
SENATE BILL 5671

State of Washington

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By Senators Holmquist, Poulsen, Honeyford, Carrell, Benton, Stevens, Rasmussen, Roach, Oemig, Schoesler, Swecker, Parlette and Hewitt

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1 AN ACT Relating to exempting alternative fuel from taxation;
2 amending RCW 82.38.080, 82.38.020, and 82.38.130; adding a new section
3 to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and
4 providing an expiration date.

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

6 **Sec. 1.** RCW 82.38.080 and 1998 c 176 s 60 are each amended to read
7 as follows:

8 (1) There is exempted from the tax imposed by this chapter, the use
9 of fuel for:

10 (a) Street and highway construction and maintenance purposes in
11 motor vehicles owned and operated by the state of Washington, or any
12 county or municipality;

13 (b) Publicly owned fire fighting equipment;

14 (c) Special mobile equipment as defined in RCW 46.04.552;

15 (d) Power pumping units or other power take-off equipment of any
16 motor vehicle which is accurately measured by metering devices that
17 have been specifically approved by the department or which is
18 established by any of the following formulae:

1 (i) Pumping propane, or fuel or heating oils or milk picked up from
2 a farm or dairy farm storage tank by a power take-off unit on a
3 delivery truck, at a rate determined by the department: PROVIDED, That
4 claimant when presenting his or her claim to the department in
5 accordance with this chapter, shall provide to the claim, invoices of
6 propane, or fuel or heating oil delivered, or such other appropriate
7 information as may be required by the department to substantiate his or
8 her claim;

9 (ii) Operating a power take-off unit on a cement mixer truck or a
10 load compactor on a garbage truck at the rate of twenty-five percent of
11 the total gallons of fuel used in such a truck; or

12 (iii) The department is authorized to establish by rule additional
13 formulae for determining fuel usage when operating other types of
14 equipment by means of power take-off units when direct measurement of
15 the fuel used is not feasible. The department is also authorized to
16 adopt rules regarding the usage of on board computers for the
17 production of records required by this chapter;

18 (e) Motor vehicles owned and operated by the United States
19 government;

20 (f) Heating purposes;

21 (g) Moving a motor vehicle on a public highway between two pieces
22 of private property when said moving is incidental to the primary use
23 of the motor vehicle;

24 (h) Transportation services for persons with special transportation
25 needs by a private, nonprofit transportation provider regulated under
26 chapter 81.66 RCW;

27 (i) Vehicle refrigeration units, mixing units, or other equipment
28 powered by separate motors from separate fuel tanks; and

29 (j) The operation of a motor vehicle as a part of or incidental to
30 logging operations upon a highway under federal jurisdiction within the
31 boundaries of a federal area if the federal government requires a fee
32 for the privilege of operating the motor vehicle upon the highway, the
33 proceeds of which are reserved for constructing or maintaining roads in
34 the federal area, or requires maintenance or construction work to be
35 performed on the highway for the privilege of operating the motor
36 vehicle on the highway.

37 (2) There is exempted from the tax imposed by this chapter the

1 removal or entry of special fuel under the following circumstances and
2 conditions:

3 (a) If it is the removal from a terminal or refinery of, or the
4 entry or sale of, a special fuel if all of the following apply:

5 (i) The person otherwise liable for the tax is a licensee other
6 than a dyed special fuel user or international fuel tax agreement
7 licensee;

8 (ii) For a removal from a terminal, the terminal is a licensed
9 terminal; and

10 (iii) The special fuel satisfies the dyeing and marking
11 requirements of this chapter;

12 (b) If it is an entry or removal from a terminal or refinery of
13 taxable special fuel transferred to a refinery or terminal and the
14 persons involved, including the terminal operator, are licensed; and

15 (c)(i) If it is a special fuel that, under contract of sale, is
16 shipped to a point outside this state by a supplier by means of any of
17 the following:

18 (A) Facilities operated by the supplier;

19 (B) Delivery by the supplier to a carrier, customs broker, or
20 forwarding agent, whether hired by the purchaser or not, for shipment
21 to the out-of-state point;

22 (C) Delivery by the supplier to a vessel clearing from port of this
23 state for a port outside this state and actually exported from this
24 state in the vessel.

25 (ii) For purposes of this subsection (2)(c):

26 (A) "Carrier" means a person or firm engaged in the business of
27 transporting for compensation property owned by other persons, and
28 includes both common and contract carriers; and

29 (B) "Forwarding agent" means a person or firm engaged in the
30 business of preparing property for shipment or arranging for its
31 shipment.

