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~~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 RCW a hazardous substance tax was 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, 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 any substances or products as hazardous which 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 WAC.)~~

~~(b) Sections 8 through 12 of I 97 consist of the tax provisions relating to hazardous substances and products which are administered exclusively under this section. The tax provisions relate exclusively to the possession of hazardous substances and products. The tax provisions do 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 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~~

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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 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 the following terms will apply.

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

(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, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Public Law 99 499. These substances consist of chemicals and elements in their purest form. A CERCLA substance which 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 the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); and

(iv) Anything else enumerated as a hazardous substance in chapter 173 \_\_\_\_ 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 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. This rule explains the provisions of chapter 82.21 RCW which imposes a hazardous substance tax on the privilege of possessing in this state specific hazardous substances. The hazardous substance tax is reported on the combined excise tax return.

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This rule contains many examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

**(2) What is a hazardous substance?** A hazardous substance is any of the following:

(a) CERCLA substance. Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, 42 USC Sec. 9601(14), as amended by Public Law 99-499. 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.

(b) Petroleum product. Any plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual 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.

(i) The term A "product ((=)) derived from the refining of crude oil" as used herein, means the first identifiable product produced from the refining process that is for sale, transfer, or exchange or commercial or industrial use. 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.

(ii) The term "derived from the refining of crude oil" "petroleum product" does not mean include petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when they are a hazardous substance pursuant to RCW 82.21.020(a) or (c) or when expressly so designated by the director of ecology.

(c) FIFRA. Any pesticide product required to be registered under the federal insecticide, fungicide and rodenticide act,

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section 136a of 7 USC Sec. 136 et. seq. as amended by Public Law 104-170.

(d) Additional substances. Any other substance listed as a hazardous substance in WAC 173-342-050.

~~(4)~~(3) Incidence of tax. The tax is imposed on the first possession in Washington of the hazardous substance.

~~(e)~~(a) What is "possession?" "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.

(b) Hazardous substances on consignment. Consignees who possess hazardous substances in this state with the power to sell the substances, in their own name or on behalf of a disclosed or undisclosed consignor, are liable for payment of the tax. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

~~(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.~~

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~~(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,~~

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

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

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

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

~~(3) (4) **Tax rate and measure.** The tax is imposed upon the privilege of possessing hazardous substances in this state. The tax rate is seven tenths of one percent (.007). The measure of the tax measure or base is the wholesale value of the hazardous substance, as defined herein.~~

(a) **What is "wholesale value?"** "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. For purpose of this subsection "place of use" means the place of first possession

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in Washington for hazardous substances not manufactured in this state.

(b) **Examples.** The following three examples illustrate how the wholesale selling price may be used to determine wholesale value. For the purpose of these illustrative examples no inquiry is made whether the wholesale selling price is indicative of the true wholesale value of the hazardous substance. See subsection (c) below.

(i) A manufacturer of a hazardous substance who is located out of state and has no tax reporting obligations in this state sells its products to a distributor in Washington for resale. The distributor is the first possessor in Washington. The measure of the tax is the wholesale selling price to the distributor.

(ii) A distributor located out of state who has no tax reporting obligations in this state sells a hazardous substance to a Washington retailer for resale. The retailer is the first possessor in Washington. The measure of the tax is the wholesale selling price to the retailer.

(iii) A manufacturer makes hazardous substances in Washington. The manufacturer sells its products to distributors and large retailers for resale. The measure of the tax is the actual selling price to each of the distributors and retailers even though the selling price may differ between the types of customers. A sale to a retailer and a sale to a distributor each establish a wholesale value.

(c) **Determining wholesale value.** A hazardous substance may be possessed under circumstances in which the selling price of the hazardous substance is not indicative of its true wholesale value or no wholesale selling price is available, as in exchanges of product between companies or first possession of a hazardous substance by a consumer who purchased at retail. When selling price is not indicative of wholesale value or when there is no selling price, the wholesale value must be determined by looking to comparable wholesale sales made at arm's length of similar hazardous substances in Washington. The comparable sales must take into account the location of the sale, product similarity in quality and quantity, conditions of sale, when the sale occurred, and whether the sale is made to comparable purchasers.

