

motor vehicle fund appropriations, to the transportation equipment fund prior to the effective date of this 1979 act, is ratified and approved. The full charge for computer services provided from this fund shall be paid directly into the fund by the division of the department of transportation, the political subdivision or the other governmental agency receiving the benefit of such services.

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CHAPTER 40

[Engrossed Substitute Senate Bill No. 2304]

SPECIAL FUEL TAXATION

AN ACT Relating to the taxation and regulation of special fuel; amending section 2, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.010; amending section 3, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.020; amending section 4, chapter 175, Laws of 1971 ex. sess. as last amended by section 5, chapter 317, Laws of 1977 ex. sess. and RCW 82.38.030; amending section 1, chapter 42, Laws of 1973 and RCW 82.38.080; amending section 10, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.090; amending section 11, chapter 175, Laws of 1971 ex. sess. as amended by section 3, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.100; amending section 12, chapter 175, Laws of 1971 ex. sess. as last amended by section 1, chapter 26, Laws of 1977 and RCW 82.38.110; amending section 13, chapter 175, Laws of 1971 ex. sess. as amended by section 5, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.120; amending section 14, chapter 175, Laws of 1971 ex. sess. as amended by section 2, chapter 26, Laws of 1977 and RCW 82.38.130; amending section 15, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.140; amending section 16, chapter 175, Laws of 1971 ex. sess. as amended by section 6, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.150; amending section 17, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.160; amending section 18, chapter 175, Laws of 1971 ex. sess. as last amended by section 3, chapter 26, Laws of 1977 and RCW 82.38.170; amending section 20, chapter 175, Laws of 1971 ex. sess. as last amended by section 8, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.190; amending section 22, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.210; amending section 23, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.220; amending section 24, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.230; amending section 27, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.260; amending section 28, chapter 175, Laws of 1971 ex. sess. as amended by section 4, chapter 26, Laws of 1977 and RCW 82.38.270; adding new sections to chapter 175, Laws of 1971 ex. sess. and to chapter 82.38 RCW; and adding a new section to chapter 175, Laws of 1971 ex. sess. and to chapter 82.38 RCW to be codified as RCW 82.38.235.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 2, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.010 are each amended to read as follows:

The purpose of this chapter is to supplement the Motor Vehicle Fuel Tax Act, chapter 82.36 RCW, by imposing a tax upon ~~((the use, within this state, of))~~ all fuels not taxed under said Motor Vehicle Fuel Tax Act ~~((, and to require the collection of the tax from the vendee in anticipation of a subsequent taxable incident when the fuel is delivered into the fuel supply tank~~

~~of a motor vehicle or into the storage facilities used for the fueling of motor vehicles at an unbonded service station))~~ used for the propulsion of motor vehicles upon the highways of this state.

Sec. 2. Section 3, chapter 175, Laws of 1971 ex. sess. and RCW 82.38-.020 are each amended to read as follows:

As hereinafter used in this chapter:

(1) "Person" means every natural person, fiduciary, association or corporation. ~~((Whenever used in any clause prescribing and imposing a fine or imprisonment, or both;))~~ The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(2) "Department" means the department of ~~((motor vehicles))~~ licensing.

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

(4) "Motor vehicle" means every self-propelled vehicle ~~((required to be licensed for operation upon the highways))~~ designed for operation upon land utilizing special fuel as the means of propulsion.

(5) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW.

(6) ~~((^aUse means the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state))~~ "Bulk storage" means the placing of special fuel by a special fuel dealer into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Special fuel dealer" means any person engaged in the business of ~~((handling))~~ delivering special fuel ~~((who delivers any part thereof))~~ into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him, or ~~((places special fuel into the storage facilities used for the fueling of motor vehicles at an unbonded service station))~~ into bulk storage facilities for subsequent use in a motor vehicle. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(8) "Special fuel user" means any person ~~((who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state))~~ purchasing special fuel into bulk storage without payment of the special fuel tax for subsequent use in a motor vehicle, or any person engaged in interstate commercial operation of motor vehicles any part of which is within this state.

