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HOUSE BILL 1290

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Clibborn and Hankins

Read first time 01/16/2007. Referred to Committee on Transportation.

1            AN ACT Relating to the administration of fuel taxes; amending RCW  
2 82.36.010, 82.36.020, 82.36.025, 82.36.026, 82.36.027, 82.36.029,  
3 82.36.031, 82.36.035, 82.36.045, 82.36.060, 82.36.080, 82.36.160,  
4 82.36.180, 82.36.320, 82.36.340, 82.36.370, 82.36.380, 82.36.450,  
5 82.38.030, 82.38.032, 82.38.035, 82.38.050, 82.38.090, 82.38.100,  
6 82.38.110, 82.38.130, 82.38.140, 82.38.150, 82.38.160, 82.38.180,  
7 82.38.270, 82.38.310, and 82.38.320; adding new sections to chapter  
8 82.36 RCW; adding a new section to chapter 82.38 RCW; repealing RCW  
9 82.36.042, 82.36.273, 82.36.305, 82.36.360, 82.36.373, 82.36.407,  
10 82.38.070, 82.38.071, 82.38.081, 82.38.185, 82.38.285, and 82.38.165;  
11 prescribing penalties; and declaring an emergency.

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

13            **Sec. 1.** RCW 82.36.010 and 2001 c 270 s 1 are each amended to read  
14 as follows:

15            The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

17            (1) "Blended fuel" means a mixture of motor vehicle fuel and  
18 another liquid, other than a de minimis amount of the liquid, that can  
19 be used as a fuel to propel a motor vehicle.

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

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

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

15 (5) (~~"Dealer" means a person engaged in the retail sale of motor~~  
16 ~~vehicle fuel.~~

17 (+6)) "Department" means the department of licensing.

18 ((+7)) (6) "Director" means the director of licensing.

19 ((+8)) (7) "Evasion" or "evade" means to diminish or avoid the  
20 computation, assessment, or payment of authorized taxes or fees  
21 through:

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

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

26 ((+9)) (8) "Export" means to obtain motor vehicle fuel in this  
27 state for sales or distribution outside the state.

28 ((+10)) (9) "Highway" means every way or place open to the use of  
29 the public, as a matter of right, for the purpose of vehicular travel.

30 ((+11)) (10) "Import" means to bring motor vehicle fuel into this  
31 state by a means of conveyance other than the fuel supply tank of a  
32 motor vehicle.

33 (11) "International fuel tax agreement licensee" means a motor  
34 vehicle fuel user operating qualified motor vehicles in interstate  
35 commerce and licensed by the department under the international fuel  
36 tax agreement.

37 (12) "Licensee" means a person holding a motor vehicle fuel

1 supplier, motor vehicle fuel importer, motor vehicle fuel exporter,  
2 motor vehicle fuel blender, or international fuel tax agreement license  
3 issued under this chapter.

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

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

9 (~~(15)~~) (14) "Motor vehicle fuel distributor" means a person who  
10 acquires motor vehicle fuel from a supplier, distributor, or licensee  
11 for subsequent sale and distribution.

12 (~~(16)~~) (15) "Motor vehicle fuel exporter" means a person who  
13 purchases motor vehicle fuel in this state and directly exports the  
14 fuel by a means other than the bulk transfer-terminal system to a  
15 destination outside of the state. If the exporter of record is acting  
16 as an agent, the person for whom the agent is acting is the exporter.  
17 If there is no exporter of record, the owner of the motor fuel at the  
18 time of exportation is the exporter.

19 (~~(17)~~) (16) "Motor vehicle fuel importer" means a person who  
20 imports motor vehicle fuel into the state by a means other than the  
21 bulk transfer-terminal system. If the importer of record is acting as  
22 an agent, the person for whom the agent is acting is the importer. If  
23 there is no importer of record, the owner of the motor vehicle fuel at  
24 the time of importation is the importer.

25 (~~(18)~~) (17) "Motor vehicle fuel supplier" means a person who  
26 holds a federal certificate of registry that is issued under the  
27 internal revenue code and authorizes the person to enter into federal  
28 tax-free transactions on motor vehicle fuel in the bulk transfer-  
29 terminal system.

30 (~~(19)~~) (18) "Motor vehicle" means a self-propelled vehicle  
31 designed for operation upon land utilizing motor vehicle fuel as the  
32 means of propulsion.

33 (~~(20)~~) (19) "Motor vehicle fuel" means gasoline and any other  
34 inflammable gas or liquid, by whatsoever name the gasoline, gas, or  
35 liquid may be known or sold, the chief use of which is as fuel for the  
36 propulsion of motor vehicles or motorboats.

37 (~~(21)~~) (20) "Person" means a natural person, fiduciary,

1 association, or corporation. The term "person" as applied to an  
2 association means and includes the partners or members thereof, and as  
3 applied to corporations, the officers thereof.

4 ~~((+22+))~~ (21) "Position holder" means a person who holds the  
5 inventory position in motor vehicle fuel, as reflected by the records  
6 of the terminal operator. A person holds the inventory position in  
7 motor vehicle fuel if the person has a contractual agreement with the  
8 terminal for the use of storage facilities and terminating services at  
9 a terminal with respect to motor vehicle fuel. "Position holder"  
10 includes a terminal operator that owns motor vehicle fuel in their  
11 terminal.

