

**Chapter 82.38 RCW**  
**FUEL TAX ACT**

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**RCW 82.38.010 Statement of purpose.** The purpose of this chapter is to impose a tax upon fuels used for the propulsion of motor vehicles upon the highways of this state. [2013 c 225 § 101; 1979 c 40 § 1; 1971 ex.s. c 175 § 2.]

**Effective date—2015 c 228; 2013 c 225:** "Section 110, chapter 225, Laws of 2013 takes effect July 1, 2015. Sections 101 through 109, 111 through 304, and 306 through 647, chapter 225, Laws of 2013 take effect July 1, 2016." [2015 c 228 § 40; 2013 c 225 § 650.]

**RCW 82.38.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended fuel" means a mixture of fuel and another liquid, other than a de minimis amount of the liquid.

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

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter.

(4) "Bulk transfer-terminal system" means the fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

(8) "Distributor" means a person who acquires fuel outside the bulk transfer-terminal system for importation into Washington, from a

terminal or refinery rack located within Washington for distribution within Washington, or for immediate export outside the state of Washington.

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

(10) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

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

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

(c) The unlawful use of dyed special fuel.

(11) "Exempt sale" means the sale of fuel to a person whose use of fuel is exempt from the fuel tax.

(12) "Export" means to obtain fuel in this state for sales or distribution outside the state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(13) "Exporter" means a person who purchases fuel physically located in this state at the time of purchase and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the fuel at the time of exportation is the exporter.

(14) "Fuel" means motor vehicle fuel or special fuel.

(15) "Fuel user" means a person engaged in uses of fuel that are not specifically exempted from the fuel tax imposed under this chapter.

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

(17) "Import" means to bring fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(18) "Importer" means a person who imports fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the fuel at the time of importation is the importer.

(19) "International fuel tax agreement licensee" means a fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(20) "Licensee" means a person holding a license issued under this chapter.

(21) "Motor vehicle" means a self-propelled vehicle utilizing fuel as a means of propulsion.

(22) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold the chief use of which is as a fuel for the propulsion of motor vehicles or vessels.

(23) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(24) "Person" means any individual, partnership, association, public or private corporation, limited liability company, or any other

type of legal or commercial entity, including their members, managers, partners, directors, or officers.

(25) "Position holder" means a person who holds the inventory position in fuel, as reflected by the records of the terminal operator. A person holds the inventory position if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services. "Position holder" includes a terminal operator that owns fuel in their terminal.

(26) "Rack" means a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(27) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(28) "Removal" means a physical transfer of fuel other than by evaporation, loss, or destruction.

(29) "Special fuel" means diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways, except it does not include motor vehicle fuel.

(30) "Supplier" means a person who holds a federal certificate of registry issued under the internal revenue code and authorizes the person to engage in tax-free transactions of fuel in the bulk transfer-terminal system.

(31) "Terminal" means a fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service.

(32) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(33) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable fuel is transferred from one licensed supplier to another licensed supplier whereby the supplier that is the position holder agrees to deliver taxable fuel to the other supplier or the other supplier's customer at the terminal at which the delivering supplier is the position holder. [2013 c 225 § 102; 2002 c 183 § 1; 2001 c 270 § 4; 1998 c 176 § 50; 1995 c 287 § 3; 1994 c 262 § 22; 1988 c 122 § 1; 1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.** (1) There is levied and imposed upon fuel licensees a tax at the rate of twenty-three cents per gallon of fuel.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of fuel is imposed on fuel licensees. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of fuel is imposed on fuel licensees.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of fuel is imposed on fuel licensees.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of fuel is imposed on fuel licensees.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of fuel is imposed on fuel licensees.

(7) Beginning August 1, 2015, an additional and cumulative tax rate of seven cents per gallon of fuel is imposed on fuel licensees.

(8) Beginning July 1, 2016, an additional and cumulative tax rate of four and nine-tenths cents per gallon of fuel is imposed on fuel licensees.

(9) Taxes are imposed when:

(a) Fuel is removed in this state from a terminal if the fuel is removed at the rack unless the removal is by a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is by a fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the fuel immediately before the removal is not a licensed supplier; or

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

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

(i) The entry is by bulk transfer and the importer is not a licensed supplier; or

(ii) The entry is not by bulk transfer;

(d) Fuel enters this state by means outside the bulk transfer-terminal system and is delivered directly to a licensed terminal unless the owner is a licensed distributor or supplier;

(e) Fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the fuel;

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

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

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

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

(j) Fuel is sold by a licensed fuel supplier to a fuel distributor or fuel blender and the fuel is not removed from the bulk transfer-terminal system. [2015 3rd sp.s. c 44 § 103; (2015 3rd sp.s. c 44 § 102 expired July 1, 2016); 2014 c 216 § 201; 2013 c 225 § 103; 2007 c 515 § 21; 2005 c 314 § 102; 2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

**Effective date—2015 3rd sp.s. c 44 §§ 103, 105, and 110:**

"Sections 103, 105, and 110 of this act take effect July 1, 2016."  
[2015 3rd sp.s. c 44 § 427.]

**Contingent expiration date—2015 3rd sp.s. c 44 §§ 101, 102, 104, and 109:** "Sections 101, 102, 104, and 109 of this act expire July 1, 2016, if sections 103, 105, and 110 of this act take effect July 1, 2016." [2015 3rd sp.s. c 44 § 428.]

