

SB 5272 - H COMM AMD
By Committee on Transportation

ADOPTED 04/06/2007

1 Strike everything after the enacting clause and insert the
2 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 82.36.031 and 1998 c 176 s 11 are each amended to read
16 as follows:

17 For the purpose of determining the amount of liability for the tax
18 imposed under this chapter, and to periodically update license
19 information, each licensee, other than a motor vehicle fuel distributor
20 or an international fuel tax agreement licensee, shall file monthly tax
21 reports with the department, on a form prescribed by the department.
22 An international fuel tax licensee shall file quarterly tax reports
23 with the department, on a form prescribed by the department.

24 A report shall be filed with the department even though no motor
25 vehicle fuel tax is due for the reporting period. Each tax report
26 shall contain a declaration by the person making the same, to the
27 effect that the statements contained therein are true and made under
28 penalties of perjury, which declaration has the same force and effect
29 as a verification of the report and is in lieu of the verification.
30 The report shall show information as the department may require for the
31 proper administration and enforcement of this chapter. Tax reports
32 shall be filed on or before the twenty-fifth day of the next succeeding
33 calendar month following the period to which the reports relate. If
34 the final filing date falls on a Saturday, Sunday, or legal holiday the
35 next secular or business day shall be the final filing date.

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

5 **Sec. 8.** RCW 82.36.045 and 1998 c 176 s 16 are each amended to read
6 as follows:

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

11 (2) If a licensee, or person acting as such, fails, neglects, or
12 refuses to file a motor vehicle fuel tax report the department shall,
13 on the basis of information available to it, determine the tax
14 liability of the licensee or person for the period during which no
15 report was filed. The department shall add the penalty provided in
16 subsection (1) of this section to the tax. An assessment made by the
17 department under this subsection or subsection (1) of this section is
18 presumed to be correct. In any case, where the validity of the
19 assessment is questioned, the burden is on the person who challenges
20 the assessment to establish by a fair preponderance of evidence that it
21 is erroneous or excessive, as the case may be.

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

28 (4) Motor vehicle fuel tax, penalties, and interest payable under
29 this chapter bears interest at the rate of one percent per month, or
30 fraction thereof, from the first day of the calendar month after the
31 amount or any portion of it should have been paid until the date of
32 payment. If a licensee or person acting as such establishes by a fair
33 preponderance of evidence that the failure to pay the amount of tax due
34 was attributable to reasonable cause and was not intentional or
35 willful, the department may waive the penalty. The department may
36 waive the interest when it determines the cost of processing or
37 collection of the interest exceeds the amount of interest due.

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

8 (6) Except in the case of violations of filing a false or
9 fraudulent report, if the department deems mitigation of penalties and
10 interest to be reasonable and in the best interest of carrying out the
11 purpose of this chapter, it may mitigate such assessments upon whatever
12 terms the department deems proper, giving consideration to the degree
13 and extent of the lack of records and reporting errors. The department
14 may ascertain the facts regarding recordkeeping and payment penalties
15 in lieu of more elaborate proceedings under this chapter.

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

22 If a petition for reassessment is filed within the thirty-day
23 period, the department shall reconsider the assessment and, if the
24 petitioner has so requested in its petition, shall grant the petitioner
25 an oral hearing and give the petitioner twenty days' notice of the time
26 and place of the hearing. The department may continue the hearing from
27 time to time. The decision of the department upon a petition for
28 reassessment becomes final thirty days after service of notice upon the
29 petitioner.

30 An assessment made by the department becomes due and payable when
31 it becomes final. If it is not paid to the department when due and
32 payable, the department shall add a penalty of ten percent of the
33 amount of the tax.

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

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

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

18 **Sec. 9.** RCW 82.36.060 and 2001 c 270 s 5 are each amended to read
19 as follows:

20 (1) An application for a license issued under this chapter shall be
21 made to the department on forms to be furnished by the department and
22 shall contain such information as the department deems necessary.

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

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

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

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

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

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

7 (3) An applicant for a license as a motor vehicle fuel importer
8 must list on the application each state, province, or country from
9 which the applicant intends to import motor vehicle fuel and, if
10 required by the state, province, or country listed, must be licensed or
11 registered for motor vehicle fuel tax purposes in that state, province,
12 or country.

13 (4) An applicant for a license as a motor vehicle fuel exporter
14 must list on the application each state, province, or country to which
15 the exporter intends to export motor vehicle fuel received in this
16 state by means of a transfer outside of the bulk transfer-terminal
17 system and, if required by the state, province, or country listed, must
18 be licensed or registered for motor vehicle fuel tax purposes in that
19 state, province, or country.

