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**SUBSTITUTE HOUSE BILL 1426**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Transportation (originally sponsored by Representatives Clibborn and Hankins; by request of Department of Licensing)

READ FIRST TIME 03/05/07.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (4) Beginning July 1, 2006, an additional and cumulative motor  
17 vehicle fuel tax rate of three cents per gallon (~~applies to the sale,~~  
18 ~~distribution, or use of~~) on motor vehicle fuel shall be imposed on  
19 motor vehicle fuel licensees, other than motor vehicle fuel  
20 distributors.

21 (5) Beginning July 1, 2007, an additional and cumulative motor  
22 vehicle fuel tax rate of two cents per gallon (~~applies to the sale,~~  
23 ~~distribution, or use of~~) on motor vehicle fuel shall be imposed on  
24 motor vehicle fuel licensees, other than motor vehicle fuel  
25 distributors.

26 (6) Beginning July 1, 2008, an additional and cumulative motor  
27 vehicle fuel tax rate of one and one-half cents per gallon (~~applies to~~  
28 ~~the sale, distribution, or use of~~) on motor vehicle fuel shall be  
29 imposed on motor vehicle fuel licensees, other than motor vehicle fuel  
30 distributors.

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

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

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

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

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

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

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

15 International fuel tax agreement licensees, or persons operating  
16 motor vehicles under other reciprocity agreements entered into with the  
17 state of Washington, are liable for and must pay the tax under RCW  
18 82.36.020 to the department on motor vehicle fuel used to operate motor  
19 vehicles on the highways of this state. This provision does not apply  
20 if the tax under RCW 82.36.020 has previously been imposed and paid by  
21 the international fuel tax agreement licensee or if the use of such  
22 fuel is exempt from the tax under this chapter.

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

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

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

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

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

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

1       **Sec. 7.** RCW 82.36.031 and 1998 c 176 s 11 are each amended to read  
2 as follows:

3       For the purpose of determining the amount of liability for the tax  
4 imposed under this chapter, and to periodically update license  
5 information, each licensee, other than a motor vehicle fuel distributor  
6 or an international fuel tax agreement licensee, shall file monthly tax  
7 reports with the department, on a form prescribed by the department.  
8 An international fuel tax licensee shall file quarterly tax reports  
9 with the department, on a form prescribed by the department.

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

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

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

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

32       (2) If a licensee, or person acting as such, fails, neglects, or  
33 refuses to file a motor vehicle fuel tax report the department shall,  
34 on the basis of information available to it, determine the tax  
35 liability of the licensee or person for the period during which no  
36 report was filed. The department shall add the penalty provided in  
37 subsection (1) of this section to the tax. An assessment made by the



1 department under this subsection or subsection (1) of this section is  
2 presumed to be correct. In any case, where the validity of the  
3 assessment is questioned, the burden is on the person who challenges  
4 the assessment to establish by a fair preponderance of evidence that it  
5 is erroneous or excessive, as the case may be.

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

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

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

29 (6) Except in the case of violations of filing a false or  
30 fraudulent report, if the department deems mitigation of penalties and  
31 interest to be reasonable and in the best interest of carrying out the  
32 purpose of this chapter, it may mitigate such assessments upon whatever  
33 terms the department deems proper, giving consideration to the degree  
34 and extent of the lack of records and reporting errors. The department  
35 may ascertain the facts regarding recordkeeping and payment penalties  
36 in lieu of more elaborate proceedings under this chapter.

37 (7) A licensee or person acting as such against whom an assessment  
38 is made under subsection (1) or (2) of this section may petition for a

1 reassessment within thirty days after service upon the licensee of  
2 notice of the assessment. If the petition is not filed within the  
3 thirty-day period, the amount of the assessment becomes final at the  
4 expiration of that period.

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

13 An assessment made by the department becomes due and payable when  
14 it becomes final. If it is not paid to the department when due and  
15 payable, the department shall add a penalty of ten percent of the  
16 amount of the tax.