**Effective date—2015 c 228; 2014 c 216:** "Sections 101, 202, and 207 through 501, chapter 216, Laws of 2014 take effect July 1, 2015. Sections 201 and 203 through 206, chapter 216, Laws of 2014 take effect July 1, 2016." [2015 c 228 § 41; 2014 c 216 § 601.]

**Findings—Tax preference performance statement—2014 c 216:** "(1) The legislature finds that current law taxes natural gas as a traditional home heating or electric generation fuel while not taking into account the benefits of natural gas use as a transportation fuel. The legislature further finds that the construction and operation of a natural gas liquefaction plant and compressed natural gas refueling stations as well as the ongoing use of compressed and liquefied natural gas will lead to positive job creation, economic development, environmental benefits, and lower fuel costs. The legislature further finds that it is sound tax policy to provide uniform tax treatment of natural gas used as a transportation fuel, regardless of whether the taxpayer providing the natural gas is a gas distribution business or not, so as to prevent any particular entity from receiving a competitive advantage solely through a structural inefficiency in the tax code.

(2) (a) This subsection is the tax performance statement for this act. The performance statement is only intended to be used for subsequent evaluation of the tax changes made in this act. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax changes in this act as changes intended to accomplish the general purposes indicated in RCW 82.32.808(2) (c) and (d).

(c) It is the legislature's specific public policy objectives to promote job creation and positive economic development; lower carbon dioxide, sulfur dioxide, nitrogen dioxide, and particulate emissions; and secure optimal liquefied natural gas pricing for the state of Washington and other public entities.

(d) To measure the effectiveness of the exemption provided in this act in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate the following:

(i) The number of employment positions and wages at a natural gas liquefaction facility located in Washington and operated by a gas distribution business where some or all of the liquefied natural gas is sold for use as a transportation fuel. If the average number of employment positions at the liquefaction facility once it is operationally complete equals or exceeds eighteen and average annual wages for employment positions at the facility exceed thirty-five thousand dollars, it is presumed that the public policy objective of job creation has been achieved.

(ii) The estimated total cost of construction of a liquefaction plant by a gas distribution company, including costs for machinery and equipment. If the total cost equals or exceeds two hundred fifty million dollars, it is presumed that the public policy objective of positive economic development has been achieved.

(iii) The estimated fuel savings by the Washington state ferry system and other public entities through the use of liquefied natural gas purchased from a gas distribution business.

(iv) The estimated reduction in carbon dioxide, sulfur dioxide, nitrogen dioxide, and particulate emissions, resulting from the use of liquefied natural gas and compressed natural gas as a transportation fuel where the natural gas is sold by a gas distribution business. The emissions of liquefied and compressed natural gas must be specifically compared with an equivalent amount of diesel fuel. If the estimated annual reduction in emissions exceeds the following benchmarks, it is presumed that the public policy objective of reducing emissions has been achieved:

- (A) Three hundred million pounds of carbon dioxide;
- (B) Two hundred thousand pounds of particulates;
- (C) Four hundred thousand pounds of sulfur dioxide; and
- (D) Four hundred fifty thousand pounds of nitrogen dioxide.

(e) (i) The following data sources are intended to provide the informational basis for the evaluation under (d) of this subsection:

- (A) Employment data provided by the state employment security department;
- (B) Ferry fuel purchasing data provided by the state department of transportation;
- (C) Diesel and other energy pricing data found on the United States energy information administration's website; and
- (D) Information provided by a gas distribution business on the annual report required under RCW 82.32.534.

(ii) In addition to the data source described under (e) (i) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (d) of this subsection.

(3) A gas distribution business claiming the exemption under RCW 82.08.02565 or 82.12.02565 must file the annual report under RCW 82.32.534 or any successor document. In addition to the information contained in the report, the report must also include the amount of liquefied natural gas and compressed natural gas sold by the gas distribution business as a transportation fuel. A gas distribution business is not required to file the annual survey under \*RCW 82.32.585, as would otherwise be required under RCW 82.32.808(5).

(4) The joint legislative audit and review committee must perform the review required in this section in a manner consistent with its tax preference review process under chapter 43.136 RCW. The committee must perform the review in calendar year 2025." [2014 c 216 § 101.]

**\*Reviser's note:** RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 515 § 36.]

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.68.035.

**Findings—2003 c 361:** "The legislature finds that the state's transportation system is in critical need of repair, restoration, and enhancement. The state's economy, the ability to move goods to market, and the overall mobility and safety of the citizens of the state rely on the state's transportation system. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—1983 1st ex.s. c 49:** See RCW 36.79.901.

**Effective dates—1977 ex.s. c 317:** "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977, except for section 9, which shall take effect on September 1, 1977." [1977 ex.s. c 317 § 24.]

**RCW 82.38.031 Tax imposed—Intent.** It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.38.030 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [2007 c 515 § 33.]

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**RCW 82.38.032 Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements.** International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.38.030 to the department on fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.38.030 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2013 c 225 § 104; 2007 c 515 § 22; 1998 c 176 § 52.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**RCW 82.38.033 Payment of tax by a nonlicensee.** Every person, other than a licensee, who acquires fuel upon which payment of tax is required must, if the tax has not been paid, comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.38.030. The person is subject to the same duties and penalties imposed upon licensees. [2013 c 225 § 208.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.035 Tax liability.** (1) A licensed supplier is liable for and must pay tax on fuel as provided in \*RCW 82.38.030(7) (a) and (i). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner is liable for and must pay tax on fuel removed from a refinery as provided in \*RCW 82.38.030(7) (b).

