

POLICY NOTE

Department of Ecology officials should stop illegally imposing the Inslee carbon tax on farmers and food transporters

By Pam Lewison, Director, Center for Agriculture

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Key Findings

1. The Climate Commitment Act imposed a carbon tax and requires the Washington State Department of Ecology to ensure fuel taxes on food production and transportation are exempt from the tax.
2. The Washington State Department of Ecology officials claim that creating an exemption mechanism is not their responsibility.
3. At the rates of the first carbon emissions offset auction, food producers and transporters will be illegally charged \$33 million for diesel purchases. Purchases of gasoline, natural gas, and propane are also exempt and currently being illegally taxed.
4. The Washington State Department of Ecology should establish a refund mechanism before even more illegal taxes are collected on the purchases of agricultural fuels.

Introduction

The “Climate Commitment Act” imposed a broad-based energy tax and it was signed into law by Governor Inslee in 2021.¹ The act created a cap-and-trade program for carbon emissions offsets to be auctioned to businesses on a quarterly basis. To protect consumers, the legislature exempted a few groups paying fuel taxes based on the first carbon emissions auction. These included food producers and transporters, to help keep grocery prices down.

The anticipated carbon tax began earlier than expected in 2023. In fact, at the beginning of the year, fuel prices rose and have continued to rise for 11 consecutive weeks this year.² In addition to general fuel prices increasing, agricultural producers and transporters report they are being charged an additional tax for the fuel they purchase – despite the carbon-tax exemption being provided in the law.

What the law says

The legislation, known as the “Climate Commitment Act” specifically requires the state Department of Ecology to create a system to exempt agricultural uses. The law reads:

“The following emissions are exempt from coverage in the program ... Motor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user. This exemption is available only if a buyer of motor vehicle fuel or special fuel provides the seller with an exemption certificate in a form and manner prescribed by the department. ...

The department must determine a method for expanding the exemption provided under (e)(i) of this subsection to include fuels used for the purpose of transporting agricultural products on public highways. The department must maintain this expanded exemption for a period of five years, in order to provide the agricultural sector with a feasible transition period.”

1 Engrossed Second Substitute Senate Bill 5126. Signed into law May 18, 2021. Accessed April 13, 2023. <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5126-S2.SL.pdf?q=20230404112106>.

2 Schumann, Timothy. “Washington state sees eleventh week of price increases at the pump.” The Center Square. Published April 3, 2023. Accessed April 13, 2023. https://www.thecentersquare.com/washington/article_68045982-d25f-11ed-b48f-9baf27d32c9c.html.



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What Ecology officials say

Claiming that payments are not due to the state until next year, Ecology officials maintain that no business has incurred the fuel tax.³ Fuel suppliers, however, are accruing liabilities for every gallon of gas and have included the cost of the tax in the price of fuel sales.

Farmers and ranchers are supposed to be exempt from those taxes but are having to pay those higher costs. Ecology officials are legally required to fix the current situation. The responsibility is built into the CCA: “The department must determine a method for expanding the exemption ...”

The Governor, Ecology officials, and legislators want the public to believe the rising cost of fuel prices is caused by the greed of fuel companies and leave it at that. However, when operating costs increase – like the need to purchase CO₂ allowances in a public auction – then businesses are likely to pass along that cost to their customers, as observed in an increased cost for fuel around the state. Despite their claims to the contrary, the carbon tax on CO₂ emissions is intended to increase fuel prices to create an incentive to use less of those fuels.

The cost to food producers

One business group that cannot pass on increased operating costs: agriculture. That is why an exemption for agricultural fuel purchases was critical when the CCA was passed and is still critical now.

At the current auction price, the fee will cost approximately \$33 million in diesel purchases for agricultural users. Gasoline, natural gas, and propane purchases are also exempt from the CCA carbon tax, but agricultural purchasers are currently being taxed for those purchases as well. However, calculating the cost is considerably more difficult as there are not readily available recent usage reports for any of the three fuels.

Conclusion

As the law’s language shows, the Department of Ecology is responsible for the collection of an illegal tax on farm fuels because they have not set up a means to ensure food producers and transporters are exempt from the tax. A simple rebate program that requires farmers and ranchers to submit their fuel purchase invoices on a quarterly basis and refunds the CCA charge at the rate noted on the invoice, would solve the problem, and provide for honest administration of the law. Food producers and transporters should not be punished because of the incompetence of a state agency.

3 “Focus on: Washington’s climate policies and fuel prices.” Washington State Department of Ecology. Revised March 2023. Accessed April 13, 2023. <https://apps.ecology.wa.gov/publications/documents/2302005.pdf>.