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

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

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

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

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

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

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

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

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

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

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

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

32       (4) An applicant for a license as a motor vehicle fuel exporter  
33 must list on the application each state, province, or country to which  
34 the exporter intends to export motor vehicle fuel received in this  
35 state by means of a transfer outside of the bulk transfer-terminal  
36 system and, if required by the state, province, or country listed, must  
37 be licensed or registered for motor vehicle fuel tax purposes in that  
38 state, province, or country.

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

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

16 An applicant who makes a false statement of a material fact on the  
17 application may be prosecuted for false swearing as defined by RCW  
18 9A.72.040.

19 (7) Except as provided by subsection (8) of this section, before  
20 granting any license issued under this chapter, the department shall  
21 require applicant to file with the department, in such form as shall be  
22 prescribed by the department, a corporate surety bond duly executed by  
23 the applicant as principal, payable to the state and conditioned for  
24 faithful performance of all the requirements of this chapter, including  
25 the payment of all taxes, penalties, and other obligations arising out  
26 of this chapter. The total amount of the bond or bonds shall be fixed  
27 by the department and may be increased or reduced by the department at  
28 any time subject to the limitations herein provided. In fixing the  
29 total amount of the bond or bonds, the department shall require a bond  
30 or bonds equivalent in total amount to twice the estimated monthly  
31 excise tax determined in such manner as the department may deem proper.  
32 If at any time the estimated excise tax to become due during the  
33 succeeding month amounts to more than fifty percent of the established  
34 bond, the department shall require additional bonds or securities to  
35 maintain the marginal ratio herein specified or shall demand excise tax  
36 payments to be made weekly or semimonthly to meet the requirements  
37 hereof.

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

4       No recoveries on any bond or the execution of any new bond shall  
5 invalidate any bond and no revocation of any license shall effect the  
6 validity of any bond but the total recoveries under any one bond shall  
7 not exceed the amount of the bond.

8       In lieu of any such bond or bonds in total amount as herein fixed,  
9 a licensee may deposit with the state treasurer, under such terms and  
10 conditions as the department may prescribe, a like amount of lawful  
11 money of the United States or bonds or other obligations of the United  
12 States, the state, or any county of the state, of an actual market  
13 value not less than the amount so fixed by the department.

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

30       The department may require a licensee to give a new or additional  
31 surety bond or to deposit additional securities of the character  
32 specified in this section if, in its opinion, the security of the  
33 surety bond theretofore filed by such licensee, or the market value of  
34 the properties deposited as security by the licensee, shall become  
35 impaired or inadequate; and upon the failure of the licensee to give  
36 such new or additional surety bond or to deposit additional securities  
37 within thirty days after being requested so to do by the department,  
38 the department shall forthwith cancel his or her license.

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

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

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

- 21 (a) Motor vehicle fuel supplier;
- 22 (b) Motor vehicle fuel distributor;
- 23 (c) Motor vehicle fuel exporter;
- 24 (d) Motor vehicle fuel importer; (~~or~~)
- 25 (e) Motor vehicle fuel blender; or
- 26 (f) International fuel tax agreement licensee.

27 (2) A person engaged in more than one activity for which a license  
28 is required must have a separate license classification for each  
29 activity, but a motor vehicle fuel supplier is not required to obtain  
30 a separate license classification for any other activity for which a  
31 license is required.

32 (3) If any person acts as a licensee without first securing the  
33 license required herein the excise tax shall be immediately due and  
34 payable on account of all motor vehicle fuel distributed or used by the  
35 person. The director shall proceed forthwith to determine from the  
36 best available sources, the amount of the tax, and the director shall  
37 immediately assess the tax in the amount found due, together with a

1 penalty of one hundred percent of the tax, and shall make a certificate  
2 of such assessment and penalty. In any suit or proceeding to collect  
3 the tax or penalty, or both, such certificate shall be prima facie  
4 evidence that the person therein named is indebted to the state in the  
5 amount of the tax and penalty therein stated. Any tax or penalty so  
6 assessed may be collected in the manner prescribed in this chapter with  
7 reference to delinquency in payment of the tax or by an action at law,  
8 which the attorney general shall commence and prosecute to final  
9 determination at the request of the director. The foregoing remedies  
10 of the state shall be cumulative and no action taken pursuant to this  
11 section shall relieve any person from the penal provisions of this  
12 chapter.

