

TITLE 45 DEPARTMENT OF STATE REVENUE

Proposed Rule LSA Document #14-145

DIGEST

Amends 45 IAC 6-1-1 to update the purpose of rules. Amends 45 IAC 6-1-3 to update definitions. Amends 45 IAC 6-1-5 to streamline requirements for reporting, paying and administration of penalty. Amends 45 IAC 6-1-8 to exclude gasoline. Amends 45 IAC 6-1-9 to update refund provisions. Amends 45 IAC 6-1-12 concerning books and record retention. Repeals 45 IAC 6-1-2, 45 IAC 6-1-4, 45 IAC 6-1-6, 45 IAC 6-1-7, 45 IAC 6-1-10, 45 IAC 6-1-11, 45 IAC 6-1-13, 45 IAC 6-1-14, and 45 IAC 6-1-15. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Business

45 IAC 6-1-1; 45 IAC 6-1-2; 45 IAC 6-1-3; 45 IAC 6-1-4; 45 IAC 6-1-5; 45 IAC 6-1-6; 45 IAC 6-1-7; 45 IAC 6-1-8; 45 IAC 6-1-9; 45 IAC 6-1-10; 45 IAC 6-1-11; 45 IAC 6-1-12; 45 IAC 6-1-13; 45 IAC 6-1-14; 45 IAC 6-1-15.

SECTION 1. 45 IAC 6-1-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 6-1-1 Statutory scheme; purpose of rules

Authority: IC 6-8-1-12; IC 6-8.1-3-3

Affected: IC 6-8-1

Sec. 1. ~~Introduction. The 1947 session of the Indiana Legislature enacted the Petroleum Severance Tax Act [IC 6-8-1].~~ **(a)** Under this act ~~[IC 6-8-1] article~~, a tax of one per cent (1%) of ~~is imposed under IC 6-8-1-8 on the value of all petroleum products, which includes generally crude oil and gas severed and taken from the land, is to be imposed upon the owner and producers of such~~ **the petroleum products.**

(b) ~~While the tax is imposed upon the act of severing such natural resources from the ground, the Act [IC 6-8-1] imposes the~~ **The responsibility for the payment of the tax is upon any person purchasing such petroleum products or having such petroleum products in their possession, in that it is a lien upon such petroleum for the tax and penalties and interest thereon. The responsibility follows such petroleum products in the hands of the purchaser or the earlier gatherer.**

(c) ~~The Act [IC 6-8-1] further provides that any~~ **Any person purchasing or having possession of petroleum products upon which the petroleum severance tax has not been paid shall be personally liable for the reporting and payment of the amount of the lien of the tax and other charges. It is further provided that** **Additionally**, if the purchaser or the person having possession of petroleum products ~~shall pay~~ **pays** the amount of the petroleum severance tax, they shall be entitled to reimbursement from the owners or producers. ~~and further in making payment of~~ **By paying** the petroleum severance tax, these purchasers or possessors of petroleum products are not subject to any suit or action for recovery by the owners or producers of petroleum products;

~~and the.~~ Any remedy of such owners or producers is exclusively by way of claim for refund and litigation upon such claim for refund with the ~~Division~~ **Department**.

~~(d) For these reasons it is the intent in the administration of the petroleum severance tax to impose the~~ **The** responsibility for the reporting and paying of the petroleum severance tax **is imposed** upon all purchasers and those having possession of petroleum products after severance from the ground, which would include all petroleum products gatherers. The reporting and payment is to be made upon forms prescribed **by the Department** in these regulations and at the time prescribed in the regulations. ~~The effect of this procedure is to make for more effective administration of the Act [IC 6-8-1], prompt payment of the petroleum severance tax and the relief from the responsibility for any liens upon purchasers or possessors of petroleum products under the petroleum severance tax. (Department of State Revenue; PT II, Sec 1; filed Jul 18, 1947, 9:30 am: Rules and Regs. 1948, p. 346)~~

SECTION 2. 45 IAC 6-1-3 IS AMENDED TO READ AS FOLLOWS:

45 IAC 6-1-3 Definitions

Authority: IC 6-8-1-12; IC 6-8.1-3-3

Affected: IC 6-8-1; IC 6-8-3

Sec. 3. Regulations—Definitions. (1) Persons. “For the purpose of this Act ~~[IC 6-8-1]~~ the word ‘person’ shall be construed to mean and include any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, firm, partnership, joint venture, pool, syndicate, association, corporation, estate, trust, or any other group or combination acting as a unit.”

(2) Department or Division. “The term ‘Department’ shall be construed to mean that agency of the State of Indiana to which is assigned the administration of the Gross Income Tax Act of 1933 ~~[IC 6-2-1]~~, as amended, or, any agency of the State of Indiana to which the administration of the Petroleum Severance Tax Act ~~[IC 6-8-1]~~ may be assigned under the terms of the Indiana Department of State Revenue Act ~~[IC 6-8-3]~~.”

(3) Taxpayer. “The word ‘Taxpayer’ shall be construed to mean any person by whom a tax is payable under this Act ~~[IC 6-8-1]~~.”

