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SENATE BILL 5741

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State of Washington

65th Legislature

2017 Regular Session

By Senator King

1 AN ACT Relating to clarifying the collection of fuel taxes within  
2 tribal jurisdictions; amending RCW 82.38.031 and 82.38.035; adding a  
3 new section to chapter 82.38 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** It is the legislature's intent to honor  
6 the treaty rights of the Yakama Nation, while protecting the state's  
7 interest in collecting and enforcing its fuel taxes.

8 **Sec. 2.** RCW 82.38.031 and 2007 c 515 s 33 are each amended to  
9 read as follows:

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

19 (2) It is the intent of the legislature that, in the absence of a  
20 tribal fuel tax agreement, as referenced in RCW 82.38.310, applicable

1 taxes imposed by this chapter be collected on motor vehicle fuel sold  
2 by a business licensed by an Indian tribal organization to any person  
3 who is not an enrolled member of the federally recognized Indian  
4 tribe within whose jurisdiction the sale takes place consistent with  
5 collection of these taxes generally within the state. The legislature  
6 finds that applicable collection and enforcement measures under this  
7 chapter are reasonably necessary to prevent fraudulent transactions  
8 and place a minimal burden on the Indian tribal organization pursuant  
9 to the United States supreme court's decision in *Washington v.*  
10 *Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134  
11 (1980). For the purposes of this subsection: "Indian tribal  
12 organization" means a federally recognized Indian tribe, or tribal  
13 entity, and includes an Indian wholesaler or retailer that is owned  
14 by an Indian who is an enrolled tribal member conducting business  
15 under tribal license or similar tribal approval within Indian  
16 country; and "Indian country" is defined in the manner set forth in  
17 18 U.S.C. Sec. 1151.

18 **Sec. 3.** RCW 82.38.035 and 2013 c 225 s 105 are each amended to  
19 read as follows:

20 (1) A licensed supplier is liable for and must pay tax on fuel as  
21 provided in RCW 82.38.030(~~((7))~~) (9) (a) and (i). On a two-party  
22 exchange, or buy-sell agreement between two licensed suppliers, the  
23 receiving exchange partner or buyer (~~(shall be)~~) is liable for and  
24 pay the tax.

25 (2) A refiner is liable for and must pay tax on fuel removed from  
26 a refinery as provided in RCW 82.38.030(~~((7))~~) (9)(b).

27 (3) A licensed distributor is liable for and must pay tax on fuel  
28 as provided in RCW 82.38.030(~~((7))~~) (9)(c).

29 (4) A licensed blender is liable for and must pay tax on fuel as  
30 provided in RCW 82.38.030(~~((7))~~) (9)(f).

31 (5) A licensed dyed special fuel user is liable for and must pay  
32 tax on fuel as provided in RCW 82.38.030(~~((7))~~) (9)(g).

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

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

37 (b) The terminal operator is not a licensee;

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

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

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

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

14 (9) Dyed special fuel users are liable for and must pay tax on  
15 dyed special fuel used on state highways unless the use of the fuel  
16 is exempt from the tax.

17 (10) Any person who purchases fuel from a business licensed by an  
18 Indian tribal organization that does not have a fuel tax agreement  
19 with the state, as referenced in RCW 82.38.310, and who is not an  
20 enrolled member of the federally recognized Indian tribe within whose  
21 jurisdiction the sale takes place, is liable for the applicable taxes  
22 imposed by this chapter if those taxes have not been paid by any of  
23 the entities listed under subsections (1) through (4) of this  
24 section. For the purposes of this subsection: "Indian tribal  
25 organization" means a federally recognized Indian tribe, or tribal  
26 entity, and includes an Indian wholesaler or retailer that is owned  
27 by an Indian who is an enrolled tribal member conducting business  
28 under tribal license or similar tribal approval within Indian  
29 country; and "Indian country" is defined in the manner set forth in  
30 18 U.S.C. Sec. 1151.

31 NEW SECTION. Sec. 4. A new section is added to chapter 82.38  
32 RCW to read as follows:

33 The department, in conjunction with the state patrol, must adopt  
34 rules to develop enforcement mechanisms for the collection of taxes  
35 owed under RCW 82.38.035(10).

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