20 (5) An applicant for a license as a motor vehicle fuel supplier
21 must have a federal certificate of registry that is issued under the
22 internal revenue code and authorizes the applicant to enter into
23 federal tax-free transactions on motor vehicle fuel in the terminal
24 transfer system.

25 (6) After receipt of an application for a license, the director may
26 conduct an investigation to determine whether the facts set forth are
27 true. The director shall require a fingerprint record check of the
28 applicant through the Washington state patrol criminal identification
29 system and the federal bureau of investigation before issuance of a
30 license. The results of the background investigation including
31 criminal history information may be released to authorized department
32 personnel as the director deems necessary. The department shall charge
33 a license holder or license applicant a fee of fifty dollars for each
34 background investigation conducted.

35 An applicant who makes a false statement of a material fact on the
36 application may be prosecuted for false swearing as defined by RCW
37 9A.72.040.

1 (7) Except as provided by subsection (8) of this section, before
2 granting any license issued under this chapter, the department shall
3 require applicant to file with the department, in such form as shall be
4 prescribed by the department, a corporate surety bond duly executed by
5 the applicant as principal, payable to the state and conditioned for
6 faithful performance of all the requirements of this chapter, including
7 the payment of all taxes, penalties, and other obligations arising out
8 of this chapter. The total amount of the bond or bonds shall be fixed
9 by the department and may be increased or reduced by the department at
10 any time subject to the limitations herein provided. In fixing the
11 total amount of the bond or bonds, the department shall require a bond
12 or bonds equivalent in total amount to twice the estimated monthly
13 excise tax determined in such manner as the department may deem proper.
14 If at any time the estimated excise tax to become due during the
15 succeeding month amounts to more than fifty percent of the established
16 bond, the department shall require additional bonds or securities to
17 maintain the marginal ratio herein specified or shall demand excise tax
18 payments to be made weekly or semimonthly to meet the requirements
19 hereof.

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

23 No recoveries on any bond or the execution of any new bond shall
24 invalidate any bond and no revocation of any license shall effect the
25 validity of any bond but the total recoveries under any one bond shall
26 not exceed the amount of the bond.

27 In lieu of any such bond or bonds in total amount as herein fixed,
28 a licensee may deposit with the state treasurer, under such terms and
29 conditions as the department may prescribe, a like amount of lawful
30 money of the United States or bonds or other obligations of the United
31 States, the state, or any county of the state, of an actual market
32 value not less than the amount so fixed by the department.

33 Any surety on a bond furnished by a licensee as provided herein
34 shall be released and discharged from any and all liability to the
35 state accruing on such bond after the expiration of thirty days from
36 the date upon which such surety has lodged with the department a
37 written request to be released and discharged, but this provision shall
38 not operate to relieve, release, or discharge the surety from any

1 liability already accrued or which shall accrue before the expiration
2 of the thirty day period. The department shall promptly, upon
3 receiving any such request, notify the licensee who furnished the bond;
4 and unless the licensee, on or before the expiration of the thirty day
5 period, files a new bond, or makes a deposit in accordance with the
6 requirements of this section, the department shall forthwith cancel the
7 license. Whenever a new bond is furnished by a licensee, the
8 department shall cancel the old bond as soon as the department and the
9 attorney general are satisfied that all liability under the old bond
10 has been fully discharged.

11 The department may require a licensee to give a new or additional
12 surety bond or to deposit additional securities of the character
13 specified in this section if, in its opinion, the security of the
14 surety bond theretofore filed by such licensee, or the market value of
15 the properties deposited as security by the licensee, shall become
16 impaired or inadequate; and upon the failure of the licensee to give
17 such new or additional surety bond or to deposit additional securities
18 within thirty days after being requested so to do by the department,
19 the department shall forthwith cancel his or her license.

20 (8) The department may waive the requirements of subsection (7) of
21 this section for licensed distributors if, upon determination by the
22 department, the licensed distributor has sufficient resources, assets,
23 other financial instruments, or other means, to adequately make
24 payments on the estimated monthly motor vehicle fuel tax payments,
25 penalties, and interest arising out of this chapter. The department
26 shall adopt rules to administer this subsection. An application for an
27 international fuel tax agreement license must be made to the
28 department. The application must be filed upon a form prescribed by
29 the department and contain such information as the department may
30 require. The department shall charge a fee of ten dollars per set of
31 international fuel tax agreement decals issued to each applicant or
32 licensee. The department shall transmit the fee to the state treasurer
33 for deposit in the motor vehicle fund.