(4) Value or Measure of the Tax. “The term ‘value’ as used herein as a measure of the tax imposed shall be construed to mean the value of the petroleum at the well from which it is produced as determined by the price paid, and, if no such price be paid or offered, then as determined pursuant to the rules or regulations of the Division.”

(5) Petroleum. “The term ‘petroleum’ shall be construed to mean and include petroleum oil and gas, and other hydrocarbons, whether liquid or gaseous form and regardless of gravity, which are severed from the land and produced from a well in the State of Indiana.”

(6) Producer and Owner. “The term ‘producer’ shall mean and include any person actually engaged in severing petroleum from the land direct. The term ‘owner’ shall mean and include any person receiving or entitled to receive a proportionate share of petroleum or a proportionate share of the proceeds of the sale of petroleum after production thereof by an operator, and without limitation of the foregoing, includes the owners of royalties, excess royalty, overriding royalty, mineral rights, or working interest.”

(7) Excise or Privilege Tax. “A tax at the rate of one per cent (1%) of the value of all petroleum is hereby imposed as of the time of the severance of such petroleum from the land, upon all producers and owners thereof as an excise for the privilege of severing the same from the land

and producing the same from the well, except when the gas from any well is used to pump or treat the same or when such gas is piped to landowner's private buildings for his own use.”

(8)(1) (a) **Purchaser.** “The term ~~‘purchaser’~~ **Purchaser**” shall ~~mean~~ **means** any person engaged in the purchase of petroleum products as defined in this Act ~~[IC 6-8-1]~~, and shall include pipelines, refineries, and any other form of petroleum purchasers for the purpose of resale or use.”

(9)(2) (b) **Petroleum Gatherers.** “The term ~~‘petroleum~~ **Petroleum** gatherer” is construed to ~~mean~~ **means** those who are engaged in purchasing ~~purchase~~ **purchase** petroleum products, as well as those who are engaged in gathering ~~gather~~ **gather** and transporting ~~transport~~ **transport** petroleum products in which they do not have the right, title or interest, and shall include any person ~~having in his possession who possesses~~ **possesses** petroleum products as defined in this Act ~~[IC 6-8-1]~~ upon which the petroleum severance tax has not been paid.” (*Department of State Revenue; PT II, Sec 3; filed Jul 18, 1947, 9:30 am; Rules and Regs. 1948, p. 347*)

SECTION 3. 45 IAC 6-1-5 IS AMENDED TO READ AS FOLLOWS:

45 IAC 6-1-5 Time and place of tax; reporting; payment; penalty

Authority: IC 6-8-1-12; IC 6-8.1-3-3

Affected: IC 6-8-1-10; IC 6-8-1-11

Sec. 5. The Reporting of the Tax.

(1) (a) **Basis of the Tax.** The tax is to be imposed at the rate of one per cent (1%) upon the value or sales price of petroleum products at the time of sale or delivery from the place of production.

(2) (b) **Method of Reporting.** The petroleum severance tax is to be reported by all ~~All~~ **All** purchasers of petroleum products or gatherers of petroleum products **must report this tax** at the time ~~such~~ **the** petroleum products are transported from the place of production. ~~The~~ **This** reporting of the tax is to be made on or after the ~~first~~ **last** day of the month immediately following the preceding monthly period by the purchaser or petroleum products gatherer on forms prescribed by the ~~Division~~ **Department**. At the time of ~~such~~ **the** reporting, a remittance for the amount of tax imposed upon the severance of petroleum products from the land is to be made to the ~~Division~~ **Department**. The purchaser or petroleum products gatherer is imposed with the responsibility to ~~make~~ **must** report of the severance of petroleum products from the land and the payment of the tax thereupon for and on behalf of and out of funds belonging to the owner or producer as their interests may be. The reports showing the amount and computation of the tax shall reflect the names and addresses of all owners or producers or interest holders participating in the production of petroleum products ~~which have been severed from the land.~~

(3) **Forms.**

(a) (c) ~~Form 1. The Petroleum Severance Tax Division.~~ **The Department** will make available **Petroleum Severance Tax Return** forms to be used in making reports of and payment of the petroleum severance tax on behalf of all producers and owners as their interests may be in the production of petroleum products. These reports ~~returns~~ shall show the total monthly amount of petroleum products severed from the land, the amount of tax thereupon and the amounts paid to the various owners or producers as their interest may be. ~~This form should insofar as possible coincide with the oil run statement commonly utilized in the petroleum industry as a basis for the purpose of making payment for petroleum products and should be properly signed and certified.~~

(b) ~~Form 2. When the petroleum gatherer makes the Petroleum Severance Tax Return and payment of the tax, it will be necessary for the purchaser of such petroleum products, for whom~~

~~the gatherer is making conveyance of the petroleum products, to prepare and submit to the Petroleum Severance Tax Division an information return showing the total monthly amount of petroleum products severed from the land, the amount of tax thereupon and the amounts paid to the various owners or producers as their interest may be. This form should, insofar as possible, coincide with the oil run statement commonly utilized in the petroleum industry as the basis for the purposes of making payment for petroleum products and this information return should be properly signed and certified.~~