12 ~~((+23+))~~ (22) "Rack" means a mechanism for delivering motor vehicle  
13 fuel from a refinery or terminal into a truck, trailer, railcar, or  
14 other means of nonbulk transfer.

15 ~~((+24+))~~ (23) "Refiner" means a person who owns, operates, or  
16 otherwise controls a refinery.

17 ~~((+25+))~~ (24) "Removal" means a physical transfer of motor vehicle  
18 fuel other than by evaporation, loss, or destruction.

19 ~~((+26+))~~ (25) "Terminal" means a motor vehicle fuel storage and  
20 distribution facility that has been assigned a terminal control number  
21 by the internal revenue service, is supplied by pipeline or vessel, and  
22 from which reportable motor vehicle fuel is removed at a rack.

23 ~~((+27+))~~ (26) "Terminal operator" means a person who owns,  
24 operates, or otherwise controls a terminal.

25 ~~((+28+))~~ (27) "Two-party exchange" or "buy-sell agreement" means a  
26 transaction in which taxable motor vehicle fuel is transferred from one  
27 licensed supplier to another licensed supplier under an exchange or  
28 buy-sell agreement whereby the supplier that is the position holder  
29 agrees to deliver taxable motor vehicle fuel to the other supplier or  
30 the other supplier's customer at the rack of the terminal at which the  
31 delivering supplier is the position holder.

32 **Sec. 2.** RCW 82.36.020 and 2001 c 270 s 2 are each amended to read  
33 as follows:

34 (1) There is hereby levied and imposed upon motor vehicle fuel  
35 ~~((users))~~ licensees a tax at the rate computed in the manner provided  
36 in RCW 82.36.025 on each gallon of motor vehicle fuel.

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

3 (a) Motor vehicle fuel is removed in this state from a terminal if  
4 the motor vehicle fuel is removed at the rack unless the removal is to  
5 a licensed exporter for direct delivery to a destination outside of the  
6 state;

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

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

12 (ii) The removal is at the refinery rack unless the removal is to  
13 a licensed exporter for direct delivery to a destination outside of the  
14 state;

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

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

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

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

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

29 (f) Motor vehicle fuel is sold by a licensed motor vehicle fuel  
30 supplier to a motor vehicle fuel distributor, motor vehicle fuel  
31 importer, (~~or~~) motor vehicle fuel blender, or international fuel tax  
32 agreement licensee and the motor vehicle fuel is not removed from the  
33 bulk transfer-terminal system.

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

36 **Sec. 3.** RCW 82.36.025 and 2005 c 314 s 101 are each amended to  
37 read as follows:

1 (1) A motor vehicle fuel tax rate of twenty-three cents per gallon  
2 (~~applies to the sale, distribution, or use of~~) on motor vehicle fuel  
3 shall be imposed on motor vehicle fuel licensees.

4 (2) Beginning July 1, 2003, an additional and cumulative motor  
5 vehicle fuel tax rate of five cents per gallon (~~applies to the sale,~~  
6 ~~distribution, or use of~~) on motor vehicle fuel shall be imposed on  
7 motor vehicle fuel licensees. This subsection (2) expires when the  
8 bonds issued for transportation 2003 projects are retired.

9 (3) Beginning July 1, 2005, an additional and cumulative motor  
10 vehicle fuel tax rate of three cents per gallon (~~applies to the sale,~~  
11 ~~distribution, or use of~~) on motor vehicle fuel shall be imposed on  
12 motor vehicle fuel licensees.

13 (4) Beginning July 1, 2006, an additional and cumulative motor  
14 vehicle fuel tax rate of three cents per gallon (~~applies to the sale,~~  
15 ~~distribution, or use of~~) on motor vehicle fuel shall be imposed on  
16 motor vehicle fuel licensees.

17 (5) Beginning July 1, 2007, an additional and cumulative motor  
18 vehicle fuel tax rate of two cents per gallon (~~applies to the sale,~~  
19 ~~distribution, or use of~~) on motor vehicle fuel shall be imposed on  
20 motor vehicle fuel licensees.

21 (6) Beginning July 1, 2008, an additional and cumulative motor  
22 vehicle fuel tax rate of one and one-half cents per gallon (~~applies to~~  
23 ~~the sale, distribution, or use of~~) on motor vehicle fuel shall be  
24 imposed on motor vehicle fuel licensees.

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

27 (1) A licensed supplier shall (~~remit~~) be liable for and pay tax  
28 to the department as provided in RCW 82.36.020. On a two-party  
29 exchange, or buy-sell agreement between two licensed suppliers, the  
30 receiving exchange partner or buyer (~~who~~) shall (~~{buyer shall}~~  
31 ~~remit~~) be liable for and pay the tax.

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

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

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

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

7 NEW SECTION. Sec. 5. A new section is added to chapter 82.36 RCW  
8 to read as follows:

9 International fuel tax agreement licensees, or persons operating  
10 motor vehicles under other reciprocity agreements entered into with the  
11 state of Washington, are liable for and must pay the tax under RCW  
12 82.36.020 to the department on motor vehicle fuel used to operate motor  
13 vehicles on the highways of this state. This provision does not apply  
14 if the tax under RCW 82.36.020 has previously been imposed and paid by  
15 the international fuel tax agreement licensee or if the use of such  
16 fuel is exempt from the tax under this chapter.