34 **Sec. 10.** RCW 82.36.080 and 1998 c 176 s 20 are each amended to
35 read as follows:

36 (1) It shall be unlawful for any person to engage in business in

1 this state as any of the following unless the person is the holder of
2 an uncanceled license issued by the department authorizing the person
3 to engage in that business:

- 4 (a) Motor vehicle fuel supplier;
- 5 (b) Motor vehicle fuel distributor;
- 6 (c) Motor vehicle fuel exporter;
- 7 (d) Motor vehicle fuel importer; (~~(or)~~)
- 8 (e) Motor vehicle fuel blender; or
- 9 (f) International fuel tax agreement licensee.

10 (2) A person engaged in more than one activity for which a license
11 is required must have a separate license classification for each
12 activity, but a motor vehicle fuel supplier is not required to obtain
13 a separate license classification for any other activity for which a
14 license is required.

15 (3) If any person acts as a licensee without first securing the
16 license required herein the excise tax shall be immediately due and
17 payable on account of all motor vehicle fuel distributed or used by the
18 person. The director shall proceed forthwith to determine from the
19 best available sources, the amount of the tax, and the director shall
20 immediately assess the tax in the amount found due, together with a
21 penalty of one hundred percent of the tax, and shall make a certificate
22 of such assessment and penalty. In any suit or proceeding to collect
23 the tax or penalty, or both, such certificate shall be prima facie
24 evidence that the person therein named is indebted to the state in the
25 amount of the tax and penalty therein stated. Any tax or penalty so
26 assessed may be collected in the manner prescribed in this chapter with
27 reference to delinquency in payment of the tax or by an action at law,
28 which the attorney general shall commence and prosecute to final
29 determination at the request of the director. The foregoing remedies
30 of the state shall be cumulative and no action taken pursuant to this
31 section shall relieve any person from the penal provisions of this
32 chapter.

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

35 Every licensee shall maintain in the office of his or her principal
36 place of business in this state, for a period of five years, records of
37 motor vehicle fuel received, sold, distributed, or used by the

1 licensee, in such form as the director may prescribe, together with
2 invoices, bills of lading, and other pertinent papers as may be
3 required under the provisions of this chapter.

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

10 **Sec. 12.** RCW 82.36.180 and 1998 c 176 s 30 are each amended to
11 read as follows:

12 The director, or duly authorized agents, may make such examinations
13 of the records, stocks, facilities, and equipment of any licensee,
14 ~~((and service stations,))~~ and make such other investigations as deemed
15 necessary in carrying out the provisions of this chapter. If such
16 examinations or investigations disclose that any reports of licensees
17 theretofore filed with the director pursuant to the requirements of
18 this chapter have shown incorrectly the gallonage of motor vehicle fuel
19 distributed or the tax ~~((accruing))~~ liability thereon, the director may
20 make such changes in subsequent reports and payments of such licensees
21 as deemed necessary to correct the errors disclosed.

22 Every such licensee or such other person not maintaining records in
23 this state so that an audit of such records may be made by the director
24 or a duly authorized representative shall be required to make the
25 necessary records available to the director upon request and at a
26 designated office within this state; or, in lieu thereof, the director
27 or a duly authorized representative shall proceed to any out-of-state
28 office at which the records are prepared and maintained to make such
29 examination.

30 NEW SECTION. **Sec. 13.** A new section is added to chapter 82.36 RCW
31 to read as follows:

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

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

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

10 **Sec. 15.** RCW 82.36.340 and 1961 c 15 s 82.36.340 are each amended
11 to read as follows:

12 The director may in order to establish the validity of any claim
13 for refund require the claimant(~~(, or, in the case of a dealer filing~~
14 ~~a claim for refund as provided by RCW 82.36.305, the person to whom~~
15 ~~such fuel was sold,)) to furnish such additional proof of the validity
16 of the claim as the director may determine, and may examine the books
17 and records of the claimant or said person to whom the fuel was sold
18 for such purpose. The records shall be sufficient to substantiate the
19 accuracy of the claim and shall be in such form and contain such
20 information as the director may require. The failure to maintain such
21 records or to accede to a demand for an examination of such records may
22 be deemed by the director as sufficient cause for denial of all right
23 to the refund claimed on account of the transaction in question.~~

24 **Sec. 16.** RCW 82.36.370 and 1998 c 176 s 42 are each amended to
25 read as follows:

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

31 (2) A refund shall be made in the manner provided in this chapter
32 or a credit given allowing for the excise tax paid or accrued on all
33 motor vehicle fuel of five hundred gallons or more which is lost or
34 destroyed, while (~~applicant shall be~~) the licensee was the owner
35 thereof, through leakage or other casualty except evaporation,
36 shrinkage or unknown causes: PROVIDED, That the director shall be

1 notified in writing as to the full circumstances surrounding such loss
2 or destruction and the amount of the loss or destruction within thirty
3 days from the day of discovery of such loss or destruction.