~~(4) (d) Remittances. Remittance to the Petroleum Severance Tax Division of the Indiana Department of State Revenue, 141 South Meridian Street, Indianapolis, Indiana, for the amount of tax imposed under this Act [IC 6-8-1] may **must** be made in cash or in by checks or any other medium of exchange commonly accepted in business practices. The amount of tax thus computed and the liens imposed under this Act [IC 6-8-1] will not be considered extinguished until the remittance in the form of checks or otherwise have cleared the various banking institutions or depository and the Division is in receipt of the cash amount.~~

~~(5) Due Date of Monthly Returns and Tax Payments and Information Returns. The due date of all monthly petroleum tax severance returns as provided for under this Act [IC 6-8-1] and regulations thereto and payments for the amount of tax reflected thereon shall be made to the Petroleum Tax Division on and after the first day of the month immediately succeeding the monthly period for which the tax is computed and not later than the thirtieth day of the month immediately following the monthly period for which the tax is computed.~~

~~(6) (e) Penalty. **If a person responsible for paying this tax fails to do so in a timely fashion, that person** Any person upon whom the liability for making returns of and the payment of the petroleum severance tax is imposed failing to make the returns and/or payment of the tax provided for by the Act [IC 6-8-1] or regulations there under within the time prescribed shall be subject to **standard penalties and interest under IC 6-8.1-10** liable and the Division may assess a penalty of \$2.00, or ten per cent (10%) of the amount of the tax whichever is the greater and shall charge and impose an interest charge upon the amount of unpaid tax at the rate of six per cent (6%) per year from the date when such tax became due and payable until the same is paid and for the purpose of computation of interest charges; any major fraction of a month shall be considered as a full month and any minor fraction shall be disregarded. (Department of State Revenue; PT II, Sec 5; filed Jul 18, 1947, 9:30 am; Rules and Regs. 1948, p. 349) NOTE: Current Address is: State Office Building; 100 N. Senate Ave.; Indianapolis, IN 46204.~~

SECTION 4. 45 IAC 6-1-8 IS AMENDED TO READ AS FOLLOWS:

45 IAC 6-1-8 Excluded gas

Authority: IC 6-8-1-12; IC 6-8.1-3-3

Affected: IC 6-8-1-8

~~Sec. 8. Exclusions. The Petroleum Severance Tax Act [IC 6-8-1] permits such amounts of gas~~
Gas is excluded from taxable consideration if it is produced from any well which is used in pumping or treating petroleum products, or when such gas is piped and used by the landowner in his private buildings and for his own private use,~~to be excluded from taxable consideration under the provisions of this Act [IC 6-8-1]. (Department of State Revenue; PT II, Sec 8; filed Jul 18, 1947, 9:30 am; Rules and Regs. 1948, p. 352)~~

SECTION 5. 45 IAC 6-1-9 IS AMENDED TO READ AS FOLLOWS:

45 IAC 6-1-9 Refunds

Authority: IC 6-8-1-12; IC 6-8.1-3-3

Affected: IC 6-8.1-8; IC 6-8.1-9

Sec. 9. ~~Refunds. Any taxpayer may apply for a refund on forms prescribed by the Department by producer and owner who has substantial reason to believe that a payment of the Petroleum Severance Tax has been made in excess of that which is legally due may make application for refund of such tax as has been paid by him or for him upon forms prescribed by the Petroleum Severance Tax Division which in substance shall properly identify such taxpayer~~ **identifying the amount and date of the alleged overpayment, the date of the alleged overpayment, the payor of the tax and the area in which the petroleum products upon which the tax is imposed were produced. The application for refund must include any supporting documentation as is reasonably requested by the Department.** *(Department of State Revenue; PT II, Sec 9; filed Jul 18, 1947, 9:30 am; Rules and Regs. 1948, p. 352)*

SECTION 6. 45 IAC 6-1-12 IS AMENDED TO READ AS FOLLOWS:

45 IAC 6-1-12 Books and records; retention

Authority: IC 6-8-1-12; IC 6-8.1-3-3

Affected: IC 6-8-1-23

Sec. 12. ~~Books and Records. Every taxpayer under the provisions of this Act ~~IC 6-8-11~~ shall keep and maintain proper books and records, proper and sufficient to adequately reflect the severance of all petroleum products under this Act ~~IC 6-8-11~~ and the their value thereof. Such books and records shall reflect the interest of the taxpayer, purchaser of the petroleum products, etc. Such books and records shall be maintained and kept by the taxpayer for a period of three (3) years from the date of the filing of the return and the payment of the tax for each taxable period. *(Department of State Revenue; PT II, Sec 12; filed Jul 18, 1947, 9:30 am; Rules and Regs. 1948, p. 353)*~~

SECTION 7. THE FOLLOWING ARE REPEALED: 45 IAC 6-1-2, 45 IAC 6-1-4, 45 IAC 6-1-6, 45 IAC 6-1-7, 45 IAC 6-1-10, 45 IAC 6-1-11, 45 IAC 6-1-13, 45 IAC 6-1-14, 45 IAC 6-1-15.