32 (3) Notwithstanding any provision of law to the contrary, every
33 urban passenger transportation system and carriers as defined by
34 chapters 81.68 and 81.70 RCW shall be exempt from the provisions of
35 this chapter requiring the payment of special fuel taxes. For the
36 purposes of this section "urban passenger transportation system" means
37 every transportation system, publicly or privately owned, having as its
38 principal source of revenue the income from transporting persons for

1 compensation by means of motor vehicles and/or trackless trolleys, each
2 having a seating capacity for over fifteen persons over prescribed
3 routes in such a manner that the routes of such motor vehicles and/or
4 trackless trolleys, either alone or in conjunction with routes of other
5 such motor vehicles and/or trackless trolleys subject to routing by the
6 same transportation system, shall not extend for a distance exceeding
7 twenty-five road miles beyond the corporate limits of the county in
8 which the original starting points of such motor vehicles are located:
9 PROVIDED, That no refunds or credits shall be granted on special fuel
10 used by any urban transportation vehicle or vehicle operated pursuant
11 to chapters 81.68 and 81.70 RCW on any trip where any portion of said
12 trip is more than twenty-five road miles beyond the corporate limits of
13 the county in which said trip originated.

14 (4) Blenders and special fuel suppliers are exempted from the tax
15 imposed by this chapter, if the alternative fuel is produced in
16 Washington state and the feed stock from which the alternative fuel is
17 produced is grown in Washington state.

18 NEW SECTION. Sec. 2. A new section is added to chapter 82.08 RCW
19 to read as follows:

20 The tax levied by RCW 82.08.020 does not apply to sales of
21 alternative fuel, as defined in RCW 82.38.020, if the fuel is exempt
22 from the special fuel tax under RCW 82.38.080.

23 NEW SECTION. Sec. 3. A new section is added to chapter 82.12 RCW
24 to read as follows:

25 This chapter does not apply to the use of alternative fuel, as
26 defined in RCW 82.38.020, if the fuel is exempt from the special fuel
27 tax under RCW 82.38.080.

28 **Sec. 4.** RCW 82.38.020 and 2002 c 183 s 1 are each amended to read
29 as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Alternative fuel" means alcohol fuel, biodiesel fuel, or
33 biodiesel feedstock, as those terms are defined in RCW 82.29A.135.

34 (2) "Blended special fuel" means a mixture of undyed diesel fuel

1 and another liquid, other than a de minimis amount of the liquid, that
2 can be used as a fuel to propel a motor vehicle.

3 ~~((+2))~~ (3) "Blender" means a person who produces blended special
4 fuel outside the bulk transfer-terminal system.

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

10 ~~((+4))~~ (5) "Bulk transfer-terminal system" means the special fuel
11 distribution system consisting of refineries, pipelines, vessels, and
12 terminals. Special fuel in a refinery, pipeline, vessel, or terminal
13 is in the bulk transfer-terminal system. Special fuel in the fuel tank
14 of an engine, motor vehicle, or in a railcar, trailer, truck, or other
15 equipment suitable for ground transportation is not in the bulk
16 transfer-terminal system.

17 ~~((+5))~~ (6) "Bulk transfer" means a transfer of special fuel by
18 pipeline or vessel.

19 ~~((+6))~~ (7) "Bulk storage" means the placing of special fuel into
20 a receptacle other than the fuel supply tank of a motor vehicle.

21 ~~((+7))~~ (8) "Department" means the department of licensing.

22 ~~((+8))~~ (9) "Dyed special fuel user" means a person authorized by
23 the internal revenue code to operate a motor vehicle on the highway
24 using dyed special fuel, in which the use is not exempt from the
25 special fuel tax.

26 ~~((+9))~~ (10) "Evasion" or "evade" means to diminish or avoid the
27 computation, assessment, or payment of authorized taxes or fees
28 through:

29 (a) A knowing: False statement; omission; misrepresentation of
30 fact; or other act of deception;

31 (b) An intentional: Failure to file a return or report; or other
32 act of deception; or

33 (c) The unlawful use of dyed special fuel.

34 ~~((+10))~~ (11) "Export" means to obtain special fuel in this state
35 for sales or distribution outside the state.

36 ~~((+11))~~ (12) "Highway" means every way or place open to the use of
37 the public, as a matter of right, for the purpose of vehicular travel.

1 (~~(12)~~) (13) "Import" means to bring special fuel into this state
2 by a means of conveyance other than the fuel supply tank of a motor
3 vehicle.

4 (~~(13)~~) (14) "International fuel tax agreement licensee" means a
5 special fuel user operating qualified motor vehicles in interstate
6 commerce and licensed by the department under the international fuel
7 tax agreement.

8 (~~(14)~~) (15) "Lessor" means a person: (a) Whose principal
9 business is the bona fide leasing or renting of motor vehicles without
10 drivers for compensation to the general public; and (b) who maintains
11 established places of business and whose lease or rental contracts
12 require the motor vehicles to be returned to the established places of
13 business.

14 (~~(15)~~) (16) "Licensee" means a person holding a license issued
15 under this chapter.

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

19 (~~(17)~~) (18) "Natural gas" means naturally occurring mixtures of
20 hydrocarbon gases and vapors consisting principally of methane, whether
21 in gaseous or liquid form.

22 (~~(18)~~) (19) "Person" means a natural person, fiduciary,
23 association, or corporation. The term "person" as applied to an
24 association means and includes the partners or members thereof, and as
25 applied to corporations, the officers thereof.

26 (~~(19)~~) (20) "Position holder" means a person who holds the
27 inventory position in special fuel, as reflected by the records of the
28 terminal operator. A person holds the inventory position in special
29 fuel if the person has a contractual agreement with the terminal for
30 the use of storage facilities and terminating services at a terminal
31 with respect to special fuel. "Position holder" includes a terminal
32 operator that owns special fuel in their terminal.