(3) A licensed distributor is liable for and must pay tax on fuel as provided in \*RCW 82.38.030(7) (c).

(4) A licensed blender is liable for and must pay tax on fuel as provided in \*RCW 82.38.030(7) (f).

(5) A licensed dyed special fuel user is liable for and must pay tax on fuel as provided in \*RCW 82.38.030(7) (g).

(6) A terminal operator is jointly and severally liable for and must pay tax on fuel if, at the time of removal:

(a) The position holder of the fuel is a person other than the terminal operator and is not a licensee;

(b) The terminal operator is not a licensee;

(c) The position holder has an expired internal revenue notification certificate;

(d) The terminal operator has reason to believe that information on the internal revenue notification certificate is false.

(7) A terminal operator is jointly and severally liable for and must pay tax on special fuel if the special fuel is removed and is not dyed or marked in accordance with internal revenue service requirements, and the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating the special fuel is dyed or marked in accordance with internal revenue service requirements.

(8) International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay tax on fuel used to operate motor vehicles on state highways.

(9) Dyed special fuel users are liable for and must pay tax on dyed special fuel used on state highways unless the use of the fuel is exempt from the tax. [2013 c 225 § 105; 2007 c 515 § 23; 2005 c 314 § 107; 2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

**\*Reviser's note:** RCW 82.38.030 was amended by 2015 3rd sp.s. c 44 § 102, changing subsection (7) to subsection (9).

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.68.035.

**Findings—2003 c 361:** See note following RCW 82.38.030.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**RCW 82.38.050 Tax liability on leased motor vehicles.** (1) A lessor leasing motor vehicles without drivers to lessees for interstate operation, may be the fuel user when the lessor supplies or pays for the fuel consumed in the motor vehicles. Any lessee may exclude motor vehicles from reports and liabilities pursuant to this chapter, but only if the excluded motor vehicles have been leased from a lessor holding a valid international fuel tax agreement license.

(2) The lessor is responsible for fuel tax licensing and reporting for the operation of motor vehicles leased for less than thirty days. [2013 c 225 § 106; 2007 c 515 § 24; 1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**RCW 82.38.055 Bonding requirements.** (1) A license may not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for:

(a) Licensed dyed special fuel users;  
(b) International fuel tax agreement licensees; or  
(c) Licensed fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States, or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. The provisions of this section do not relieve, release, or discharge the surety from any liability

accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license. [2013 c 225 § 201.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.060 Tax computation on mileage basis.** If tax on fuel placed in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to adopt such basis. In the absence of records showing the number of miles actually operated per gallon of fuel consumed, fuel consumption must be calculated by the department. [2023 c 470 § 1020. Prior: 2013 c 225 § 107; 2013 c 23 § 332; 1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

**Explanatory statement—2023 c 470:** See note following RCW 10.99.030.

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.065 Dyed special fuel use—Authorization, license required—Imposition of tax.** A person may operate or maintain a licensed or required to be licensed 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 issued under this chapter. [2013 c 225 § 108; 2002 c 183 § 3; 1998 c 176 § 56.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.066 Dyed special fuel—Requirements—Marking—Notice.**

(1) Special fuel satisfies the dyeing and marking requirements of this chapter if it meets the dyeing and marking requirements of the internal revenue service, including, but not limited to, requirements respecting type, dosage, and timing.

(2) Notice is required with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(a) Provided by the terminal operator to a person who receives dyed special fuel at a terminal rack;

(b) Provided by a seller of dyed special fuel to the buyer if the special fuel is located outside the bulk transfer-terminal system and is not sold from a retail pump posted in accordance with the requirements of this subsection; or

(c) Posted by a seller on a retail pump dispensing dyed special fuel and provided by the seller of dyed special fuel to the buyer at the retail pump. [2013 c 225 § 109; 1998 c 176 § 57.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.072 Dyed special fuel—Penalties.** (1) Unless the use is exempt from the special fuel tax, or expressly authorized by the federal internal revenue code and this chapter, a person having dyed special fuel in the fuel supply tank of a motor vehicle that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The penalties must be collected and administered under this chapter.

(2) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The penalties must be collected and administered under this chapter.

(3) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.

(4) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (1) of this section. [2013 c 225 § 204.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.075 Natural gas, compressed natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device.** (1) To encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 is imposed upon the use of liquefied natural gas, compressed natural gas, or propane used in any motor vehicle. The annual license fee must be based upon the following schedule and formula:

VEHICLE TONNAGE (GVW)	FEE
0 - 6,000	\$ 45
6,001 - 10,000	\$ 45
10,001 - 18,000	\$ 80
18,001 - 28,000	\$110
28,001 - 36,000	\$150
36,001 and above	\$250

(2) To determine the annual license fee for a registration year, the appropriate dollar amount in the schedule is multiplied by the fuel tax rate per gallon effective on July 1st of the preceding calendar year and the product is divided by 12 cents.

(3) The department, in addition to the resulting fee, must charge an additional fee of five dollars as a handling charge for each license issued.

(4) The vehicle tonnage fee must be prorated so the annual license will correspond with the staggered vehicle licensing system.

(5) A decal or other identifying device issued upon payment of the annual fee must be displayed as prescribed by the department as authority to purchase this fuel.

(6) Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device.

(7) Commercial motor vehicles registered in a foreign jurisdiction under the provisions of the international registration plan are subject to the annual fee.

(8) Motor vehicles registered in a foreign jurisdiction, except those registered under the international registration plan under chapter 46.87 RCW, are exempt from this section.

