

CHAPTER 22.

[S. B. 27.]

MOTOR VEHICLE FUEL IMPORTER TAX ACT.

AN ACT relating to revenue and taxation; imposing a motor vehicle fuel tax on the importation of gasoline into this state in the fuel supply tanks of commercial vehicles being used on the highways of this state for commercial purposes; providing for the payment, collection, and lien of the tax, and the distribution and use of the proceeds thereof; providing for the retention of records and the making of reports; providing for refunds; conferring powers and imposing duties on certain state officers and departments; imposing penalties; amending section 82.36.220, chapter 15, Laws of 1961 as amended by section 31, chapter 21, Laws of 1961 extraordinary session and RCW 82.36.220; amending section 82.36.300, chapter 15, Laws of 1961 and RCW 82.36.300; and providing an effective date.

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

Motor vehicle fuel importer use tax. Purpose—Use of proceeds.

SECTION 1. It is hereby declared to be the purpose of this act to levy a tax on those importing gasoline into the state of Washington in the fuel supply tanks of commercial motor vehicles being used on the highways of this state for commercial purposes as a just and reasonable contribution to the cost of constructing, maintaining, and policing such highways incident to the use thereof by such persons and to the end that said highway users shall pay to the state of Washington an equal amount in taxes as is paid by other commercial highway users who use gasoline on which the motor vehicle fuel excise tax has been paid to this state. The revenues collected shall be used to partially defray the cost of construction, reconstruction, and maintenance of the public highways and the regulation of traffic thereon, and for no other purposes.

Definitions.

SEC. 2. The following words, terms, and phrases when used in this act have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Commercial motor vehicle" means and includes any bus, or any road tractor, or any tractor truck, truck, or other conveyance, the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire.

(2) "Motor carrier" means and includes a natural person, individual, partnership, firm, association, or private or public corporation, which is engaged in interstate commerce and which operates or causes to be operated on any highway in this state any commercial motor vehicle.

(3) "Operations", when applied to a motor carrier, means operations of all commercial motor vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the motor carrier who operates them or causes them to be operated into or out of or through this state.

(4) "Motor vehicle fuel" means gasoline or any other inflammable liquid, by whatsoever name such liquid may be known or sold, the use of which is as fuel for the propulsion of commercial motor vehicles except fuel as defined in chapter 82.40 RCW.

(5) "Use" means and includes the consumption of motor vehicle fuel by any motor carrier in a commercial motor vehicle for the propulsion thereof upon the public highways of this state.

(6) "Motor vehicle fuel importer for use" means and includes any motor carrier importing motor vehicle fuel into this state in the fuel supply tank or tanks of any commercial motor vehicle for use in propelling said vehicle upon the highways of this state.

(7) "Public highways" means and includes every way, lane, road, street, boulevard, and every way or place open as a matter of right to public vehicular

travel both inside and outside the limits of cities and towns.

(8) "Director" means the director of licenses.

Motor vehicle
fuel importer
use tax. Levied
—Rate.

SEC. 3. In consideration of the use of the public highways of this state, motor carriers who import motor vehicle fuel into the state of Washington in the fuel supply tank or tanks of commercial motor vehicles for use in propelling said vehicles on said highways shall be subject to a tax for such use of the highways as hereinafter provided. A tax at the rate of seven and one-half cents per gallon is hereby imposed upon every motor carrier measured and determined by the number of gallons of motor vehicle fuel so imported and actually used by such motor carrier in its operations within this state.

Voluntary
reports of
carriers—
Remittances.

SEC. 4. Motor carriers may file with the director a report at any time, provided the reporting period includes a full calendar month or months, upon a form prescribed and furnished by the director, showing the amount of motor vehicle fuel imported for use within this state and such other information as the director may require to carry out the purpose of this act. Each report shall be accompanied by a remittance payable to the state treasurer for the amount of tax due and payable hereunder.

Motor carriers who voluntarily file the report as in this section provided, are not to include commercial motor vehicles used exclusively in intrastate operations in this state for which tax paid motor vehicle fuel is purchased or received entirely within this state.