Certain price listings in independent publications may correspond to comparable wholesale sales of similar hazardous substances of like quality and character. These independent

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publications may be relied upon to determine wholesale value upon approval by the department of revenue and when comparable to sales made in Washington to a comparable purchaser.

~~(4)(5) Exemptions. The following are expressly exempt from the tax:~~ **Exemption for successive possession of a previously taxed hazardous substance.**

~~(a) RCW 82.21.040 provides an exemption for any~~ Any successive possession((s)) of a any previously taxed hazardous substance((s are tax exempt)).

(a) **What is a "previously taxed hazardous substance?"**  
"Previously taxed hazardous substance" is a hazardous substance upon which the tax has been paid to the state and which has not been remanufactured or reprocessed in any manner (other than repackaging or recycling for beneficial reuse) since the tax was paid. For purpose of this rule "recycling for beneficial reuse" means the recapturing of any used hazardous substance, for the sole purpose of extending the useful life of the hazardous substance in its previously taxed form.

(b) **What is "remanufactured or reprocessed?"**  
"Remanufactured or reprocessed" means that a chemical reaction occurred when two or more compounds or elements were combined. A hazardous substance comprised of previously taxed hazardous substances (compounds or elements) that, when mixed together produce a chemical reaction, is subject to tax.

(i) An "element" cannot be separated into simpler substances by chemical means.

(ii) A "compound" is composed of atoms of two or more elements chemically united in fixed proportions.

(iii) A "chemical reaction" of elements and/or compounds occurs when, upon mixing, the elements and/or compounds combine or break down to form a new molecular structure. A chemical reaction is distinguished from a mixture of elements and/or compounds; elements and/or compounds retain their structural identity in a mixture.

(c) **Examples of exempt successive possession.**

(i) Manufacturer is the first possessor of a hazardous substance and pays the tax. Wholesaler purchases the hazardous substance for resale to retailers. Wholesaler is a successive possessor of a previously taxed hazardous substance and does not owe the tax.

(ii) Manufacturer combines unleaded gasoline on which the tax has been paid with premium unleaded gasoline on which the tax has been paid to produce mid-level gasoline. The combination of

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the two compounds does not produce a chemical reaction. The possession of the mid-level gasoline is an exempt possession of a previously taxed hazardous substance because the unleaded gasoline and the premium unleaded gasoline have not been remanufactured or reprocessed as those terms are defined for the purpose of this rule.

(iii) Manufacturer combines gasoline on which the tax has been paid with ethanol to produce gasohol. The combination does not produce a chemical reaction. The gasohol is an exempt possession of previously taxed product.

(iv) Manufacturer A produces a hazardous substance for the purpose of later commercial use and pays the tax on the substance. Manufacturer A purchases a previously taxed hazardous substance and combines it with the original substance. The combination does not produce a chemical reaction. Because there is no chemical reaction, that is, the previously taxed hazardous substances have not been remanufactured or reprocessed as those terms are defined for the purpose of this rule, the resulting hazardous substance is an exempt possession of previously taxed product.

**(d) Examples of possessions not exempt from tax.**

(i) Manufacturer A produces and sells a hazardous substance on which it pays the tax due to the state. Manufacturer B purchases the hazardous substance and combines it with non-hazardous substances. The combination of substances produces a chemical reaction. Because there is a chemical reaction, that is, the previously taxed hazardous substance has been remanufactured or reprocessed as those terms are defined for the purpose of this rule, the resulting hazardous substance is not an exempt possession of previously taxed product.