(9) Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

(10) Any person selling or dispensing liquefied natural gas, compressed natural gas, or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter. [2014 c 216 § 202; 2013 c 225 § 110; 1983 c 212 § 1; 1981 c 129 § 1; 1979 c 48 § 1; 1977 ex.s. c 335 § 1.]

**Effective date—Findings—Tax preference performance statement—**  
**2014 c 216:** See notes following RCW 82.38.030.

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—1979 c 48:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 c 48 § 2.]

**Effective date—1977 ex.s. c 335:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 335 § 2.]

**RCW 82.38.080 Exemptions.** (1) The following sales of special fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the state of Washington, any county, or any municipality when the fuel is used for street and highway construction and maintenance purposes in motor vehicles owned and operated by the state, county, or municipality;

(b) Sales for use in publicly owned firefighting equipment;

(c) Sales to the United States government;

(d) Sales to a private, nonprofit transportation provider regulated under chapter 81.66 RCW when the fuel is for use in providing transportation services for persons with special transportation needs;

(e) Sales of waste vegetable oil as defined under RCW 82.08.0205, if the oil is used to manufacture biodiesel;

(f) (i) Sales to privately owned urban passenger transportation systems and carriers as defined in chapters 81.68 and 81.70 RCW. No exemption or refund may be granted for special fuel used by any privately owned urban transportation vehicle, or vehicle operated

pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of the trip is more than twenty-five road miles beyond the corporate limits of the county in which the trip originated.

(ii) For purposes of this subsection (1)(f), "privately owned urban passenger transportation system" means every privately owned transportation system having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to routing by the same transportation system, do not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles or trackless trolleys are located; and

(g)(i) Sales to publicly owned and operated urban passenger transportation systems.

(ii) For the purposes of this subsection (1)(g), "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW, unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW.

(2) The following sales of motor vehicle fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the armed forces of the United States or to the national guard when the fuel is used exclusively in ships or for export from this state;

(b) Sales to foreign diplomatic and consular missions, if the foreign government represented grants an equivalent exemption to missions and personnel of the United States performing similar services in the foreign country; and

(c) Sales of fuel used exclusively for racing that is not legally allowed on the public highways of this state. [2013 c 225 § 111; 2009 c 352 § 1; 2008 c 237 § 1; 1998 c 176 § 60; 1996 c 244 § 6; 1993 c 141 § 2; 1990 c 185 § 1; 1983 c 108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2008 c 237:** See note following RCW 82.08.0205.

**Effective date—1972 ex.s. c 138:** "The effective date of this act shall be July 1, 1972." [1972 ex.s. c 138 § 6.]

**RCW 82.38.090 Penalty for acting without license—Separate licenses for separate activities—Interstate commerce—Exception.** (1) It is unlawful for any person to engage in business in this state as any of the following unless the person is the holder of a license issued by the department authorizing the person to engage in that business:

(a) Fuel supplier;

- (b) Fuel distributor;
- (c) Fuel blender;
- (d) Terminal operator;
- (e) Dyed special fuel user; or
- (f) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity; however, a fuel supplier is not required to obtain a separate license classification for fuel distributor or fuel blender.

(3) Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [2013 c 225 § 112; 1998 c 176 § 61; 1995 c 20 § 13; 1994 c 262 § 23; 1993 c 54 § 6; 1991 c 339 § 6; 1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.100 Special fuel trip permits—Penalty—Fees.** (1) Any special fuel user operating a motor vehicle in this state for commercial purposes may apply for a special fuel trip permit. The permit:

- (a) Is good for a period of three consecutive days beginning and ending on the dates shown on the face of the permit issued;
- (b) Is valid only for the vehicle for which it is issued;
- (c) Must identify, as the department may require, the vehicle for which it is issued; and
- (d) Must be completed in its entirety, signed, and dated by the operator before operation of the vehicle on the public highways of this state.

(2) Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) Blank special fuel trip permits may be obtained from field offices of the department of transportation, department of licensing, county auditors or other agents, or subagents appointed by the department for the fee provided in \*RCW 46.17.400 (1)(f) and (4). The fee is in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state. A report of mileage may not be required with respect to the motor vehicle. Special fuel trip permits may not be issued if the applicant has outstanding fuel taxes, penalties, or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed.

(4) Special fuel trip permits are not subject to exchange, refund, or credit. [2010 c 161 § 907. Prior: 2007 c 515 § 25; 2007 c

419 § 17; 1999 c 270 § 2; 1998 c 176 § 62; 1983 c 78 § 1; 1979 c 40 § 6; 1973 1st ex.s. c 156 § 3; 1971 ex.s. c 175 § 11.]

**\*Reviser's note:** RCW 46.17.400 was amended by 2011 c 171 § 62, deleting subsection (4).

**Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161:** See notes following RCW 46.04.013.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**Findings—Short title—2007 c 419:** See notes following RCW 46.16A.010.

**RCW 82.38.110 Application for license—Federal certificate of registry—Investigation—Fee—Bond or security.** (1) Application for a license must be made to the department. The application must be filed in a manner prescribed by the department and must contain information the department requires. For purposes of this section, the term "applicant" has the same meaning as "person" as provided in RCW 82.38.020.

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

(a) Proof the department may require concerning the applicant's identity;

(b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;

(c) The employment history of the applicant and partner, officer, or director;

(d) A bank reference and whether the applicant or partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment;

(e) Whether the applicant or partner, officer, or director has been convicted of a crime or suffered a civil judgment directly related to the distribution and sale of fuel within the last ten years.

