

property owner.

Veto
Message

The extension from two years to five years in section 4 could well have an adverse effect upon the marketability of local improvement district bonds. While the portion of this bill authorizing assessment deferrals is permissive only and will require implementing ordinances and resolutions at the local level, section 4 is not. Accordingly, I have determined it is appropriate to veto section 4 in order to protect the integrity and marketability of local improvement district bonds.

The remainder of House Bill 130 is approved."

CHAPTER 138

[Engrossed House Bill No. 221]

TAXATION OF MOTOR VEHICLE AND SPECIAL FUELS

AN ACT Relating to taxation of motor vehicle and special fuels; amending section 82.36.280, chapter 15, Laws of 1961 as amended by section 1, chapter 36, Laws of 1971 ex. sess. and RCW 82.36.280; amending section 9, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.080; amending section 18, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.170; amending section 19, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.180; amending section 20, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.190; and providing an effective date.

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

Section 1. Section 82.36.280, chapter 15, Laws of 1961 as last amended by section 1, chapter 36, Laws of 1971 ex. sess. and RCW 82.36.280 are each amended to read as follows:

Any person who uses any motor vehicle fuel for the purpose of operating any internal combustion engine not used on or in conjunction with any motor vehicle licensed to be operated over and along any of the public highways, and as the motive power thereof, upon which motor vehicle fuel excise tax has been paid, 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 used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. No refund shall be made for motor vehicle fuel consumed

by any motor vehicle as herein defined that is required to be registered and licensed as provided in chapter 46.16 RCW; and is operated over and along any public highway except that a refund shall be allowed for motor vehicle fuel consumed: (1) In a motor vehicle owned by the United States that is operated off the public highways for official use; (2) By auxiliary equipment not used for motive power, provided such consumption is accurately measured by a metering device that has been specifically approved by the ~~((director))~~ department or is established by either of the following formulae:

(a) For fuel used in pumping fuel or heating oils by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased 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 ~~((director))~~ department in accordance with the provisions of this chapter, shall provide to said claim, invoices of fuel oil delivered, or such other appropriate information as may be required by the ~~((director))~~ department to substantiate his claim; or

(b) For fuel used in operating a power take-off unit on a cement mixer truck or load compactor on a garbage truck, claimant shall be allowed a refund of twenty-five percent of the tax paid on all fuel used in such a truck.

Sec. 2. Section 9, chapter 175, Laws of 1971 ex. sess. 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 ~~((or such other methods))~~ 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)

notwithstanding any provision of law to the contrary, every urban passenger transportation system 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 fifteen road miles beyond the corporate limits of the city 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 on any trip where any portion of said trip is more than fifteen road miles beyond the corporate limits of the city in which said trip originated.

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

(1) If any person affected by this chapter shall fail or refuse to comply with any provision of this chapter or shall violate the same, or shall fail or refuse to comply with any rule or regulation promulgated hereunder by the department or shall violate the same, he shall forfeit to the state of Washington as penalty, the sum of twenty-five dollars.

(2) In case any special fuel dealer or special fuel user refuses or fails to file a return required by this chapter within the time prescribed by RCW 82.38.150, there is hereby imposed the penalty provided in subsection (1) of this section or a sum equal to ten percent of the tax due, whichever is greater, together with interest at the rate of one percent for each calendar month or fraction thereof during which such refusal or failure continues.

(3) Where a special fuel dealer or a special fuel user files a report, but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one percent per month or fraction thereof from the date such tax was due to the date of payment in full thereof.

(4) 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 the penalty provided in subsection (2) of this section together with interest at the rate of one percent per month, or fraction thereof,

from the date the report was due.

(5) 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 (4) of this section. An assessment made by the department pursuant to this subsection or to subsection (4) 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.

(6) 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 (2), ~~((3))~~, (4), and (5) of this section.

(7) 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 (1) of this section and all other penalties prescribed by law.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (4) of this section within three years from the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(9) Any special fuel dealer or special fuel user against whom an assessment is made under the provisions of subsections (4) or (5) of this section may petition for a reassessment thereof within fifteen days after service upon the special fuel dealer or special fuel user of notice thereof. If such petition is not filed within such fifteen day period, the amount of the assessment becomes final at the expiration thereof.

V 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.

(10) 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.