(ii) Manufacturer A produces a hazardous substance for the purpose of later commercial use and pays the tax on the substance. Manufacturer A purchases a previously taxed hazardous substance and combines it with the original substance. The combination produces a chemical reaction. The resulting hazardous substance is not an exempt possession of previously taxed product because the previously taxed substances were remanufactured or reprocessed as those terms are defined for the purpose of this rule.

(e) **Proof of previously taxed hazardous substance.** Proof that a hazardous substance has been previously taxed may be in the form of information on the invoice from the seller or by certification from the seller. Such certification must be taken in good faith and must substantially be in the form below. Blanket certification may be taken for recurrent purchases of the same hazardous substance and must be renewed at intervals not to exceed

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two years. Sellers and purchasers both must retain copies of certifications for five years from the date the certification expires.

**Certification that the hazardous substance tax has been paid by a person previously in possession of the substance(s)**

I hereby certify that this purchase/exchange - all purchases/exchanges of (omit one)

\_\_\_\_\_ by  
(identify substance(s) purchased/exchanged )

\_\_\_\_\_,  
(~~identify substance(s) purchased~~)(name of purchaser)

who possesses registration no. \_\_\_\_\_,  
(buyer's Washington State uniform business identification or  
tax registration number, if registered)

consists of the purchase or exchange 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 substance(s).

\_\_\_\_The person in possession of the hazardous substance(s) prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller\_\_\_\_\_

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Tax Registration No. \_\_\_\_\_

Firm name \_\_\_\_\_

Address \_\_\_\_\_

Type of business \_\_\_\_\_

Authorized signature \_\_\_\_\_  
Title \_\_\_\_\_

Date \_\_\_\_\_

(f) When first possessor does not pay the tax. If the tax has not been paid by the person who had first possession in this state of the hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(i) A buyer and seller may wish to establish proof that the tax on the hazardous substance has not previously been paid. Such proof may be in the form of information on the invoice from the seller or by certification from the seller. Such certification must be taken in good faith and must substantially be in the form below. Blanket certification may be taken for recurrent purchases of the same hazardous substance and must be renewed at intervals not to exceed two years. Sellers and purchasers must retain copies of certifications for five years from the date the certification expires.

**Certification of sale or exchange of hazardous substance(s)  
upon which the hazardous substance tax has not been paid**

I hereby certify that this sale/exchange - all  
sales/exchanges of  
(omit one)

\_\_\_\_\_ to  
(identify substance(s) sold or exchanged)

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\_\_\_\_\_  
(name of purchaser/transferee)

who possesses registration no. \_\_\_\_\_,  
(buyer's Washington State uniform business identification or  
tax registration number, if registered)

consists of the purchase or exchange of hazardous  
substance(s) upon which the hazardous substance tax has not  
been paid in full by a person previously in possession of the  
substance(s) in this state. The undersigned understands that  
should the purchaser/transferee fail to pay the hazardous  
substance tax due that the Department of Revenue may collect  
the tax from the undersigned. 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 on possession of the hazardous substance(s)  
identified herein.

Name of registered  
seller/transferor

Tax Registration No.

Firm name

Address

Type of  
business

Authorized signature

Title

Date

(ii) Example. The first possessor in this state of petroleum  
products sells petroleum to an interstate transportation company.  
The first possessor has not paid the tax. That the tax has not  
been paid is shown by information on the invoice or by a  
certificate from the first possessor affirming that the tax has  
not been paid. If the interstate transportation company fails to

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pay the tax, the department may collect the tax from either the first possessor or the interstate transportation company.

~~(i) Any person who possesses a hazardous substance which 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. 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." 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 establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in state suppliers which 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.~~

(6) Other possessions exempt from tax. Certain other possessions are not subject to the tax.

(b) (a) Possession for personal or domestic use. 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 under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any

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business purpose) by that person, or a relative of that person, or a person residing in the same dwelling as that person is exempt from tax.