(9) "Special fuel supplier" means any person engaged in the business of selling special fuel where delivery thereof is made other than, or in addition to, the manner prescribed under the definition of "special fuel dealer", but does not include any person making retail sales of special fuel exclusively for heating purposes.

(10) "Service station" means any location at which fueling of motor vehicles is offered to the general public.

(11) "Unbonded service station" means any service station at which an unbonded special fuel dealer regularly makes sales of special fuel by means of delivery thereof into the fuel supply tanks of motor vehicles.

(12) "Bond" means: (a) A bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the provisions of chapter 48.28 RCW which bond shall be payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations of such dealer, arising out of this chapter; or (b) a deposit with the state treasurer by the special fuel dealer or special fuel user, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Washington, or any county of said state, of an actual market value not less than the amount so fixed by the department.

(13) "Lessor" means any person (a) whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public, and (b) who maintains established places of business and whose lease or rental contracts require such motor vehicles to be returned to the established places of business.

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

(15) "Standard pressure and temperature" means fourteen and seventy-three hundredths pounds of pressure per square inch at sixty degrees Fahrenheit.

Sec. 3. Section 4, chapter 175, Laws of 1971 ex. sess. as last amended by section 5, chapter 317, Laws of 1977 ex. sess. and RCW 82.38.030 are each amended to read as follows:

(1) There is hereby levied and imposed upon special fuel users a tax at the rate computed in the manner provided in RCW 82.36.025 per gallon or each one hundred cubic feet of compressed natural gas measured at standard pressure and temperature on the use ~~((within the meaning of the word use as defined herein))~~ of special fuel in any motor vehicle operated upon the highways of this state during the fiscal half-year for which such rate is applicable.

(2) Said tax shall be collected by the special fuel dealer and shall be paid over to the department as hereinafter provided: (a) With respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles or into storage facilities used for the fueling of motor vehicles at unbonded service stations in this state; or (b) in all other transactions where the purchaser ~~((indicates in writing to the special fuel dealer prior to or at~~

~~the time of the delivery that the entire quantity of the special fuel covered by the delivery is for use by him for a taxable purpose as a fuel in a motor vehicle)) is not the holder of a valid special fuel license issued pursuant to this chapter allowing the purchase of untaxed special fuel.~~

(3) Said tax shall be paid over to the department by the special fuel user as hereinafter provided ~~((a))~~ with respect to the taxable use of special fuel upon which the tax has not previously been imposed ~~((which was acquired in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle in this state; or (b) in all transactions with a special fuel dealer in this state where a written statement has not been furnished to the special fuel dealer as set forth in subsection (2)(b) of this section)).~~

It is expressly provided that delivery of special fuel may be made without collecting the tax otherwise imposed, when such deliveries are made by a bonded special fuel dealer to special fuel users who are authorized by the department as hereinafter provided, to purchase fuel without payment of tax to the bonded special fuel dealer.

Sec. 4. Section 1, chapter 42, Laws of 1973 and RCW 82.38.080 are each amended to read as follows:

There is exempted from the tax imposed by this chapter, the use of fuel for: (1) street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality; (2) publicly owned fire fighting equipment; (3) special mobile equipment as defined in RCW 46.04.552; (4) 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 which is established by either of the following formulae: (a) pumping propane, or fuel or heating oils by a power take-off unit on a delivery truck, at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered: **PROVIDED**, That claimant when presenting his claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his claim; or (b) operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; (5) motor vehicles owned and operated by the United States government; ~~((and))~~ (6) heating purposes; (7) moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle; and (8) notwithstanding any provision of law to the contrary, every urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel

taxes. For the purposes of this section "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 and/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 and/or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles and/or trackless trolleys subject to routing by the same transportation system, shall 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 are located: PROVIDED, That no refunds or credits shall be granted on fuel used by any urban transportation vehicle or vehicle operated pursuant to chapters 81.68 and 81.70 RCW on any trip where any portion of said trip is more than twenty-five road miles beyond the corporate limits of the county in which said trip originated.