Sec. 4. Section 19, chapter 175, Laws of 1971 ex. sess. and RCW 82.38.180 are each amended to read as follows:

Any person who has paid a special fuel tax either directly or to the vendor from whom it was purchased may file a claim for a refund of the tax so paid and shall be reimbursed and repaid the amount of:

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

(2) Any taxes previously paid on special fuel exported for use outside of this state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

(3) Any tax, penalty or interest erroneously or illegally collected or paid.

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

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

Recovery for such loss or destruction under either subsection (4) or (5) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as they may deem necessary. In the event that the department is not satisfied that the fuel was lost or destroyed as claimed because information or proof as required

hereunder is not sufficient to substantiate the accuracy of the claim, they may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on special fuel alleged to be lost or destroyed.

Sec. 5. Section 20, chapter 175, Laws of 1971 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 period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180, subsections (1) ~~((and))~~, (2), (4) and (5) of this 1972 amendatory act, 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 period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3).

(c) Within six months from the date the assessment becomes final or within six months from the date of collection, whichever period expires the later, with respect to assessments made by the department under RCW 82.38.170(4) and (5).

(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 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.

NEW SECTION. Sec. 6. The effective date of this act shall be July 1, 1972.

Passed the House February 18, 1972.

Passed the Senate February 18, 1972.

Approved by the Governor February 25, 1972 with the exception of an item in section 3 which is vetoed.

Filed in Office of Secretary of State February 28, 1972.

Note: Governor's explanation of partial veto is as follows:

"...This bill makes certain changes in the Special Fuel Tax Act which was passed by the Legislature in 1971. Section 3 of the bill provides a new procedure for special fuel dealers or users who wish to petition the Department of Motor Vehicles for a reassessment when the Department has issued a deficiency assessment because of insufficient special fuel tax payment. An error in drafting occurred when this bill was reported to both Houses from a Free Conference Committee. The dealer or user seeking a reassessment must petition for reassessment within fifteen days or the assessment becomes final. The Free Conference Committee neglected to change the reference in the second paragraph of subsection (9) from thirty to fifteen days. I have therefore

Veto
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vetoed the words 'thirty day' from this second paragraph to conform this language to the fifteen-day time limit for filing petitions for reassessment intended by the Legislature.

Veto
Message

With the exception of this item in Section 3, Engrossed House Bill No. 221 is approved."

CHAPTER 139
[House Bill No. 228]
REAL ESTATE BROKERS AND SALESMEN

AN ACT Relating to real estate brokers and salesmen; amending section 2, chapter 252, Laws of 1941 as as last amended by section 1, chapter 78, Laws of 1969 and RCW 18.85.010; amending section 5, part, chapter 252, Laws of 1941 as last amended by section 2, chapter 222, Laws of 1951 and RCW 18.85.030; amending section 4, chapter 252, Laws of 1941 as last amended by section 2, chapter 235, Laws of 1953 and RCW 18.85.040; amending section 5, part, chapter 252, Laws of 1941 as last amended by section 3, chapter 235, Laws of 1953 and RCW 18.85.050; amending section 8, chapter 252, Laws of 1941 and RCW 18.85.060; amending section 17, chapter 235, Laws of 1953 and RCW 18.85.071; amending section 15, chapter 252, Laws of 1941 as last amended by section 5, chapter 235, Laws of 1953 and RCW 18.85.090; amending section 8, chapter 222, Laws of 1951 and RCW 18.85.100; amending section 3, chapter 252, Laws of 1941 as amended by section 9, chapter 222, Laws of 1951 and RCW 18.85.110; amending section 11, chapter 222, Laws of 1951 and RCW 18.85.130; amending section 12, chapter 222, Laws of 1951 as amended by section 7, chapter 235, Laws of 1953 and RCW 18.85.140; amending section 13, chapter 222, Laws of 1951 as amended by section 8, chapter 235, Laws of 1953 and RCW 18.85.150; amending section 21, chapter 222, Laws of 1951 as amended by section 9, chapter 235, Laws of 1953 and RCW 18.85.161; amending section 10, chapter 252, Laws of 1941 as last amended by section 14, chapter 222, Laws of 1951 and RCW 18.85.170; amending section 42, chapter 52, Laws of 1957 and RCW 18.85.190; amending section 27, chapter 252, Laws of 1941 as last amended by section 10, chapter 235, Laws of 1953 and RCW 18.85.210; amending section 19, chapter 252, Laws of 1941 as last amended by section 3, chapter 22, Laws of 1967 and RCW 18.85.230; amending section 25, chapter 222, Laws of 1951 and