~~(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, possession For example, possession of hazardous substances used by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such substances are used, is a personal or domestic use and is not subject to tax. Additionally possessions of fuel petroleum by private natural persons for use in privately owned vehicles used exclusively for non-business purposes are tax exempt is a personal or domestic use and is not subject to tax.~~

~~(e) (b) **Retailer possession of "minimal" amounts.** Any possession of any a hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount which is determined to be "minimal" by the department of ecology is exempt from tax. That department has determined that the term "minimal" means less than \$1,000.00 worth of such hazardous substances measured by their wholesale value of the substance, possessed during any calendar month.~~

~~(d) (c) **Natural gas and alumina.** Possessions of alumina or natural gas are tax exempt.~~

~~(e) (d) **Prohibited by US Constitution.** Persons or activities which 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 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~~

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~~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 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.~~

~~(5)(7) Credits. There are three distinct kinds of tax two credits against liability which 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 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 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~~

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~~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 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 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 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.~~

**Fuel-in-tank credit.** A credit is allowed for previously taxed hazardous substance carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle. For purpose of this credit, "fuel tank" means the receptacle containing the fuel that generates the energy to propel the airplane, ship, truck, or other vehicle. The fuel-in-tank credit is limited to the amount of tax previously paid to the state or to the unpaid amount of tax due.

(i) The fuel-in-tank credit is allowed to the following persons:

(A) The person who carried from this state previously taxed hazardous substance in the fuel tank of the airplane, ship, truck, or other vehicle. Proof that the tax was previously paid may be made by information on the invoice or by certification from a

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seller that the tax was paid that conforms to the requirements set forth above in subsection (5)(e);

(B) The person who carried from this state hazardous substance in the fuel tank of the airplane, ship, truck, or other vehicle and who is a successive possessor of untaxed hazardous substance as discussed in subsection (5). Proof that the hazardous substance tax has not been paid may be made by information on the invoice or by certification from the seller that the tax has not been paid that conforms to the requirements set forth in subsection (5)(f). The person must pay the tax due and may take the credit allowed under this section against the amount remitted to the state; or

(C) The person who paid the tax to the state but did not carry from this state the hazardous substance in the fuel tank of the airplane, ship, truck, or other vehicle provided that the person receives and retains certification that the fuel was carried from this state that conforms to the requirements set forth in this subsection. Such certification must be taken in good faith.

When the fuel-in-tank credit is taken in reliance on a certificate issued by an unregistered person and the unregistered person does not carry from this state any or all of the hazardous substance, the person who took the credit must pay the taxes due upon such hazardous substance. The amount of tax paid constitutes a debt owed to the person by the unregistered person. Blanket certification may be taken for recurrent purchases of the same hazardous substance and must be renewed at intervals not to exceed two years. Sellers and purchasers must retain copies of certifications for five years from the date the certification expires.

(ii) Persons who did not pay the tax and receive certificates from their buyers must forward the certificates to the person from whom they purchased the fuel.

(iii) ~~(iv)~~ Fuel consumed in the tanks going out and coming in to the state is subject to tax. In order to equitably and efficiently administer this tax credit, any fuel which is brought into this state in ~~carrier vehicle~~ fuel tanks of any airplane, ship, truck, or other vehicle must be accounted for separately from fuel which is purchased in this state for use in such fuel tanks. Formulas approved by the department for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

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~~(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 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.~~

(iv) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tank((s)) credit certificate in substantially the following form, if the person signing the certificate possesses a registration certificate under RCW 82.32.030 for payment of taxes:

**CERTIFICATE OF CREDIT FOR FUEL CARRIED  
FROM THIS STATE IN FUEL TANKS  
BY A REGISTERED TAXPAYER**

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 is~~ were/will be  
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 agree to~~ pay the taxes due upon all or any  
part of such fuel which 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.

