

Chapter 82.21 RCW
HAZARDOUS SUBSTANCE TAX—MODEL TOXICS CONTROL ACT

Sections

82.21.010	Intent of pollution tax—Intent of model toxics control reform act.
82.21.020	Definitions.
82.21.030	Pollution tax.
82.21.040	Exemptions.
82.21.045	Tax preferences—Expiration dates.
82.21.050	Credits.
82.21.900	Short title—1989 c 2.
82.21.905	Captions—1989 c 2.
82.21.910	Construction—1989 c 2.
82.21.915	Existing agreements—1989 c 2.
82.21.920	Effective date—1989 c 2.

RCW 82.21.010 Intent of pollution tax—Intent of model toxics control reform act. (1) It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. However, it is not intended to impose a tax on the first possession of small amounts of any hazardous substance (other than petroleum and pesticide products) that is first possessed by a retailer for the purpose of sale to ultimate consumers. This chapter is not intended to exempt any person from tax liability under any other law.

(2) It is the specific purpose of the model toxics control reform act (chapter 422, Laws of 2019) to update the model toxics control program and its primary funding mechanism. These reforms are intended to achieve the financial stability, transparency, and long-term protection of revenues. Specifically, this reform act makes the following changes:

(a) Increases funding for programs and projects related to clean air, clean water, toxic cleanup, and prevention, with specific focus on stormwater pollution;

(b) Provides distinct and transparent financial separation of capital and operating budget funding under the model toxics control program;

(c) Improves the transparency and visibility of operating and capital project expenditures under the model toxics control program; and

(d) Eliminates the year-to-year volatility of hazardous substance tax revenues by moving to a volumetric rate for petroleum products. [2019 c 422 § 101; 1989 c 2 § 8 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2019 c 422: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 422 § 419.]

Intent—2019 c 422: "It is the intent of the legislature that during the 2019-2021 biennium no transfers to the state general fund, education legacy trust account, or opportunities pathway account must be made from the state toxics control account, local toxics control account, environmental legacy stewardship account, model toxics control operating account, model toxics control capital account, or model toxics control stormwater account." [2019 c 422 § 1.]

RCW 82.21.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hazardous substance" means:

(a) 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 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that 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 products;

(c) Any pesticide product required to be registered under section 136a of the federal insecticide, fungicide and rodenticide act, 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology shall not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition shall take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this paragraph (d) means an item or items containing both:

(i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this paragraph (d) to present a threat to human health or the environment if released into the environment; and

(ii) one or more substances that are not hazardous substances.

(2) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, 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.

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(4) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner

(other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(5) "Wholesale value" means 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 accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [2002 c 105 § 1; 1989 c 2 § 9 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2002 c 105: "This act takes effect July 1, 2002."
[2002 c 105 § 2.]

RCW 82.21.030 Pollution tax. (1)(a) A tax is imposed on the privilege of possession of hazardous substances in this state. Except as provided in (b) of this subsection, the rate of the tax is seven-tenths of one percent multiplied by the wholesale value of the substance. Moneys collected under this subsection (1)(a) must be deposited in the model toxics control capital account.

(b) For the fiscal year beginning July 1, 2019, the rate of the tax on petroleum products is \$1.09 per barrel. For subsequent fiscal years, the rate of tax on petroleum products is determined pursuant to subsection (3) of this section. The tax collected under this subsection (1)(b) on petroleum products must be deposited as follows, after first depositing the tax as provided in (c) of this subsection, except that during the 2021-2023 biennium the deposit as provided in (c) of this subsection may be prorated equally across each month of the biennium:

(i) Sixty percent to the model toxics control operating account created under RCW 70A.305.180;

(ii) Twenty-five percent to the model toxics control capital account created under RCW 70A.305.190; and

(iii) Fifteen percent to the model toxics control stormwater account created under RCW 70A.305.200.

(c) Until the beginning of the ensuing biennium after the enactment of an additive transportation funding act, \$50,000,000 per biennium to the motor vehicle fund to be used exclusively for transportation stormwater activities and projects. For purposes of this subsection, "additive transportation funding act" means an act enacted after June 30, 2023, in which the combined total of new revenues deposited into the motor vehicle fund and the multimodal transportation account exceed \$2,000,000,000 per biennium attributable solely to an increase in revenue from the enactment of the act.