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

8 In the event that the director is not satisfied that the fuel was
9 lost or destroyed as claimed, wherefore required information or proof
10 as required hereunder is not sufficient to substantiate the accuracy of
11 the claim, the director may deem as sufficient cause the denial of all
12 right relating to the refund or credit for the excise tax on motor
13 vehicle fuel alleged to be lost or destroyed.

14 **Sec. 17.** RCW 82.36.380 and 2003 c 358 s 13 are each amended to
15 read as follows:

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

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

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

20 (c) Act as a motor fuel importer, motor fuel blender, or motor fuel
21 supplier unless the person holds an uncanceled motor fuel license
22 issued by the department authorizing the person to engage in that
23 business;

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

26 (e) Knowingly operate a conveyance for the purpose of hauling,
27 transporting, or delivering motor vehicle fuel in bulk and not possess
28 an invoice, bill of sale, or other statement showing the name, address,
29 and tax license number of the seller or consignor, the destination, the
30 name, address, and tax license number of the purchaser or consignee,
31 and the number of gallons.

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

36 (a) Pay the tax or fee evaded plus interest, commencing at the date

1 the tax or fee was first due, at the rate of twelve percent per year,
2 compounded monthly; and

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

5 (3) The tax imposed by this chapter is held in trust by the
6 licensee until paid to the department, and a licensee who appropriates
7 the tax to his or her own use or to any use other than the payment of
8 the tax on the due date as prescribed in this chapter is guilty of a
9 felony or gross misdemeanor in accordance with the theft and
10 anticipatory provisions of Title 9A RCW. A person, partnership,
11 corporation, or corporate officer who fails to pay to the department
12 the tax imposed by this chapter is personally liable to the state for
13 the amount of the tax.

14 **Sec. 18.** RCW 82.36.450 and 1995 c 320 s 2 are each amended to read
15 as follows:

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

32 (2) The provisions of this section do not repeal existing
33 state/tribal fuel tax agreements or consent decrees in existence on the
34 effective date of this act. The state and the tribe may agree to
35 substitute an agreement negotiated under this section for an existing
36 agreement or consent decree, or to enter into an agreement using a

1 methodology similar to the state/tribal fuel tax agreements in effect
2 on the effective date of this act.

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

4 (a) Require that the tribe or the tribal retailer acquire all motor
5 vehicle fuel only from persons or companies operating lawfully in
6 accordance with this chapter as a motor vehicle fuel distributor,
7 supplier, importer, or blender, or from a tribal distributor, supplier,
8 importer, or blender lawfully doing business according to all
9 applicable laws;

10 (b) Provide that the tribe will expend fuel tax proceeds or
11 equivalent amounts on: Planning, construction, and maintenance of
12 roads, bridges, and boat ramps; transit services and facilities;
13 transportation planning; police services; and other highway-related
14 purposes;

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

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

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

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

30 NEW SECTION. Sec. 19. A new section is added to chapter 82.36 RCW
31 to read as follows:

32 It is the intent and purpose of this chapter that the tax shall be
33 imposed at the time and place of the first taxable event and upon the
34 first taxable person within this state. Any person whose activities
35 would otherwise require payment of the tax imposed by RCW 82.36.020 but
36 who is exempt from the tax nevertheless has a precollection obligation
37 for the tax that must be imposed on the first taxable event within this

1 state. Failure to pay the tax with respect to a taxable event shall
2 not prevent tax liability from arising by reason of a subsequent
3 taxable event.

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

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

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

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

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

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

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

37 (7) Taxes are imposed when:

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Special fuel is sold by a licensed special fuel supplier to a
2 special fuel distributor, special fuel importer, or special fuel
3 blender and the special fuel is not removed from the bulk transfer-
4 terminal system.

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

17 **Sec. 21.** RCW 82.38.032 and 1998 c 176 s 52 are each amended to
18 read as follows:

19 ~~((The tax under RCW 82.38.030, if not previously imposed and paid,
20 must be paid over to the department by special fuel users and persons
21 licensed under the international fuel tax agreement or other fuel tax
22 reciprocity agreements entered into with the state of Washington, on
23 the use of special fuel to operate motor vehicles on the highways of
24 this state, unless the use is exempt from the tax under this chapter.))~~
25 International fuel tax agreement licensees, or persons operating motor
26 vehicles under other reciprocity agreements entered into with the state
27 of Washington, are liable for and must pay the tax under RCW 82.38.030
28 to the department on special fuel used to operate motor vehicles on the
29 highways of this state. This provision does not apply if the tax under
30 RCW 82.38.030 has previously been imposed and paid by the international
31 fuel tax agreement licensee or if the use of such fuel is exempt from
32 the tax under this chapter.

