

**WAC 458-20-126 Sales of motor vehicle fuel, special fuel, and nonpolluting fuel.** (1) **Introduction.** This rule explains the retail sales and use taxes for motor vehicle fuel, special fuel, and fuels commonly referred to as liquefied natural gas, compressed natural gas, or propane. This 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, and how are they taxed?** "Motor vehicle fuel" as used in this 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" as used in this 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.

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, fuel taxes apply to sales of fuel for highway consumption and 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 exemptions are available?**

(a) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel or special fuel for use in passenger-only ferry vessels. These exemptions 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 motor vehicle fuel or special fuel purchased or used by private, nonprofit transportation providers certified under chapter 81.66 RCW, 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 retail sales tax and use tax exemptions for motor vehicle fuel or special fuel purchased or used for the purpose of public transportation, if the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080.

(d) **Special fuel used in interstate commerce.** RCW 82.08.0255 provides a retail sales tax credit or refund for sales of special fuel that is delivered in this state but later transported and used outside this state by persons engaged in interstate commerce. The credit or refund also applies to persons hauling their own goods in interstate commerce.

**Certificate.** Persons selling special fuel to interstate carriers must obtain a completed "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser to document entitlement to the credit or refund. The certificate 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

The provisions of the 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 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) RCW 82.08.865 and 82.12.865 provided retail sales tax and use tax exemptions to farm fuel users for diesel, biodiesel, and aircraft fuel purchased for nonhighway use.

(ii) These exemptions 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 may be obtained from the department 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) **Nonpolluting fuels.** Nonpolluting fuels are described as liquefied natural gas, compressed natural gas, or liquefied petroleum gas, commonly called propane. Nonpolluting fuels may be purchased for either highway or "off-highway" use. Nonpolluting fuels purchased for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. 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 encourages the use of nonpolluting fuels by providing for payment of an annual fee by users of 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 nonpolluting fuels.

Fuel dealers should not collect retail sales or use tax on any 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.** 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 nonpolluting fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpolluting fuels to such bulk purchasers must obtain from the purchaser an exemption certificate to document entitlement to the exemption. The "Certificate for Purchase of Nonpolluting Special Fuels" must certify the amount of fuel that the purchaser will consume in using motor ve-

hicles upon the highways of this state. This procedure is limited 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 Nonpolluting Special Fuel" may be obtained from the department 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. 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) Nonpolluting fuel not placed in motor vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpolluting Special Fuel" 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 its permanent records. When 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, 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.

(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 have not been paid, have been refunded, or have not been applied, then retail sales tax is due on the out-of-state licensed vehicle owner's purchases of 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 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.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.12.022, and 82.14.230. WSR 15-04-104, § 458-20-126, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0255, 82.12.0256, 82.08.865, and 82.12.865. WSR 10-01-051, § 458-20-126, filed 12/9/09, effective 1/9/10; WSR 08-16-045, § 458-20-126, filed

7/29/08, effective 8/29/08. Statutory Authority: RCW 82.32.300. WSR 91-15-022, § 458-20-126, filed 7/11/91, effective 8/11/91; WSR 83-17-099 (Order ET 83-6), § 458-20-126, filed 8/23/83; WSR 83-07-034 (Order ET 83-17), § 458-20-126, filed 3/15/83; Order ET 73-1, § 458-20-126, filed 11/2/73; Order ET 70-3, § 458-20-126 (Rule 126), filed 5/29/70, effective 7/1/70.]