(d) The department must compile a list of petroleum products that are not easily measured on a per barrel basis. Petroleum products identified on the list are subject to the rate under (a) of this subsection in lieu of the volumetric rate under (b) of this subsection. The list will be made in a form and manner prescribed by the department and must be made available on the department's internet website. In compiling the list, the department may accept technical assistance from persons that sell, market, or distribute petroleum products and consider any other resource the department finds useful in compiling the list.

(2) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(3) For fiscal years beginning on or after July 1, 2020, the rate of tax on petroleum products for the previous fiscal year must be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States department of commerce, bureau of economic analysis for the most recent 12-month period ending December 31st of the prior year. [2023 c 68 § 3; 2022 c 182 § 313; 2021 c 333 § 705; 2020 c 20 § 1483; 2019 c 422 § 201; 1989 c 2 § 10 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2022 c 182 §§ 313, 408-414, and 421: "Sections 313, 408 through 414, and 421 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 25, 2022]." [2022 c 182 § 508.]

Intent—2022 c 182: See note following RCW 70A.65.240.

Effective date—2021 c 333: See note following RCW 43.19.642.

Effective date—Intent—2019 c 422: See notes following RCW 82.21.010.

RCW 82.21.040 Exemptions. The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a 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.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance 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.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

* (5) (a) Any possession of a hazardous substance as defined in RCW 82.21.020(1)(c) that is solely for use by a farmer or certified applicator as an agricultural crop protection product and warehoused in this state or transported to or from this state, provided that the person possessing the substance does not otherwise use, manufacture, package for sale, or sell the substance in this state.

(b) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(6) Persons or activities which the state is prohibited from taxing under the United States Constitution. [2015 3rd sp.s. c 6 § 1902; 1989 c 2 § 11 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** Subsection (5) of this section expires January 1, 2026, pursuant to the automatic expiration date established in RCW 82.32.805(1) (a).

Tax preference performance statement—2015 3rd sp.s. c 6 § 1902:

"(1) The legislature categorizes the tax preference in section 1902 of this act as one intended to improve industry competitiveness, as indicated in RCW 82.32.808(2) (b).

(2) The legislature's specific public policy objective is to clarify an existing exemption from the hazardous substance tax for agricultural crop protection products to incentivize storing products in Washington state as they are engaged in interstate commerce. The legislature finds that the agricultural industry is a vital component of Washington's economy, providing thousands of jobs throughout the state. The legislature further finds that Washington state is the ideal location for distribution centers for agricultural crop protection products because Washington is an efficient transportation hub for Pacific Northwest farmers, and encourages crop protection products to be managed in the most protective facilities, and transported using the most sound environmental means. However, products being warehoused in the state are diminishing because agricultural crop protection products are being redirected to out-of-state distribution centers as a direct result of Washington's tax burden. Relocation of this economic activity is detrimental to Washington's economy through the direct loss of jobs and hazardous substance tax revenue, thereby negatively impacting the supply chain for Washington farmers, thereby causing increased transportation usage and risk of spillage, thereby failing to encourage the most environmentally protective measures. Therefore, it is the intent of the legislature to encourage the regional competitiveness of agricultural distribution by clarifying an exemption from the hazardous substance tax for agricultural crop protection products that are manufactured out-of-state, warehoused or transported into the state, but ultimately shipped and sold out of Washington state.

(3) If a review finds an average increase in revenue of the hazardous substance tax, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data available from the department of revenue." [2015 3rd sp.s. c 6 § 1901.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

RCW 82.21.045 Tax preferences—Expiration dates. See RCW 82.32.805 for the expiration date of new tax preferences for the tax imposed under this chapter. [2013 2nd sp.s. c 13 § 1711.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

RCW 82.21.050 Credits. (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any hazardous substance tax paid to another state with respect to the same hazardous substance. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that hazardous substance. For the purpose of this subsection:

(a) "Hazardous substance tax" means a tax:

(i) Which is imposed on the act or privilege of possessing hazardous substances, and which is not generally imposed on other activities or privileges; and

(ii) Which is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof. [1989 c 2 § 12 (Initiative Measure No. 97, approved November 8, 1988).]

RCW 82.21.900 Short title—1989 c 2. See RCW 70A.305.900.

RCW 82.21.905 Captions—1989 c 2. See RCW 70A.305.901.

RCW 82.21.910 Construction—1989 c 2. See RCW 70A.305.902.

RCW 82.21.915 Existing agreements—1989 c 2. See RCW 70A.305.903.

RCW 82.21.920 Effective date—1989 c 2. See RCW 70A.305.904.