Reprinted
March 26, 1999

ENGROSSED
HOUSE BILL No. 1789

DIGEST OF HB 1789 (Updated March 25, 1999 2:24 pm - DI 73)

Citations Affected: IC 6-2.5; IC 6-6; IC 6-8.1; noncode.

Synopsis: Motor carrier fuel taxes. Provides that a motor carrier is entitled to a credit against the motor carrier fuel tax for motor fuel used to propel equipment mounted on a motor vehicle that has a common reservoir for locomotion and for the operation of the equipment. Provides that the credit applies to motor fuel used to propel the equipment within Indiana and outside Indiana. Requires a motor carrier to obtain certification from the department of state revenue before the motor carrier may claim the credit. Requires a motor carrier to file a claim for the credit with the motor carrier's quarterly return. Provides that the department of state revenue may approve only $3,500,000 of credits in a state fiscal year. Provides that state sales tax is applied to the price of kerosene sold from a metered pump before the addition of state and federal taxes.

Effective: July 1, 1999.

Kruzan, Buell, Crooks, Buck
(SENATE SPONSORS — WHEELER, ROGERS)

January 26, 1999, read first time and referred to Committee on Ways and Means.
February 10, 1999, amended, reported — Do Pass.
February 15, 1999, read second time, ordered engrossed. Engrossed.
February 16, 1999, read third time, passed. Yeas 95, nays 0.
February 17, 1999, re-engrossed.

SENATE ACTION

February 22, 1999, read first time and referred to Committee on Finance.
March 22, 1999, reported favorably — Do Pass.
March 25, 1999, read second time, amended, ordered engrossed.

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March 26, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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ENGROSSED
HOUSE BILL No. 1789

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2.5-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. For purposes of this chapter:

"Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

"Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

"Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

"Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

"Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

"Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

"Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

"Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

"Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

"Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(i) the total price per unit; minus

(ii) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

"Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

"Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

"Prepayment rate" means a rate per gallon of gasoline, rounded to the nearest one-tenth of one cent ($0.001), determined by the department by determining the product of:

(1) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by

(2) the state gross retail tax rate; multiplied by

(3) ninety percent (90%).

"Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

"Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds an unrevoked permit issued under section 7 of this chapter.

"Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

"Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

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(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 2. IC 6-2.5-7-3 IS AMENDED TO READ AS FOLLOWS: Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent ($.001), of:

(i) the price per unit before the addition of state and federal taxes; multiplied by

(ii) five percent (5%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel **or kerosene** which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel **or kerosene** sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent ($.001), of:

(i) the price per unit before the addition of state and federal taxes; multiplied by

(ii) five percent (5%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

SECTION 3. IC 6-6-4.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A tax is imposed on the consumption of motor fuel by a carrier in its operations on highways in Indiana. The rate of this tax is the same rate per gallon as the rate per gallon at which special fuel is taxed under IC 6-6-2.5. The tax shall be paid quarterly by the carrier to the department on or before the last day of the month immediately following the quarter.

(b) The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.

(c) The amount of tax that a carrier shall pay for a particular quarter

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under this section equals the product of the tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed by the carrier in its operation on highways in Indiana and upon which the carrier has not paid tax imposed under IC 6-6-1.1 or IC 6-6-2.5.

(d) **Subject to section 4.8 of this chapter, a carrier is entitled to a proportional use credit against** the tax imposed under this section ~~does not apply to~~ **for** that portion of motor fuel used ~~in Indiana~~ to propel equipment mounted on a motor vehicle having a common reservoir for locomotion on the highway and the operation of the equipment, as determined by rule of the commissioner. ~~The exemption granted by~~ **An application for a proportional use credit under** this subsection shall be ~~taken~~ **filed** on a quarterly basis ~~in the~~ **on a** form ~~of a claim for refund~~ prescribed by the department.

SECTION 4. IC 6-6-4.1-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.5. (a) A surcharge tax is imposed on the consumption of motor fuel by a carrier in its operations on highways in Indiana. The rate of this surcharge tax is eleven cents ($0.11) per gallon. The tax shall be paid quarterly by the carrier to the department on or before the last day of the month immediately following the quarter.

(b) The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.

(c) The amount of tax that a carrier shall pay for a particular quarter under this section equals the product of the tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed by the carrier in its operation on highways in Indiana.

(d) **Subject to section 4.8 of this chapter, a carrier is entitled to a proportional use credit against** the tax imposed under this section ~~does not apply to~~ **for** that portion of motor fuel used ~~in Indiana~~ to propel equipment mounted on a motor vehicle having a common reservoir for locomotion on the highway and the operation of this equipment as determined by rule of the commissioner. ~~The exemption granted by~~ **An application for a proportional use credit under** this subsection shall be ~~taken~~ **filed** on a quarterly basis ~~in the~~ **on a** form ~~of a claim for refund~~ prescribed by the department.