Sec. 5. Section 10, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.090 are each amended to read as follows:

It shall be unlawful for any person to act as a special fuel dealer, a special fuel supplier or a special fuel user in this state unless such person is the holder of an uncanceled special fuel dealer's, a special fuel supplier's or a special fuel user's license issued to him by the department (~~(, except for owners of privately operated passenger vehicles exempt from reporting requirements pursuant to RCW 82.38.150. Before issuing the certificate of registration of any motor vehicle under the provisions of Title 46 RCW, the department shall ascertain from the applicant for such registration whether the motor vehicle sought to be registered is propelled by a fuel the use of which is subject to the tax hereby imposed. If it is ascertained that any motor vehicle is so propelled, the department shall not complete such registration until the applicant therefor has established to the satisfaction of the department that he is the holder of a valid special fuel license issued to him pursuant to this chapter)~~). A special fuel supplier's license authorizes a person to sell special fuel without collecting the special fuel tax to other suppliers and dealers holding valid special fuel licenses.

A special fuel dealer's license authorizes a person to deliver previously untaxed special fuel into the fuel supply tanks of motor vehicles, collect the special fuel tax on behalf of the state at the time of delivery, and remit the taxes collected to the state as provided herein. A licensed special fuel dealer may also deliver untaxed special fuel into bulk storage facilities of a licensed special fuel user without collecting the special fuel tax. Special fuel dealers and suppliers, when making deliveries of special fuel into bulk storage to any person not holding a valid special fuel license must collect the special fuel tax at time of delivery, unless the person to whom the delivery is made is specifically exempted from the tax as provided herein.

A special fuel user's license authorizes a person to purchase special fuel into bulk storage for use in motor vehicles either on or off the public highways of this state without payment of the special fuel tax at time of purchase. Holders of special fuel licenses are all subject to the bonding, reporting, tax payment, and record-keeping provisions of this chapter. All purchases of special fuel by a licensed special fuel user directly into the fuel supply tank of a motor vehicle are subject to the special fuel tax at time of purchase unless they have specific written authorization from the department as provided in RCW 82.38.040. Persons utilizing special fuel for heating purposes only are not required to be licensed.

Sec. 6. Section 11, chapter 175, Laws of 1971 ex. sess. as amended by section 3, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.100 are each amended to read as follows:

~~((1))~~ Any special fuel user operating a motor vehicle into this state for commercial purposes may make application for a trip permit in lieu of a special fuel user's license required in RCW 82.38.090 which shall be good for a period of not more than twenty consecutive days beginning and ending on the dates specified on the face of the permit issued. An administrative fee of ten dollars shall be required for each permit issued plus ~~((one))~~ three dollars for each consecutive day covered by such permit. Such fees shall be 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 and no report of mileage shall be required with respect to such vehicle. Trip permits ~~((may))~~ will not be issued if the applicant ~~((does not operate motor vehicles into or from the state of Washington more than six times during any calendar year))~~ 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.

~~((2))~~ Any special fuel user desiring to operate a motor vehicle exclusively within the state of Washington pending the receipt of a special fuel user's license as required in RCW 82.38.090 may make application for a trip permit as provided in subsection (1) of this section. **PROVIDED**, That only one trip permit shall be issued for the same vehicle. All fees paid for such trip permit shall be in lieu of any special fuel tax otherwise due by the applicant for using special fuel in a motor vehicle on the public highways of this state and no report of mileage shall be required for the operation of the vehicle for the period for which the trip permit was issued.

~~((3))~~ All fees collected by the department ~~((under the provisions of subsections (1) and (2) of this section))~~ for trip permits shall be credited and deposited in the same manner as the special fuel tax collected hereunder and shall not be subject to refund or credit.