Tax 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)

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Date: \_\_\_\_\_

(v) When the person providing the certificate is not a registered taxpayer under RCW 82.32.030, the credit for fuel-in-tanks purchased in this state must be accounted for by using a certificate in substantially the following form:

**CERTIFICATE OF CREDIT FOR FUEL CARRIED  
FROM THIS STATE IN FUEL TANKS  
BY A PERSON NOT REGISTERED TO PAY TAXES IN WASHINGTON**

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from

\_\_\_\_\_  
(name of seller or transferor),  
were/will be carried from this state in the fuel tank of an  
airplane, ship, truck, or other vehicle operated in  
interstate or foreign commerce. I understand that the seller  
or transferor must pay the taxes due upon all or any part of  
such fuel which is not so carried from this state and that  
such tax paid constitutes a debt owed by me to the seller or  
transferor. This certification is given with full knowledge  
of, and subject to the legally prescribed penalties for fraud  
and tax evasion.

Type of Business \_\_\_\_\_  
Firm Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
Washington State 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 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~~

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~~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.~~

~~(e)(b) **Hazardous substance tax paid to another state.** A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax which has been paid by the same person measured by the wholesale value of the same hazardous substance. for any hazardous substance tax paid to another state for the same hazardous substance. The amount of credit may not exceed the tax due to this state upon possession of the same hazardous substance in this state. Persons claiming this credit must maintain records necessary to verify that the qualifications for taking the credit have been met.~~

~~(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in the following respects: in all its various respects.~~

~~(A) The taxable incident must be on the act or privilege of possessing the substance;~~

~~(B) The tax must be of a kind that is not generally imposed on other activities or privileges; ; the tax purpose must be that the substance is hazardous; and~~

~~(C) ((t)) 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-added tax.~~

~~(ii) This credit may be taken for the amount of any other state's qualifying tax which 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 prior to the first possession in Washington.~~

~~(iii) The amount of credit is limited to the amount of tax paid to 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.~~

~~(iv)(iii) Exchange agreements under which hHazardous substances or products possessed in this state that are exchanged~~

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through any exchange agreement or similar 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 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 qualify for this credit.~~

~~(6) Newly defined hazardous substances. The director of ecology may identify and designate things as being hazardous substances after March 1, 1989. Also, things 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.~~

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

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

~~(i) Example. The department of ecology adopts or amends the rule by adding a new substance and the effective date of the amendment is June 15. Possession of the substance does not become taxable until August 1.~~

~~(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 liability 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 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,~~

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~~manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the credit provision explained at part (5)(a) of this section.~~

~~(a) However, the term "product" is defined to mean only an item or items which 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.~~

~~(7) 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.~~

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~~(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 (4)(i) and (ii) of this section. 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. An example is fungible petroleum products, received from sources both within and outside this state, that are commingled in common storage facilities. In such cases the taxpayer should seek advance approval from the department, in writing, for tax reporting and credit taking on a test period, formulary, or volume percentage basis, subject to audit verification. Requests for approval should be mailed to Taxpayer Services, Department of Revenue, PO Box 47478, Olympia, WA 98504.~~

~~(a) Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage~~

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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 \_\_\_\_\_  
!TL(omit one)

\_\_\_\_\_  
\_\_\_\_\_  
by \_\_\_\_\_,  
(identify substance(s) purchased)!TL (name of purchaser)

who possesses registration no. \_\_\_\_\_,  
!TL(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.

\_\_\_\_ !TLThe registered seller named below personally paid the tax upon possession of the hazardous substances.

\_\_\_\_ !TLA person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

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~~(Check the appropriate line.)~~

~~Name of registered seller\_\_\_\_\_ !TLRegistration No.\_\_\_\_\_~~

~~Firm name\_\_\_ !TLAddress\_\_\_~~

~~Type of business\_~~

~~Authorized signature\_\_\_ !TLTitle\_\_\_~~

~~!TLDate\_\_\_~~

#### ~~PART II — PETROLEUM PRODUCTS TAX~~

~~(1) Under the provisions of chapter 383, Laws of 1989, (hereinafter 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~~

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~~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~~

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~~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 \_\_\_~~

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~~(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~~

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~~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)(c) 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."~~