribed by the department.

18 Dyed special fuel users whose estimated yearly tax liability is two
19 hundred fifty dollars or less, shall file a report yearly, and dyed
20 special fuel users whose estimated yearly tax liability is more than
21 two hundred fifty dollars, shall file reports quarterly. Special fuel
22 users licensed under the international fuel tax agreement shall file
23 reports quarterly. (~~Special fuel distributors~~) Heating oil dealers
24 subject to the pollution liability insurance agency fee and reporting
25 requirements shall remit pollution liability insurance agency returns
26 and any associated payment due to the department annually.

27 The department shall establish the reporting frequency for each
28 applicant at the time the special fuel license is issued. If it
29 becomes apparent that any licensee is not reporting in accordance with
30 the above schedule, the department shall change the licensee's
31 reporting frequency by giving thirty days' notice to the licensee by
32 mail to the licensee's address of record. A report shall be filed with
33 the department even though no special fuel was used, or tax is due, for
34 the reporting period. Each tax report shall contain a declaration by
35 the person making the same, to the effect that the statements contained
36 therein are true and are made under penalties of perjury, which
37 declaration shall have the same force and effect as a verification of

1 the report and is in lieu of such verification. The report shall show
2 such information as the department may reasonably require for the
3 proper administration and enforcement of this chapter. (~~For counties~~
4 ~~within which an additional excise tax on special fuel has been levied~~
5 ~~by that jurisdiction under RCW 82.80.010, the report must show the~~
6 ~~quantities of special fuel sold, distributed, or withdrawn from bulk~~
7 ~~storage by the reporting dealer or user within the county's boundaries~~
8 ~~and the tax liability from its levy.)) A licensee shall file a tax
9 report on or before the twenty-fifth day of the next succeeding
10 calendar month following the period to which it relates.~~

11 Subject to the written approval of the department, tax reports may
12 cover a period ending on a day other than the last day of the calendar
13 month. Taxpayers granted approval to file reports in this manner will
14 file such reports on or before the twenty-fifth day following the end
15 of the reporting period. No change to this reporting period will be
16 made without the written authorization of the department.

17 If the final filing date falls on a Saturday, Sunday, or legal
18 holiday the next secular or business day shall be the final filing
19 date. Such reports shall be considered filed or received on the date
20 shown by the post office cancellation mark stamped upon an envelope
21 containing such report properly addressed to the department, or on the
22 date it was mailed if proof satisfactory to the department is available
23 to establish the date it was mailed.

24 The department, if it deems it necessary in order to insure payment
25 of the tax imposed by this chapter, or to facilitate the administration
26 of this chapter, has the authority to require the filing of reports and
27 tax remittances at shorter intervals than one month if, in its opinion,
28 an existing bond has become insufficient.

29 **Sec. 29.** RCW 82.38.180 and 1998 c 176 s 71 are each amended to
30 read as follows:

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

36 (1) (~~Any~~) Taxes previously paid on special fuel used for purposes

1 other than for the propulsion of motor vehicles upon the public
2 highways in this state.

3 (2) (~~Any~~) Taxes previously paid on special fuel exported for use
4 outside of this state. Special fuel carried from this state in the
5 fuel tank of a motor vehicle is deemed to be exported from this state.
6 Special fuel distributed to a federally recognized Indian tribal
7 reservation located within the state of Washington is not considered
8 exported outside this state.

9 (3) (~~Any~~) Tax, penalty, or interest erroneously or illegally
10 collected or paid.

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

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

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

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

30 No refund or claim for credit shall be approved by the department
31 unless the gallons of special fuel claimed as nontaxable satisfy the
32 conditions specifically set forth in this section and the nontaxable
33 event or use occurred during the period covered by the refund claim.
34 Refunds or claims for credit (~~by sellers or users of special fuel~~)
35 shall not be allowed for anticipated nontaxable use or events.

36 **Sec. 30.** RCW 82.38.270 and 2003 c 358 s 14 are each amended to
37 read as follows:

1 (1) It is unlawful for a person or corporation to:

2 (a) Have dyed diesel in the fuel supply tank of a vehicle that is
3 licensed or required to be licensed for highway use or maintain dyed
4 diesel in bulk storage for highway use, unless the person or
5 corporation maintains an uncanceled dyed diesel user license or is
6 otherwise exempted by this chapter;

7 (b) Evade a tax or fee imposed under this chapter;

8 (c) File a false statement of a material fact on a special fuel
9 license application or special fuel refund application;

10 (d) Act as a special fuel importer, special fuel blender, or
11 special fuel supplier unless the person holds an uncanceled special
12 fuel license issued by the department authorizing the person to engage
13 in that business;

14 (e) Knowingly assist another person to evade a tax or fee imposed
15 by this chapter;

16 (f) Knowingly operate a conveyance for the purpose of hauling,
17 transporting, or delivering special fuel in bulk and not possess an
18 invoice, bill of sale, or other statement showing the name, address,
19 and tax license number of the seller or consignor, the destination, the
20 name, address, and tax license number of the purchaser or consignee,
21 and the number of gallons.