Sec. 7. Section 12, chapter 175, Laws of 1971 ex. sess. as last amended by section 1, chapter 26, Laws of 1977 and RCW 82.38.110 are each amended to read as follows:

Application for a special fuel dealer's license, special fuel supplier's license or a special fuel user's license, shall be made to the department. The application shall be filed upon a form prepared and furnished by the department and shall contain such information as the department deems necessary.

No special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in RCW 82.38.020, in such form as the department may require, to secure his compliance with this chapter, and the payment of any and all taxes, interest and penalties due and to become due hereunder. The requirement of furnishing a bond shall be waived ~~((provided all acquisitions of special fuel by the licensee are on a tax paid or a tax exempt basis))~~ for special fuel users having valid Washington vehicle license plates on all of their licensed vehicles and having an estimated tax liability of less than five hundred dollars per year.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to ~~((twice))~~ three times the estimated monthly fuel tax, determined in such manner as the department may deem proper: PROVIDED, That those special fuel dealers and special fuel users having held a special fuel license for five or more years without having said license suspended or revoked by the department shall be permitted to reduce the amount of their bond to twice the estimated monthly tax liability: PROVIDED FURTHER, That the total amount of the bond or bonds shall never be less than five hundred dollars nor more than fifty thousand dollars~~((: PROVIDED FURTHER, That special fuel dealers or special fuel users whose license is suspended or revoked for cause, shall be required to furnish bond coverage equivalent to three times the estimated monthly fuel tax.~~

~~Any person who has filed with the department a bond as a motor vehicle fuel distributor under the terms and conditions provided for in RCW 82:36.060, may extend the terms and conditions of said distributor's bond, by an approved rider or bond form, to include coverage of all liabilities and conditions imposed by this chapter upon the special fuel dealer or to the special fuel user to whom said extension is made applicable. The amount of any new bond that may be required of a dealer or user shall not exceed the maximum amount provided by RCW 82.36.060 for a motor vehicle fuel distributor's license)).~~

Sec. 8. Section 13, chapter 175, Laws of 1971 ex. sess. as amended by section 5, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.120 are each amended to read as follows:

Upon receipt and approval of an application and bond (if required), the department shall issue to the applicant a license to act as a special fuel dealer, a special fuel supplier, or a special fuel user: PROVIDED, That the department may refuse to issue a special fuel dealer's license, special fuel

supplier's license, or a special fuel user's license to any person (1) who formerly held either type of license which, prior to the time of filing for application, has been revoked for cause; or (2) who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause; or (3) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause; or (4) who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.37, 82.38, or 46.85 RCW; or (5) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least five days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him for resale, delivery or use. Every licensed special fuel user ((and consumer of special fuel used to propel motor vehicles upon the highways of this state)) operating a motor vehicle registered in a jurisdiction other than this state shall reproduce the license and carry a photocopy thereof with each motor vehicle being operated upon the highways of this state.

A special fuel dealer or a special fuel supplier may use special fuel in motor vehicles owned or operated by them without securing a license as a special fuel user but they shall be subject to all other conditions, requirements and liabilities imposed herein upon a special fuel user.

The department shall furnish to each licensed special fuel supplier a list showing the name and address of each bonded special fuel dealer as of the beginning of each fiscal year, and shall thereafter during each year supplement such list monthly.

Each special fuel dealer's license, special fuel supplier's license, and special fuel user's license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel dealer's license, special fuel supplier's license, or special fuel user's license shall be transferable.

Sec. 9. Section 14, chapter 175, Laws of 1971 ex. sess. as amended by section 2, chapter 26, Laws of 1977 and RCW 82.38.130 are each amended to read as follows:

The department may revoke the license of any special fuel dealer, special fuel supplier, or special fuel user for any of the grounds constituting

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

The department shall cancel any license to act as a special fuel dealer, a special fuel supplier, or a special fuel user immediately upon surrender thereof by the holder.

