EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-20-260 (Rule 260) *Oil spill response and administration tax* explains the provisions of chapter 82.23B RCW which imposes an oil spill response tax and an oil spill administration tax.

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

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AND RECEIVED BY: March 21, 2016

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Department proposes to amend Rule 260 to include that the same taxes imposed on crude oil or petroleum products received at a marine terminal also apply, effective July 1, 2015, on the same type of products received at a bulk oil terminal. Definitions for "bulk oil terminal" and "tank car" have been added, and existing definitions have been updated based on Chapter 274, Laws of 2015.

A copy of the draft rule is available for viewing and printing on our website at Rules Agenda

Reasons supporting proposal: Chapter 274, Laws of 2015 (ESHB 1449).

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

Statute being implemented:
RCW 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040

Is rule necessary because of a:

Federal Law?	☐ Yes	☒ No
Federal Court Decision?	☐ Yes	☒ No
State Court Decision?	☐ Yes	☒ No

If yes, CITATION:

Date
January 13, 2016

Name
Kevin Dixon

Signature

Title
Rules Coordinator

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Name of proponent: Department of Revenue

☐ Private
☐ Public
☒ Governmental

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

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AMENDATORY SECTION (Amending WSR 02-16-016, filed 7/26/02, effective 8/26/02)

WAC 458-20-260 Oil spill response and administration tax. (1) **Introduction.** This rule explains the provisions of chapter 82.23B RCW which imposes an oil spill response tax and an oil spill administration tax. The taxes are imposed ((~~upon~~)) on the privilege of receiving crude oil or petroleum products at a marine terminal in this state from a waterborne vessel or barge operating on the navigable waters of this state. Effective July 1, 2015, both taxes are also imposed on the privilege of receiving crude oil or petroleum products at a bulk oil terminal within this state from a tank car, under chapter 274, Laws of 2015. RCW 82.23B.020.

Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Definitions.** For purposes of this rule, the following terms as found in RCW 82.23B.010 will apply.

(a) ((~~"Tax" means the oil spill response and oil spill administration taxes imposed by chapter 82.23B RCW.~~

~~(b)~~)) **Barrel.** "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

((~~(c)~~)) (b) **Bulk oil terminal.** "Bulk oil terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products from a tank car.

(c) **Crude oil.** "Crude oil" means any naturally occurring ((~~liquid~~)) hydrocarbons ((~~at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline~~)) coming from the earth that are liquid at twenty-five degrees Celsius and one atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

(d) **Department.** "Department" means the department of revenue.

(e) **Marine terminal.** "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(f) **Navigable waters.** "Navigable waters" means those waters of the state and their adjoining shorelines((~~,~~)) that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(g) **Person.** "Person" ((~~has the meaning provided in RCW 82.04.030~~)) or "company," herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. RCW 82.04.030.

(h) **Petroleum product.** "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined

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as fuel or fuel blendstock((~~,~~)) including, but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(i) **Previously taxed product.** "Previously taxed product" means any crude oil or petroleum product which has been received in this state in a manner subject to the tax imposed by chapter 82.23B RCW and upon which such tax has been paid.

(j) **Tax.** "Tax" means the oil spill response and oil spill administration taxes imposed by chapter 82.23B RCW.

(k) **Taxpayer.** "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal in this state ((~~from a waterborne vessel or barge~~)) and who is liable for the tax.

((~~(j)~~)) (l) **Tank car.** "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.

(m) **Waterborne vessel or barge.** "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of ((~~travelling~~)) traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

((~~(k) "Previously taxed product" means any crude oil or petroleum product which has been received in this state in a manner subject to the tax and upon which the tax has been paid.~~))

(3) **Imposition, base, and reporting of tax.** The tax is imposed on the privilege of receiving: Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; or effective July 1, 2015, crude oil or petroleum products at a bulk oil terminal within this state from a tank car. The tax is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car or waterborne vessel or barge. RCW 82.23B.020.