33 (~~(20)~~) (21) "Rack" means a mechanism for delivering special fuel
34 from a refinery or terminal into a truck, trailer, railcar, or other
35 means of nonbulk transfer.

36 (~~(21)~~) (22) "Refiner" means a person who owns, operates, or
37 otherwise controls a refinery.

1 ~~((+22+))~~ (23) "Removal" means a physical transfer of special fuel
2 other than by evaporation, loss, or destruction.

3 ~~((+23+))~~ (24) "Special fuel" means and includes all combustible
4 gases and liquids suitable for the generation of power for propulsion
5 of motor vehicles, except that it does not include motor vehicle fuel
6 as defined in chapter 82.36 RCW, nor does it include dyed special fuel
7 as defined by federal regulations, unless the use is in violation of
8 this chapter. If a person holds for sale, sells, purchases, or uses
9 any dyed special fuel in violation of this chapter, all dyed special
10 fuel held for sale, sold, purchased, stored, or used by that person is
11 considered special fuel, and the person is subject to all presumptions,
12 reporting, and recordkeeping requirements and other obligations which
13 apply to special fuel, along with payment of any applicable taxes,
14 penalties, or interest for illegal use.

15 ~~((+24+))~~ (25) "Special fuel distributor" means a person who
16 acquires special fuel from a supplier, distributor, or licensee for
17 subsequent sale and distribution.

18 ~~((+25+))~~ (26) "Special fuel exporter" means a person who purchases
19 special fuel in this state and directly exports the fuel by a means
20 other than the bulk transfer-terminal system to a destination outside
21 of the state.

22 ~~((+26+))~~ (27) "Special fuel importer" means a person who imports
23 special fuel into the state by a means other than the bulk transfer-
24 terminal system. If the importer of record is acting as an agent, the
25 person for whom the agent is acting is the importer. If there is no
26 importer of record, the owner of the special fuel at the time of
27 importation is the importer.

28 ~~((+27+))~~ (28) "Special fuel supplier" means a person who holds a
29 federal certificate issued under the internal revenue code and
30 authorizes the person to tax-free transactions on special fuel in the
31 bulk transfer-terminal system.

32 ~~((+28+))~~ (29) "Special fuel user" means a person engaged in uses of
33 special fuel that are not specifically exempted from the special fuel
34 tax imposed under this chapter.

35 ~~((+29+))~~ (30) "Terminal" means a special fuel storage and
36 distribution facility that has been assigned a terminal control number
37 by the internal revenue service, is supplied by pipeline or vessel, and
38 from which reportable special fuel is removed at a rack.

1 (~~(30)~~) (31) "Terminal operator" means a person who owns,
2 operates, or otherwise controls a terminal.

3 (~~(31)~~) (32) "Two-party exchange" or "buy-sell agreement" means a
4 transaction in which taxable special fuel is transferred from one
5 licensed supplier to another licensed supplier under an exchange or
6 buy-sell agreement whereby the supplier that is the position holder
7 agrees to deliver taxable special fuel to the other supplier or the
8 other supplier's customer at the rack of the terminal at which the
9 delivering supplier is the position holder.

10 **Sec. 5.** RCW 82.38.130 and 1998 c 176 s 65 are each amended to read
11 as follows:

12 The department may revoke the license of any licensee for any of
13 the grounds constituting cause for denial of a license set forth in RCW
14 82.38.120 or for other reasonable cause. Before revoking such license
15 the department shall notify the licensee to show cause within twenty
16 days of the date of the notice why the license should not be revoked:
17 PROVIDED, That at any time prior to and pending such hearing the
18 department may, in the exercise of reasonable discretion, suspend such
19 license.

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

22 Any surety on a bond furnished by a licensee as provided in this
23 chapter shall be released and discharged from any and all liability to
24 the state accruing on such bond after the expiration of forty-five days
25 from the date which such surety shall have lodged with the department
26 a written request to be released and discharged, but this provision
27 shall not operate to relieve, release, or discharge the surety from any
28 liability already accrued or which shall accrue before the expiration
29 of the forty-five day period. The department shall promptly, upon
30 receiving any such request, notify the licensee who furnished the bond,
31 and unless the licensee, on or before the expiration of the forty-five
32 day period, files a new bond, in accordance with this section, the
33 department forthwith shall cancel the special fuel dealer's or special
34 fuel user's license.

35 The department may require a new or additional surety bond of the
36 character specified in RCW 82.38.020(~~(3)~~) (4) if, in its opinion, the
37 security of the surety bond therefor filed by such licensee, shall

1 become impaired or inadequate. Upon failure of the licensee to give
2 such new or additional surety bond within forty-five days after being
3 requested to do so by the department, or after he or she shall fail or
4 refuse to file reports and remit or pay taxes at the intervals fixed by
5 the department, the department forthwith shall cancel his or her
6 license.

7 NEW SECTION. **Sec. 6.** Section 1 of this act expires June 30, 2015.

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