It shall be presumed that a special fuel dealer's bond is in effect until such time as the department notifies all licensed special fuel suppliers to the contrary by mailing to their current address of record.

Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of forty-five days from the date which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the forty-five day period. The department shall promptly, upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the forty-five day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in subsection (12) of RCW 82.38.020, the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in subsection (12) of RCW 82.38.020 if, in its opinion, the security of the surety bond therefor filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate. Upon failure of the special fuel dealer or special fuel user to give such new or additional surety bond or to deposit additional securities within forty-five days after being requested to do so by the department, or after he shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the department, the department forthwith shall cancel his license.

Sec. 10. Section 15, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.140 are each amended to read as follows:

(1) Every special fuel dealer, special fuel supplier, special fuel user, and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep for a period of not less than three 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 special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each 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 each sale or delivery;
- (e) The number of gallons sold ~~((or))~~, delivered, or used for taxable purposes;
- (f) The number of gallons sold ~~((or))~~, delivered, or used for any purpose not subject to the tax imposed herein;
- (g) The name ~~((and))~~, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
- (h) The inventories of special fuel on hand at each place of business at the end of each month.

(2) All special fuel users using special fuel in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis. Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.

(3) Persons using special fuel for heating purposes only are not required to maintain records of fuel usage.

(4) Invoices shall be prepared for sales and deliveries of special fuel in the manner and containing such information as may be prescribed by the department.

~~((Any person purchasing and receiving a delivery of special fuel into the fuel supply tank of a motor vehicle in Washington shall carry within the vehicle the invoice or other acceptable document evidencing receipt of such special fuel until the fuel is consumed.))~~

Every special fuel supplier, special fuel dealer or special fuel user making such sales or deliveries of special fuel and every person so receiving and purchasing special fuel must each retain one copy of each such invoice as part of his permanent records for the time and purposes above provided.

Every special fuel user shall keep, in addition to his records of deliveries into motor vehicles, a complete record as prescribed by the department of the total gallons of special fuel used for other purposes during each month and the purposes for which said special fuel was used:

Sec. 11. Section 16, chapter 175, Laws of 1971 ex. sess. as amended by section 6, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.150 are each amended to read as follows:

For the purpose of determining the amount of his liability for the tax herein imposed each special fuel dealer and each special fuel user shall file tax reports with the department, on forms prescribed by the department, ~~((a~~

monthly tax report)) at periodic intervals as shown in the following schedule:

<u>Estimated Yearly</u>	<u>Tax Liability</u>	<u>Reporting Frequency</u>
	<u>\$ 0 - \$100</u>	<u>Yearly</u>
	<u>\$101 - 250</u>	<u>Semi-yearly</u>
	<u>\$251 - 499</u>	<u>Quarterly</u>
	<u>\$500 and over</u>	<u>Monthly</u>

The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any special fuel licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to his address of record. A report shall be filed with the department ((for each calendar month, even though no special fuel was used, or tax is due, for the calendar month. Such)) even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and shall be in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter: PROVIDED, That if a special fuel dealer or special fuel user is also a special fuel supplier at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the ((monthly)) tax report to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the report on or before the twenty-fifth day of the next succeeding calendar month following the ((monthly)) period to which it relates.