33 **Sec. 22.** RCW 82.38.035 and 2005 c 314 s 107 are each amended to
34 read as follows:

35 (1) A licensed supplier shall ~~((remit))~~ be liable for and pay tax
36 on special fuel to the department as provided in RCW 82.38.030(7)(a).

1 On a two-party exchange, or buy-sell agreement between two licensed
2 suppliers, the receiving exchange partner or buyer shall (~~remit~~) be
3 liable for and pay the tax.

4 (2) A refiner shall (~~remit~~) be liable for and pay tax to the
5 department on special fuel removed from a refinery as provided in RCW
6 82.38.030(7)(b).

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

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

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

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

19 **Sec. 23.** RCW 82.38.050 and 1990 c 250 s 82 are each amended to
20 read as follows:

21 (~~Except as otherwise provided in this chapter, every special fuel~~
22 ~~user shall be liable for the tax on special fuel used in motor vehicles~~
23 ~~leased to the user for thirty days or more and operated on the highways~~
24 ~~of this state to the same extent and in the same manner as special fuel~~
25 ~~used in his own motor vehicles and operated on the highways of this~~
26 ~~state:—PROVIDED, That~~) A lessor who is engaged regularly in the
27 business of leasing or renting for compensation motor vehicles and
28 equipment he owns without drivers to carriers or other lessees for
29 interstate operation, may be deemed to be the special fuel user when he
30 supplies or pays for the special fuel consumed in such vehicles, and
31 such lessor may be issued ((a)) an international fuel tax agreement
32 license ((~~as a special fuel user~~)) when application and bond have been
33 properly filed with and approved by the department for such license.
34 Any lessee may exclude motor vehicles of which he or she is the lessee
35 from reports and liabilities pursuant to this chapter, but only if the
36 motor vehicles in question have been leased from a lessor holding a
37 valid (~~special fuel user's~~) international fuel tax agreement license.

1 (~~Every such lessor shall file with the application for a special~~
2 ~~fuel user's license one copy of the lease form or service contract the~~
3 ~~lessor enters into with the various lessees of the lessor's motor~~
4 ~~vehicles.~~) When the ((~~special fuel user's~~)) license has been secured,
5 such lessor shall make and assign to each motor vehicle leased for
6 interstate operation a photocopy of such license to be carried in the
7 cab compartment of the motor vehicle and on which shall be typed or
8 printed on the back the unit or motor number of the motor vehicle to
9 which it is assigned and the name of the lessee. Such lessor shall be
10 responsible for the proper use of such photocopy of the license issued
11 and its return to the lessor with the motor vehicle to which it is
12 assigned.

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

16 **Sec. 24.** RCW 82.38.100 and 1999 c 270 s 2 are each amended to read
17 as follows:

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

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

30 (3) For each permit issued, there shall be collected a filing fee
31 of one dollar, an administrative fee of ten dollars, and an excise tax
32 of nine dollars. Such fees and tax shall be in lieu of the special
33 fuel tax otherwise assessable against the permit holder for importing
34 and using special fuel in a motor vehicle on the public highways of
35 this state, and no report of mileage shall be required with respect to
36 such vehicle. Trip permits will not be issued if the applicant has

1 outstanding fuel taxes, penalties, or interest owing to the state or
2 has had a special fuel license revoked for cause and the cause has not
3 been removed.

4 (4) Blank permits may be obtained from field offices of the
5 department of transportation, (~~Washington state patrol,~~) department
6 of licensing, or other agents appointed by the department. The
7 department may appoint county auditors or businesses as agents for the
8 purpose of selling trip permits to the public. County auditors or
9 businesses so appointed may retain the filing fee collected for each
10 trip permit to defray expenses incurred in handling and selling the
11 permits.

12 (5) A surcharge of five dollars is imposed on the issuance of trip
13 permits. The portion of the surcharge paid by motor carriers must be
14 deposited in the motor vehicle fund for the purpose of supporting
15 vehicle weigh stations, weigh-in-motion programs, and the commercial
16 vehicle information systems and networks program. The remaining
17 portion of the surcharge must be deposited in the motor vehicle fund
18 for the purpose of supporting congestion relief programs. All other
19 fees and excise taxes collected by the department for trip permits
20 shall be credited and deposited in the same manner as the special fuel
21 tax collected under this chapter and shall not be subject to exchange,
22 refund, or credit.

