

**THIS DRAFT IS NOT TO BE CONSIDERED A PROPOSED RULE AND IS ONLY PROVIDED FOR DISCUSSION PURPOSES TO DETERMINE WHAT TOPICS A LATER PROPOSED RULE MIGHT ADDRESS. UNDER NO CIRCUMSTANCES IS THIS DISCUSSION DRAFT TO BE USED TO DETERMINE TAX LIABILITY AND OR EXEMPTIONS.**

WAC 458-20-265      PETROLEUM PRODUCTS TAX

*Drafter's note re this proposed new rule. The HST and PPT statutes are nearly identical with the two following exceptions: the tax base for the HST includes more than just petroleum products and the exemptions for the two taxes are not identical. The proposed rule seeks to treat the taxation of petroleum products subject to the HST and subject to the PPT the same except for the difference in exemptions.*

(1) **Introduction.** This rule explains the provisions of chapter 82.23A RCW which imposes a tax on the privilege of possessing in this state petroleum products. The petroleum products tax is reported on a special line of the combined excise tax return that is designated as "petroleum tax." The law provides that this tax will not be imposed under specified circumstances. When those circumstances have occurred the line designated "petroleum tax" on the combined excise tax return will be shaded or in some other manner indicate that the tax is not currently being imposed.

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 petroleum product?** "Petroleum product" means 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.

(a) A "product derived from the refining of crude oil" means the first identifiable product produced from the refining process that is for sale, transfer, or exchange, or commercial or industrial use.

(b) The term "petroleum product" does not include petroleum products which are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc.

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(3) **Incidence of tax.** The tax is imposed on the first possession in Washington of the petroleum product.

(a) **What is "possession?"** "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.

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

(4) **Tax Measure.** The measure of the tax is the wholesale value of the petroleum product.

(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 products of like quality and character. For purpose of this subsection "place of use" means the place of first possession in Washington for petroleum products 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 petroleum product. See subsection (c) below.

(i) A manufacturer of a petroleum product 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.

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(ii) A distributor located out of state who has no tax reporting obligations in this state sells a petroleum product 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 petroleum products 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 petroleum product may be possessed under circumstances in which the selling price of the petroleum product 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 petroleum product 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 petroleum products 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 petroleum products of like quality and character. These independent 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.

(5) **Exemption for successive possession of a previously taxed petroleum product.** RCW 82.23A.030 provides an exemption for any successive possession of a previously taxed petroleum product

(a) **What is a "previously taxed petroleum product?"**

"Previously taxed petroleum product" is a petroleum product upon which the tax has been paid to the state and which has not been

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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 petroleum product, for the sole purpose of extending the useful life of the petroleum product 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 petroleum product comprised of previously taxed petroleum products (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 petroleum product and pays the tax. Wholesaler purchases the petroleum product for resale to retailers. Wholesaler is a successive possessor of a previously taxed petroleum product 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 the two compounds does not produce a chemical reaction. The possession of the mid-level gasoline is an exempt possession of a previously taxed petroleum product 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

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not produce a chemical reaction. The gasohol is an exempt possession of previously taxed product.

(iv) Manufacturer A produces a petroleum product for the purpose of later commercial use and pays the tax on the substance. Manufacturer A purchases a previously taxed petroleum product 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 petroleum products have not been remanufactured or reprocessed as those terms are defined for the purpose of this rule, the resulting petroleum product is an exempt possession of previously taxed product.

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

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

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

**(e) Proof of previously taxed petroleum product.** Proof that a petroleum product 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 petroleum product and must be renewed at intervals not to exceed two years. Sellers and purchasers both must retain copies of certifications for five years from the date the certification expires.

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**Certification that the petroleum products 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)

\_\_\_\_\_, 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 petroleum products upon which the petroleum products tax has been paid in full by a person previously in possession of the 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 petroleum products tax which has not been previously paid because of possession of the petroleum product(s) identified herein.

\_\_\_\_\_The registered seller named below personally paid the tax upon possession of the petroleum product(s).

\_\_\_\_\_The person in possession of the petroleum product(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 petroleum product, the department may collect the tax from any person who has had possession of the petroleum product. 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.

(i) A buyer and seller may wish to establish proof that the tax on the petroleum product 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 petroleum product 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 petroleum product(s)  
upon which the petroleum products tax has not been paid**

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

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

\_\_\_\_\_, (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 petroleum product(s) upon which the petroleum products 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 petroleum products 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 petroleum products tax which has not been previously paid on possession of the petroleum product(s) identified herein.

Name of registered seller/\_\_\_\_\_ Tax registration No. \_\_\_\_\_

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

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

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

Date \_\_\_\_\_

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(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 certification from the first possessor affirming that the tax has not been paid. If the interstate transportation company fails to pay the tax, the department may collect the tax from either the first possessor or the interstate transportation company.

(6) **Exemption for exported fuel.** RCW 82.23A.030 also provides an exemption for petroleum products that are exported for use or sale outside this state as fuel. For purpose of this exemption "fuel" means combustible gases and liquids suitable for the generation of energy.