(3) An applicant must identify each state, province, or country the applicant intends to import fuel from by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(4) An applicant must identify each state, province, or country the applicant intends to export fuel to by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(5) An applicant for a fuel supplier or terminal operator license must have the appropriate federal certificate of registry issued by the internal revenue service for the activity in which the applicant is engaging.

(6) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, a licensed distributor may provide evidence to the department of sufficient

assets to adequately meet fuel tax payments, penalties, interest, or other obligations arising out of this chapter.

(7) An application for a dyed special fuel user license must be made in a manner prescribed by the department.

(8) An application for an international fuel tax agreement license must be made in a manner prescribed by the department. A fee of ten dollars per set of international fuel tax agreement decals issued to each applicant or licensee must be charged.

(9) For the purpose of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, Canadian province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history. [2013 c 225 § 113; 2002 c 352 § 26; 2001 c 270 § 8; 1998 c 176 § 63; 1996 c 104 § 8; 1988 c 122 § 2; 1983 c 242 § 2; 1979 c 40 § 7; 1977 c 26 § 1; 1973 1st ex.s. c 156 § 4; 1971 ex.s. c 175 § 12.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective dates—2002 c 352:** See note following RCW 46.09.410.

**RCW 82.38.120 Issuance of license—Refusal.** (1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:

(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;

(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;

(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(e) Who formerly held as an individual, partner, officer, director, owner, managing employee of a licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle, special, or aircraft fuel, which has been suspended or revoked for cause;

(f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(g) Who misrepresented or concealed a material fact in obtaining a license or reinstating a license;

(h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who failed to cooperate with the department's investigations by:

(i) Not furnishing papers or documents;

(ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who failed to comply with an order issued by the director; or

(k) Upon other sufficient cause being shown.

(2) Before a refusal under this section, the department must grant the applicant a hearing and must grant the applicant at least twenty days written notice of the time and place thereof. [2013 c 225 § 114. Prior: 1998 c 176 § 64; 1998 c 115 § 4; 1996 c 104 § 9; 1995 c 274 § 21; 1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.140 Fuel records—Reports—Inspection.** (1) Every person importing, manufacturing, refining, transporting, blending, or storing fuel must keep for a period of five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all fuel purchased or received and all fuel sold, delivered, or used by them. Records must show:

(a) The date of receipt;

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

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

(d) The date of sale or delivery;

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

(f) The number of gallons sold, delivered, or used for any purpose not subject to the fuel tax;

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

(h) The physical inventories of fuel and petroleum products on hand at each place of business at the end of each month;

(i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline and other petroleum products which may be used in the compounding, blending, or manufacturing of fuel.

(2) (a) All international fuel tax agreement 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.

(b) Operating records must show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

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

(3) The department 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 the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance transporting fuel in bulk must possess during the entire time an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person transporting fuel must at the request of any law enforcement officer or authorized representative of the department, produce for inspection required records and must permit inspection of the contents of the vehicle. [2013 c 225 § 115; 2007 c 515 § 27; 1998 c 176 § 66. Prior: 1996 c 104 § 10; 1996 c 90 § 2; 1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**RCW 82.38.150 Periodic tax reports—Forms—Filing—Time extensions during state of emergency.** (1) For the purpose of determining the amount of liability for the tax imposed under this chapter, each licensee, other than an international fuel tax agreement licensee or a dyed special fuel user, must file monthly tax reports with the department.

(2) Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, must file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, must file reports quarterly. International fuel tax agreement licensees must file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee must file reports annually.

(3) A licensee, other than international fuel tax agreement licensee, must file a tax report on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(4) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(5) The department in order to insure payment of the tax or to facilitate administration of this chapter, may require the filing of reports and tax remittances at intervals other than one month.

(6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper. [2013 c 225 § 116; 2008 c 181 § 506; 2007 c 515 § 28; 1998 c 176 § 67; 1996 c 104 § 11; 1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**Purpose—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 46.68.090.

**Effective date—1988 c 23:** "This act shall take effect January 1, 1989." [1988 c 23 § 2.]

**RCW 82.38.160 Computation and payment of tax—Remittance—Electronic funds transfer.** (1) The tax must be computed by multiplying the tax rate per gallon by the number of gallons of fuel subject to the fuel tax.

(2) A fuel distributor must remit tax on fuel purchased from a supplier, and due to the state for that reporting period, to the special fuel supplier. This provision does not apply to fuel imported by a distributor under RCW 82.38.035(3).

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

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

(5) If the tax is paid by electronic funds transfer, the tax must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day is the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month, the tax must be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [2013 c 225 § 117; 2005 c 260 § 2; 1998 c 176 § 68; 1987 c 174 § 5; 1979 c 40 § 12; 1971 ex.s. c 175 § 17.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2005 c 260:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 260 § 4.]

**Effective date—1987 c 174:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 174 § 8.]

**RCW 82.38.170 Civil and statutory penalties and interest—**  
**Deficiency assessments.** (1) If any person fails to pay any taxes due the state of Washington within the time prescribed by RCW 82.38.150 and 82.38.160, the person must pay a penalty of ten percent of the tax due.

(2) If the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

(4) If any licensee establishes by a fair preponderance of evidence that failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1) and (2) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is added to the amount of deficiency a penalty of twenty-five percent of the deficiency, in addition to all other penalties prescribed by law.

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must assess the person a penalty of one hundred percent of the tax in addition to the tax owed.

(7) Any fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment. The department may waive interest when it determines the cost of processing the collection exceeds the amount of interest due.