23 **Sec. 25.** RCW 82.38.130 and 1998 c 176 s 65 are each amended to
24 read as follows:

25 The department may revoke the license of any licensee for any of
26 the grounds constituting cause for denial of a license set forth in RCW
27 82.38.120 or for other reasonable cause. Before revoking such license
28 the department shall notify the licensee to show cause within twenty
29 days of the date of the notice why the license should not be revoked:
30 PROVIDED, That at any time prior to and pending such hearing the
31 department may, in the exercise of reasonable discretion, suspend such
32 license.

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

35 Any surety on a bond furnished by a licensee as provided in this
36 chapter shall be released and discharged from any and all liability to
37 the state accruing on such bond after the expiration of forty-five days

1 from the date which such surety shall have lodged with the department
2 a written request to be released and discharged, but this provision
3 shall not operate to relieve, release, or discharge the surety from any
4 liability already accrued or which shall accrue before the expiration
5 of the forty-five day period. The department shall promptly, upon
6 receiving any such request, notify the licensee who furnished the bond,
7 and unless the licensee, on or before the expiration of the forty-five
8 day period, files a new bond, in accordance with this section, the
9 department ((forthwith)) shall cancel the ((~~special fuel dealer's or~~
10 ~~special fuel user's~~)) license.

11 The department may require a new or additional surety bond of the
12 character specified in RCW 82.38.020(3) if, in its opinion, the
13 security of the surety bond therefor filed by such licensee, shall
14 become impaired or inadequate. Upon failure of the licensee to give
15 such new or additional surety bond within forty-five days after being
16 requested to do so by the department, or after he or she shall fail or
17 refuse to file reports and remit or pay taxes at the intervals fixed by
18 the department, the department forthwith shall cancel his or her
19 license.

20 **Sec. 26.** RCW 82.38.140 and 1998 c 176 s 66 are each amended to
21 read as follows:

22 (1) Every licensee and every person importing, manufacturing,
23 refining, ((~~dealing in,~~)) transporting, blending, or storing special
24 fuel in this state shall keep for a period of not less than five years
25 open to inspection at all times during the business hours of the day to
26 the department or its authorized representatives, a complete record of
27 all special fuel purchased or received and all of such products sold,
28 delivered, or used by them. Such records shall show:

29 (a) The date of each receipt;

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

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

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

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

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

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

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

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

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

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

17 (3) The department may require a person other than a licensee
18 engaged in the business of selling, purchasing, distributing, storing,
19 transporting, or delivering special fuel to submit periodic reports to
20 the department regarding the disposition of the fuel. The reports must
21 be on forms prescribed by the department and must contain such
22 information as the department may require.

23 (4) Every person operating any conveyance for the purpose of
24 hauling, transporting, or delivering special fuel in bulk shall have
25 and possess during the entire time the person is hauling special fuel,
26 an invoice, bill of sale, or other statement showing the name, address,
27 and license number of the seller or consigner, the destination, name,
28 and address of the purchaser or consignee, license number, if
29 applicable, and the number of gallons. The person hauling such special
30 fuel shall at the request of any law enforcement officer or authorized
31 representative of the department, or other person authorized by law to
32 inquire into, or investigate those types of matters, produce for
33 inspection such invoice, bill of sale, or other statement and shall
34 permit such official to inspect and gauge the contents of the vehicle.

35 **Sec. 27.** RCW 82.38.150 and 1998 c 176 s 67 are each amended to
36 read as follows:

37 For the purpose of determining the amount of liability for the tax

1 herein imposed, and to periodically update license information, each
2 licensee, other than a special fuel distributor, an international fuel
3 tax agreement licensee, or a dyed special fuel user, shall file monthly
4 tax reports with the department, on forms prescribed by the department.

5 Dyed special fuel users whose estimated yearly tax liability is two
6 hundred fifty dollars or less, shall file a report yearly, and dyed
7 special fuel users whose estimated yearly tax liability is more than
8 two hundred fifty dollars, shall file reports quarterly. Special fuel
9 users licensed under the international fuel tax agreement shall file
10 reports quarterly. (~~Special fuel distributors~~) Heating oil dealers
11 subject to the pollution liability insurance agency fee and reporting
12 requirements shall remit pollution liability insurance agency returns
13 and any associated payment due to the department annually.