Additional
assessments—
Notice.

SEC. 5. If the director is not satisfied with the report filed or amount of tax paid to the state by any motor carrier pursuant to the requirements of this act, he may make an additional assessment of tax due from such carrier based upon the best information available to him. The director shall give

to the carrier written notice of any such added amount of tax determined to be due under the provisions of this section. Each such notice may 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 carrier at his address as the same appears in the records of the director.

SEC. 6. The tax imposed hereunder, with respect to which tax liability hereunder accrues, shall be collected by the assessment of tax through periodic audit examination of the carrier's records, pursuant to the provisions of section 8 of this act: *Provided*, That the tax imposed hereunder, with respect to which tax liability hereunder accrues, may be paid by the motor carrier before such time of audit, as provided by the provisions of section 4 of this act. The tax shall be computed and paid, multiplied by the tax rate imposed hereunder, on the total number of gallons of motor vehicle fuel used by such motor carrier within this state during the taxable period of the carrier's operations on the public highways of this state.

Collection of
tax, procedure.

Proviso.

Every motor carrier subject to the tax shall be entitled to deduct from the total number of gallons of motor vehicle fuel used in Washington, to determine the number of gallons of motor vehicle fuel upon which the tax levied by this act is to be computed and paid, the number of gallons of motor vehicle fuel shown to have been purchased or received in Washington for use in its operations either within or without this state on which the tax levied by chapter 82.36 RCW has been paid by such carrier to this state. Evidence of the payment of such tax in such form as may be required by, or is satisfactory to, the director shall be furnished by each such carrier taking the deduction herein allowed.

When the amount of the credit herein provided

to which any motor carrier is entitled for the month or months that the report covers exceeds the amount of the tax for which such carrier is liable for the same month or months, such excess may be refunded by the director pursuant to the provisions of section 14 of this act.

Motor vehicle fuel importer use tax. Exemptions.

SEC. 7. The tax levied by this act shall not apply to motor vehicle fuel imported into and used on the public highways of this state by:

(1) Persons operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons, regardless of whether for hire or compensation or not for hire or compensation.

(2) Motor vehicle fuel used in vehicles owned and operated by any department, board, bureau, agency, or taxing area or any other agency of the federal government, or by any state and political subdivision thereof.

Tax levy when record audit discloses discrepancy—Time of payment—Penalty when late.

SEC. 8. Whenever it is established by audit of the motor carrier's records and books that such carrier subject to the imposition of the tax herein did not purchase sufficient fuel within this state commensurate with the miles traveled on public highways of this state, the director or his duly appointed representative is hereby authorized to make an assessment of the tax with respect to that amount of motor vehicle fuel consumed on the public highways of this state in excess of the amount of motor vehicle fuel purchased in this state.

Any motor carrier against whom a tax assessment is made under this section shall pay to the director the amount of the tax assessment within thirty days after service upon the carrier of notice thereof. Every assessment made by the director shall become due and payable at the time it becomes final, and if not paid to the director when due and payable there shall be added thereto a penalty of

ten percent of the amount of the tax assessment and interest at the rate of one-half of one percent per month, or a fraction thereof, from the time said tax became due until the date of payment. Any notice required by this section shall be served in the manner prescribed by section 5 of this act.

SEC. 9. If any motor carrier liable for the payment of the tax assessment 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, whether such property is employed by such carrier in the prosecution of business 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.

Tax as lien—
Filing procedure—
Certificate of release
of lien—
Recording of.

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 director has filed 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.

The auditor, upon presentation of a notice of lien, and without requiring the payment of any fee, shall file and index it in the manner now provided for deeds and other conveyances, except that he shall not be required to include, in the index, any description of the property affected by the lien. The lien shall continue until the amount of the tax, together with any penalties and interest subsequently accruing thereon, is paid. The director may

issue a certificate of release of lien when the amount of the tax, together with any penalties and interest subsequently accruing thereon, has been satisfied, and such release may be recorded with the auditor of the county in which the notice of lien has been filed.