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

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

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

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

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

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

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

31 Upon the taxable removal of motor vehicle fuel by a licensed  
32 supplier and upon importation by a licensed importer, the licensee who  
33 acquired or removed the motor vehicle fuel, other than a motor vehicle  
34 fuel exporter, shall be entitled to a deduction from the tax liability  
35 on the gallonage of taxable motor vehicle fuel removed or imported in

1 order to account for handling losses, as follows: For a motor vehicle  
2 fuel supplier (~~((acting as a distributor))~~), one-quarter of one percent;  
3 and for (~~((all other licensees))~~) a licensed importer, thirty one-  
4 hundredths of one percent. For those licensees required to file tax  
5 reports, the handling loss deduction shall be reported on tax reports  
6 filed with the department. (~~((For motor vehicle fuel distributors, the  
7 handling loss deduction shall be shown on the invoice provided to the  
8 motor vehicle fuel distributor by the seller.))~~)

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

11 For the purpose of determining the amount of liability for the tax  
12 imposed under this chapter, and to periodically update license  
13 information, each licensee, other than (~~((a motor vehicle fuel  
14 distributor))~~) an international fuel tax agreement licensee, shall file  
15 monthly tax reports with the department, on a form prescribed by the  
16 department. An international fuel tax licensee shall file quarterly  
17 tax reports with the department, on a form prescribed by the  
18 department.

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

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

35 **Sec. 9.** RCW 82.36.035 and 2005 c 260 s 1 are each amended to read  
36 as follows:



1 (1) The tax imposed by this chapter shall be computed by  
2 multiplying the tax rate per gallon provided in this chapter by the  
3 number of gallons of motor vehicle fuel subject to the motor vehicle  
4 fuel tax.

5 (2) Except as provided in subsection (3) of this section, tax  
6 reports shall be accompanied by a remittance payable to the state  
7 treasurer covering the tax amount determined to be due for the  
8 reporting period.

9 (3) If the tax is paid by electronic funds transfer, the tax shall  
10 be paid on or before the twenty-sixth calendar day of the month  
11 immediately following the reporting period. If the payment due date  
12 falls on a Saturday, Sunday, or legal holiday the next business day  
13 will be the payment date.

14 (4) The tax shall be paid by electronic funds transfer whenever the  
15 amount due is fifty thousand dollars or more.

16 ~~((5) A motor vehicle fuel distributor shall remit tax on motor  
17 vehicle fuel purchased from a motor vehicle fuel supplier, and due to  
18 the state for that reporting period, to the motor vehicle fuel  
19 supplier.~~

20 ~~(6) At the election of the distributor, the payment of the motor  
21 vehicle fuel tax owed on motor vehicle fuel purchased from a supplier  
22 shall be remitted to the supplier on terms agreed upon between the  
23 distributor and supplier or no later than seven business days before  
24 the twenty-sixth day of the following month. This election shall be  
25 subject to a condition that the distributor's remittances of all  
26 amounts of motor vehicle fuel tax due to the supplier shall be paid by  
27 electronic funds transfer. The distributor's election may be  
28 terminated by the supplier if the distributor does not make timely  
29 payments to the supplier as required by this section. This section  
30 shall not apply if the distributor is required by the supplier to pay  
31 cash or cash equivalent for motor vehicle fuel purchases.))~~

32 **Sec. 10.** RCW 82.36.045 and 1998 c 176 s 16 are each amended to  
33 read as follows:

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

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

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

18 (4) Motor vehicle fuel tax, penalties, and interest payable under  
19 this chapter bears interest at the rate of one percent per month, or  
20 fraction thereof, from the first day of the calendar month after the  
21 amount or any portion of it should have been paid until the date of  
22 payment. If a licensee or person acting as such establishes by a fair  
23 preponderance of evidence that the failure to pay the amount of tax due  
24 was attributable to reasonable cause and was not intentional or  
25 willful, the department may waive the penalty. The department may  
26 waive the interest when it determines the cost of processing or  
27 collection of the interest exceeds the amount of interest due.

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

35 (6) Except in the case of violations of filing a false or  
36 fraudulent report, if the department deems mitigation of penalties and  
37 interest to be reasonable and in the best interest of carrying out the  
38 purpose of this chapter, it may mitigate such assessments upon whatever

1 terms the department deems proper, giving consideration to the degree  
2 and extent of the lack of records and reporting errors. The department  
3 may ascertain the facts regarding recordkeeping and payment penalties  
4 in lieu of more elaborate proceedings under this chapter.

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

11 If a petition for reassessment is filed within the thirty-day  
12 period, the department shall reconsider the assessment and, if the  
13 petitioner has so requested in its petition, shall grant the petitioner  
14 an oral hearing and give the petitioner twenty days' notice of the time  
15 and place of the hearing. The department may continue the hearing from  
16 time to time. The decision of the department upon a petition for  
17 reassessment becomes final thirty days after service of notice upon the  
18 petitioner.

19 An assessment made by the department becomes due and payable when  
20 it becomes final. If it is not paid to the department when due and  
21 payable, the department shall add a penalty of ten percent of the  
22 amount of the tax.

