



RULE-MAKING ORDER

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

Agency: Department of Revenue

Permanent Rule Only

Effective date of rule:

Permanent Rules

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

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

- Yes
 - No
- If Yes, explain:

Purpose: Amend WAC 458-20-126, titled: *Sales of motor vehicle fuel, special fuel, and nonpolluting fuel* to:

- Recognize provisions of ESSB 6440, Sec. 301, 304, and 305 (Chapter 216, Laws of 2014) with respect to natural gas, compressed natural gas, or liquefied natural gas used for transportation fuel;
- Update language on filing and paying retail sales and use tax for motor vehicle fuel, special fuel, and fuels commonly referred to as liquefied natural gas, compressed natural gas, or propane; and
- Clarify language such as changing “section” to “rule” throughout.

Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 458-20-126
- Suspended:

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

Other authority: RCW 82.12.022 and 82.14.230.

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-24-109 on December 3, 2014.
Describe any changes other than editing from proposed to adopted version: None.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

- Name: _____ phone () _____
- Address: _____ fax () _____
- e-mail _____

Date adopted: February 3, 2015

NAME

Dylan Waits

SIGNATURE

TITLE

Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 03, 2015
TIME: 8:20 AM

WSR 15-04-104

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	Amended		Repealed
Federal rules or standards:	New	Amended		Repealed
Recently enacted state statutes:	New	Amended	1	Repealed

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

	New	Amended		Repealed
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The number of sections adopted in the agency's own initiative:

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

	New	Amended		Repealed
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The number of sections adopted using:

Negotiated rule making:	New	Amended		Repealed
Pilot rule making:	New	Amended		Repealed
Other alternative rule making:	New	Amended		Repealed

AMENDATORY SECTION (Amending WSR 10-01-051, filed 12/9/09, effective 1/9/10)

WAC 458-20-126 Sales of motor vehicle fuel, special fuel((s)), and ((nonpollutant)) nonpolluting fuel. (1) **Introduction.** This ((section)) rule explains the retail sales and use taxes for motor vehicle fuel, special fuel((s)), and fuels commonly referred to as liquefied natural gas ((and)), compressed natural gas, or propane. This ((section)) rule also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuel((s)), and how are they taxed?** "Motor vehicle fuel" as used in this ((section)) rule means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuel((s))" as used in this ((section)) rule means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

((The)) Retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally ((the)), fuel taxes apply to sales of fuel for highway consumption and ((the)) retail sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuel((s)) exemptions are available?**

(a) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide ((exemptions from the)) retail sales tax and use tax exemptions for motor vehicle fuel or special fuel((, purchased on or after April 27, 2007,)) for use in passenger-only ferry vessels. ((This)) These exemptions ((applies)) apply only to fuel purchased by public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW.

(b) **Nonprofit transportation providers.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for ((sales of or uses of)) motor vehicle fuel or special fuel((s)) purchased or used by private, nonprofit transportation providers certified under chapter 81.66 RCW, ((who are)) if the purchaser is entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and 82.12.0256 provide ((exemptions for the)) retail sales tax and use tax ((when)) exemptions for motor vehicle fuel or special fuel((s are)) purchased or used for the purpose of public transportation, ((and)) if the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080((+3)).

(d) **Special fuel((s)) used in interstate commerce.** ((The)) RCW 82.08.0255 provides a retail sales tax ((does not apply to)) credit or refund for sales of special fuel((s)) that is delivered in this state ((which are)) but later transported and used outside this state by persons engaged in interstate commerce. ((RCW 82.08.0255(2).) This exemption)) The credit or refund also applies to persons hauling their own goods in interstate commerce.

((Exemption)) **Certificate.** Persons selling special fuel((s)) to interstate carriers must obtain a completed ((exemption certificate))

"Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser (~~(in order)~~) to document (~~(the)~~) entitlement to the (~~(exemption)~~) credit or refund. The (~~(exemption)~~) certificate (~~(can)~~) may be obtained from the department of revenue (department) on the internet at <http://www.dor.wa.gov/>, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706

The provisions of the (~~(exemption)~~) certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this (~~(section)~~) rule, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) (~~(Effective March 6, 2006,)~~) RCW 82.08.865 and 82.12.865 (~~(exempt)~~) provided retail sales tax and use tax exemptions to farm fuel users (~~(from retail sales and use taxes)~~) for diesel, biodiesel, and aircraft fuel purchased for nonhighway use.