The director shall furnish to any person applying therefor a certificate showing the amount of all liens for motor vehicle fuel tax, penalties, and interest that may be of record in the files of the director against any motor carrier under the provisions of this act.

Motor vehicle fuel importer use tax. Attorney general's duties—Certificate as evidence.

SEC. 10. Whenever any motor carrier is delinquent in the payment of any obligation hereunder, the director may transmit notice of such delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from such motor carrier. In any suit brought to enforce the rights of the state hereunder, a certificate of the tax assessment and penalty shall be prima facie evidence that the motor carrier therein named is indebted to the state in the amount of the tax and penalty therein stated.

Remedies cumulative.

SEC. 11. The foregoing remedies of the state shall be cumulative, and no action by the director shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this act.

Petition for reassessment—Burden of proof on challenger—Hearings—Decision—Notice of.

SEC. 12. Any motor carrier against whom a tax assessment is made under the provisions of section 8 of this act may petition for a reassessment thereof within thirty days after service upon the carrier of notice thereof. If such petition is not filed within such thirty day period, the amount of the tax assessment becomes final at the expiration thereof.

An assessment of tax made by the director pur-

suant to the provisions of section 8 of this act shall be presumed to be correct, and in any case where the validity of the assessment is questioned, the burden, except as to proof of alleged fraud, 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. Except in the case of a fraud, no assessment shall be made for any period for which the motor carrier's records are no longer required to be kept or maintained.

If a petition for reassessment is filed within the thirty day period above provided, the director shall reconsider the assessment and, if the motor carrier has so requested in his petition, shall grant such carrier an oral hearing and give the carrier ten days' notice of the time and place thereof. The director may continue the hearing from time to time. The decision of the director upon a petition for reassessment shall become final sixty days after service upon the motor carrier of notice thereof. Any notice required by this section shall be served in the manner prescribed by section 5 of this act.

SEC. 13. Every notice of assessment of tax proposed to be assessed hereunder shall be served on the motor carrier within five years from the date upon which such assessed taxes became due.

Assessment
notice served
within five
years of due
date.

SEC. 14. Every motor carrier subject to the tax hereby imposed who has paid any tax on motor vehicle fuel levied or directed to be paid by chapter 82.36 RCW, either directly by the collection of the tax by the vendor from the consumer, or indirectly by adding the amount of the tax to the price of the fuel and paid by the consumer, shall be reimbursed and repaid the amount of such tax paid by him, if such motor carrier has purchased and exported such fuel in the fuel supply tank or tanks of a commercial motor vehicle and has used such fuel to operate said

Refunds when
tax paid under
chapter 82.36
RCW.

Motor vehicle
fuel importer
use tax. Re-
funds when
tax paid under
chapter 82.36
RCW.

vehicle upon the highways of another state, and if the motor carrier pays to the other state a similar motor vehicle fuel tax on the same fuel, or pays any other highway use tax the rate for which is increased because such fuel was not purchased in, and the tax thereon paid, to such state: *Provided*, That the refund rate shall be the current rate per gallon of the then current motor vehicle fuel tax of this state.

Proviso.

Before any such refund may be granted, the motor carrier claiming such refund must present to the director a statement accompanied by information showing the source of the fuel used and evidence of payment of tax to the state in which the fuel was used and such other information as the director may require. The request for refund shall be made over the signature of the claimant, and shall state the total amount of such fuel for which he is entitled to be reimbursed under this section.

The director or his duly appointed representative shall have the right, in order to establish the validity of any claim for refund, as provided herein, to examine the books and records of such claimant. The records must be sufficient in scope and detail to substantiate the accuracy of the claim, and the director or his duly appointed representative shall have full authority to determine the adequacy of such records and books and the amount of the refund due the claimant from the taxes collected on motor vehicle fuel.

All claims for refunds based upon exportation of motor vehicle fuel from this state in the fuel supply tank or tanks of a commercial motor vehicle must be filed with the director before the expiration of five years from the last day of the month in which the fuel was used.

Carrier to
keep records.