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

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

32 ~~((10) The tax imposed by this chapter, if required to be collected~~  
33 ~~by the seller, is held in trust by the licensee until paid to the~~  
34 ~~department, and a licensee who appropriates or converts the tax~~  
35 ~~collected to his or her own use or to any use other than the payment of~~  
36 ~~the tax to the extent that the money required to be collected is not~~  
37 ~~available for payment on the due date as prescribed in this chapter is~~  
38 ~~guilty of a felony, or gross misdemeanor in accordance with the theft~~

1 ~~and anticipatory provisions of Title 9A RCW. A person, partnership,~~  
2 ~~corporation, or corporate officer who fails to collect the tax imposed~~  
3 ~~by this section, or who has collected the tax and fails to pay it to~~  
4 ~~the department in the manner prescribed by this chapter, is personally~~  
5 ~~liable to the state for the amount of the tax.))~~

6 **Sec. 11.** RCW 82.36.060 and 2001 c 270 s 5 are each amended to read  
7 as follows:

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

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

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

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

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

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

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

31 (3) An applicant for a license as a motor vehicle fuel importer  
32 must list on the application each state, province, or country from  
33 which the applicant intends to import motor vehicle fuel and, if  
34 required by the state, province, or country listed, must be licensed or  
35 registered for motor vehicle fuel tax purposes in that state, province,  
36 or country.

1 (4) An applicant for a license as a motor vehicle fuel exporter  
2 must list on the application each state, province, or country to which  
3 the exporter intends to export motor vehicle fuel received in this  
4 state by means of a transfer outside of the bulk transfer-terminal  
5 system and, if required by the state, province, or country listed, must  
6 be licensed or registered for motor vehicle fuel tax purposes in that  
7 state, province, or country.

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

13 (6) After receipt of an application for a license, the director may  
14 conduct an investigation to determine whether the facts set forth are  
15 true. The director shall require a fingerprint record check of the  
16 applicant through the Washington state patrol criminal identification  
17 system and the federal bureau of investigation before issuance of a  
18 license. The results of the background investigation including  
19 criminal history information may be released to authorized department  
20 personnel as the director deems necessary. The department shall charge  
21 a license holder or license applicant a fee of fifty dollars for each  
22 background investigation conducted.

23 An applicant who makes a false statement of a material fact on the  
24 application may be prosecuted for false swearing as defined by RCW  
25 9A.72.040.

26 (7) (~~Except as provided by subsection (8) of this section,~~)  
27 Before granting any license issued under this chapter, the department  
28 shall require applicant to file with the department, in such form as  
29 shall be prescribed by the department, a corporate surety bond duly  
30 executed by the applicant as principal, payable to the state and  
31 conditioned for faithful performance of all the requirements of this  
32 chapter, including the payment of all taxes, penalties, and other  
33 obligations arising out of this chapter. The total amount of the bond  
34 or bonds shall be fixed by the department and may be increased or  
35 reduced by the department at any time subject to the limitations herein  
36 provided. In fixing the total amount of the bond or bonds, the  
37 department shall require a bond or bonds equivalent in total amount to  
38 twice the estimated monthly excise tax determined in such manner as the

1 department may deem proper. If at any time the estimated excise tax to  
2 become due during the succeeding month amounts to more than fifty  
3 percent of the established bond, the department shall require  
4 additional bonds or securities to maintain the marginal ratio herein  
5 specified or shall demand excise tax payments to be made weekly or  
6 semimonthly to meet the requirements hereof.

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

10 No recoveries on any bond or the execution of any new bond shall  
11 invalidate any bond and no revocation of any license shall effect the  
12 validity of any bond but the total recoveries under any one bond shall  
13 not exceed the amount of the bond.

14 In lieu of any such bond or bonds in total amount as herein fixed,  
15 a licensee may deposit with the state treasurer, under such terms and  
16 conditions as the department may prescribe, a like amount of lawful  
17 money of the United States or bonds or other obligations of the United  
18 States, the state, or any county of the state, of an actual market  
19 value not less than the amount so fixed by the department.

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

36 The department may require a licensee to give a new or additional  
37 surety bond or to deposit additional securities of the character  
38 specified in this section if, in its opinion, the security of the

1 surety bond theretofore filed by such licensee, or the market value of  
2 the properties deposited as security by the licensee, shall become  
3 impaired or inadequate; and upon the failure of the licensee to give  
4 such new or additional surety bond or to deposit additional securities  
5 within thirty days after being requested so to do by the department,  
6 the department shall forthwith cancel his or her license.

7 ~~(8) ((The department may waive the requirements of subsection (7)~~  
8 ~~of this section for licensed distributors if, upon determination by the~~  
9 ~~department, the licensed distributor has sufficient resources, assets,~~  
10 ~~other financial instruments, or other means, to adequately make~~  
11 ~~payments on the estimated monthly motor vehicle fuel tax payments,~~  
12 ~~penalties, and interest arising out of this chapter. The department~~  
13 ~~shall adopt rules to administer this subsection.))~~ An application for  
14 an international fuel tax agreement license must be made to the  
15 department. The application must be filed upon a form prescribed by  
16 the department and contain such information as the department may  
17 require. The department shall charge a fee of ten dollars per set of  
18 international fuel tax agreement decals issued to each applicant or  
19 licensee. The department shall transmit the fee to the state treasurer  
20 for deposit in the motor vehicle fund.

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

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

- 27 (a) Motor vehicle fuel supplier;
- 28 (b) ~~((Motor vehicle fuel distributor;~~
- 29 ~~(c))~~ Motor vehicle fuel exporter;
- 30 ~~((d))~~ (c) Motor vehicle fuel importer; ~~((or~~
- 31 ~~(e))~~ (d) Motor vehicle fuel blender; or
- 32 (e) International fuel tax agreement licensee.

33 (2) A person engaged in more than one activity for which a license  
34 is required must have a separate license classification for each  
35 activity, but a motor vehicle fuel supplier is not required to obtain  
36 a separate license classification for any other activity for which a  
37 license is required.

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

19 **Sec. 13.** RCW 82.36.160 and 1998 c 176 s 27 are each amended to  
20 read as follows:

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

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

33 **Sec. 14.** RCW 82.36.180 and 1998 c 176 s 30 are each amended to  
34 read as follows:

35 The director, or duly authorized agents, may make such examinations  
36 of the records, stocks, facilities, and equipment of any licensee,



1 (~~and service stations,~~) and make such other investigations as deemed  
2 necessary in carrying out the provisions of this chapter. If such  
3 examinations or investigations disclose that any reports of licensees  
4 theretofore filed with the director pursuant to the requirements of  
5 this chapter have shown incorrectly the gallonage of motor vehicle fuel  
6 distributed or the tax (~~(accruing)~~) liability thereon, the director may  
7 make such changes in subsequent reports and payments of such licensees  
8 as deemed necessary to correct the errors disclosed.

9 Every such licensee or such other person not maintaining records in  
10 this state so that an audit of such records may be made by the director  
11 or a duly authorized representative shall be required to make the  
12 necessary records available to the director upon request and at a  
13 designated office within this state; or, in lieu thereof, the director  
14 or a duly authorized representative shall proceed to any out-of-state  
15 office at which the records are prepared and maintained to make such  
16 examination.

17 NEW SECTION. **Sec. 15.** A new section is added to chapter 82.36 RCW  
18 to read as follows:

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

22 **Sec. 16.** RCW 82.36.320 and 1961 c 15 s 82.36.320 are each amended  
23 to read as follows:

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

31 **Sec. 17.** RCW 82.36.340 and 1961 c 15 s 82.36.340 are each amended  
32 to read as follows:

33 The director may in order to establish the validity of any claim  
34 for refund require the claimant(~~(, or, in the case of a dealer filing  
35 a claim for refund as provided by RCW 82.36.305, the person to whom~~

1 ~~such fuel was sold,~~) to furnish such additional proof of the validity  
2 of the claim as the director may determine, and may examine the books  
3 and records of the claimant or said person to whom the fuel was sold  
4 for such purpose. The records shall be sufficient to substantiate the  
5 accuracy of the claim and shall be in such form and contain such  
6 information as the director may require. The failure to maintain such  
7 records or to accede to a demand for an examination of such records may  
8 be deemed by the director as sufficient cause for denial of all right  
9 to the refund claimed on account of the transaction in question.

10 **Sec. 18.** RCW 82.36.370 and 1998 c 176 s 42 are each amended to  
11 read as follows:

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

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

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

30 In the event that the director is not satisfied that the fuel was  
31 lost or destroyed as claimed, wherefore required information or proof  
32 as required hereunder is not sufficient to substantiate the accuracy of  
33 the claim, the director may deem as sufficient cause the denial of all  
34 right relating to the refund or credit for the excise tax on motor  
35 vehicle fuel alleged to be lost or destroyed.

1       **Sec. 19.** RCW 82.36.380 and 2003 c 358 s 13 are each amended to  
2 read as follows:

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

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

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

7       (c) Act as a motor fuel importer, motor fuel blender, or motor fuel  
8 supplier unless the person holds an uncanceled motor fuel license  
9 issued by the department authorizing the person to engage in that  
10 business;

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

13       (e) Knowingly operate a conveyance for the purpose of hauling,  
14 transporting, or delivering motor vehicle fuel in bulk and not possess  
15 an invoice, bill of sale, or other statement showing the name, address,  
16 and tax license number of the seller or consignor, the destination, the  
17 name, address, and tax license number of the purchaser or consignee,  
18 and the number of gallons.

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

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

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

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

1           **Sec. 20.** RCW 82.36.450 and 1995 c 320 s 2 are each amended to read  
2 as follows:

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

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

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

27           (a) Require that the tribe or the tribal retailer acquire all motor  
28 vehicle fuel only from persons or companies operating lawfully in  
29 accordance with this chapter as a motor vehicle fuel distributor,  
30 supplier, importer, or blender, or from a tribal distributor, supplier,  
31 importer, or blender lawfully doing business according to all  
32 applicable laws;

33           (b) Provide that the tribe will expend fuel tax proceeds or  
34 equivalent amounts on: Planning, construction, and maintenance of  
35 roads, bridges, and boat ramps; transit services and facilities;  
36 transportation planning; police services; and other highway-related  
37 purposes;

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

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

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

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

16 NEW SECTION. Sec. 21. A new section is added to chapter 82.36 RCW  
17 to read as follows:

18 It is the intent and purpose of this chapter that the tax shall be  
19 imposed at the time and place of the first taxable event and upon the  
20 first taxable person within this state. Any person whose activities  
21 would otherwise require payment of the tax imposed by RCW 82.36.020 but  
22 who is exempt from the tax nevertheless has a precollection obligation  
23 for the tax that must be imposed on the first taxable event within this  
24 state. Failure to pay the tax with respect to a taxable event shall  
25 not prevent tax liability from arising by reason of a subsequent  
26 taxable event.

27 **Sec. 22.** RCW 82.38.030 and 2005 c 314 s 102 are each amended to  
28 read as follows:

29 (1) There is hereby levied and imposed upon special fuel (~~(users)~~)  
30 licensees a tax at the rate of twenty-three cents per gallon of special  
31 fuel, or each one hundred cubic feet of compressed natural gas,  
32 measured at standard pressure and temperature.

33 (2) Beginning July 1, 2003, an additional and cumulative tax rate  
34 of five cents per gallon of special fuel, or each one hundred cubic  
35 feet of compressed natural gas, measured at standard pressure and

1 temperature shall be imposed on special fuel (~~((users))~~) licensees. This  
2 subsection (2) expires when the bonds issued for transportation 2003  
3 projects are retired.

4 (3) Beginning July 1, 2005, an additional and cumulative tax rate  
5 of three cents per gallon of special fuel, or each one hundred cubic  
6 feet of compressed natural gas, measured at standard pressure and  
7 temperature shall be imposed on special fuel (~~((users))~~) licensees.

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

12 (5) Beginning July 1, 2007, an additional and cumulative tax rate  
13 of two cents per gallon of special fuel, or each one hundred cubic feet  
14 of compressed natural gas, measured at standard pressure and  
15 temperature shall be imposed on special fuel (~~((users))~~) licensees.

16 (6) Beginning July 1, 2008, an additional and cumulative tax rate  
17 of one and one-half cents per gallon of special fuel, or each one  
18 hundred cubic feet of compressed natural gas, measured at standard  
19 pressure and temperature shall be imposed on special fuel (~~((users))~~)  
20 licensees.

21 (7) Taxes are imposed when:

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

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

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

32 (ii) The removal is at the refinery rack unless the removal is to  
33 a licensed exporter for direct delivery to a destination outside of the  
34 state, or the removal is to a special fuel (~~((distributor))~~) supplier for  
35 direct delivery to an international fuel tax agreement licensee under  
36 RCW 82.38.320;

37 (c) Special fuel enters into this state for sale, consumption, use,

1 or storage, unless the fuel enters this state for direct delivery to an  
2 international fuel tax agreement licensee under RCW 82.38.320, if  
3 either of the following applies:

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

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

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

10 (e) Blended special fuel is removed or sold in this state by the  
11 blender of the fuel. The number of gallons of blended special fuel  
12 subject to tax is the difference between the total number of gallons of  
13 blended special fuel removed or sold and the number of gallons of  
14 previously taxed special fuel used to produce the blended special fuel;

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

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

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

22 (i) Special fuel is sold by a licensed special fuel supplier to a  
23 special fuel distributor, special fuel importer, or special fuel  
24 blender and the special fuel is not removed from the bulk transfer-  
25 terminal system.

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

1           **Sec. 23.** RCW 82.38.032 and 1998 c 176 s 52 are each amended to  
2 read as follows:

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

17           **Sec. 24.** RCW 82.38.035 and 2005 c 314 s 107 are each amended to  
18 read as follows:

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

24           (2) A refiner shall (~~remit~~) be liable for and pay tax to the  
25 department on special fuel removed from a refinery as provided in RCW  
26 82.38.030(7)(b).

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

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

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

36           (6) Nothing in this chapter prohibits the licensee liable for



1 payment of the tax under this chapter from including as a part of the  
2 selling price an amount equal to such tax.

3 **Sec. 25.** RCW 82.38.050 and 1990 c 250 s 82 are each amended to  
4 read as follows:

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

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

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

1       **Sec. 26.** RCW 82.38.090 and 1998 c 176 s 61 are each amended to  
2 read as follows:

3       (1) It shall be unlawful for any person to engage in business in  
4 this state as any of the following unless the person is the holder of  
5 an uncanceled license issued to him or her by the department  
6 authorizing the person to engage in that business:

7       (a) Special fuel supplier;

8       (b) ~~((Special fuel distributor;~~

9       ~~(+e+)) Special fuel exporter;~~

10       ~~((+d+))~~ (c) Special fuel importer;

11       ~~((+e+))~~ (d) Special fuel blender;

12       ~~((+f+))~~ (e) Dyed special fuel user; or

13       ~~((+g+))~~ (f) International fuel tax agreement licensee.

14       (2) A person engaged in more than one activity for which a license  
15 is required must have a separate license classification for each  
16 activity, but a special fuel supplier is not required to obtain a  
17 separate license classification for any other activity for which a  
18 license is required.

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

30       **Sec. 27.** RCW 82.38.100 and 1999 c 270 s 2 are each amended to read  
31 as follows:

32       (1) Any special fuel user operating a motor vehicle into this state  
33 for commercial purposes may make application for a trip permit that  
34 shall be good for a period of three consecutive days beginning and  
35 ending on the dates specified on the face of the permit issued, and  
36 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. 28.** RCW 82.38.110 and 2002 c 352 s 26 are each amended to  
2 read as follows:

3       (1) Application for a license issued under this chapter shall be  
4 made to the department. The application shall be filed upon a form  
5 prepared and furnished by the department and shall contain such  
6 information as the department deems necessary.