14 The department shall establish the reporting frequency for each
15 applicant at the time the special fuel license is issued. If it
16 becomes apparent that any licensee is not reporting in accordance with
17 the above schedule, the department shall change the licensee's
18 reporting frequency by giving thirty days' notice to the licensee by
19 mail to the licensee's address of record. A report shall be filed with
20 the department even though no special fuel was used, or tax is due, for
21 the reporting period. Each tax report shall contain a declaration by
22 the person making the same, to the effect that the statements contained
23 therein are true and are made under penalties of perjury, which
24 declaration shall have the same force and effect as a verification of
25 the report and is in lieu of such verification. The report shall show
26 such information as the department may reasonably require for the
27 proper administration and enforcement of this chapter. (~~For counties~~
28 ~~within which an additional excise tax on special fuel has been levied~~
29 ~~by that jurisdiction under RCW 82.80.010, the report must show the~~
30 ~~quantities of special fuel sold, distributed, or withdrawn from bulk~~
31 ~~storage by the reporting dealer or user within the county's boundaries~~
32 ~~and the tax liability from its levy.)) A licensee shall file a tax
33 report on or before the twenty-fifth day of the next succeeding
34 calendar month following the period to which it relates.~~

35 Subject to the written approval of the department, tax reports may
36 cover a period ending on a day other than the last day of the calendar
37 month. Taxpayers granted approval to file reports in this manner will

1 file such reports on or before the twenty-fifth day following the end
2 of the reporting period. No change to this reporting period will be
3 made without the written authorization of the department.

4 If the final filing date falls on a Saturday, Sunday, or legal
5 holiday the next secular or business day shall be the final filing
6 date. Such reports shall be considered filed or received on the date
7 shown by the post office cancellation mark stamped upon an envelope
8 containing such report properly addressed to the department, or on the
9 date it was mailed if proof satisfactory to the department is available
10 to establish the date it was mailed.

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

16 **Sec. 28.** RCW 82.38.180 and 1998 c 176 s 71 are each amended to
17 read as follows:

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

23 (1) ~~((Any))~~ Taxes previously paid on special fuel used for purposes
24 other than for the propulsion of motor vehicles upon the public
25 highways in this state.

26 (2) ~~((Any))~~ Taxes previously paid on special fuel exported for use
27 outside of this state. Special fuel carried from this state in the
28 fuel tank of a motor vehicle is deemed to be exported from this state.
29 Special fuel distributed to a federally recognized Indian tribal
30 reservation located within the state of Washington is not considered
31 exported outside this state.

32 (3) ~~((Any))~~ Tax, penalty, or interest erroneously or illegally
33 collected or paid.

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

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

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

7 Recovery for such loss or destruction under either subsection (4),
8 (5), or (6) of this section must be susceptible to positive proof
9 thereby enabling the department to conduct such investigation and
10 require such information as (~~they~~) it may deem necessary. In the
11 event that the department is not satisfied that the fuel was lost,
12 destroyed, or contaminated as claimed because information or proof as
13 required hereunder is not sufficient to substantiate the accuracy of
14 the claim, (~~they~~) it may deem such as sufficient cause to deny all
15 right relating to the refund or credit for the excise tax paid on
16 special fuel alleged to be lost or destroyed.

17 No refund or claim for credit shall be approved by the department
18 unless the gallons of special fuel claimed as nontaxable satisfy the
19 conditions specifically set forth in this section and the nontaxable
20 event or use occurred during the period covered by the refund claim.
21 Refunds or claims for credit (~~by sellers or users of special fuel~~)
22 shall not be allowed for anticipated nontaxable use or events.

23 **Sec. 29.** RCW 82.38.270 and 2003 c 358 s 14 are each amended to
24 read as follows:

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

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

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

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

34 (d) Act as a special fuel importer, special fuel blender, or
35 special fuel supplier unless the person holds an uncanceled special
36 fuel license issued by the department authorizing the person to engage
37 in that business;

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

3 (f) Knowingly operate a conveyance for the purpose of hauling,
4 transporting, or delivering special fuel in bulk and not possess an
5 invoice, bill of sale, or other statement showing the name, address,
6 and tax license number of the seller or consignor, the destination, the
7 name, address, and tax license number of the purchaser or consignee,
8 and the number of gallons.