SEC. 15. Each motor carrier under this act shall make and retain for a period of five years records

of gallons of motor vehicle fuel purchased or received, mileage traveled within and without this state, commercial motor vehicles owned, operated, leased, or operated under any other form of contract, and other pertinent papers that are reasonably necessary to substantiate any such tax liability imposed by this act.

Each motor carrier under this act shall be required to retain for five years all purchase or sales invoices reflecting purchases of motor vehicle fuels in this state, and such invoices shall be identified by imprinted serial numbers thereon and with the imprinted name and location of the seller, showing the date of sale, the name and address of the purchaser, the license or equipment number, the type of fuel sold, the number of gallons sold, the price per gallon, the total sale price, and a statement by the seller that the Washington motor vehicle fuel tax has been paid or assumed.

SEC. 16. The director or his duly authorized representative may examine, during the usual business hours of the day, the books, records, papers, and equipment of any motor carrier and investigate the disposition which any such carrier or other person makes of fuel to determine whether the tax imposed by this act has been paid.

Carrier records to be available for examination—Reimbursement if without state.

Every such motor vehicle fuel importer for use not maintaining records in this state so that an audit of such records may be made by the director or his duly authorized representative shall be required to make the necessary records available to the director at his request and at his designated office within this state; or, in lieu thereof, shall agree to pay as reimbursement to the director or his duly appointed representative subsistence and travel allowance at the rates prescribed by statute of this state to proceed to any out-of-state office at which the records

are prepared and maintained to make such examination.

Motor vehicle fuel importer use tax. Rules, regulations—
Divulging information unlawful.

SEC. 17. The director is hereby empowered with full authority to promulgate rules and regulations that are necessary to the administration of this act.

It shall be unlawful for the director, or any person having an administrative duty under this act, to divulge or to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any motor carrier or other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law: *Provided*, That the director may, upon request from the officials to whom are entrusted the enforcement of the motor vehicle fuel importer use tax law of any other state or any political subdivision, 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 mileage traveled, fuel imported and used, or any other disposition of motor vehicle fuel imported and used by such motor carrier, provided such other state or states furnish like information to this state.

Proviso.

Unlawful acts enumerated—
Penalty.

SEC. 18. It shall be unlawful for any person to commit any of the following acts:

(1) To defraud the state or evade the payment of any tax, penalty, or interest which shall be due pursuant to the provisions of this act;

(2) To use a false or fictitious name or give a false or fictitious address in any form required under

the provisions of this act, or otherwise commit a fraud in any record or report;

(3) To refuse to permit the director, or any representative appointed by him in writing, to examine his books, records, papers, or other equipment pertaining to the importation and use of motor vehicle fuel within this state;

(4) To fail or refuse to keep proper books, records, or papers as shall be required by the provisions of this act;

(5) To engage in any act or activity with the intent to evade payment to, or prevent collection by, the state of the tax hereby imposed; and any such act or activity shall also render the person or persons liable, jointly or severally, for such unpaid tax, with penalties and interest prescribed by the provisions of this act;

(6) To make a false statement in connection with any claim for refund, or to knowingly collect or attempt to collect or cause to be repaid to himself or to any other person any refund of any amount paid to the state hereunder without being entitled to the same.

Any person violating any of the provisions of this act 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.

SEC. 19. All moneys collected by the director shall be transmitted forthwith to the state treasurer, together with a statement showing whence the moneys were derived, and shall be by him credited to the motor vehicle fund. A duplicate of such statement shall be sent to the state auditor.

Disposition of
tax proceeds.

The proceeds of the motor vehicle fuel importer use tax imposed by this act shall be distributed as follows: Of the seven and one-half cents collected,

Motor vehicle fuel importer use tax. Disposition of proceeds.

six and one-half cents shall be distributed between the state, cities and counties under the provisions of RCW 46.68.090 and 46.68.100, one-quarter cent shall be distributed to the state and expended pursuant to RCW 46.68.130, one-quarter cent shall be paid into the motor vehicle fund and credited to the Puget Sound reserve account created by RCW 47.60.350, and one-half cent shall be distributed to the cities and towns directly and allocated between them as provided by RCW 46.68.110: *Provided*, That the funds allocated to a city or town which are attributable to such one-half cent of the additional tax imposed by this act shall be matched twenty-five percent by such city or town and seventy-five percent from the proceeds of such one-half cent of additional tax: *And provided further*, That the proceeds of such one-half cent of additional tax and the matching funds provided by such city or town shall be used exclusively for the construction, improvement, and repair of arterial highways as that term is defined in RCW 46.04.030. All such sums shall first be subject to proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

Proviso.

