

SENATE BILL REPORT

SB 5847

As of January 18, 2024

Title: An act relating to enhancing prorated and fuel tax collections by improving taxpayer compliance, providing additional enforcement mechanisms, and protecting confidential taxpayer information.

Brief Description: Enhancing prorated and fuel tax collections by improving taxpayer compliance, providing additional enforcement mechanisms, and protecting confidential taxpayer information.

Sponsors: Senators Liias, King, Hasegawa, Nobles, Shewmake and Wilson, C.; by request of Department of Licensing.

Brief History:

Committee Activity: Transportation: 1/18/24.

Brief Summary of Bill

- Provides additional authority to the Department of Licensing (DOL) to enforce fuel tax requirements.
- Requires DOL to establish a prorated and fuel tax discovery team to detect and investigate fuel tax and proportional registration violations, with authority to seek search warrants, issue subpoenas, perform inspections, and investigate and assess alleged civil violations.
- Makes a person other than a licensee who is engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel and who fails to submit required tax reports to DOL subject to civil and criminal penalties.
- Requires a fuel licensee who has a fuel license revoked to submit an application for reinstatement and to resolve all outstanding violations, non-compliance items, and debts owed prior to issuance of a new license.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Exempts fuel tax reports submitted to DOL from public inspection and copying.

SENATE COMMITTEE ON TRANSPORTATION

Staff: Bryon Moore (786-7726)

Background: International Fuel Tax Agreement and Proportional Vehicle Registration. The International Fuel Tax Agreement (IFTA) is a motor fuel tax cooperative agreement with other states and provinces for the administration, collection, and enforcement of each state's motor fuel taxes on motor fuel used by motor carriers. The International Registration Plan (IRP) is a cooperative agreement with other states and provinces that enables fleets that operate in interstate commerce to register vehicles in one home location and pay apportioned licensing fees based on the distance driven in each jurisdiction, which the Department of Licensing (DOL) refers to as proportional registration. International Fuel Tax Agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state, are liable for and must pay the fuel tax on fuel used to operate motor vehicles on highways in the state.

DOL is required to issue license plates that indicate a vehicle is registered in Washington in accordance with the IRP once a complete application is submitted and all required fees and taxes have been paid. DOL may deny, suspend, or revoke the IRP-compliant license plate of a registrant who formerly had his or her credentials revoked for cause when the cause has not been corrected, who has certain unsatisfied state debts, or who has been prohibited from operating as a motor carrier by the Federal Motor Carrier Safety Administration or the Washington State Patrol (WSP) when the cause has not been corrected. Prior to denial, suspension, or revocation, DOL must grant the applicant, registrant, or owner an informal hearing and provide at least ten days written notice of the time and place of the hearing.

If a registrant is delinquent in the payment of an obligation, DOL may provide notice of the amount due in person or by mail to the person who has possession or control of credits from previous overpayments, who has personal or real property belonging to the person, or who owes debts to the person. If a person fails to answer the notice within 20 days after receipt of it, a court may render judgment by default against the person. The notice and order by a court to withhold and deliver constitutes a continuing lien on property of the person.

Motor Vehicle and Aircraft Fuel Taxes Requirements. An excise tax is imposed on fuel licensees at the time of the first taxable event in the state, including when fuel is removed from a terminal at the rack or from a refinery and when fuel enters into the state for sale, consumption, use, or storage, subject to certain exceptions. International fuel tax agreement licensees or individuals operating motor vehicles under other reciprocity agreements entered into with the state are required to pay the motor vehicle fuel tax. An aircraft fuel tax is

imposed on distributors of aircraft fuel on aircraft fuel sold, delivered, or used in the state.

A person may operate or maintain a motor vehicle with dyed special fuel in the fuel supply tank only if the use is authorized by the Internal Revenue Code and the person is either the holder of a dyed special fuel user license or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the person is the holder of a dyed special fuel user license.

Application for a fuel license must be made to DOL and must meet all requirements and be made in a manner prescribed by DOL. DOL may refuse to issue to, or to suspend or revoke, a fuel license of any licensee or applicant who formerly held a license suspended or revoked for cause, who has an unsatisfied state debt, who misrepresented or concealed a material fact in obtaining or reinstating a license, or for other specified reasons. Prior to refusal to issue, or suspension or revocation of a license, DOL must grant the applicant a hearing and must provide at least 20 days written notice of the time and place of the hearing.

Every person importing, manufacturing, refining, transporting, blending, or storing fuel must keep a complete record of all fuel purchased or received and of all fuel sold, delivered, or used. All IFTA licensees and dyed special fuel users authorized to use dyed special fuel on highways in vehicles licensed for highway operation must maintain detailed mileage records on an individual vehicle basis. In the absence of detailed mileage records, motor vehicle fuel consumption must be calculated using the mileage basis determined by DOL. DOL may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel to submit periodic reports to DOL with information on the disposition of the fuel.

Motor Vehicle and Aircraft Fuel Taxes Civil Penalties. If a person fails to pay taxes due by the time allowed, the person must pay a penalty of 10 percent of the taxes owed. If a licensee establishes by a fair preponderance of evidence that the failure to pay was due to reasonable cause and was not intentional or willful, DOL may waive the penalty. If any person acts as a licensee without first securing the required license, all fuel tax liability incurred is immediately due. DOL must assess the person a penalty of 100 percent of the tax in addition to the tax owed. A licensee may petition for a reassessment within 30 days after service on the licensee of the assessment, after which time, the amount assessed becomes final. DOL must reconsider the assessment requested in a petition filed, and if requested, must grant an informal hearing and provide ten days notice of the time and place of the hearing.

A person having dyed special fuel in the fuel supply tank of a motor vehicle being used in a manner not exempt from the motor vehicle fuel tax or who maintains dyed special fuel in bulk storage for an intended sale or use in violation of its eligible uses is subject to a civil penalty of \$10 for each gallon of dyed special fuel placed into the supply tank, or \$1,000, whichever is greater. WSP or other commercial vehicle safety alliance-certified officers

may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle to detect the presence of dye or other chemical compound.

If a person fails to pay taxes due, including interest and any penalties owed, a lien will be placed on property belonging to or acquired by the person. When a person fails to pay taxes due, inclusive of interest and penalties, DOL is authorized to provide notice of the delinquency by mail. A person who receives notice of the delinquency, which constitutes a continuing lien on property of the person, must satisfy the debt within 20 days of receipt of the notice. If a person fails to answer the notice within the time allowed, a court may make a judgement by default against the person.

Any licensee who has a fuel license revoked must pay a \$100 penalty prior to being issued a new license.

Motor Vehicle and Aircraft Fuel Tax Enforcement and Criminal Offenses. DOL may examine the records and equipment of any person distributing, transporting, storing, or using fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. DOL may initiate and conduct investigations as are reasonably necessary to establish the existence of any alleged violations of non-compliance. For the purposes of an investigation or proceeding, DOL may subpoena witnesses and require the production of records deemed relevant or material.

It is unlawful for a person to evade a fuel tax or related fee; commit fraud or make a false representation on a fuel tax license application, refund application, or tax return; or display or possess a fuel license with knowledge is fraudulent or has been suspended or revoked.

When WSP has good reason to believe that motor vehicle fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured, WSP may prepare an affidavit describing the place or thing to be searched to present to a judge, and the judge is required to issue a search warrant to seize the fuel and conveyance and arrest the person in possession or who has control of them.

When enforcing provisions of the aircraft fuel tax, DOL may call on WSP or any peace officer in the state to aid in enforcement.

Public Disclosure Exemption for Tax Information. Agencies are required to make public records available for public inspection and copying unless the record falls within a specific exemption. Tax information provided to the Department of Revenue is considered confidential and privileged and may not be disclosed, subject to certain exceptions.

Summary of Bill: Civil Penalties. An IRP-compliant license plate may be denied, suspended, or revoked immediately. This act constitutes notice of an adverse action. Upon receipt of this notice, the applicant, registrant, or owner must be granted 30 days to request a review by DOL of the action. If no request is received by DOL, the action becomes final,

subject to appeal to superior court. If a registrant is delinquent in the payment of an obligation, DOL may provide notice of the amount due in person or by mail, or through electronic service.

For purposes of the per gallon penalty calculation for unlawful use or intended sale or use of dyed special fuel, DOL may make an assessment based on the calculated capacity of the bulk storage used, which is presumptive unless evidence is provided to support that a lower quantity of fuel be used for the assessment.

DOL is granted authority to inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle to detect the presence of dye or other chemical compound. DOL may also inspect, collect and secure samples of special fuel in any bulk storage device transported on the highways of the state. For multiple violations of the unlawful use or intended sale or use of dyed special fuel within five years, the penalty for a single violation—the greater of \$10 per gallon or \$1,000—is increased by multiplying it by one plus the number of preceding violations within this period.

A person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering motor vehicle fuel who is required to submit periodic reports to DOL with information on the disposition of the fuel and who fails to do so is subject to civil and criminal penalties. If a person other than a licensee fails, neglects, or refuses to file a required motor vehicle fuel tax report, or files a false or fraudulent report, DOL must assess a penalty of \$100 plus \$0.05 per gallon not properly reported or falsely reported. The person may petition for a reassessment within 30 days after service of the assessment. If the person establishes by a fair preponderance of evidence that the failure to pay was due to reasonable cause and was not intentional or willful, DOL may waive the penalty.

If a petition for fuel tax reassessment is filed by a licensee or other person within 30 days, DOL must grant a review if requested. DOL must offer a review before a refusal to issue, suspend, or revoke a fuel license become final. Refusals, suspensions, and revocations become final 30 days after notice is served on the licensee or applicant of the intention to refuse, suspend, or revoke a license. In addition to paying a penalty, a fuel licensee who has a fuel license revoked must submit an application for reinstatement and must resolve all outstanding violations, non-compliance items, and debts owed related to fuel tax collections prior to issuance of a new license. A person required to have an IFTA license found operating without a license is subject to an assessment of \$500, in addition to other penalties prescribed by law.

When a person fails to pay taxes due, inclusive of interest and penalties, DOL is authorized to provide notice of the delinquency by electronic service or by mail.

Enforcement and Criminal Offenses. DOL has enforcement authority for fuel tax requirements and may request WSP, or any peace officer in the state, aid in the enforcement

of fuel tax laws and regulations.

DOL is required to establish a prorated and fuel tax discovery team to detect and investigate fuel tax and proportional registration violations, with authority to seek search warrants, issue subpoenas, perform inspections, and investigate and assess alleged civil violations of fuel tax and proportional registration laws. DOL must adopt rules necessary to establish the prorated and fuel tax discovery team.

It is unlawful for a person to:

- knowingly display, or cause to permit to be displayed, or possess, a fictitious or altered IFTA decal or license;
- fail to display, or improperly display, a valid IFTA decal associated with a valid IFTA license;
- operate a motor vehicle without having obtained an IFTA license; and
- offer for sale as taxed fuel, fuel that the seller knows or has reason to know is untaxed.

In the addition to WSP, when DOL has good reason to believe that motor vehicle fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured, DOL, in consultation with WSP, may prepare an affidavit describing the place or thing to be searched and present it to a judge, and the judge must issue a search warrant and to seize the fuel and conveyance and arrest the person in possession or who has control of them.

DOL may apply for and obtain a superior court order approving and authorizing a subpoena where the application adequately specifies the records, documents, or testimony requested, and that declares under oath the lawful purposes of the investigation within DOL's authority under fuel tax laws. DOL may not disclose tax return or tax information obtained in response to a subpoena, except as permitted by law.

Public Disclosure Exemption for Tax Information. Fuel tax reports submitted to DOL are exempt from public inspection and copying. This exemption does not restrict DOL from providing summary or aggregate data where the taxpayer's right to privacy or unfair competitive disadvantage can reasonably be protected; does not prevent DOL from data sharing agreements with federal, state, or local agencies; and does not restrict sharing with law enforcement for purposes of investigation or enforcement.

Severability. If any provision of the act or its application is held invalid, the remainder of the act or other applications of it is not affected.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony: PRO: The adage trust but verify applies to what this bill is about. While there are many components of the legislation, it is fundamentally about fairness and making sure that everyone is paying the appropriate amount of fuel taxes to support transportation investments. The tools provided to the Department of Licensing (DOL) will aid in better enforcement and provide additional authority to go after individuals not paying the required fuel taxes or evading paying altogether. The Department Licensing can audit, but the actual criminal investigations are done by the State Patrol. Some of the provisions of this bill give DOL more authority over these types of matters. It provides more appropriate consequences for unlicensed activity and illegal fuel tax evasion. The additional civil investigation authority and the ability to impose civil fines are two of the most significant changes. All of this is about ensuring a fairness and creating more efficient compliance with fuel tax laws. The bill also has privacy protections of fuel licensee information like what other taxpayers have when they are regulated by the Department of Revenue.

Persons Testifying: PRO: Senator Marko Liias, Prime Sponsor; Beau Perschbacher, WA Dept. of Licensing.

Persons Signed In To Testify But Not Testifying: No one.