(8) Except in the case of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate the assessments.

(9) Except in the case of a fraudulent report or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires later.

(10)(a) Any licensee against whom an assessment is made under the provisions of subsections (1) and (2) of this section may petition for a reassessment within thirty days after service upon the licensee of

the assessment. If such petition is not filed within such thirty day period, the amount of the assessment becomes final.

(b) If a petition for reassessment is filed within the thirty day period, the department must reconsider the assessment and, if the licensee has requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(c) Every assessment made by the department becomes due and payable at the time it becomes final and if not timely paid to the department, a penalty of ten percent of the amount of the tax is added to the assessment.

(11) Any notice of assessment required by this section must be served by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

(12) Any licensee who has had a fuel license revoked must pay a one hundred dollar penalty prior to the issuance of a new license.

(13) Any person who, upon audit or investigation by the department, is found to have not paid fuel taxes as required by this chapter is subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who will hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired. [2013 c 225 § 118; 2002 c 183 § 4; 1998 c 176 § 70; 1996 c 104 § 12; 1995 c 274 § 24; 1994 c 262 § 25; 1991 c 339 § 7; 1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40 § 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—1987 c 174:** See note following RCW 82.38.160.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.38.080.

**RCW 82.38.180 Refunds and credits.** (1) Any person who has purchased fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(a) Fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state. However, a refund may not be made for motor vehicle fuel consumed by a motor vehicle required to be registered under chapter 46.16A RCW.

(b) Fuel exported for use outside of this state. Fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(c) Tax, penalty, or interest erroneously or illegally collected or paid.

(d) Fuel which is lost or destroyed, while the licensee is the owner thereof, through fire, lightning, flood, windstorm, or explosion.

(e) Fuel of five hundred gallons or more which is lost or destroyed while the licensee is the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

(f) Fuel used in power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or by a formula determined by the department.

(2) Any person who has purchased special fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Special fuel used for the operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway;

(b) Special fuel used by special mobile equipment as defined in RCW 46.04.552;

(c) Special fuel used in a motor vehicle for movement between two pieces of private property wherein the movement is incidental to the primary use of the vehicle; and

(d) Special fuel inadvertently mixed with dyed special fuel.

(3) Any person who has purchased motor vehicle fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Motor vehicle fuel used by a private, nonprofit transportation provider regulated under chapter 81.66 RCW to provide transportation services for persons with special transportation needs; and

(b) Motor vehicle fuel used by an urban passenger transportation system. For purposes of this subsection "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity of over fifteen persons, over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to the routing by the same transportation system, do not extend for a distance exceeding fifteen road miles beyond the corporate limits of the city in which the original starting points of such motor vehicles or trackless trolleys are located. No refunds are authorized for fuel used on any trip where any portion of the trip is more than fifteen road miles beyond the corporate limits of the city in which the trip originated.

(4) Recovery for such loss or destruction under subsections (1)(d) or (e) or (2)(d) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as it may deem necessary. In the event that the department is not satisfied that the fuel was lost, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the

accuracy of the claim, it may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on fuel alleged to be lost or destroyed.

(5) No refund or claim for credit may be approved by the department unless the gallons of fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit are not be [are not] allowed for anticipated nontaxable use or events. [2013 c 225 § 119; 2007 c 515 § 29; 1998 c 176 § 71; 1972 ex.s. c 138 § 4; 1971 ex.s. c 175 § 19.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.38.080.

**RCW 82.38.183 Refund to aeronautics account.** At least once each fiscal year, the director must request the state treasurer to refund from the motor vehicle fund, to the aeronautics account created under RCW 82.42.090, an amount equal to 0.028 percent of the gross motor vehicle fuel tax less an amount equal to aircraft fuel taxes transferred to that account as a result of nonhighway refunds claimed by motor fuel purchasers. The refund is considered compensation for unclaimed motor vehicle fuel that is used in aircraft for purposes taxable under RCW 82.42.020. The director must also remit from the motor vehicle fund the taxes required by RCW 82.12.0256(2)(d) for the unclaimed refunds, provided that the sum of the amount refunded and the amount remitted in accordance with RCW 82.12.0256(2)(d) does not exceed the unclaimed refunds. [2013 c 225 § 207.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.190 Claim of refund or credit.** (1) Claims under RCW 82.38.180 must be filed with the department on forms prescribed by the department and must contain and be supported by such information and documentation as the department may require. Claims for refund of fuel tax must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 must first be credited on any amounts then due and payable from a person to whom the refund is due.

(3) No refund or credit may be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, with the exception of the credits or refunds allowed under RCW 82.38.180(1)(c), and if not filed within this period the right to refund is barred.

(b) Within five years from the last day of the month following the close of the reporting period for which the overpayment is due

with respect to the refunds or credits allowable under RCW 82.38.180(1)(c). The department must refund any amount paid that has been verified by the department to be more than twenty dollars over the amount actually due for the reporting period. Payment credits may not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department must provide written notice of its action to the claimant.

(5)(a) Interest must be paid upon any refundable amount or credit due under RCW 82.38.180(1)(c) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

(b) The interest must be paid:

(i) In the case of a refund, to the last day of the calendar month following the date upon which the claim is approved by the department.

(ii) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, it may not allow any interest.

