

WSR 24-03-166

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed January 24, 2024, 9:44 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-281 Petroleum product tax.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (department) intends to amend WAC 458-20-281 to incorporate changes enacted pursuant to HB [ESHB] 1175 (2023), specifically, the petroleum products tax rate imposed under RCW 82.23A.020.

Reasons Supporting Proposal: The update is to conform the rule to HB [ESHB] 1175, which passed during the 2023 legislative session.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.23A.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brett Granemann, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1532; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate for this rule update because the department is incorporating changes resulting from 2023 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Brett Granemann, Department of Revenue, 6400 Linderson Way S.W., Tumwater, WA, phone 360-534-1532, fax 360-534-1606, email brettg@dor.wa.gov, AND RECEIVED BY March 25, 2024.

January 24, 2024  
Atif Aziz  
Rules Coordinator

OTS-5159.1

AMENDATORY SECTION (Amending WSR 17-01-155, filed 12/21/16, effective 1/21/17)

**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 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 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.