(a) **Tax is due.** The tax is due for payment together with the timely filing of the return ((~~upon~~)) on which it is reported, on or before the twenty-fifth day of the month following the month in which the taxable receipt occurs. ((~~In case any~~)) If receipt commences on the last day of any month and extends past midnight, the receipt at the election of the marine or bulk oil terminal may be deemed to have occurred during the following month or may be deemed to have been completed at midnight ((~~and commenced at the instant after midnight~~)) on the last day of the month on which it was commenced.

(b) **Compute the number of net barrels.** The number of barrels received must be computed as the net barrels received by the marine or bulk oil terminal operator. Net barrels must be computed by using an industry standard adjustment to gross barrels received to account for variations in temperature and content of water or other nonpetroleum substances.

(4) **Tax collection by the marine or bulk oil terminal operator.** Unless the taxpayer has been issued a direct payment certificate as provided in subsection (5) of this rule, the operator of any marine or bulk oil terminal located in this state where crude oil or petroleum products are received and placed into storage tanks is responsible for the collection of the tax from the taxpayer.

(a) **Personally liable for the tax.** Failure to collect the tax from the taxpayer and remit it to the department will cause the marine or bulk oil terminal operator to become personally liable for the tax,

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unless the ((~~marine~~)) terminal operator has billed the taxpayer for the tax or notified the taxpayer in writing of the imposition of the tax.

(i) The tax has been billed to a taxpayer when an invoice, statement of account, or notice of imposition of the tax is mailed or delivered to the taxpayer by the marine or bulk oil terminal operator within the operator's normal billing cycle, and separately states the dates of receipt, rate of tax, number of barrels received and placed into storage tanks, and the amount of the tax required to be collected by the operator.

(ii) A taxpayer has been notified of the imposition of the tax when, within twenty days from the date of receipt, a notice is mailed or delivered to the taxpayer, or to an agent of the taxpayer authorized to accept notices of this type other than the marine or bulk oil terminal operator. This notice must separately state the dates of receipt, rate of tax, number of barrels received into storage tanks, and the amount of the tax required to be collected by the operator.

(iii) Marine and bulk oil terminal operators must maintain a record of the names and addresses of taxpayers billed for the tax, or in cases where taxpayers are sent written notification of the imposition of the tax, the names and addresses of the persons to whom notice is sent. Such records must indicate those persons billed or notified from whom the tax has been collected. ((~~Upon~~)) On request, the records ((~~shall~~)) must be made available for inspection by the department.

(b) **Tax must be held in trust.** The tax collected must be held in trust by the marine or bulk oil terminal operator until paid to the department. The tax is due from the ((~~marine terminal~~)) operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the tax is collected.

(c) ((~~A~~)) **Use of direct payment certificate.** A marine or bulk oil terminal operator who relies in good faith ((~~upon~~)) on a direct payment certificate (see subsection (5) of this rule) issued to a taxpayer is relieved from any liability for the collection of the tax from the taxpayer. A marine or bulk oil terminal operator is likewise relieved from liability for collection of the tax from a taxpayer if the ((~~marine~~)) terminal operator relies in good faith ((~~upon~~)) on a current roster of certificate holders published by the department ((~~which~~)) that bears the name of a taxpayer.

(5) **Direct payment to the department.** Any taxpayer may apply to the department in writing for permission to pay the tax directly to the department. ((~~Upon~~)) On approval of the department, any taxpayer making application for direct payment will be issued a direct payment certificate entitling the taxpayer to pay the tax directly to the department.

(a) ((~~In order~~)) **Qualifications for direct payments.** To qualify for direct payment, the taxpayer must meet the following requirements:

(i) The taxpayer must be registered with the department.