SECTION 5. IC 6-6-4.1-4.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.7. (a) This section applies only to a claim for a**

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proportional use credit under section 4(d) or 4.5(d) of this chapter for taxes first due and payable after July 31, 1999.

(b) A carrier must be certified by the department in order to qualify for a proportional use credit under section 4(d) or 4.5(d) of this chapter.

(c) A carrier must apply to the department for certification before April 1 of the first calendar year for which the proportional use credit will be claimed. An application for certification must be in writing upon forms prescribed by the department and must be signed and verified by the carrier. The department must include on all application forms suitable spaces for a listing of the following:

(1) The carrier's federal Social Security number or federal tax identification number.

(2) The address of the carrier's principal place of business.

(3) A description of each of the carrier's vehicles that has a common fuel supply reservoir for both locomotion on a public highway and a commercial purpose.

(4) The vehicle identification number for each vehicle described in subdivision (3).

(d) The department may certify that a carrier is qualified to claim a proportional use credit under section 4(d) or 4.5(d) of this chapter only upon payment by the carrier to the department of a one (1) time fee of seven dollars ($7). The carrier must pay the fee at the time the application for certification is submitted to the department. The department shall deposit the fee in the motor carrier regulation fund established by IC 8-2.1-23-1.

(e) A carrier must notify the department, on forms prescribed by the department, of any change of address by the carrier. The carrier must provide the notice not more than ten (10) days after the change of address. The department may revoke or suspend the certification of a carrier that fails to comply with this subsection.

(f) All certificates issued under this section are personal and may not be transferred.

(g) The department may require a carrier that has been issued a certificate under this section to submit additional information from time to time at reasonable intervals, as determined by the department.

(h) The department may adopt rules under IC 4-22-2 to carry out this section.

SECTION 6. IC 6-6-4.1-4.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.8. (a) This section applies only to a claim for a**

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proportional use credit under section 4(d) or 4.5(d) of this chapter for taxes first due and payable after July 31, 1999.

(b) In order to obtain a proportional use credit against taxes imposed under section 4 or 4.5 of this chapter, a carrier must file a claim with the department. The claim must be submitted on a form prescribed by the department and must be filed with the quarterly return for the taxable period for which the proportional use credit is claimed. A carrier is not entitled to a proportional use credit under section 4(d) or 4.5(d) of this chapter unless the carrier has paid in full the taxes to which the credit applies. A credit approved under this section shall, subject to this section, be refunded to the carrier without interest.

(c) The department shall determine the aggregate amount of proportional use credits claimed under section 4(d) or 4.5(d) of this chapter for each quarter. The department may approve the full amount of a proportional use credit claimed by a carrier if the aggregate amount of proportional use credits claimed for the quarter and for the fiscal year do not exceed the limits set forth in subsection (d). If the aggregate amount of proportional use credits claimed in a quarter exceeds the limits set forth in subsection (d), the department shall pay the claims for that quarter on a pro rata basis.

(d) The department may not approve more than three million five hundred thousand dollars ($3,500,000) of proportional use credits under this section in a state fiscal year. In addition, the amount of proportional use credits the department may approve under this section for a quarter may not exceed the following:

(1) For the quarter ending September 30 of a year, an amount equal to one million three hundred seventy-five thousand dollars ($1,375,000).

(2) For the quarter ending December 31 of a year, an amount equal to:

(A) six hundred twenty-five thousand dollars ($625,000); plus

(B) the greater of zero (0) or the result of:

(i) the limit determined for the previous quarter under this subsection; minus

(ii) the aggregate amount of claims approved for the previous quarter.

(3) For the quarter ending March 31 of a year, an amount equal to:

(A) six hundred twenty-five thousand dollars ($625,000);

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plus

(B) the greater of zero (0) or the result of:

(i) the limit determined for the previous quarter under this subsection; minus

(ii) the aggregate amount of claims approved for the previous quarter.

(4) For the quarter ending June 30 of a year, an amount equal to:

(A) eight hundred seventy-five thousand dollars ($875,000); plus

(B) the greater of zero (0) or the result of:

(i) the limit determined for the previous quarter under this subsection; minus

(ii) the aggregate amount of claims approved for the previous quarter.

SECTION 7. IC 6-8.1-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The department shall establish a registration center to service owners of commercial motor vehicles.

(b) The registration center is under the supervision of the department through the motor carrier services division.

(c) An owner or operator of a commercial motor vehicle may apply to the registration center for the following:

(1) Vehicle registration (IC 9-18).

(2) Motor carrier fuel tax annual permit.

(3) Proportional use credit certificate (IC 6-6-4.1-4.7).

~~(3)~~ **(4)** Certificate of operating authority.

~~(4)~~ **(5)** Oversize vehicle permit (IC 9-20-3).

~~(5)~~ **(6)** Overweight vehicle permit (IC 9-20-4).