Proviso.

RCW 82.36.220 amended.

SEC. 20. Section 82.36.220, chapter 15, Laws of 1961 as amended by section 31, chapter 21, Laws of 1961 extraordinary session and RCW 82.36.220 are each amended to read as follows:

Motor vehicle fuel tax. Exemptions.

Every person who imports motor vehicle fuel into this state for his own use in equipment other than motor vehicles shall not, for that reason alone, be required to secure a distributor's license or to comply with any of the provisions of this chapter imposed upon a distributor or with the provisions of RCW 82.36.100; but such person shall make a report verified under oath and file the same with the director on or before the tenth day of the succeeding month,

showing the number of gallons of motor vehicle fuel so imported and the number of gallons of such motor vehicle fuel used during the preceding month, the name of the person from whom the motor vehicle fuel was purchased, the date of purchase, the place of storage, and the manner of use or intended use together with a description of the equipment in which the same is used. These reports shall be filed upon blanks furnished by the director: *Provided*, That any person coming into this state in an aircraft or motor boat shall not be required to make such a report in respect to any motor vehicle fuel carried in the fuel tanks of such vehicle for the purpose of propelling such vehicle, and every person coming into this state in a motor vehicle who shall transport in the fuel tanks of such vehicle motor vehicle fuel for the propulsion thereof shall be subject to all the provisions of the motor vehicle fuel importer use tax act applying to taxation of fuel in vehicles coming into this state, but if the motor vehicle fuel so brought into the state be removed from the fuel tanks of such vehicles or used for any purpose other than the propulsion of the vehicles, the person so importing motor vehicle fuel shall be subject to all the provisions of this chapter applying to distributors. The director shall have the right in order to establish the validity of any exemption, to examine the books and records of the claimant for such purpose, and the failure of the claimant to accede to the demand for such examination shall constitute a waiver of all rights to the exemption herein granted.

Proviso.

SEC. 21. Section 82.36.300, chapter 15, Laws of 1961 and RCW 82.36.300 are each amended to read as follows:

RCW 82.36.300 amended.

Every person who shall export any motor vehicle fuel for use outside of this state and who has

Refunds on exported fuel.

paid the motor vehicle fuel excise tax upon such motor vehicle fuel shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so exported.

Motor vehicle
fuel importer
use tax.
Severability.

SEC. 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected.

Short title.

SEC. 23. Sections 1 through 19 of this act shall be known and may be cited as the "Motor Vehicle Fuel Importer Use Tax Act".

SEC. 24. This act shall take effect July 1, 1963.

Passed the Senate March 26, 1963.

Passed the House April 2, 1963.

Approved by the Governor April 18, 1963.

CHAPTER 23.

[S. B. 45.]

ELECTIONS—ABSENTEE VOTING.

AN ACT relating to elections and absentee voting therein; amending sections 2, 3 and 4, chapter 167, Laws of 1955 and RCW 29.36.010, 29.36.020, and 29.36.030; amending section 2, chapter 50, Laws of 1955 as amended by section 7, chapter 167, Laws of 1955 and RCW 29.36.060; amending section 7, chapter 159, Laws of 1917 and RCW 29.36.110; adding a new section to chapter 29.36 RCW; and repealing section 21, chapter 130, Laws of 1961 and RCW 29.36.015, section 18, chapter 14, Laws of 1950 extraordinary session as last amended by section 20, chapter 130, Laws of 1961 and RCW 29.36.080, section 20, chapter 14, Laws of 1950 extraordinary session and RCW 29.36.090.

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

RCW 29.36.010
amended.

SECTION 1. Section 2, chapter 167, Laws of 1955 and RCW 29.36.010 are each amended to read as follows: