



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
**(Implements RCW 34.05.360)**

**Agency:** Department of Revenue

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) ( If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:**

WAC 458-20-252 Hazardous substance tax and petroleum product tax (Rule 252) and WAC 458-20-281 Petroleum product tax (new Rule 281) were, prior to this expedited rulemaking, combined into one rule. Now split into two separate rules.

**Amended Rule 252:**

- Added language to clarify that HST does not include specified noncompound metals when in solid form larger than certain size
- Added federal statutory cite for FIFRA to definition of “pesticide products”
- Added language for “agricultural crop protection product exemption”

**New Rule 281:**

- Deleted “liquefied or liquefiable gases” from definition of “petroleum product”
- Added language under definition of “wholesale value” for determining the tax for petroleum products introduced at the rack
- Added definitions of “rack,” “terminal,” and “nonbulk transfer”
- Decreased the tax rate from 0.5% to 0.3%
- Decreased the tax rate from 0.3% to 0.15% starting July 1, 2021
- Extended the PPT by 10 years to July 1, 2030

**Citation of existing rules affected by this order:**

Repealed:

Amended: WAC 458-20-252 Hazardous substance tax and petroleum product tax

Suspended:

**Statutory authority for adoption:** RCW 82.32.300 and 82.01.060(2)

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 16-21-094 on October 19, 2016

Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: No preliminary cost-benefit analysis was prepared.

**Date adopted:**

December 21, 2016

**NAME**

Kevin Dixon

**SIGNATURE**

**TITLE**

Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: December 21, 2016**

**TIME: 9:28 AM**

**WSR 17-01-155**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

|   |     |         |          |
|---|-----|---------|----------|
| <b>Federal statute:</b>                 | New | Amended | Repealed |
| <b>Federal rules or standards:</b>      | New | Amended | Repealed |
| <b>Recently enacted state statutes:</b> | New | Amended | Repealed |

**The number of sections adopted at the request of a nongovernmental entity:**

|     |         |          |
|-----|---------|----------|
| New | Amended | Repealed |
|-----|---------|----------|

**The number of sections adopted in the agency's own initiative:**

|     |   |         |   |          |
|-----|---|---------|---|----------|
| New | 1 | Amended | 1 | Repealed |
|-----|---|---------|---|----------|

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

|     |   |         |   |          |
|-----|---|---------|---|----------|
| New | 1 | Amended | 1 | Repealed |
|-----|---|---------|---|----------|

**The number of sections adopted using:**

|                                       |     |         |          |
|---------------------------------------|-----|---------|----------|
| <b>Negotiated rule making:</b>        | New | Amended | Repealed |
| <b>Pilot rule making:</b>             | New | Amended | Repealed |
| <b>Other alternative rule making:</b> | New | Amended | Repealed |

AMENDATORY SECTION (Amending WSR 89-16-091, filed 8/2/89, effective 9/2/89)

**WAC 458-20-252 Hazardous substance tax ((and petroleum product tax)).**

((PART 1 — HAZARDOUS SUBSTANCE TAX))

(1) Introduction. Under ((the provisions of)) chapter ((82.22)) 82.21 RCW (referred to in this rule as the "law"), a hazardous substance tax ((was)) is imposed((, effective January 1, 1988,)) upon the wholesale value of certain substances and products, with specific credits and exemptions provided. ((This law is significantly changed, effective on March 1, 1989, because of Initiative 97 (I-97) which was passed by the voters in the November 8, 1988 general election.)) The tax((, which is reimposed by I-97,)) is an excise tax upon the privilege of possessing hazardous substances or products in this state. ((It is imposed in addition to all other taxes of an excise or property tax nature and is not in lieu of any other such taxes.))

(a) ((I-97, which will be referred to as chapter 2, Laws of 1989,)) Chapter 82.21 RCW defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate by rule any other substance((s)) or product((s)) as hazardous ((which)) that could present a threat to human health or the environment. ((The department of ecology, by duly published rule, defines and enumerates hazardous substances and products and otherwise administers the provisions of the law relating to hazardous and toxic or dangerous materials, waste, disposal, cleanup, remedial actions, and monitoring. (See chapter 173 — of the)) (Chapter 173-342 WAC.)

(b) ((Sections 8 through 12 of I-97 consist of the tax provisions relating to hazardous substances and products which are)) Chapter 82.21 RCW is administered exclusively under this ((section)) rule. The ((tax provisions)) law relates exclusively to the possession of hazardous substances and products. The ((tax provisions do)) law does not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege ((which)) that incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department of revenue may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

(2) Definitions. For purposes of this ((part)) rule the following ((terms will)) definitions apply.

(a) "Tax" means the hazardous substance tax imposed under ((section 10 of I-97)) chapter 82.21 RCW.

(b) "Hazardous substance" means (~~anything designated as such by the provisions of chapter 173 WAC, administered by the state department of ecology, as adopted and thereafter amended. In addition, the law defines this term to include~~):

(i) Any substance that, on March 1, (~~1989~~) 2002, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc. These substances consist of chemicals and elements in their purest form. A CERCLA substance (~~which~~) that contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology(~~-~~);

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under section 136a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(iv) Anything else enumerated as a hazardous substance in chapter (~~173~~) 173-342 WAC by the department of ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(~~i~~) The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products (~~which~~) that are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of the department of ecology in chapter 173-342 WAC.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington((~~7~~)).

(ii) States of the United States or any political subdivisions of such other states((~~7~~)).

(iii) The District of Columbia((~~7~~)).

(iv) Territories and possessions of the United States((~~7~~)).

(v) Any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

((~~i~~)) The term "natural person," for purposes of the tax exemption (~~provided by section 11(2) of I-97~~) in subsection (4)(b) of this rule regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this ((~~section~~)) rule, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this ((~~section~~)) rule. Other terms not expressly defined in these chapters or this ((~~section~~)) rule are to be given their common and ordinary meanings.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing a hazardous substance((~~s~~)) in this state. The tax rate

is seven tenths of one percent (.007). The tax measure or base is the wholesale value of the substance, as defined (~~herein~~) in this rule.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance (~~which~~) that has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in (~~the last part of this section~~) subsection (14) of this rule. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation (~~which~~) that establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in-state suppliers (~~which~~) that reflect their payment of the tax or simple bills of lading or delivery documents revealing an in-state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature, rather than a business nature, is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount (~~which~~) that is determined to be "minimal" by the department of ecology. That department has determined that



the term "minimal" means less than \$1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities (~~which~~) that the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced or manufactured outside this state (~~which~~) that is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out-of-state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out-of-state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in-state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances (~~which~~) that are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) (~~Though I-97 contains an exemption for persons possessing any hazardous substance where such possession first occurred before March 1, 1989, this exemption applies only to the tax imposed under I-97. It does not apply retroactively to excuse the hazardous substance tax which was imposed under chapter 82.22 RCW in effect from January 1, 1988 until March 1, 1989. However:~~

~~(i) **Transitional rule:** Persons who possess stocks or inventories of petroleum products as of March 1, 1989, which are destined for sale or use outside this state as fuel are not subject to tax upon such possessions of preexisting inventories. For periods before March 1, 1989 the former exemption of RCW 82.22.040(3) for export petroleum products applies. For periods on and after March 1, 1989 the exemption for prepossessed hazardous substances explained in subsection (g) above will apply. Records appropriate to establish that such petroleum products were destined for out of state sale or use as fuel must be retained by any possessor claiming exemption under this transitional rule.)~~ Any possession of an agricultural crop protection product that is solely for use by a farmer or certified applicator as an agricultural crop protection product and is warehoused in this state or transported to or from this state is tax exempt, provided that the person possessing the product does not use, manufacture, package for sale, or sell the product in this state. The following definitions apply throughout this subsection unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7

U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(5) Credits. There are three distinct kinds of tax credits against liability (~~(which)~~) that are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components (~~(which)~~) that are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals (~~(which)~~) that it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel (~~(which)~~) that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel (~~(which)~~) that remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers (~~(who)~~) that carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel (~~(which)~~) that is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel (~~(which)~~) that is purchased in this state for use in such fuel tanks. Formulas approved by the department of revenue for reporting the amount of fuel consumed in this state for purposes of this tax or oth-



er excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel ((which)) that is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

**Certificate of Credit for Fuel Carried  
from this State in Fuel Tanks**

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel ((which)) that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel ((which)) that is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

|                      |                             |
|----------------------|-----------------------------|
| Registration No.     | .....                       |
|                      | (if applicable)             |
| Type of Business     | .....                       |
| Firm Name            | .....                       |
| Business Address     | .....                       |
| Registered Name      | .....                       |
|                      | (if different)              |
| Tax Reporting Agent  | .....                       |
|                      | (if applicable)             |
| Authorized Signature | .....                       |
| Title                | .....                       |
| Identity of Fuel     | .....                       |
|                      | (kind and amount by volume) |
|                      | Date: .....                 |

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel ((which)) that ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax ((which)) that has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax (~~which~~) that has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed (~~by section 10 of I-97~~) under chapter 82.21 RCW.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. (~~See~~) Additional information regarding recordkeeping requirements is provided in WAC 458-20-19301(~~, part (9) for record keeping requirements~~). The department of revenue will publish an excise tax bulletin listing other states' taxes (~~which~~) that qualify for this credit.

(6) Newly defined hazardous substances. Under chapter 82.21 RCW the director of the department of ecology may identify and designate (~~things~~) other substances or products as being hazardous substances (~~after March 1, 1989. Also, things~~) for purposes of the tax. The director of the department of ecology may also delete substances or products previously designated as hazardous substances (~~may be deleted from this definition~~). Such actions are done by (~~the adoption and subsequent periodic amendments to rules of the department of ecology under the Washington Administrative Code~~) amending chapter 173-342 WAC.

(a) The law allows the addition or deletion of substances or products as hazardous substances by rule amendments, no more often than twice in any calendar year.

(b) When such (~~definitions~~) additions or deletions are (~~changed~~) made, they do not take effect for tax purposes until the first day of the following month (~~which~~) that is at least thirty days after the effective date of rule (~~action~~) amendment by the department of ecology.

(i) Example. The department of ecology (~~adopts or~~) amends (~~the rule~~) chapter 173-342 WAC by adding a new substance and the effective date of the amendment is June 15<sup>th</sup>. Possession of the substance does not become taxable until August 1<sup>st</sup>.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax li-

ability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The exemption for previously taxed hazardous substances does not apply to "products" (~~which~~) that have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the credit provision explained at (~~part~~) subsection (5)(a) of this (~~section~~) rule.

(a) However, the term "product" is defined to mean only an item or items (~~which~~) that contain a combination of both hazardous substance(s) and nonhazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction (~~which~~) that occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is otherwise consumed during the manufacturing or processing activity.

(~~i~~) However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances

are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be eighty percent of its retail purchase price. This provision is intended to achieve a tax measure equivalent to the wholesale value.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in ~~((part))~~ subsection (4)(a)(i) and (ii) of this ~~((section))~~ rule. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

~~((a))~~ Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase - .....  
all purchases of .....  
(omit one)  
..... by .....  
(identify substance(s) purchased) (name of purchaser)

who possesses registration no. \_\_\_\_\_ ,  
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

..... The registered seller named below personally paid the tax upon possession of the hazardous substances.

..... A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller ..... Registration No. ....  
Firm name ..... Address .....  
Type of business .....  
Authorized signature ..... Title .....  
Date .....

~~( ( PART II — PETROLEUM PRODUCTS TAX~~

~~(1) Under the provisions of chapter 383, Laws of 1989, (herein after referred to as the law), a petroleum product tax was imposed, effective July 1, 1989, upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. It is imposed in addition to all other taxes of an excise or property tax nature, including the hazardous substance tax explained earlier in this section, and is not in lieu of any other such taxes.~~

~~(a) Sections 14-18 of the law consist of the tax provisions relating to possession of petroleum products which are administered exclusively under this section. The application of the petroleum product tax with the exceptions noted below, is the same as the hazardous substance tax applications explained in subsection (1)(c) of part 1 of this section.~~

~~(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.~~

~~(2) Definitions. For purposes of this part the following terms will apply.~~

~~(a) "Tax" means the petroleum product tax imposed under section 16 of the law.~~

~~(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.~~



~~(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.~~

~~(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.~~

~~(ii) "Actual possession" occurs when the person with control has physical possession.~~

~~(iii) "Constructive possession" occurs when the person with control does not have physical possession.~~

~~(d) "Previously taxed petroleum products" means petroleum products upon which the petroleum product tax has been paid and which have not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.~~

~~(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character. "Wholesale value" shall be determined in precisely the manner for the petroleum product tax as it is for the hazardous substance tax in part 1, subsection (2)(g) of this section.~~

~~(f) "Selling price." See 2(h) of part 1 of this section.~~

~~(g) "State," for purposes of the credit provisions of the petroleum product tax, means:~~

~~(i) A state of the United States other than Washington, or any political subdivision of such other state,~~

~~(ii) The District of Columbia,~~

~~(iii) Any foreign country or political subdivision thereof, and~~

~~(iv) Territories and possessions of the United States.~~

~~(3) Tax rate and measure. The tax is imposed upon the privilege of possession of petroleum products in this state. The tax rate is fifty one hundredths of one percent (.005). The tax measure or base is the wholesale value of the petroleum products, as defined herein. The tax will apply for first possessions of petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.~~

~~(4) Exemptions. The following are expressly exempt from the tax:~~

~~(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (See part 1, subsection (4)(a) of this section.) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.~~

~~(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (See part 1, subsection (4)(b) of this section.)~~

~~(c) Any possessions of the following substances are tax exempt:~~

~~(i) Natural gas, or petroleum coke;~~

~~(ii) Liquid fuel or fuel gas used in processing petroleum;~~

~~(iii) Petroleum products that are exported for use or sale outside this state as fuel.~~

~~(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain~~

~~of distribution of such products in this state. To perfect its entitlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:~~

~~Certificate of Tax Exempt Export Petroleum Products~~

~~I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.~~

~~Registration No. ....  
Type of Business .....  
(If applicable) Firm Name .....  
Registered Name (If different) .....  
Authorized Signature .....  
Title .....  
Identity of Petroleum Product .....  
(Kind and amount by volume)  
Date: .....~~

~~(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferrers of petroleum products.~~

~~(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193, parts A or C. Carriers who will purchase fuel in this state to be taken out-of-state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, see the credit provisions of part 1, subsection (5)(b) of this section.~~

~~(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.~~

~~(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products which are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.~~

~~(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.~~

~~(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in part 1, subsection (5)(b) of this section.~~

~~The same form of certification as used for the fuel in tanks hazardous substance tax credit in subsection (5)(b)(vi) of part 1 of this section may be used.~~

~~(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax which has been paid by the same person measured by the wholesale value of the same petroleum product tax.~~

~~(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.~~

~~(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in part 1, subsection (5)(e) of this section. The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.~~

~~(6) The general administrative and tax reporting provisions for the hazardous substance tax contained in part 1 (8) through (14) of this section apply as well for the petroleum products tax of this part in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products." )~~

NEW SECTION

**WAC 458-20-281 Petroleum product tax.** (1) Introduction. Under chapter 82.23A RCW (hereinafter referred to as the "law"), a petroleum product tax is imposed upon the wholesale value of petroleum products in this state with specific credits and exemptions provided. The tax is an excise tax upon the privilege of first possessing petroleum products in this state. The tax is administered by the department of revenue.

(a) Chapter 82.23A RCW is administered exclusively under this rule. The application of the petroleum product tax with the exceptions noted below, is the same as the application of the hazardous substance tax explained in WAC 458-20-252 (1)(c).

(b) The petroleum product tax is imposed upon any possession of petroleum products in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall only upon the first such possession in this state just like the hazardous substance tax.

(2) Definitions. For purposes of this rule the following definitions will apply.

(a) "Tax" means the petroleum product tax imposed under chapter 82.23A RCW.

(b) "Petroleum product" means any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel oil, asphalt base, and every other product derived from the refining of crude oil, but the term does not include crude oil or liquefiable gases.

(c) "Possession" means control of a petroleum product located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(d) "Previously taxed petroleum product" means a petroleum product in respect to which the petroleum product tax has been paid and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(e) "Wholesale value" is the tax measure or base. It means the fair market value determined by the wholesale selling price at the place of use of similar products of like quality and character.

(i) For purposes of determining the tax for petroleum products introduced at the rack, the wholesale value is determined when the petroleum product is removed at the rack unless the removal is to a properly licensed petroleum products exporter for direct delivery to a destination outside of the state. For all other cases, the wholesale value is determined upon the first nonbulk possession in the state.

(ii) In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases, the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

(f) "Selling price" has the same meaning as provided in WAC 458-20-252 (2)(h).

(g) "State," for purposes of the credit provisions of the petroleum product tax, means:

(i) A state of the United States other than Washington, or any political subdivision of such other state;

(ii) The District of Columbia;

(iii) Any foreign country or political subdivision thereof; and

(iv) Territories and possessions of the United States.

(h) "Rack" means a mechanism for delivering petroleum products from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer. For purposes of this definition:

(i) "Nonbulk transfer" means a transfer of a petroleum product that does not meet the definition of "bulk transfer" in (h)(ii) of this subsection;

(ii) "Bulk transfer" means a transfer of a petroleum product by pipeline or vessel; and

(iii) "Terminal" means a petroleum product storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which certain petroleum products are removed at a rack.

(3) Tax rate and measure. The tax is imposed upon the privilege of possession of a petroleum product in this state.