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

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

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

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

29 The director, or duly authorized agents, may make such examinations  
30 of the records, stocks, facilities, and equipment of any licensee,  
31 ~~((and service stations,))~~ and make such other investigations as deemed  
32 necessary in carrying out the provisions of this chapter. If such  
33 examinations or investigations disclose that any reports of licensees  
34 theretofore filed with the director pursuant to the requirements of  
35 this chapter have shown incorrectly the gallonage of motor vehicle fuel

1 distributed or the tax (~~(accruing)~~) liability thereon, the director may  
2 make such changes in subsequent reports and payments of such licensees  
3 as deemed necessary to correct the errors disclosed.

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

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

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

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

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

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

28 The director may in order to establish the validity of any claim  
29 for refund require the claimant(~~(, or, in the case of a dealer filing  
30 a claim for refund as provided by RCW 82.36.305, the person to whom  
31 such fuel was sold,~~) to furnish such additional proof of the validity  
32 of the claim as the director may determine, and may examine the books  
33 and records of the claimant or said person to whom the fuel was sold  
34 for such purpose. The records shall be sufficient to substantiate the  
35 accuracy of the claim and shall be in such form and contain such



1 information as the director may require. The failure to maintain such  
2 records or to accede to a demand for an examination of such records may  
3 be deemed by the director as sufficient cause for denial of all right  
4 to the refund claimed on account of the transaction in question.

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

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

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

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

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

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

- 33 (1) It is unlawful for a person or corporation to:  
34 (a) Evade a tax or fee imposed under this chapter;  
35 (b) File a false statement of a material fact on a motor fuel  
36 license application or motor fuel refund application;

1 (c) Act as a motor fuel importer, motor fuel blender, or motor fuel  
2 supplier unless the person holds an uncanceled motor fuel license  
3 issued by the department authorizing the person to engage in that  
4 business;

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

7 (e) Knowingly operate a conveyance for the purpose of hauling,  
8 transporting, or delivering motor vehicle fuel in bulk and not possess  
9 an invoice, bill of sale, or other statement showing the name, address,  
10 and tax license number of the seller or consignor, the destination, the  
11 name, address, and tax license number of the purchaser or consignee,  
12 and the number of gallons.

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

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

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

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

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

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

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

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

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

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

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

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

37 (4) Information from the tribe or tribal retailers received by the

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

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

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

9 **NEW SECTION.** **Sec. 19.** A new section is added to chapter 82.36 RCW  
10 to read as follows:

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

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

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

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

33 (3) Beginning July 1, 2005, an additional and cumulative tax rate  
34 of three cents per gallon of special fuel, or each one hundred cubic  
35 feet of compressed natural gas, measured at standard pressure and

1 temperature shall be imposed on special fuel (~~((users))~~) licensees, other  
2 than special fuel distributors.

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

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

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

18 (7) Taxes are imposed when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 ~~((The tax under RCW 82.38.030, if not previously imposed and paid,~~

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

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

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

21 (2) A refiner shall (~~remit~~) be liable for and pay tax to the  
22 department on special fuel removed from a refinery as provided in RCW  
23 82.38.030(7)(b).

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

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

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

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

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

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

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

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

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

37       (1) Any special fuel user operating a motor vehicle into this state



1 for commercial purposes may make application for a trip permit that  
2 shall be good for a period of three consecutive days beginning and  
3 ending on the dates specified on the face of the permit issued, and  
4 only for the vehicle for which it is issued.

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

12 (3) For each permit issued, there shall be collected a filing fee  
13 of one dollar, an administrative fee of ten dollars, and an excise tax  
14 of nine dollars. Such fees and tax shall be in lieu of the special  
15 fuel tax otherwise assessable against the permit holder for importing  
16 and using special fuel in a motor vehicle on the public highways of  
17 this state, and no report of mileage shall be required with respect to  
18 such vehicle. Trip permits will not be issued if the applicant has  
19 outstanding fuel taxes, penalties, or interest owing to the state or  
20 has had a special fuel license revoked for cause and the cause has not  
21 been removed.