(ii) The taxpayer must file a bond with the department in an amount equal to two months estimated liability for the tax, but in no event less than ten thousand dollars. The bond must be executed by the taxpayer as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. Two months estimated tax liability shall be the total number of barrels received and placed into the storage tanks of a marine or bulk oil terminal in this state by the taxpayer during the two months in the immediately preceding twelve-month period with the

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highest number of barrels received multiplied by the total tax rate. If the department determines that the result of the foregoing calculation does not represent a fair estimate of the actual tax liability ((~~which~~)) that the taxpayer is expected to incur, it may set the bond requirement at such higher amount as the department determines in its judgment will secure the payment of the tax. The bond requirement may be waived ((~~upon~~)) with proof satisfactory to the department that the taxpayer has sufficient assets located in this state to ((~~insure~~)) ensure payment of the tax.

(iii) The taxpayer must be current in all of its tax obligations to the state having filed all returns as required by Title 82 RCW.

(b) **Review of bond amount.** The department may, from time to time, review the amount of any bond filed by a taxpayer possessing a direct payment certificate and may, ((~~upon~~)) with twenty days written notice to the taxpayer, require such higher bond as the department determines to be necessary to ((~~secure the~~)) ensure payment of the tax. The filing of a substitute bond in such higher amount is a condition to the continuation of the right to make direct payment under this ((~~section~~)) rule.

(c) **A direct payment certificate can be revoked.** The department may revoke a direct payment certificate issued under this ((~~section may be revoked by the department~~)) rule if the taxpayer fails to maintain a current registration, fails to file a substitute bond within twenty days from a written request, or becomes delinquent in the payment of the tax.

(d) **Taxpayers holding a direct payment certificate.** The department maintains a current roster of all taxpayers who have a direct payment certificate. Copies of the roster are made available on a monthly basis to any interested person requesting to be placed on the roster subscription list. Requests to be placed on the roster subscription list should be mailed to ((~~the~~)) Taxpayer Services, Department of Revenue, ((~~Taxpayer Services, attn: Public Records,~~)) P.O. Box 47478, Olympia, WA 98504-7478.

(e) **Application for a direct payment certificate.** Applications for a direct payment certificate ((~~shall~~)) must be in writing and ((~~shall~~)) must include the name and address of the applicant, the applicant's registration number if currently registered, and the name and phone number of a contact person. The application ((~~shall~~)) must also contain a statement that if the application is approved, the taxpayer consents to the public disclosure that the taxpayer has been granted a direct payment certificate, or if the certificate is later revoked, the taxpayer consents to the public disclosure of the fact of revocation. Applications should be mailed to ((~~the~~)) Taxpayer Account Administration, Attn: Oil Spill Tax Unit, Department of Revenue, ((~~Taxpayer Account Administration,~~)) P.O. Box 47476, Olympia, WA 98504-7476.

(6) **Exemption - Previously taxed crude oil or petroleum products.** The tax applies only to the first receipt of crude oil or petroleum products at a marine or bulk oil terminal in this state. RCW 82.23B.030 provides an exemption for the subsequent receipt at a marine or bulk oil terminal in this state of previously taxed crude oil or petroleum products. This exemption applies even though the previously taxed crude oil or petroleum products are refined or processed prior to subsequent transportation and receipt.

(7) **Presumption.** Any receipt of crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state, or effective

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July 1, 2015, receipt of crude oil or petroleum products at a bulk oil terminal within this state from a tank car, is presumed to be subject to the tax.

(a) **Certification of previous payment of the oil spill tax.** A person may rebut this presumption by documenting that the crude oil or petroleum products received were previously subject to the tax. The proof may be in the form of information on the invoice or a written certification from the seller at the time of shipment or exchange. The written certification must be in substantially the form below stating that all or a specific, stated portion of the crude oil or petroleum products were previously subject to the tax or, in the alternative, stating the amount of tax remitted or to be remitted to the state respective to the crude oil or petroleum products being sold.

Certification of Previous Payment of the Oil Spill Tax

I hereby certify that all or a portion of the crude oil or petroleum products specified herein were previously subject to the oil spill tax and that such tax was paid by the undersigned.