22 (2)(a) A single violation of subsection (1)(a) of this section is
23 a gross misdemeanor under chapter 9A.20 RCW.

24 (b) Multiple violations of subsection (1)(a) of this section and
25 violations of subsection (1)(b) through (f) of this section are a class
26 C felony under chapter 9A.20 RCW.

27 (3) In addition to other penalties and remedies provided by law,
28 the court shall order a person or corporation found guilty of violating
29 subsection (1)(b) through (f) of this section to:

30 (a) Pay the tax or fee evaded plus interest, commencing at the date
31 the tax or fee was first due, at the rate of twelve percent per year,
32 compounded monthly; and

33 (b) Pay a penalty of one hundred percent of the tax evaded, to the
34 multimodal transportation account of the state.

35 (4) The tax imposed by this chapter is held in trust by the
36 licensee until paid to the department, and a licensee who appropriates
37 the tax to his or her own use or to any use other than the payment of
38 the tax on the due date as prescribed in this chapter is guilty of a

1 felony or gross misdemeanor in accordance with the theft and
2 anticipatory provisions of Title 9A RCW. A person, partnership,
3 corporation, or corporate officer who fails to pay to the department
4 the tax imposed by this chapter is personally liable to the state for
5 the amount of the tax.

6 **Sec. 31.** RCW 82.38.310 and 1995 c 320 s 3 are each amended to read
7 as follows:

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

24 (2) The provisions of this section do not repeal existing
25 state/tribal fuel tax agreements or consent decrees in existence on the
26 effective date of this act. The state and the tribe may agree to
27 substitute an agreement negotiated under this section for an existing
28 agreement or consent decree, or to enter into an agreement using a
29 methodology similar to the state/tribal fuel tax agreements in effect
30 on the effective date of this act.

31 (3) If a new agreement is negotiated, the agreement must:

32 (a) Require that the tribe or the tribal retailer acquire all
33 special fuel only from persons or companies operating lawfully in
34 accordance with this chapter as a special fuel distributor, supplier,
35 importer, or blender, or from a tribal distributor, supplier, importer,
36 or blender lawfully doing business according to all applicable laws;

1 (b) Provide that the tribe will expend fuel tax proceeds or
2 equivalent amounts on: Planning, construction, and maintenance of
3 roads, bridges, and boat ramps; transit services and facilities;
4 transportation planning; police services; and other highway-related
5 purposes;

6 (c) Include provisions for audits or other means of ensuring
7 compliance to certify the number of gallons of special fuel purchased
8 by the tribe for resale at tribal retail stations, and the use of fuel
9 tax proceeds or their equivalent for the purposes identified in (b) of
10 this subsection. Compliance reports must be delivered to the director
11 of the department of licensing.

12 (4) Information from the tribe or tribal retailers received by the
13 state or open to state review under the terms of an agreement shall be
14 deemed personal information under RCW 42.56.230(3)(b) and exempt from
15 public inspection and copying.

16 (5) The governor may delegate the power to negotiate fuel tax
17 agreements to the department of licensing.

18 (6) The department of licensing shall prepare and submit an annual
19 report to the legislature on the status of existing agreements and any
20 ongoing negotiations with tribes.

21 **Sec. 32.** RCW 82.38.320 and 1998 c 176 s 83 are each amended to
22 read as follows:

23 (1) An international fuel tax agreement licensee who meets the
24 qualifications in subsection (2) of this section may be given special
25 authorization by the department to purchase special fuel delivered into
26 bulk storage without payment of the special fuel tax at the time the
27 fuel is purchased. The special authorization applies only to full
28 truck-trailer loads filled at a terminal rack and delivered directly to
29 the bulk storage facilities of the special authorization holder. The
30 licensee shall pay special fuel tax on the fuel at the time the
31 licensee files their international fuel tax agreement tax return and
32 accompanying schedule with the department. The accompanying schedule
33 shall be provided in a form and manner determined by the department and
34 shall contain information on purchases and usage of all nondyed special
35 fuel purchased during the reporting period. In addition, by the
36 fifteenth day of the month following the month in which fuel under the
37 special authorization was purchased, the licensee must report to the

1 department, the name of the seller and the number of gallons purchased
2 for each purchase of such fuel, and any other information as the
3 department may require.