22 (4) Blank permits may be obtained from field offices of the  
23 department of transportation, (~~Washington state patrol,~~) department  
24 of licensing, or other agents appointed by the department. The  
25 department may appoint county auditors or businesses as agents for the  
26 purpose of selling trip permits to the public. County auditors or  
27 businesses so appointed may retain the filing fee collected for each  
28 trip permit to defray expenses incurred in handling and selling the  
29 permits.

30 (5) A surcharge of five dollars is imposed on the issuance of trip  
31 permits. The portion of the surcharge paid by motor carriers must be  
32 deposited in the motor vehicle fund for the purpose of supporting  
33 vehicle weigh stations, weigh-in-motion programs, and the commercial  
34 vehicle information systems and networks program. The remaining  
35 portion of the surcharge must be deposited in the motor vehicle fund  
36 for the purpose of supporting congestion relief programs. All other  
37 fees and excise taxes collected by the department for trip permits

1 shall be credited and deposited in the same manner as the special fuel  
2 tax collected under this chapter and shall not be subject to exchange,  
3 refund, or credit.

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

6 The department may revoke the license of any licensee for any of  
7 the grounds constituting cause for denial of a license set forth in RCW  
8 82.38.120 or for other reasonable cause. Before revoking such license  
9 the department shall notify the licensee to show cause within twenty  
10 days of the date of the notice why the license should not be revoked:  
11 PROVIDED, That at any time prior to and pending such hearing the  
12 department may, in the exercise of reasonable discretion, suspend such  
13 license.

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

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

29 The department may require a new or additional surety bond of the  
30 character specified in RCW 82.38.020(3) if, in its opinion, the  
31 security of the surety bond therefor filed by such licensee, shall  
32 become impaired or inadequate. Upon failure of the licensee to give  
33 such new or additional surety bond within forty-five days after being  
34 requested to do so by the department, or after he or she shall fail or  
35 refuse to file reports and remit or pay taxes at the intervals fixed by  
36 the department, the department forthwith shall cancel his or her  
37 license.

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

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

10       (a) The date of each receipt;

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

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

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

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

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

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

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

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

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

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

34       (3) The department may require a person other than a licensee  
35 engaged in the business of selling, purchasing, distributing, storing,  
36 transporting, or delivering special fuel to submit periodic reports to  
37 the department regarding the disposition of the fuel. The reports must

1 be on forms prescribed by the department and must contain such  
2 information as the department may require.

3 (4) Every person operating any conveyance for the purpose of  
4 hauling, transporting, or delivering special fuel in bulk shall have  
5 and possess during the entire time the person is hauling special fuel,  
6 an invoice, bill of sale, or other statement showing the name, address,  
7 and license number of the seller or consigner, the destination, name,  
8 and address of the purchaser or consignee, license number, if  
9 applicable, and the number of gallons. The person hauling such special  
10 fuel shall at the request of any law enforcement officer or authorized  
11 representative of the department, or other person authorized by law to  
12 inquire into, or investigate those types of matters, produce for  
13 inspection such invoice, bill of sale, or other statement and shall  
14 permit such official to inspect and gauge the contents of the vehicle.

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

17 For the purpose of determining the amount of liability for the tax  
18 herein imposed, and to periodically update license information, each  
19 licensee, other than a special fuel distributor, an international fuel  
20 tax agreement licensee, or a dyed special fuel user, shall file monthly  
21 tax reports with the department, on forms prescribed by the department.

22 Dyed special fuel users whose estimated yearly tax liability is two  
23 hundred fifty dollars or less, shall file a report yearly, and dyed  
24 special fuel users whose estimated yearly tax liability is more than  
25 two hundred fifty dollars, shall file reports quarterly. Special fuel  
26 users licensed under the international fuel tax agreement shall file  
27 reports quarterly. (~~Special fuel distributors~~) Heating oil dealers  
28 subject to the pollution liability insurance agency fee and reporting  
29 requirements shall remit pollution liability insurance agency returns  
30 and any associated payment due to the department annually.