Identify product: _____

Amount of product in this shipment: _____

Percentage of product on which the tax has been paid: _____

OR

Amount of tax remitted or to be remitted to the state on product: _____

Name of recipient: _____

_____ _____

Authorized Signature of Seller Date

_____ _____

Firm Name UBI Number

(b) **Example 1.** Crude oil is received at a marine terminal in this state and the tax is remitted. The crude oil is then commingled with crude oil from a source not involving a receipt at a marine terminal such as a receipt from a pipeline or a tank car. The commingled crude oil is refined into two petroleum products such as jet kerosene and unleaded gasoline. The petroleum products are then placed on separate waterborne vessels or barges and are shipped to a second marine terminal in this state. The receipt of petroleum products at the second marine terminal is presumed to be subject to the tax. The presumption may be rebutted by proof of what portion of each product of the shipment was previously subject to tax. Proof may be made by means of information on the invoice or a written certification that substantially conforms with the requirements set forth in subsection (7)(a) of this rule.

(c) **Example 2.** Petroleum product is received at a marine terminal in this state and the tax is remitted. Substances that were not previously subject to the tax are added to the petroleum product resulting in an increase of the volume of the petroleum product. The petroleum product is then placed on a waterborne vessel or barge and received at a second marine terminal in this state. ((~~Upon~~)) At time of receipt at the second marine terminal, the tax is due on the incremental increase in volume of the petroleum product caused by the addition of the substances.

(8) **Export credit.** A credit is allowed against the tax for any crude oil or petroleum products exported from or sold for export from the state. RCW 82.23B.040.

(a) ((~~An export credit may be taken by~~)) **Credit for previously taxed product.** Any person who exports or sells for export any previously taxed product may take an export credit. When the person taking

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the export credit is not the person who remitted the tax, the proof of payment of tax may be made by information on an invoice or written certification that substantially conforms to the requirements set forth in subsection (7)(a) of this rule.

(b) **When product is exported.** A person exports product when ((~~he or she~~)) the person actually transports the product beyond the borders of this state for purposes of sale, or delivers the product to a common carrier for delivery and subsequent sale or use at a point outside this state. Documentation of export is described in (d) of this subsection.

(c) **Sales of previously taxed product for export.** A person sells product for export when as a necessary incident to a contract of sale the seller agrees to, and does deliver previously taxed product:

(i) To the buyer at a destination outside this state;

(ii) To a carrier consigned to and for transportation to a destination outside this state;

(iii) To the buyer alongside or aboard a vessel or other vehicle of transportation under circumstances where it is clear that the process of ((~~exportation of~~)) exporting the product has begun; or

(iv) Into a pipeline for transportation to a destination outside this state.

In all circumstances, there must be a certainty of export evidenced by some overt step taken in the export process. A sale for export will not necessarily be deemed to have occurred if the product is merely in storage awaiting shipment, even though there is reasonable certainty that the product will be exported. The intention to export, as evidenced for example, by financial and contractual relationships, does not indicate certainty of export if the product has not commenced its journey outside this state. The product must actually enter the export stream. Sales of petroleum products by delivery into the fuel tank of a vessel or other vehicle in quantities greater than one hundred gallons will be considered placed into the export stream, provided the vessel or vehicle is immediately destined for a point outside this state and the seller obtains and keeps the documentary evidence ((~~provided~~)) discussed in (d) of this subsection.

(d) **Certificate of export.** A person who takes the credit for export must show that the previously taxed product was exported or sold for export. An export or a sale for export may be shown by obtaining and keeping any of the following documentary evidence:

(i) A bona fide bill of lading in which the seller is the shipper/consignor and by which the carrier agrees to transport the product to the buyer at a destination outside this state; or

(ii) A written certification in substantially the following form:

Certificate of Export

I hereby certify that the crude oil or petroleum products specified herein, purchased by or transferred to the undersigned from (seller or transferor), have been received into the export stream and are for export for sale or use outside Washington state. I will become liable for any tax credit granted (seller or transferor) pertaining to any crude oil or petroleum 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.

