

# Facts on Washington's Tax Structure

## Hazardous Substance Tax

Washington State Department of Ecology  
Christine Gregoire, Director



### THE HAZARDOUS SUBSTANCE TAX AND THE MODEL TOXICS CONTROL ACT

The Model Toxics Control Act provides for the cleanup of Washington's hazardous waste sites, solid and hazardous waste planning and management, water and environmental health protection, and other activities. To fund these activities, the law imposes the hazardous substance tax on the possession of certain hazardous substances in Washington.

The Department of Ecology has the primary responsibility for administering the Model Toxics Control Act (MTCA). The department regulates and monitors dangerous materials, oversees hazardous waste disposal and cleanup (remedial actions), and provides grants to local governments for cleanup activities. In addition, the MTCA supports programs in other state agencies that relate to solid and hazardous waste: the Department of Agriculture's Waste Pesticide Program; the Department of Community Development's emergency response training; the Department of Health's assessment of health impacts from various hazardous waste sites, and the Department of Natural Resource's work on contaminated sediments sites held in state trust. The Department of Revenue collects the hazardous substance tax.

#### What are hazardous substances?

Many substances are hazardous or toxic. However, not all substances thought to be hazardous are subject to the hazardous substance tax. The law currently imposes the hazardous substance tax on three broad categories:

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- ◆ **Petroleum products,**
- ◆ **Chemicals listed by the Environmental Protection Agency in the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and**
- ◆ **Pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).**

The Department of Ecology may add substances. If additional substances become taxable, notification will be provided.

#### Petroleum Products

All petroleum products produced by refineries, such as fuels, are subject to the hazardous substance tax.

Manufactured products (other than crankcase motor oils) that contain petroleum derivatives merely as an ingredient or component part are not subject to the hazardous substance tax. WD-40, gasoline additives, automotive parts cleaners, and plastics are examples of products **not** subject to the tax.

#### CERCLA Chemicals

Only CERCLA chemicals in their purest form are taxable. CERCLA chemicals diluted with water are still considered to be in their purest form and are taxable. For instance, household bleach contains both sodium hypochlorite and water.

Examples of common CERCLA chemicals include the following:

acetic acid  
acetone  
hydrochloric acid  
methyl ethyl ketone (MEK)  
phosphoric acid  
sodium hypochlorite (bleach)  
trisodium phosphate (TSP)  
toluene  
xylene

Products containing CERCLA chemicals only as ingredients are not subject to the tax. An example of this is nail polish remover. The nail polish remover contains acetone, but it also contains other ingredients, such as lanolin and perfume. Nail polish remover is not taxable because it is no longer considered to be pure.

### **FIFRA Products**

Pesticides registered under FIFRA include many products not normally thought of as pesticides. Products that kill or inhibit the growth of living organisms are considered pesticides. Products registered under FIFRA have an Environmental Protection Agency registration (EPA Reg) number printed on the product label. Examples of pesticide products include the following:

- ◆ Lawn and garden products including weed-and-feed fertilizers, herbicides, moss control agents, and slug baits.
- ◆ Household and commercial disinfectants, mildewicides, insecticides, and some bleaches.
- ◆ Mothproofing products.
- ◆ Products to disinfect swimming pools and hot tubs.
- ◆ Various pet products including flea and tick dips and shampoos, flea and tick collars.
- ◆ Rodenticides such as rat poisons and mole killers.
- ◆ Insect and animal repellent products.

- ◆ Products to control lice on humans and animals including sprays, shampoos, and lotions.

- ◆ Wood preservatives, preservative paints and stains.

- ◆ Marine anti-fouling paints.

### **Who pays the Hazardous Substance Tax?**

The first person who possesses hazardous substances in Washington must pay the hazardous substance tax. However, if it has not been paid, the Department of Revenue may collect the tax from any person who possesses the substances in this state. Once the tax is paid, successive possessors are not subject to the tax, unless the hazardous substance is remanufactured or reprocessed in some manner.

Sellers of hazardous substances often show the hazardous substance tax on the invoice. Sellers may show the effect of the tax as a line item charge. However, the seller remains liable for the hazardous substance tax.

The following are examples of persons who must pay the hazardous substance tax:

- ◆ All businesses who purchase hazardous substances from an out-of-state source.
- ◆ Persons who take consignment of hazardous substances for sale either in their own name or in the name of an out-of-state consignor.
- ◆ Persons who manufacture hazardous substances in this state.
- ◆ Out-of-state sellers who maintain a stock of hazardous substances in this state.

### **How do I show that the tax has already been paid?**

If you purchase the substances from an in-state seller, you should maintain evidence, such as an invoice, showing that the substances were delivered from an in-state source.

**What is the tax rate and how is the tax computed?**

The rate of tax is seven tenths of one percent (.007) and it is paid to the Department of Revenue on the Combined Excise Tax Return (Form Rev 40 2406). The tax is based on the wholesale value of hazardous substances.