(6) The department must pay interest of one percent on any refund payable under RCW 82.38.180 (1) or (2), except as provided in subsection (5)(a) of this section, which is issued more than thirty state business days after the receipt of a claim properly filed and completed. After the end of the thirty business-day period, additional interest accrues at the rate of one percent on the amount payable for each thirty calendar-day period. [2013 c 225 § 120; 1998 c 176 § 74; 1997 c 183 § 10; 1996 c 91 § 4; 1979 c 40 § 14; 1973 1st ex.s. c 156 § 8; 1972 ex.s. c 138 § 5; 1971 ex.s. c 175 § 20.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—1996 c 91:** See note following RCW 46.87.150.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.38.080.

**RCW 82.38.195 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations.** An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed. [2013 c 225 § 202.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.200 Suits for recovery of taxes illegally or erroneously collected.** (1) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.38.180 unless a claim for refund or credit has been duly filed pursuant to RCW 82.38.190.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to RCW 82.38.190, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any special fuel tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

(5) In any judgment, interest shall be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department. [1971 ex.s. c 175 § 21.]

**RCW 82.38.205 Injunctions—Writs.** No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [2013 c 225 § 206.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.210 Tax lien—Filing.** (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there will be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date taxes were due and payable until the amount is satisfied. The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties, and interest owed. [2013 c 225 § 121; 1998 c 176 § 75; 1979 c 40 § 15; 1971 ex.s. c 175 § 22.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.220 Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer.**

(1) If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render judgment, plus costs by default against the person. [2013 c 225 § 122; 1998 c 176 § 76; 1994 c 262 § 26; 1983 c 242 § 5; 1979 c 40 § 16; 1971 ex.s. c 175 § 23.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.230 Delinquency—Seizure and sale of property—Notice—Distribution of excess.**

(1) If a person is delinquent in the payment of any obligation, and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of excise tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person, and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, successors, or assigns. Prior to making any seizure of property, the department may

first serve upon the person's bondsperson a notice of delinquency and, demand for payment of the amount due. [2013 c 225 § 123; 2007 c 218 § 78; 1998 c 176 § 77; 1979 c 40 § 17; 1971 ex.s. c 175 § 24.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Intent—Finding—2007 c 218:** See note following RCW 41.08.020.

**RCW 82.38.235 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment.** When an assessment becomes final the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state. [2013 c 225 § 124; 2001 c 146 § 14; 1998 c 176 § 78; 1979 c 40 § 22.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.245 Bankruptcy proceedings—Notice.** A licensee who files a petition for bankruptcy, or against whom a petition for bankruptcy is filed, must notify the department within ten days of the filing, including the name and location of the court in which the petition was filed. [2013 c 225 § 125; 1997 c 183 § 9.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.255 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties.** A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing. [2013 c 225 § 203.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.260 Administration and enforcement.** (1) The department may prescribe, adopt, and enforce reasonable rules relating to administration and enforcement of this chapter.

(2) The department or its authorized representative may examine the books, papers, 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. If books, papers, records, and equipment are not maintained in this state at the time of demand, the department does not lose any right of examination.

(3) The department may require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the department.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of fuel by any person, if the other furnishes like information.

(7) The department may enter into a fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian province for the administration, collection, and enforcement of their respective fuel taxes.

(8) For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to another agreement under chapter 82.41 RCW, chapter 82.41 RCW controls to the extent of any conflict.

(9) The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [2013 c 225 § 126; 1998 c 176 § 80; 1995 c 274 § 25; 1979 c 40 § 18; 1971 ex.s. c 175 § 27.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.270 Violations—Penalties.** (1) It is unlawful for a person to:

(a) Have dyed special fuel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed special fuel in bulk storage for highway use, unless the person maintains an uncanceled dyed special fuel user license or is otherwise exempt under this chapter;

(b) Hold dyed special fuel for use, intended use, sale, or intended sale in a manner in violation of this chapter;

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

(d) File a false statement of a material fact regarding the administration and enforcement of this chapter or otherwise commit any fraud or make a false representation on a fuel tax license application, fuel tax refund application, fuel tax return, fuel tax record, or fuel tax refund claim;

(e) Act as a fuel licensee unless the person holds an uncanceled fuel license issued by the department authorizing the person to engage in that business;

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

(g) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(h) Refuse to permit the department or its authorized representative to examine the person's books, papers, records, storage facilities, and equipment used in conjunction with the use, distribution, or sale of fuel;

(i) To display, or cause to permit to be displayed, or to have in possession, any fuel license knowing the same to be fictitious, or to have been suspended, canceled, revoked, or altered;

(j) To lend to, or knowingly permit the use of, by one not entitled thereto, any fuel license issued to the person lending it or permitting it to be used;

(k) To display or to represent as one's own any fuel license not issued to the person displaying the same;

(l) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which the person is not specifically entitled by government regulations, for the purpose of obtaining any fuel or other inflammable petroleum products upon which the fuel tax has not been paid;

(m) To sell or dispense natural gas or propane for their own use or the use of others into tanks of vehicles powered by this fuel when the vehicle does not display a valid decal or other identifying device as provided in RCW 82.38.075.

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

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

(3) Violations of subsection (1) (h) through (m) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court must order a person or corporation found guilty of violating subsection (1) (c) through (g) of this section to:

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

(b) Pay a penalty of one hundred percent of the tax evaded.

(5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax is personally liable to the state for the amount of the tax. [2013 c 225 § 127; 2007 c 515 § 30; 2003 c 358 § 14; 2000 2nd sp.s. c 4 § 10; 1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**Captions not law—2003 c 358:** "Captions used in this act are not part of the law." [2003 c 358 § 16.]