Registration No. . . . . Type of Business . . . . . .
(If applicable)

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Firm Name . . . . . Registered Name . . . . . (If different)

Authorized Signature . . . . . .

Title . . . . . .

Identity of Product . . . . . (Kind and amount by volume)

Date . . . . . ; or

(iii) Documents consisting of:

(A) Purchase orders or contracts of sale which show that the seller is required to place the product into the export stream, e.g., "f.a.s. vessel"; and

(B) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the product was delivered into the export stream; and

(C) When available, records showing that the products were packaged, numbered, or otherwise handled in a way which is exclusively attributable to products sold for export.

(e) **Circumstances when credit is not available.** Only the export or sale for export of crude oil or petroleum products will qualify for the export credit. Crude oil or petroleum products ((~~will~~)) are not ((~~be~~)) eligible for the export credit if, prior to export, they are subject to further processing or used as ingredients in other compounds unless the resulting products are themselves crude oil or petroleum products.

(f) **Location exchange agreement.** Crude oil or petroleum products delivered to purchasers in other states pursuant to location exchange agreements ((~~will~~)) do not qualify for the export credit unless the crude oil or petroleum products were previously subject to the tax and credit has not yet been taken. A location exchange agreement is any arrangement where crude oil or petroleum products located in this state are exchanged through an accounts crediting system, or any other method, for like substances located in other states. Any person acquiring previously taxed product in this state for which no credit has been taken may claim a credit on any such product subsequently exported or sold for export, provided all of the requirements set forth in subsections (8) and (9) of this rule have been met.

(g) **Maintenance of records.** Persons claiming ((~~this~~)) the export credit must maintain records necessary to verify that the ((~~credit taking~~)) qualifications for taking the credit have been met. For this purpose any person claiming a credit who maintains those records required by WAC 458-20-19301 (Multiple activities tax credit), subsection (9), will be considered to have satisfied the requirements of this subsection.

(9) **Amount of credit.** The amount of the credit ((~~will be~~)) is equal to the tax previously paid on the crude oil or petroleum product exported or sold for export and for which credit has not already been taken. In no event will a credit be allowed in excess of the tax paid on the product exported or sold for export.

(a) ((~~In the case of a~~)) **Credit for amount billed or written on certification.** If the person claiming the credit ((~~who~~)) is not the taxpayer, the credit will be equal to that portion of the tax billed on an invoice or shown on a written certification that substantially conforms with the requirements set forth in subsection (7)(a) of this rule which relates to the particular product exported or sold for export.

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((~~In order~~)) To determine the amount of tax reflected on an invoice which relates to a particular product exported or sold for export, it may be necessary to convert the tax paid from a rate per barrel to a rate per gallon or some other unit of measurement. This conversion is computed by taking the total amount of tax paid on an invoice for a particular product and dividing that figure by the total quantity of the product expressed in terms of the unit of measurement used for export. The credit is then computed by multiplying the converted rate times the quantity of product exported or sold for export.

(b) **Accounting methods for determining credit for commingled products.** When the product exported is previously taxed product commingled with untaxed product a person claiming the export credit may compute the amount of previously taxed product using one of the following methods:

(i) First-in, first-out method. Under this method the export credit is computed by treating existing inventory as sold before later acquired inventory.

(ii) Average of tax paid method. Under this method, the export credit is determined by calculating the average rate of tax paid on all inventory. This method requires computing the tax by making adjustments in the rate of tax paid on all products on hand as ((~~it is~~)) they are removed from or added to storage.

(iii) Any other method approved by the department.

(c) **Use of selected method.** The use of one of the methods set forth in this subsection (9) to account for tax paid on commingled crude oil or petroleum products constitutes an election to continue using the method selected. Once selected, no change in accounting method is permitted without the prior consent of the department.

(d) **Examples.** The following ((~~are~~)) examples ((~~of the way in which~~)) show how to compute the credit ((~~is to be computed:~~)).