(ii) (~~(Substitute Senate Bill (SSB) 5009, chapter 443, Laws of 2007, added biodiesel fuel as exempt from retail sales and use taxes when purchased or used by farm fuel users for nonhighway use. This))~~ These exemptions(~~(, effective May 11, 2007, also applies)~~) also apply to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which (~~(can)~~) may be obtained from the department (~~(on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:~~

~~Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
1-800-647-7706)~~

using the contact information described in (d) of this subsection.

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) (~~(Nonpollutant)~~) **Nonpolluting fuels.** (~~(Nonpollutant)~~) Nonpolluting fuels are described as liquefied natural gas (~~(and)~~), compressed natural gas, or liquefied petroleum gas, commonly called propane. (~~(Nonpollutant)~~) Nonpolluting fuels (~~(can)~~) may be purchased for either highway or "off-highway" use. (~~(Sales of nonpollutant)~~) Nonpolluting fuels purchased for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. (~~(Nonpollutant)~~) Nonpolluting

fuels purchased for "off-highway" use are subject to retail sales tax or use tax.

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 ~~((provides))~~ encourages the use of nonpolluting fuels by providing for payment of an annual fee by users of ~~((nonpollutant fuel))~~ nonpolluting fuels, in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these ~~((nonpollutant))~~ nonpolluting fuels.

Fuel dealers should not collect retail sales or use tax on any ~~((nonpollutant-fuel))~~ nonpolluting fuels sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** ~~((Nonpollutant))~~ Nonpolluting fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of ~~((nonpollutant))~~ nonpolluting fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling ~~((nonpollutant))~~ nonpolluting fuels to such bulk purchasers must obtain from the purchaser an exemption certificate ~~((in-order))~~ to document entitlement to the exemption. The "Certificate for Purchase of ~~((Nonpollutant))~~ Nonpolluting Special Fuels" must certify the amount of fuel ~~((which will be consumed by the purchaser))~~ that the purchaser will consume in using motor vehicles upon the highways of this state. This procedure is limited~~((, however,))~~ to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of ~~((Nonpollutant))~~ Nonpolluting Special ((Fuels-can)) Fuel" may be obtained from the department ~~((on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:~~

~~Taxpayer Services~~

~~Department of Revenue~~

~~P.O. Box 47478~~

~~Olympia, WA 98504-7478~~

~~1-800-647-7706))~~ using the contact information described in subsection (3)(d) of this rule.

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. ~~((In the event such))~~ If an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) ~~((Nonpollutant))~~ Nonpolluting fuel not placed in motor vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of ~~((Nonpollutant))~~ Nonpolluting Special Fuel((s))" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of ~~((his))~~ its permanent records. When ~~((nonpollutant))~~ nonpolluting fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such

buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, ~~((it will be presumed))~~ the department will presume that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075. ~~((In lieu of))~~

(i) Therefore, the fuel taxes of chapters 82.36 and 82.38 RCW generally apply to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for highway use.

(ii) Retail sales tax applies to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for off-highway use.

(iii) If the fuel taxes of chapters 82.36 and 82.38 RCW~~((7))~~ have not been paid, have been refunded, or have not been applied, then retail sales tax is due on ~~((their))~~ the out-of-state licensed vehicle owner's purchases of ~~((nonpollutant))~~ nonpolluting fuel, for either highway or off-highway use.

(e) Any person selling or dispensing liquefied natural gas, compressed natural gas, or propane into a tank of a motor vehicle powered by this fuel that does not comply with the provisions in chapter 82.38 RCW described in this rule, is subject to the penalty provisions in chapter 82.38 RCW.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle fuel or special fuel~~((s))~~ and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.