31 The department shall establish the reporting frequency for each  
32 applicant at the time the special fuel license is issued. If it  
33 becomes apparent that any licensee is not reporting in accordance with  
34 the above schedule, the department shall change the licensee's  
35 reporting frequency by giving thirty days' notice to the licensee by  
36 mail to the licensee's address of record. A report shall be filed with  
37 the department even though no special fuel was used, or tax is due, for

1 the reporting period. Each tax report shall contain a declaration by  
2 the person making the same, to the effect that the statements contained  
3 therein are true and are made under penalties of perjury, which  
4 declaration shall have the same force and effect as a verification of  
5 the report and is in lieu of such verification. The report shall show  
6 such information as the department may reasonably require for the  
7 proper administration and enforcement of this chapter. (~~For counties~~  
8 ~~within which an additional excise tax on special fuel has been levied~~  
9 ~~by that jurisdiction under RCW 82.80.010, the report must show the~~  
10 ~~quantities of special fuel sold, distributed, or withdrawn from bulk~~  
11 ~~storage by the reporting dealer or user within the county's boundaries~~  
12 ~~and the tax liability from its levy.)) A licensee shall file a tax  
13 report on or before the twenty-fifth day of the next succeeding  
14 calendar month following the period to which it relates.~~

15 Subject to the written approval of the department, tax reports may  
16 cover a period ending on a day other than the last day of the calendar  
17 month. Taxpayers granted approval to file reports in this manner will  
18 file such reports on or before the twenty-fifth day following the end  
19 of the reporting period. No change to this reporting period will be  
20 made without the written authorization of the department.

21 If the final filing date falls on a Saturday, Sunday, or legal  
22 holiday the next secular or business day shall be the final filing  
23 date. Such reports shall be considered filed or received on the date  
24 shown by the post office cancellation mark stamped upon an envelope  
25 containing such report properly addressed to the department, or on the  
26 date it was mailed if proof satisfactory to the department is available  
27 to establish the date it was mailed.

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

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

35 Any person who has purchased special fuel on which tax has been  
36 paid (~~a special fuel tax either directly or to the vendor from whom it~~

1 ~~was purchased~~) may file a claim with the department for a refund of  
2 the tax (~~so paid and shall be reimbursed and repaid the amount of~~)  
3 for:

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

7 (2) (~~Any~~) Taxes previously paid on special fuel exported for use  
8 outside of this state. Special fuel carried from this state in the  
9 fuel tank of a motor vehicle is deemed to be exported from this state.  
10 Special fuel distributed to a federally recognized Indian tribal  
11 reservation located within the state of Washington is not considered  
12 exported outside this state.

13 (3) (~~Any~~) Tax, penalty, or interest erroneously or illegally  
14 collected or paid.

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

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

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

24 Recovery for such loss or destruction under either subsection (4),  
25 (5), or (6) of this section must be susceptible to positive proof  
26 thereby enabling the department to conduct such investigation and  
27 require such information as (~~they~~) it may deem necessary. In the  
28 event that the department is not satisfied that the fuel was lost,  
29 destroyed, or contaminated as claimed because information or proof as  
30 required hereunder is not sufficient to substantiate the accuracy of  
31 the claim, (~~they~~) it may deem such as sufficient cause to deny all  
32 right relating to the refund or credit for the excise tax paid on  
33 special fuel alleged to be lost or destroyed.

34 No refund or claim for credit shall be approved by the department  
35 unless the gallons of special fuel claimed as nontaxable satisfy the  
36 conditions specifically set forth in this section and the nontaxable  
37 event or use occurred during the period covered by the refund claim.

1 Refunds or claims for credit (~~(by sellers or users of special fuel)~~)  
2 shall not be allowed for anticipated nontaxable use or events.