4 (2) To receive or maintain special authorization under subsection
5 (1) of this section, the following conditions regarding the
6 international fuel tax agreement licensee must apply:

7 (a) During the period encompassing the four consecutive calendar
8 quarters immediately preceding the fourth calendar quarter of the
9 previous year, the number of gallons consumed outside the state of
10 Washington as reported on the licensee's international fuel tax
11 agreement tax returns must have been equal to at least twenty percent
12 of the nondyed special fuel gallons, including fuel used on-road and
13 off-road, purchased by the licensee in the state of Washington, as
14 reported on the accompanying schedules required under subsection (1) of
15 this section;

16 (b) The licensee must have been licensed under the provisions of
17 the international fuel tax agreement during each of the four
18 consecutive calendar quarters immediately preceding the fourth calendar
19 quarter of the previous year; and

20 (c) The licensee has not violated the reporting requirements of
21 this section.

22 (3) Only a licensed special fuel supplier or special fuel importer
23 may sell special fuel to a special authorization holder in the manner
24 prescribed by this section.

25 (4) A special fuel (~~distributor~~) supplier or importer who sells
26 special fuel under the special authorization provisions of this section
27 is not liable for the special fuel tax on the fuel. (~~By the fifteenth~~
28 ~~day of the month following the month in which the fuel was sold, the~~
29 ~~special fuel distributor shall report to the department, the name and~~
30 ~~special authorization number of the purchaser and the number of gallons~~
31 ~~sold for each purchase of such special fuel, and any other information~~
32 ~~as the department may require.)) The special fuel supplier or importer
33 will report such sales, in a manner prescribed by the department, at
34 the time the special fuel supplier or importer submits the monthly tax
35 report.~~

36 (~~(4) A supplier selling special fuel under the provisions of this~~
37 ~~section shall not be responsible for taxes due for special fuel~~
38 ~~purchased under the provisions of this section.~~

1 ~~(5) An international fuel tax agreement licensee who qualifies for~~
2 ~~a special authorization under this section for calendar year 1999 is~~
3 ~~not subject to the special fuel user requirements of RCW 82.38.289.)~~

4 NEW SECTION. **Sec. 33.** A new section is added to chapter 82.38 RCW
5 to read as follows:

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

15 NEW SECTION. **Sec. 34.** The following acts or parts of acts are
16 each repealed:

17 (1) RCW 82.36.042 (Notice by supplier of distributor's failure to
18 pay tax--License suspension--Notice to suppliers--Revocation or
19 suspension upon continued noncompliance) and 1998 c 176 s 14;

20 (2) RCW 82.36.273 (Refunds to licensee for fuel purchased by exempt
21 person--Exception--Invoice or proof) and 1998 c 176 s 35;

22 (3) RCW 82.36.305 (Refunds to dealer delivering fuel exclusively
23 for marine use--Limitations--Supporting certificate) and 1965 ex.s. c
24 79 s 12 & 1961 c 15 s 82.36.305;

25 (4) RCW 82.36.360 (Separate invoices for nontaxed fuel) and 1961 c
26 15 s 82.36.360;

27 (5) RCW 82.36.373 (Refund for worthless accounts receivable--
28 Rules--Apportionment after receipt) and 1998 c 176 s 43;

29 (6) RCW 82.36.407 (Tax liability of user--Payment--Exceptions) and
30 1998 c 176 s 48;

31 (7) RCW 82.38.070 (Credit for sales for which no consideration was
32 received--Report--Adjustment) and 1998 c 176 s 58, 1990 c 250 s 83, &
33 1971 ex.s. c 175 s 8;

34 (8) RCW 82.38.071 (Refund for worthless accounts receivable--
35 Rules--Apportionment after receipt) and 1998 c 176 s 59;

1 (9) RCW 82.38.081 (Exemptions--Motor vehicle fuel used for racing)
2 and 1998 c 115 s 6;

3 (10) RCW 82.38.185 (Refunds--Tax paid purchased by exempt person--
4 Application) and 1998 c 176 s 73;

5 (11) RCW 82.38.285 (Tax liability of user--Exceptions) and 1998 c
6 176 s 81; and

7 (12) RCW 82.38.165 (Notice by supplier of distributor's failure to
8 pay tax--License suspension--Notice to suppliers--Revocation or
9 suspension upon continued noncompliance) and 1998 c 176 s 69.

10 NEW SECTION. **Sec. 35.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected."

14 Correct the title.

EFFECT: Removes the handling loss allowance deduction for
licensed fuel distributors.

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