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

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

~~((Any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile is exempt from the filing of a special fuel tax report on the condition that all fuel used in this state, except fuel brought into this state in the fuel tank of the vehicle, is purchased from a special fuel dealer in this state who collects the tax from the user when delivering the fuel into the fuel tank of the user's automobile. For the purposes of this chapter, "privately operated passenger automobile" includes passenger cars as that term is defined in RCW 46.04.382, and such light trucks and other noncommercial vehicles as may be defined as such by rules and regulations adopted by the department. A special fuel user may be relieved of the filing of the tax report even though he operates more than one passenger automobile using special fuel, whether or not such automobiles are used for pleasure or in a business or profession, providing that the user is not also using such fuel in other motor vehicles which are not privately operated passenger automobiles. Notwithstanding that a special fuel user's sole use of such special fuel is in a privately operated automobile, he shall continue to file the tax report if he is using such special fuels from bulk storage of special fuel on which the tax has not been paid at the time of purchase or acquisition.~~

~~The department may relieve any holder of a valid special fuel users license from the requirement of filing returns under this section when he has established to its satisfaction (1) that such user's vehicles are operated exclusively within the boundaries of this state; (2) that his purchases of special fuel are made exclusively from special fuel dealers holding valid licenses under this chapter; (3) that he does not acquire special fuel in any manner or for any purpose whereby payment of tax or undertaking therefor is not made to a special fuel dealer at time of purchase; and (4) that he maintains adequate records subject to audit:))~~

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

The department may permit any special fuel user whose sole use of special fuel is in motor vehicles or equipment exempt from tax as provided in RCW ~~((82.38.030(+)))~~ 82.38.075 and RCW 82.38.080(1), (2), (3) and (6), in lieu of the reports required in this section, to submit reports annually or as requested by the department, in such form as the department may require.

Sec. 12. Section 17, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.160 are each amended to read as follows:

The tax imposed by this chapter shall be computed as follows: (1) With respect to special fuel upon which the tax has been collected by the seller

thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel delivered (~~or placed by him into the supply tank or tanks of a motor vehicle or into the storage facilities used in the fueling of motor vehicles at an unbonded service station or in all other transactions where the purchaser has indicated in writing to the special fuel dealer that the quantity of special fuel covered by the delivery is for use as a fuel in a motor vehicle~~) subject to the special fuel tax; (2) with respect to special fuel on which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel consumed by him in the propulsion of a motor vehicle on the highways of this state.

The ~~((monthly))~~ tax return shall be accompanied by a remittance payable to the state treasurer covering the tax moneys collected by the special fuel dealer or the amount determined to be due hereunder ~~((on account of the use (as defined in RCW 82.38.020)))~~ by licensed users of special fuels during the preceding ~~((month))~~ reporting period.

Sec. 13. Section 18, chapter 175, Laws of 1971 ex. sess. as last amended by section 3, chapter 26, Laws of 1977 and RCW 82.38.170 are each amended to read as follows:

(1) If any special fuel dealer or special fuel user fails to pay any taxes collected or due the state of Washington by said dealer or user within the time prescribed by RCW 82.38.150, said dealer or user shall pay in addition to such tax a penalty of ten percent of the amount thereof plus interest at the rate of one percent per month, or fraction thereof, from the date such tax was due until paid.

(2) If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency together with interest at the rate of one percent per month, or fraction thereof, from the date the report was due until paid: **PROVIDED**, That the interest charge on the unpaid excise tax shall be waived when such interest is less than five dollars: **AND PROVIDED FURTHER**, That the department may waive the interest on the unpaid excise tax when the interest exceeds five dollars and the department of ~~((motor vehicles))~~ licensing determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(3) If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax report, the department shall, on the basis of information available to it, determine the tax liability of the special fuel dealer or the special fuel user for the period during which no report was filed, and to the tax as thus determined, the

department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any special fuel dealer or special fuel user shall establish by a fair preponderance of evidence that his 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 wilful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any special fuel dealer or special fuel user shall file a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency together with interest at one percent per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law: PROVIDED, That the interest charge on the unpaid excise tax shall be waived when such interest is less than five dollars: AND PROVIDED FURTHER, That the ~~((director))~~ department may waive the interest on the unpaid excise tax when the interest exceeds five dollars and the department of ~~((motor vehicles))~~ licensing determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(6) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within three years from the twenty-fifth day of the next succeeding calendar month following the ~~((monthly))~~ reporting period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(7) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the special fuel dealer or special fuel user has so requested in his petition, shall grant such special fuel dealer or special fuel user an oral hearing and give the special fuel dealer or special fuel user ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty

days after service upon the special fuel dealer or special fuel user of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(8) Any notice of assessment required by this section shall be served personally or by mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the special fuel dealer or special fuel user at his address as the same appears in the records of the department.