7       (2) Every application for a special fuel license, other than an  
8 application for a dyed special fuel user or international fuel tax  
9 agreement license, must contain the following information to the extent  
10 it applies to the applicant:

11       (a) Proof as the department shall require concerning the  
12 applicant's identity, including but not limited to his or her  
13 fingerprints or those of the officers of a corporation making the  
14 application;

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

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

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

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

30       (3) An applicant for a license as a special fuel importer must list  
31 on the application each state, province, or country from which the  
32 applicant intends to import fuel and, if required by the state,  
33 province, or country listed, must be licensed or registered for special  
34 fuel tax purposes in that state, province, or country.

35       (4) An applicant for a license as a special fuel exporter must list  
36 on the application each state, province, or country to which the  
37 exporter intends to export special fuel received in this state by means  
38 of a transfer outside the bulk transfer-terminal system and, if

1 required by the state, province, or country listed, must be licensed or  
2 registered for special fuel tax purposes in that state, province, or  
3 country.

4 (5) An applicant for a license as a special fuel supplier must have  
5 a federal certificate of registry that is issued under the internal  
6 revenue code and authorizes the applicant to enter into federal tax-  
7 free transactions on special fuel in the terminal transfer system.

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

18 (7) An applicant who makes a false statement of a material fact on  
19 the application may be prosecuted for false swearing as defined by RCW  
20 9A.72.040.

21 (8) A special fuel license may not be issued to any person or  
22 continued in force unless such person has furnished bond, as defined in  
23 RCW 82.38.020, in such form as the department may require, to secure  
24 his or her compliance with this chapter, and the payment of any and all  
25 taxes, interest, and penalties due and to become due hereunder. The  
26 requirement of furnishing a bond may be waived(~~(a) For special fuel~~  
27 ~~distributors who only deliver special fuel into the fuel tanks of~~  
28 ~~marine vessels;~~~~(b))~~) for dyed special fuel users(~~(c))~~) or for  
29 persons issued licenses under the international fuel tax agreement(~~(d)~~  
30 ~~or (d) for licensed special fuel distributors who, upon determination~~  
31 ~~by the department, have sufficient resources, assets, other financial~~  
32 ~~instruments, or other means to adequately make payments on the~~  
33 ~~estimated monthly motor vehicle fuel tax payments, penalties, and~~  
34 ~~interest arising out of this chapter. The department shall adopt rules~~  
35 ~~to administer this section))~~).

36 (9) The department may require a licensee to post a bond if the  
37 licensee, after having been licensed, has failed to file timely reports  
38 or has failed to remit taxes due, or when an investigation or audit

1 indicates problems severe enough that the department, in its  
2 discretion, determines that a bond is required to protect the interests  
3 of the state. The department may also adopt rules prescribing  
4 conditions that, in the department's discretion, require a bond to  
5 protect the interests of the state.

6 (10) The total amount of the bond or bonds required of any licensee  
7 shall be equivalent to three times the estimated monthly fuel tax,  
8 determined in such manner as the department may deem proper: PROVIDED,  
9 That those licensees having held a special fuel license for five or  
10 more years without having said license suspended or revoked by the  
11 department shall be permitted to reduce the amount of their bond to  
12 twice the estimated monthly tax liability: PROVIDED FURTHER, That the  
13 total amount of the bond or bonds shall never be less than five hundred  
14 dollars nor more than one hundred thousand dollars.

15 (11) An application for a dyed special fuel user license must be  
16 made to the department. The application must be filed upon a form  
17 prescribed by the department and contain such information as the  
18 department deems necessary.

19 (12) An application for an international fuel tax agreement license  
20 must be made to the department. The application must be filed upon a  
21 form prescribed by the department and contain such information as the  
22 department may require. The department shall charge a fee of ten  
23 dollars per set of International Fuel Tax Agreement decals issued to  
24 each applicant or licensee. The department shall transmit the fee to  
25 the state treasurer for deposit in the motor vehicle fund.

26 **Sec. 29.** RCW 82.38.130 and 1998 c 176 s 65 are each amended to  
27 read as follows:

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

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

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

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

23 **Sec. 30.** RCW 82.38.140 and 1998 c 176 s 66 are each amended to  
24 read as follows:

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

32 (a) The date of each receipt;

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

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

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

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

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

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

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

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

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

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

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

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



1       **Sec. 31.** RCW 82.38.150 and 1998 c 176 s 67 are each amended to  
2 read as follows:

3       For the purpose of determining the amount of liability for the tax  
4 herein imposed, and to periodically update license information, each  
5 licensee, other than ((~~a special fuel distributor,~~)) an international  
6 fuel tax agreement licensee((~~,~~)) or a dyed special fuel user, shall  
7 file monthly tax reports with the department, on forms prescribed by  
8 the department.

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

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

1 Subject to the written approval of the department, tax reports may  
2 cover a period ending on a day other than the last day of the calendar  
3 month. Taxpayers granted approval to file reports in this manner will  
4 file such reports on or before the twenty-fifth day following the end  
5 of the reporting period. No change to this reporting period will be  
6 made without the written authorization of the department.

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

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

19 **Sec. 32.** RCW 82.38.160 and 2005 c 260 s 2 are each amended to read  
20 as follows:

21 (1) The tax imposed by this chapter shall be computed by  
22 multiplying the tax rate per gallon provided in this chapter by the  
23 number of gallons of special fuel subject to the special fuel tax.