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

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

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

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

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

14 (d) Act as a special fuel importer, special fuel blender, or  
15 special fuel supplier unless the person holds an uncanceled special  
16 fuel license issued by the department authorizing the person to engage  
17 in that business;

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

20 (f) Knowingly operate a conveyance for the purpose of hauling,  
21 transporting, or delivering special fuel in bulk and not possess an  
22 invoice, bill of sale, or other statement showing the name, address,  
23 and tax license number of the seller or consignor, the destination, the  
24 name, address, and tax license number of the purchaser or consignee,  
25 and the number of gallons.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

26       **Sec. 31.** RCW 82.38.320 and 1998 c 176 s 83 are each amended to  
27 read as follows:

28       (1) An international fuel tax agreement licensee who meets the  
29 qualifications in subsection (2) of this section may be given special  
30 authorization by the department to purchase special fuel delivered into  
31 bulk storage without payment of the special fuel tax at the time the  
32 fuel is purchased. The special authorization applies only to full  
33 truck-trailer loads filled at a terminal rack and delivered directly to  
34 the bulk storage facilities of the special authorization holder. The  
35 licensee shall pay special fuel tax on the fuel at the time the  
36 licensee files their international fuel tax agreement tax return and  
37 accompanying schedule with the department. The accompanying schedule

1 shall be provided in a form and manner determined by the department and  
2 shall contain information on purchases and usage of all nondyed special  
3 fuel purchased during the reporting period. In addition, by the  
4 fifteenth day of the month following the month in which fuel under the  
5 special authorization was purchased, the licensee must report to the  
6 department, the name of the seller and the number of gallons purchased  
7 for each purchase of such fuel, and any other information as the  
8 department may require.

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

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

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

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

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

30 (4) A special fuel (~~distributor~~) supplier or importer who sells  
31 special fuel under the special authorization provisions of this section  
32 is not liable for the special fuel tax on the fuel. (~~By the fifteenth~~  
33 ~~day of the month following the month in which the fuel was sold, the~~  
34 ~~special fuel distributor shall report to the department, the name and~~  
35 ~~special authorization number of the purchaser and the number of gallons~~  
36 ~~sold for each purchase of such special fuel, and any other information~~  
37 ~~as the department may require.)) The special fuel supplier or importer~~

1 will report such sales, in a manner prescribed by the department, at  
2 the time the special fuel supplier or importer submits the monthly tax  
3 report.

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

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

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

12 It is the intent and purpose of this chapter that the tax shall be  
13 imposed at the time and place of the first taxable event and upon the  
14 first taxable person within this state. Any person whose activities  
15 would otherwise require payment of the tax imposed by RCW 82.38.030 but  
16 who is exempt from the tax nevertheless has a precollection obligation  
17 for the tax that must be imposed on the first taxable event within this  
18 state. Failure to pay the tax with respect to a taxable event shall  
19 not prevent tax liability from arising by reason of a subsequent  
20 taxable event.

21 NEW SECTION. Sec. 33. The following acts or parts of acts are  
22 each repealed:

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

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

28 (3) RCW 82.36.305 (Refunds to dealer delivering fuel exclusively  
29 for marine use--Limitations--Supporting certificate) and 1965 ex.s. c  
30 79 s 12 & 1961 c 15 s 82.36.305;

31 (4) RCW 82.36.360 (Separate invoices for nontaxed fuel) and 1961 c  
32 15 s 82.36.360;

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

35 (6) RCW 82.36.407 (Tax liability of user--Payment--Exceptions) and  
36 1998 c 176 s 48;

1 (7) RCW 82.38.070 (Credit for sales for which no consideration was  
2 received--Report--Adjustment) and 1998 c 176 s 58, 1990 c 250 s 83, &  
3 1971 ex.s. c 175 s 8;

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

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

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

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

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

15 NEW SECTION. **Sec. 34.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 35.** This act is necessary for the immediate  
20 preservation of the public peace, health, or safety, or support of the  
21 state government and its existing public institutions, and takes effect  
22 immediately.

--- END ---