(9) Any licensee who has had their special fuel user (~~{{license}}~~) license, special fuel dealer (~~{{license}}~~) license, special fuel supplier (~~{{license}}~~) license, or combination thereof revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(10) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be 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 shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

Sec. 14. Section 20, chapter 175, Laws of 1971 ex. sess. as last amended by section 8, chapter 156, Laws of 1973 1st ex. sess. and RCW 82.38.190 are each amended to read as follows:

(1) Claims under RCW 82.38.180 shall be filed with the department on forms prescribed by the department and shall show the date of filing and the period covered in the claim, the number of gallons of special fuel used for purposes subject to tax refund, and such other facts and information as may be required. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as may be prescribed by the department, and such other information as the department may require.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user or to any person to whom the refund is due, and the department shall then certify the balance thereof to the state treasurer, who shall thereupon draw his warrant for such certified amount to such special fuel dealer or special fuel user or any person: PROVIDED, HOWEVER, That the department shall deduct fifty cents from all such refunds as a filing fee, which fee shall be deducted from the warrant issued in payment of such refund to defray expenses in furnishing the claim forms and other forms provided for in this chapter.

(3) No refund or credit shall 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 ((monthly)) reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, subsections (1), (2), (4) and (5), and if not filed within this period the right to refund shall be forever barred.

(b) Within three years from the last day of the month following the close of the ((monthly)) reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3).

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

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the ((monthly)) reporting period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) 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.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) No injunction or writ of mandate or other legal or equitable process shall issue 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.

Sec. 15. Section 22, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.210 are each amended to read as follows:

~~((The tax, including any penalty and interest hereby imposed, shall constitute a lien upon any motor vehicle in connection with which the taxable use is made, attaching at the time of such use. Such lien shall not be removed until such tax has been paid or the motor vehicle subject to such lien has been sold in payment of the tax, and shall be paramount to all private liens or encumbrances upon such motor vehicle and to the rights of any conditional vendor or any other holder of the legal title to such motor vehicle. In the event the ownership of a motor vehicle subject to the lien is transferred, whether by operation of law or otherwise, no registration card or certificate of title with respect to such motor vehicle shall be issued by~~

~~the department to the transferee or person otherwise entitled thereto until after the department has determined that such lien has been removed.)~~

If any special fuel dealer, supplier, or user liable for the remittance of tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, ~~((located or situated in the county wherein such lien arises,))~~ whether such property is employed by such person ~~((in the prosecution of business))~~ for personal or business use or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof. The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed and recorded notice of such lien ~~((in the office of the county auditor of the county in which the principal place of business of the taxpayer is located))~~ as hereinafter provided.

In order to avail itself of the lien hereby created, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties and interest claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state.

Sec. 16. Section 23, chapter 175, Laws of 1971 ex. sess. and RCW 82-.38.220 are each amended to read as follows:

In the event any special fuel user or special fuel dealer is delinquent in the payment of any obligation imposed hereunder, the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such user or dealer or owing any debts to such user or dealer, at the time of the receipt by them of such notice, and thereafter any person so notified shall neither transfer nor make other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition ~~((or until twenty days have lapsed from and~~

after the receipt of the notice)). All persons so notified must, within five days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be.