24 ~~(2) ((A special fuel distributor shall remit tax on special fuel  
25 purchased from a special fuel supplier, and due to the state for that  
26 reporting period, to the special fuel supplier.~~

27 ~~(3) At the election of the distributor, the payment of the special  
28 fuel tax owed on special fuel purchased from a supplier shall be  
29 remitted to the supplier on terms agreed upon between the distributor  
30 and the supplier or no later than seven business days before the  
31 twenty sixth day of the following month. This election shall be  
32 subject to a condition that the distributor's remittances of all  
33 amounts of special fuel tax due to the supplier shall be paid by  
34 electronic funds transfer. The distributor's election may be  
35 terminated by the supplier if the distributor does not make timely  
36 payments to the supplier as required by this section. This section~~

1 ~~shall not apply if the distributor is required by the supplier to pay~~  
2 ~~cash or cash equivalent for special fuel purchases.~~

3 ~~(4))~~ Except as provided in subsection ~~((+5))~~ (3) of this section,  
4 the tax return shall be accompanied by a remittance payable to the  
5 state treasurer covering the tax amount determined to be due for the  
6 reporting period.

7 ~~((+5))~~ (3) If the tax is paid by electronic funds transfer, the  
8 tax shall be paid on or before the twenty-sixth calendar day of the  
9 month immediately following the reporting period. If the payment due  
10 date falls on a Saturday, Sunday, or legal holiday the next business  
11 day will be the payment date. If the tax is paid by electronic funds  
12 transfer and the reporting period ends on a day other than the last day  
13 of a calendar month as provided in RCW 82.38.150, the tax shall be paid  
14 on or before the last state business day of the thirty-day period  
15 following the end of the reporting period.

16 ~~((+6))~~ (4) The tax shall be paid by electronic funds transfer  
17 whenever the amount due is fifty thousand dollars or more.

18 **Sec. 33.** RCW 82.38.180 and 1998 c 176 s 71 are each amended to  
19 read as follows:

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

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

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

34 (3) ~~((Any))~~ Tax, penalty, or interest erroneously or illegally  
35 collected or paid.

36 (4) ~~((Any))~~ Taxes previously paid on all special fuel which is lost

1 or destroyed, while (~~applicant~~) the licensee shall be the owner  
2 thereof, through fire, lightning, flood, wind storm, or explosion.

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

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

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

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

25 **Sec. 34.** RCW 82.38.270 and 2003 c 358 s 14 are each amended to  
26 read as follows:

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

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

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

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

36 (d) Act as a special fuel importer, special fuel blender, or

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

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

6 (f) Knowingly operate a conveyance for the purpose of hauling,  
7 transporting, or delivering special fuel in bulk and not possess an  
8 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) A single violation of subsection (1)(a) of this section is  
13 a gross misdemeanor under chapter 9A.20 RCW.

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

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

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

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

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

34 **Sec. 35.** RCW 82.38.310 and 1995 c 320 s 3 are each amended to read  
35 as follows:

36 ~~((The department of licensing may enter into an agreement with any~~  
37 ~~federally recognized Indian tribe located on a reservation within this~~

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

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

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

23 (a) Require that the tribe or the tribal retailer acquire all  
24 special fuel only from persons or companies operating lawfully in  
25 accordance with this chapter as a special fuel distributor, supplier,  
26 importer, or blender, or from a tribal distributor, supplier, importer,  
27 or blender lawfully doing business according to all applicable laws;

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

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

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

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

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

10       **Sec. 36.** RCW 82.38.320 and 1998 c 176 s 83 are each amended to  
11 read as follows:

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

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

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

1 of the nondyed special fuel gallons, including fuel used on-road and  
2 off-road, purchased by the licensee in the state of Washington, as  
3 reported on the accompanying schedules required under subsection (1) of  
4 this section;

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

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

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

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

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

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

31 NEW SECTION. Sec. 37. A new section is added to chapter 82.38 RCW  
32 to read as follows:

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



1 for the tax that must be imposed on the first taxable event within this  
2 state. Failure to pay the tax with respect to a taxable event shall  
3 not prevent tax liability from arising by reason of a subsequent  
4 taxable event.

5 NEW SECTION. **Sec. 38.** The following acts or parts of acts are  
6 each repealed:

7 (1) RCW 82.36.042 (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 14;

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

12 (3) RCW 82.36.305 (Refunds to dealer delivering fuel exclusively  
13 for marine use--Limitations--Supporting certificate) and 1965 ex.s. c  
14 79 s 12 & 1961 c 15 s 82.36.305;

15 (4) RCW 82.36.360 (Separate invoices for nontaxed fuel) and 1961 c  
16 15 s 82.36.360;

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

19 (6) RCW 82.36.407 (Tax liability of user--Payment--Exceptions) and  
20 1998 c 176 s 48;

21 (7) RCW 82.38.070 (Credit for sales for which no consideration was  
22 received--Report--Adjustment) and 1998 c 176 s 58, 1990 c 250 s 83, &  
23 1971 ex.s. c 175 s 8;

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

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

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

30 (11) RCW 82.38.285 (Tax liability of user--Exceptions) and 1998 c  
31 176 s 81; and

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

35 NEW SECTION. **Sec. 39.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 40.** This act is necessary for the immediate  
5 preservation of the public peace, health, or safety, or support of the  
6 state government and its existing public institutions, and takes effect  
7 immediately.

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