This exemption may be claimed only by the person who exports untaxed petroleum products for use or sale outside this state as fuel or by the person who paid the tax to the state.

(a) The exemption may be claimed by the person who exports the petroleum products for use or sale outside this state as fuel when such person is the successive possessor of untaxed petroleum products as discussed in subsection (5). Proof that the petroleum products tax has not been paid may be made by information from the seller on the invoice or by certification that the tax has not been paid that conforms to the requirements set forth above in subsection (5)(f). The person must pay the tax due and may claim the exemption allowed under this subsection for the petroleum products exported for use or sale outside this state as fuel.

(b) The exemption may be claimed by the person who paid the tax to the state and who receives and retains certification from a buyer that the petroleum products were exported for use or sale outside this state as fuel. The certification must substantially conform to the requirements set forth in this subsection and must be taken in good faith. Except as provided in subsection (6)(e) below, blanket certification may be taken for recurrent purchases of the same petroleum product 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.

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In the event the first possessor has already remitted the tax to the state, the first possessor may exempt from taxation currently possessed petroleum products the value of which is equal to the value of the petroleum products exported as measured by the tax paid on those products.

**Certificate of Export of Petroleum Products  
For Use or Sale Outside this State as Fuel**

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 products tax due upon all or any part of such products which are not so exported outside Washington state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No. \_\_\_\_\_  
Type of Business \_\_\_\_\_  
(If applicable) Firm Name \_\_\_\_\_  
Registered Name (If different) \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_

Identity of Petroleum Product \_\_\_\_\_  
(Kind and amount by volume)

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

(c) Persons who export or cause the exportation of petroleum products to persons outside this state for use or sale as fuel and who claim the exemption allowed under this section or issue a certification of export must keep in their records proof of actual exportation.

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(d) Persons who receive a certification from their buyer and who did not pay the tax must forward the certification to the person from whom they purchased the fuel.

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

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

(a) **Possession for personal or domestic use.** Any possession of a petroleum product by a natural person under circumstances where the product is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person is exempt from tax. For example, possession of petroleum by private persons for use in privately owned vehicles is a personal or domestic use and is not subject to tax.

(b) **Prohibited by US Constitution.** Persons or activities which the state is prohibited from taxing under the United State Constitution are exempt from tax.

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

(i) Natural gas, or petroleum coke; or

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

(d) **Products packaged for retail sale.** Any possession of petroleum products packaged for sale to ultimate consumers is exempt. 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.

(8) **Credits.** There are two credits against liability.

(a) **Fuel-in-tank credit.** A credit is allowed for previously taxed petroleum product that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle ("carriers"). 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.

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

(A) The person who carried from this state previously taxed petroleum product 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 that the tax was paid from a seller that conforms to the requirements set forth above in subsection (5)(e);

(B) The person who carried from this state petroleum product in the fuel tank of the airplane, ship, truck, or other vehicle and who is a successive possessor of untaxed petroleum product as discussed in subsection (5). Proof that the petroleum product has not been paid may be made by information on the invoice or by certification that the tax has not been paid from the seller that conforms to the requirements set forth above 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 petroleum product 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 petroleum product, the person who took the credit must pay the taxes due upon such petroleum product. 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 petroleum product 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.

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(iii) 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 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.

(iv) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tank credit certificate in substantially the following form, if the person signing the certificate possesses a registration certificate under to 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),  
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 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. \_\_\_\_\_  
Type of Business \_\_\_\_\_  
Firm Name \_\_\_\_\_  
Business Address \_\_\_\_\_  
Registered Name \_\_\_\_\_  
(if different)

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Tax Reporting Agent \_\_\_\_\_  
(if applicable)

Authorized Signature \_\_\_\_\_  
Title \_\_\_\_\_

Identity of Fuel \_\_\_\_\_  
(kind and amount by volume)

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 \_\_\_\_\_

Business Address \_\_\_\_\_

Authorized Signature

Title \_\_\_\_\_

Identity of Fuel \_\_\_\_\_  
(kind and amount by volume)

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(b) **Petroleum products tax paid to another state.** A credit may be taken for any petroleum products tax paid to another state for the same petroleum product. The amount of credit may not exceed the tax due to this state upon possession of the same petroleum product 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:

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

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

(C) The tax measure must be stated in terms of the wholesale value of the petroleum products, without deduction such that the other state's tax does not constitute an income tax or 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 product was previously possessed in another taxing jurisdiction.

(iii) Petroleum products possessed in this state that are exchanged through any exchange agreement or similar accounts crediting system with like products possessed in other states do not qualify for this credit. The product taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(9) **Petroleum products untraceable to source.** Various circumstances may arise whereby a person will possess petroleum products 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

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basis, subject to audit verification. Requests for approval should be mailed to Taxpayer Services, Department of Revenue, PO Box 47478, Olympia, WA 98504.