Sec. 17. Section 24, chapter 175, Laws of 1971 ex. sess. and RCW 82-.38.230 are each amended to read as follows:

Whenever any special fuel user, supplier or dealer is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from the user, supplier or dealer in the following manner: The department shall seize any ((~~motor vehicle~~)) property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent user, supplier or dealer and to all persons appearing of record to have an interest in such ((~~motor vehicle~~)) property. The notice shall be given in writing at least ten days before the date set for the sale by enclosing it in an envelope addressed to such user, supplier or dealer at his address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such ((~~motor vehicle~~)) property, addressed to such person at his last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the ((~~motor vehicle~~)) property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the ((~~motor vehicle~~)) property to be sold, together with a statement of the amount due hereunder, the name of the user, supplier or dealer and the further statement that unless such amount is paid on or before the time fixed in the notice the ((~~motor vehicle~~)) property will be sold in accordance with law.

The department shall then proceed to sell the ((~~motor vehicle~~)) property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state hereunder from the delinquent user, supplier or dealer, the excess shall be returned to such user, supplier or dealer and his receipt obtained therefor. If any person having an interest in or lien upon the ((~~motor vehicle~~)) property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to such user, supplier or dealer pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of

such user, supplier or dealer shall not be available, the department shall deposit such excess with the state treasurer as trustee for such user, supplier or dealer, his heirs, successors, or assigns: PROVIDED, That prior to making any seizure of property as herein provided for, the department may first serve upon the user's, supplier's, or dealer's bondsman a notice of the delinquency, with a demand for the payment of the amount due.

Sec. 18. Section 27, chapter 175, Laws of 1971 ex. sess. and RCW 82-38.260 are each amended to read as follows:

The department shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.

The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer, special fuel supplier or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause the department to lose any right of such examination under this chapter when and where such records become available.

The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.

For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received by a special fuel dealer or a special fuel user into storage and dispensing equipment designed to fuel motor vehicles is delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.

The department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer, special

fuel supplier or special fuel user, provided such other state or states furnish like information to this state.

Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public.

Sec. 19. Section 28, chapter 175, Laws of 1971 ex. sess. as amended by section 4, chapter 26, Laws of 1977 and RCW 82.38.270 are each amended to read as follows:

It shall be unlawful for any person to:

(1) Refuse, or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;

(2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed herein to make any false statement or conceal any material fact in any record, return, or affidavit provided for in this chapter;

(3) Conduct any activities requiring a license under this chapter without a license or after a license has been suspended, surrendered, canceled, or revoked;

(4) Fail to keep and maintain the books and records required by this chapter;

(5) Divert special fuel purchased for a nontaxable use to a use subject to the taxes imposed by this chapter without payment of the taxes as required by this chapter.

Except as otherwise provided by law, any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both.

The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter.

NEW SECTION. Sec. 20. There is added to chapter 175, Laws of 1971 ex. sess. and to chapter 82.38 RCW a new section to read as follows:

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 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 to appear before the director, or the officer designated by him 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.

NEW SECTION. Sec. 21. There is added to chapter 175, Laws of 1971 ex. sess. and to chapter 82.38 RCW a new section to be codified as RCW 82.38.145 to read as follows:

A special fuel dealer is required to collect the special fuel tax for all fuel dispensed through a pump equipped with a keylock meter when such deliveries are not personally made by the special fuel dealer or his employees unless the purchaser has been issued an authorization by the department to purchase special fuel without payment of tax pursuant to RCW 82.38.040. A serially numbered invoice covering multiple withdrawals of fuel from a pump with a keylock meter for a stated period of time not to exceed one calendar month shall be accepted as an invoice issued at the time of sale.

NEW SECTION. Sec. 22. There is added to chapter 175, Laws of 1971 ex. sess. and to chapter 82.38 RCW a new section to be codified as RCW 82.38.235 to read as follows:

Whenever any assessment shall have become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties plus interest and a filing fee of five dollars. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the special fuel user, supplier or dealer mentioned in the warrant, the amount of the tax, penalties, interest and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee of five dollars, which shall be added to the amount of the warrant.

Passed the Senate February 22, 1979.

Passed the House March 2, 1979.

Approved by the Governor March 16, 1979.

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