For manufacturers of hazardous substances, the wholesale value is the manufacturer's selling price.

For wholesalers and retailers, the wholesale value is the purchase price.

For consumers who purchase hazardous substances from out-of-state retailers, the wholesale value is 80 percent of the purchase price.

**CERCLA products appearing in retail outlets are often identified by a brand name different than that shown on the CERCLA list. Is there a way for retailers to identify CERCLA products by brand name?**

Yes. The Department of Ecology has identified common CERCLA products that can be found on retailers shelves by brand name. A copy of this list is available from the Department of Revenue.

**Are there any exemptions from the hazardous substance tax?**

There are six exemptions:

- ◆ Previously taxed hazardous substances. Successive possessions of hazardous substances are not taxed again.
- ◆ Possession of hazardous substances by natural persons (as opposed to business entities) for personal and domestic uses.
- ◆ Retailers possessing small quantities of hazardous substances for sale to consumers. Small quantities are monthly inventories of hazardous substances for which the wholesale value is less than \$1,000.
- ◆ Possession of alumina or natural gas.

◆ Hazardous substances possessed by the federal government and its instrumentalities.

◆ Out-of-state sellers who deliver hazardous substances directly to the buyer in Washington.

**Are hazardous substances sold to the federal government subject to the tax?**

The federal government's exemption from the hazardous substance tax is not extended to persons selling hazardous substances to the federal government. If the substances are delivered from an inventory located in Washington, the seller has possessed the substances in this state and owes the tax.

Contractors and subcontractors who use hazardous substances while performing contracts for the federal government owe the tax if the substances have not been previously subjected to the tax. This is true even if the federal government retains title to the substances.

**Are hazardous substances delivered to out-of-state buyers subject to the tax?**

Yes. The tax is due from the first person possessing hazardous substances in Washington. Even though the substances may be sold to an out-of-state buyer, that doesn't alter the fact that those substances were possessed by the seller in this state.

**If hazardous substances are mixed together or are components in a new product, is the tax due again?**

The hazardous substance tax is due on the resulting product only if it results in the creation of a new product shown on the FIFRA or CERCLA lists.

If the new product is subject to the tax, the manufacturer may take a credit for the amount of hazardous substance tax previously paid by the manufacturer.

**Is the hazardous substance tax due if a previously taxed substance is repackaged into**

**smaller amounts or if the brand name is changed?**

Merely repackaging or changing the brand name does not result in a new hazardous substance. For this reason, no additional tax liability is incurred.

**Are hazardous substances possessed on consignment subject to the tax?**

Businesses selling hazardous substances on consignment, in their own name, or in the name of their client, are the first possessors of the substance. As first possessors, consignees must pay the tax. The consignee may take a credit for previously taxed substances only if the consignor has already paid the tax. To document that the tax was previously paid, the consignee must obtain proof from the consignor that the tax has been paid.

**Is the hazardous substance tax due if tax was paid in another state before the substances entered Washington?**

The person who paid a similar tax to another state may take credit on the Combined Excise Tax Return for the amount paid.

Many states impose taxes on hazardous or toxic substances. However, these taxes may not be similar. For example, Oregon's "Superfund Fees" and California's "Poison Tax" are not similar to Washington's hazardous substance tax.

If you have a question as to whether a tax paid to another state is similar to this state's hazardous substance tax, please contact the Department of Revenue.

**Is fuel used in interstate commerce subject to the tax?**

All fuel consumed in Washington by interstate carriers, airplanes, ships, trucks and other vehicles,

is subject to the tax. This is true even if the fuel was purchased out-of-state.

Fuel carried from this state in the fuel tanks of carriers is not subject to the hazardous substance tax.

Interstate carriers may give their suppliers a Certificate of Credit for Fuel Carried From This State in Fuel Tanks. When the certificate is given to suppliers, carriers pay the tax on the fuel consumed in this state directly to the Department of Revenue. First possessors receiving the certificate are relieved of paying the tax.

**How can I get more information?**

Additional information may be found in the tax statute, (Chapter 82.21 of the Revised Code of Washington); in the Department of Revenue's administrative rule (Chapter 458-20-252 Washington Administrative Code); and in advisory bulletins issued by the Department of Revenue.

If you need assistance in determining if a substance is taxable, or if you would like to receive a complete FIFRA or CERCLA list on a user supplied computer disc, contact the Department of Ecology by calling (206) 438-3000.

If you need assistance in determining how to pay the tax, or if you want a copy of the Household Hazardous Substance List (common retail products) or WAC 458-20-252, contact the Department of Revenue's Taxpayer Information and Education Section.

1-800-647-7706 In-state calls only  
1-800-233-6349 Out-of-state calls  
(206) 753-5525 Olympia

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