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

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

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

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

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

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

31 **Sec. 30.** RCW 82.38.310 and 1995 c 320 s 3 are each amended to read
32 as follows:

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

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

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

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

20 (a) Require that the tribe or the tribal retailer acquire all
21 special fuel only from persons or companies operating lawfully in
22 accordance with this chapter as a special fuel distributor, supplier,
23 importer, or blender, or from a tribal distributor, supplier, importer,
24 or blender lawfully doing business according to all 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 special fuel purchased
32 by the tribe for resale at tribal retail stations, and the use of fuel
33 tax proceeds or their equivalent for the purposes identified in (b) of
34 this subsection. Compliance reports must be delivered to the director
35 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 personal information under RCW 42.56.230(3)(b) and exempt from
2 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 **Sec. 31.** RCW 82.38.320 and 1998 c 176 s 83 are each amended to
9 read as follows:

10 (1) An international fuel tax agreement licensee who meets the
11 qualifications in subsection (2) of this section may be given special
12 authorization by the department to purchase special fuel delivered into
13 bulk storage without payment of the special fuel tax at the time the
14 fuel is purchased. The special authorization applies only to full
15 truck-trailer loads filled at a terminal rack and delivered directly to
16 the bulk storage facilities of the special authorization holder. The
17 licensee shall pay special fuel tax on the fuel at the time the
18 licensee files their international fuel tax agreement tax return and
19 accompanying schedule with the department. The accompanying schedule
20 shall be provided in a form and manner determined by the department and
21 shall contain information on purchases and usage of all nondyed special
22 fuel purchased during the reporting period. In addition, by the
23 fifteenth day of the month following the month in which fuel under the
24 special authorization was purchased, the licensee must report to the
25 department, the name of the seller and the number of gallons purchased
26 for each purchase of such fuel, and any other information as the
27 department may require.

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

31 (a) During the period encompassing the four consecutive calendar
32 quarters immediately preceding the fourth calendar quarter of the
33 previous year, the number of gallons consumed outside the state of
34 Washington as reported on the licensee's international fuel tax
35 agreement tax returns must have been equal to at least twenty percent
36 of the nondyed special fuel gallons, including fuel used on-road and

1 off-road, purchased by the licensee in the state of Washington, as
2 reported on the accompanying schedules required under subsection (1) of
3 this section;

4 (b) The licensee must have been licensed under the provisions of
5 the international fuel tax agreement during each of the four
6 consecutive calendar quarters immediately preceding the fourth calendar
7 quarter of the previous year; and

8 (c) The licensee has not violated the reporting requirements of
9 this section.

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

13 (4) A special fuel (~~((distributor))~~) supplier or importer who sells
14 special fuel under the special authorization provisions of this section
15 is not liable for the special fuel tax on the fuel. (~~((By the fifteenth~~
16 ~~day of the month following the month in which the fuel was sold, the~~
17 ~~special fuel distributor shall report to the department, the name and~~
18 ~~special authorization number of the purchaser and the number of gallons~~
19 ~~sold for each purchase of such special fuel, and any other information~~
20 ~~as the department may require.))~~) The special fuel supplier or importer
21 will report such sales, in a manner prescribed by the department, at
22 the time the special fuel supplier or importer submits the monthly tax
23 report.

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

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

30 NEW SECTION. Sec. 32. A new section is added to chapter 82.38 RCW
31 to read as follows:

32 It is the intent and purpose of this chapter that the tax shall be
33 imposed at the time and place of the first taxable event and upon the
34 first taxable person within this state. Any person whose activities
35 would otherwise require payment of the tax imposed by RCW 82.38.030 but
36 who is exempt from the tax nevertheless has a precollection obligation
37 for the tax that must be imposed on the first taxable event within this

1 state. Failure to pay the tax with respect to a taxable event shall
2 not prevent tax liability from arising by reason of a subsequent
3 taxable event.

4 NEW SECTION. **Sec. 33.** The following acts or parts of acts are
5 each repealed:

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

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

11 (3) RCW 82.36.305 (Refunds to dealer delivering fuel exclusively
12 for marine use--Limitations--Supporting certificate) and 1965 ex.s. c
13 79 s 12 & 1961 c 15 s 82.36.305;

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

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

18 (6) RCW 82.36.407 (Tax liability of user--Payment--Exceptions) and
19 1998 c 176 s 48;

20 (7) RCW 82.38.070 (Credit for sales for which no consideration was
21 received--Report--Adjustment) and 1998 c 176 s 58, 1990 c 250 s 83, &
22 1971 ex.s. c 175 s 8;

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

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

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

29 (11) RCW 82.38.285 (Tax liability of user--Exceptions) and 1998 c
30 176 s 81; and

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

34 NEW SECTION. **Sec. 34.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

3 Correct the title.

EFFECT: Distributors are added to the definition of a licensee. As a licensee, distributors are eligible for the float and handling loss allowance deduction, which is retained. Moves the tax responsibility and imposes the tax on the redefined licensees, except for distributors. Retains the other elements of SB 5272.

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