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**RCW 82.38.275 Investigatory power.** The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules or regulations issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring him or her to appear before the director, or the officer designated by him or her to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [2013 c 23 § 333; 1979 c 40 § 20.]

**RCW 82.38.280 State preempts tax field.** (1) The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing fuel, and no city, town, county, township or other subdivision or municipal corporation of the state may levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020.

(2) This section does not apply to any tax imposed by the state. [2013 c 225 § 128; 2010 c 106 § 231; 2003 c 350 § 6; 1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2010 c 106:** See note following RCW 35.102.145.

**Effective date—1991 c 173:** See note following RCW 82.47.010.

**Purpose—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 46.68.090.

**Effective date—1979 ex.s. c 181:** "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 181 § 10.]

**RCW 82.38.290 Disposition of funds.** (1) Unless directed otherwise in this section, all taxes, fees, assessments, civil and criminal penalties, interest, and proceeds from sales of forfeited property collected under this chapter must be deposited into the motor vehicle fund.

(2) The penalty imposed in RCW 82.38.270(4)(b) must be deposited into the multimodal transportation account.

(3) One cent per gallon must be deducted from each motor vehicle fuel marine use refund claim and deposited into the coastal protection fund.

(4) Fifty percent of all fines and forfeitures imposed in any criminal proceeding by any court of this state for violations of the penal provisions of this chapter must be paid to the current expense fund of the county where collected and the remainder deposited into the motor vehicle fund. All fees, fines, forfeitures, and penalties collected or assessed by a district court must be remitted as provided in chapter 3.62 RCW. [2013 c 225 § 129; 1971 ex.s. c 175 § 30.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**RCW 82.38.300 Judicial review and appeals.** Judicial review and appeals shall be governed by the Administrative Procedure Act, chapter 34.05 RCW. [1971 ex.s. c 175 § 31.]

**RCW 82.38.310 Agreement with tribe for fuel taxes.** (1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

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

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

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

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of

this subsection. Compliance reports must be delivered to the director of the department of licensing.

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

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

(6) The department of licensing must prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2013 c 225 § 130; 2007 c 515 § 31; 1995 c 320 § 3.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**Legislative recognition, belief—1995 c 320:** "The legislature recognizes that certain Indian tribes located on reservations within this state dispute the authority of the state to impose a tax upon the tribe, or upon tribal members, based upon the distribution, sale, or other transfer of motor vehicle and other fuels to the tribe or its members when that distribution, sale, or other transfer takes place upon that tribe's reservation. While the legislature believes it has the authority to impose state motor vehicle and other fuel taxes under such circumstances, it also recognizes that all of the state citizens may benefit from resolution of these disputes between the respective governments." [1995 c 320 § 1.]

**Effective date—1995 c 320:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 320 § 5.]

**RCW 82.38.320 Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions.** (1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to the bulk storage facilities of the special authorization holder. The licensee must pay fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule must be provided in a form and manner determined by the department and must contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report to the department, the name of the seller and the number of gallons purchased for each purchase of such fuel, and any other information as the department may require.

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

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

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

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

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

(4) A fuel supplier or distributor who sells fuel under the special authorization provisions of this section is not liable for the fuel tax on the fuel. The fuel supplier or distributor must report such sales, in a manner prescribed by the department, at the time the fuel supplier or distributor submits the monthly tax report. [2013 c 225 § 131; 2007 c 515 § 32; 1998 c 176 § 83.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Effective date—2007 c 515:** See note following RCW 82.38.030.

**RCW 82.38.360 Fuel tax evasion—Seizure and forfeiture.** (1) The following are subject to seizure and forfeiture:

(a) Fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Fuel blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing must give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or

district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an administrative inspection; or

(b) The state patrol has probable cause to believe the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2013 c 225 § 132; 2003 c 358 § 7.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Captions not law—2003 c 358:** See note following RCW 82.38.270.

**RCW 82.38.365 Fuel tax evasion—Forfeiture procedure.** In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol must proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol must list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol must list and particularly describe in duplicate the fuel seized. The selling price of the fuel seized must be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel must be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture.

(4) The state patrol must, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department

must promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2013 c 225 § 133; 2003 c 358 § 8.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Captions not law—2003 c 358:** See note following RCW 82.38.270.

**RCW 82.38.370 Fuel tax evasion—Forfeited property.** When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. [2013 c 225 § 134; 2003 c 358 § 9.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Captions not law—2003 c 358:** See note following RCW 82.38.270.

**RCW 82.38.375 Fuel tax evasion—Return of seized property.** (1) The state patrol and the department may return property seized and proceeds from the sale of fuel under this chapter when it is shown that there was no intention to violate this chapter.

(2) When property is returned under this section, the state patrol and the department may return the goods to the parties from whom they were seized if and when the parties pay all applicable taxes and interest. [2003 c 358 § 10.]

**Captions not law—2003 c 358:** See note following RCW 82.38.270.

**RCW 82.38.380 Fuel tax evasion—Search and seizure.** When the state patrol has good reason to believe that fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge must issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2013 c 225 § 135; 2003 c 358 § 11.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Captions not law—2003 c 358:** See note following RCW 82.38.270.

**RCW 82.38.385 Rules.** The department and the state patrol must adopt rules necessary to implement RCW 82.38.360 through 82.38.380. [2013 c 225 § 136; 2003 c 358 § 12.]

**Effective date—2013 c 225:** See note following RCW 82.38.010.

**Captions not law—2003 c 358:** See note following RCW 82.38.270.