(a) The tax rate is thirty one-hundredths of one percent (.003). Starting July 1, 2021, the rate will be decreased from thirty one-hundredths of one percent (.003) to fifteen one-hundredths of one percent (.0015).

(b) The tax measure or base is the wholesale value of the petroleum product, as defined in this rule.

(c) The tax will apply for first possessions of any petroleum products in all periods after its effective date unless the department notifies taxpayers in writing of the department's determination that the pollution liability reinsurance program trust account contains a sufficient balance to cause a moratorium on the tax application. The department will again notify taxpayers in writing if and when the account balance requires reapplication of the tax.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed petroleum products are exempt in precisely the manner as the same exemption for the hazardous substance tax. (Additional information is provided in WAC 458-20-252 (4)(a).) If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(b) Any possession of a petroleum product by a natural person for use of a personal or domestic nature rather than a business nature is exempt in precisely the manner as the same exemption for the hazardous substance tax. (Additional information is provided in WAC 458-20-252 (4)(b).)

(c) Any possessions of the following substances are tax exempt:

(i) Natural gas, or petroleum coke;

(ii) Liquid fuel or fuel gas used in processing petroleum;

(iii) Petroleum products that are exported for use or sale outside this state as fuel.

(iv) The exemption for possessions of petroleum products for export sale or use as fuel may be taken by any person within the chain of distribution of such products in this state. To perfect its enti-



tlement to this exemption the person possessing such product(s) must take from its buyer or transferee of the product(s) a written certification in substantially the following form:

Certificate of Tax Exempt Export Petroleum Products

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (seller or transferor), are for export for use or sale outside Washington state as fuel. I will become liable for and pay any petroleum product tax due upon all or any part of such products that are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. ....  
(If applicable)  
Type of Business .....  
Registered Name .....  
(If different)  
Authorized Signature .....  
Title .....  
Identity of Petroleum Product .....  
(Kind and amount by volume)  
Date: .....

(v) Each successive possessor of such petroleum products must, in turn, take a certification in this form from any other person to whom such petroleum products are sold or transferred in this state. Failure to take and keep such certifications as part of its permanent records will incur petroleum product tax liability by such sellers or transferors of petroleum products.

(vi) Persons in possession of such petroleum products who themselves export or cause the exportation of such products to persons outside this state for further sale or use as fuel must keep the proofs of actual exportation required by WAC 458-20-193C, parts A or B. Carriers who will purchase fuel in this state to be taken out-of-state in the fuel tanks of any ship, airplane, truck, or other carrier vehicle will provide their fuel suppliers with this certification. Then such carriers will directly report and pay the tax only upon the portion of such fuel actually consumed by them in this state. (With respect to fuel brought into this state in fuel tanks and partially consumed here, information regarding the credit provisions is provided in WAC 458-20-252 (5)(b).)

(vii) Blanket export exemption certificates may never be accepted in connection with petroleum products exchanged under exchange agreements.

(d) Any possession of petroleum products packaged for sale to ultimate consumers. This exemption is limited to petroleum products that are prepared and packaged for sale at usual and ordinary retail outlets. Examples are containerized motor oil, lubricants, and aerosol solvents.

(5) Credits. There are two distinct kinds of tax credits against liability which are available under the law.

(a) A credit may be taken in the amount of the petroleum product tax upon the value of fuel which is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. The credit is applied in precisely the same manner as the hazardous substance tax in WAC 458-20-252 (5)(b).

The same form of certification as used for the fuel-in-tanks hazardous substance tax credit in WAC 458-20-252 (5)(b)(vi) may be used.

(b) A credit may be taken against the tax owed in this state in the amount of any other state's petroleum product tax that has been paid by the same person measured by the wholesale value of the same petroleum product tax.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be on the act or privilege of possessing petroleum products and the tax must be of a kind that is not generally imposed on other activities or privileges; the tax purpose must be to fund pollution liability insurance; and the tax measure must be stated in terms of the wholesale value of the petroleum products, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) The credit is applied in precisely the same manner as the state credit for hazardous substance tax in WAC 458-20-252 (5)(c). The amount of the credit shall not exceed the petroleum product tax liability with respect to that petroleum product.

(6) General administration and tax reporting. The general administrative and tax reporting provisions for the hazardous substance tax contained in WAC 458-20-252 (8) through (14) apply as well for the petroleum product tax of this rule in precisely the same manner except the references to "hazardous substance(s)" or "substance(s)" should be replaced with the words, "petroleum products."

(7) Expiration date. The petroleum product tax expires July 1, 2030.