(d) Funding for the development and operation of the registration center shall be taken from the motor carrier regulation fund (IC 8-2.1-23-1).

(e) The department shall recommend to the general assembly other functions that the registration center may perform.

SECTION 8. [EFFECTIVE JULY 1, 1999] **(a) Notwithstanding IC 6-6-4.1-4.7(c), as added by this act, a carrier that seeks to claim a proportional use credit under IC 6-6-4.1-4(d) or IC 6-6-4.1-4.5(d) for taxes first due and payable on October 31, 1999, or January 31, 2000, must apply for certification under IC 6-6-4.1-4.7, as added by this act, before October 1, 1999.**

(b) This SECTION expires August 1, 2000.

SECTION 9. [EFFECTIVE JULY 1, 1999] **(a) The percentage of**

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a carrier's fuel consumption that is eligible under IC 6-6-4.1-4 and IC 6-6-4.1-4.5 for the proportional use exemption, as determined by a rule of the department of state revenue that is in effect on January 1, 1998, shall remain in effect until July 1, 2001, as the percentage of a carrier's fuel that is eligible for a proportional use credit under IC 6-6-4.1-4(d) and IC 6-6-4.1-4.5(d), both as amended by this act.

(b) If, after June 30, 2001, the commissioner of the department of state revenue determines on the basis of studies or other competent evidence that the percentages set forth in 45 IAC 13-4-7 do not accurately reflect actual fuel consumption that is eligible for the proportional use credit, the department may adopt rules to change those percentages or may establish by rule a different method of determining the percentage of a carrier's fuel consumption that is eligible under IC 6-6-4.1-4 or IC 6-6-4.1-4.5, both as amended by this act, for the proportional use credit. A rule adopted by the department under this SECTION that determines eligible fuel consumption based on the type of vehicle must allow a carrier to receive a greater proportional use credit upon a showing that the carrier's actual eligible fuel consumption exceeded the amount determined under the rule.

(c) This SECTION expires January 1, 2003.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1789, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 20, delete "four" and insert "**three**".

Page 4, line 21, before "dollars" insert "**five hundred thousand**".

Page 4, line 21, delete "($4,000,000)" and insert "**($3,500,000)**".

Page 4, line 27, delete "five" and insert "**three**".

Page 4, line 27, after "hundred" insert "**seventy-five**".

Page 4, line 27, delete "($1,500,000)" and insert "**($1,375,000)**".

Page 4, line 36, delete "seven" and insert "**six**".

Page 4, line 36, delete "fifty" and insert "**twenty-five**".

Page 4, line 36, delete "($750,000)" and insert "**($625,000)**".

Page 5, line 2, delete "seven" and insert "**six**".

Page 5, line 2, delete "fifty" and insert "**twenty-five**".

Page 5, line 2, delete "($750,000)" and insert "**($625,000)**".

Page 5, line 10, delete "one million" and insert "**eight hundred seventy-five thousand**".

Page 5, line 10, delete "($1,000,000)" and insert "**($875,000)**".

and when so amended that said bill do pass.

(Reference is to HB 1789 as introduced.)

BAUER, Chair

Committee Vote: yeas 25, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred House Bill No. 1789, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1789 as printed February 17, 1999 - Printer's Reprint.)

BORST, Chairperson

Committee Vote: Yeas 11, Nays 1.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1789 be amended to read as follows:

Page 4, line 26, delete ":".

Page 4, line 27, delete "(A)".

Page 4, run in lines 26 through 27.

Page 4, line 28, delete "; plus" and insert "**.**".

Page 4, delete lines 29 through 33.

(Reference is to EHB 1789 as printed March 23, 1999.)

WHEELER

SENATE MOTION

Mr. President: I move that House Bill 1789 be amended to read as follows:

Page 1, after the enacting clause and before line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-7-1 IS AMENDED TO READ AS FOLLOWS [effective july 1, 1999]: Sec. 1. For purposes of this chapter:

"Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

"Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

"Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

"Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

"Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

"Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

"Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

"Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

"Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

"Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

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(i) the total price per unit; minus

(ii) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

"Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

"Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

"Prepayment rate" means a rate per gallon of gasoline, rounded to the nearest one-tenth of one cent ($0.001), determined by the department by determining the product of:

(1) the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax; multiplied by

(2) the state gross retail tax rate; multiplied by

(3) ninety percent (90%).

"Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

"Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds an unrevoked permit issued under section 7 of this chapter.

"Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

"Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

SECTION 2. IC 6-2.5-7-3 IS AMENDED TO READ AS

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FOLLOWS: Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent ($.001), of:

(i) the price per unit before the addition of state and federal taxes; multiplied by

(ii) five percent (5%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel **or kerosene** which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel **or kerosene** sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent ($.001), of:

(i) the price per unit before the addition of state and federal taxes; multiplied by

(ii) five percent (5%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.".

Renumber all SECTIONS consecutively.

(Reference is to H.B. 1789 as printed March 23, 1999.)

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