(i) **Example 3.** A petroleum products distributor purchases 100 barrels each of premium unleaded gasoline and regular unleaded gasoline. The invoice from the refiner separately states that the invoice includes $5.00 of tax for each of the two types of products. The distributor pays the invoiced amount and later sells 2,000 gallons of the premium unleaded and 4,000 gallons of the regular unleaded to a retailer located outside Washington. ((~~In order~~)) To compute the amount of credit on the export sales the distributor must convert the tax paid from barrels to gallons. Since there are 42 US gallons in a barrel and 200 barrels purchased, the number of gallons equals 8400 (42 × 200). The per gallon tax paid on both products is equal to .119 cents per gallon ($10.00 ÷ 8400). The distributor would be eligible for credit equal to $2.38 for the premium unleaded (2,000 × $.00119) and $4.76 for the regular unleaded (4,000 × $.00119).

(ii) **Example 4.** A petroleum products distributor purchases 100 barrels of unleaded gasoline on which the tax has been remitted for a portion. The invoice for the unleaded separately states that the total price includes $4.00 of tax. This previously taxed product is commingled with 30 barrels of gasoline received through a pipeline, that is, product that is not subject to tax. The distributor sells 2,940 gallons of commingled product to a retailer for sale outside Washington. The tax paid on the previously taxed product is equal to .095 cents per gallon ($4.00 ÷ 4200). Since the exported product has been blended with product that has not been taxed, only 76.9% of the exported product is eligible for credit (100 ÷ 130). The credit is $2.15 (2,940 × .769 × $.00095).

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(iii) **Example 5.** A petroleum distributor purchases 100 barrels of gasoline and receives from the seller an invoice that states that the tax has been paid on 90% of the shipped product. The distributor exports the 100 barrels. The petroleum distributor may claim an export credit of $4.50. (90% of 100 barrels equals 90 barrels times the tax rate of $.05 equals $4.50.)

(iv) **Example 6.** A petroleum distributor purchases 100 barrels of unleaded gasoline from refinery A and later purchases 100 barrels from refinery B. The distributor stores all of its unleaded gasoline in a single storage tank. The invoice from refinery A separately states the amount of tax on the gasoline as $5.00 and the refinery B invoice states the tax as $4.00. The distributor pays the two invoiced amounts and sells 2,100 gallons of the commingled unleaded to a retailer located outside Washington. The distributor then purchases 100 more barrels of unleaded gasoline from distributor C. Distributor C's invoice separately states the tax as $3.00. Following payment of the invoice, the distributor exports an additional 2,100 gallons of unleaded. The distributor could choose to calculate the tax using one of the methods of accounting described in (b) of this subsection.

(A) Under the first-in, first-out method the distributor would treat all 4,200 gallons sold as if it was the unleaded gasoline purchased from refinery A. Under this method, the credit would be equal to .119 cents per gallon ($5.00 ÷ 4,200) or $5.00 total ($.00119 × 4,200).

(B) Under the average of tax paid method the distributor would recompute the tax paid on average for the entire commingled amount making adjustments as gasoline is sold or gasoline is added. Prior to the addition of the purchases from refinery B or distributor C, the rate would be .119 cents per gallon ($5.00 ÷ 4,200). Following the addition of the 100 barrels from refinery B the tank contains 8,400 gallons. The rate of tax would now be .107 cents per gallon (($5.00 + $4.00) ÷ 8,400). Out of this amount 2,100 gallons is exported in the first sale. The credit for this sale would be equal to $2.25 ($.00107 × 2,100).

(10) **Credit for use of petroleum products.** ((~~Effective March 26, 1992, any~~)) A person having paid the tax imposed by ((~~this~~)) chapter 82.23B RCW may claim a refund or credit for the following:

(a) The use of petroleum products as a consumer for a purpose other than as a fuel. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190; or

(b) The use of petroleum products as a component or ingredient in the manufacture of an item which is not a fuel.

(c) The amount of refund or credit claimed may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used.

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