



February 24, 2012

ENGROSSED
SENATE BILL No. 353

DIGEST OF SB 353 (Updated February 21, 2012 2:15 pm - DI 113)

Citations Affected: Noncode.

Synopsis: Study sales taxation of gasoline. Requires the commission on state tax and financing policy to study all aspects of the manner in which the state gross retail tax is imposed upon the sale of motor fuel and collected.

Effective: July 1, 2012.

Walker, Lanane, Boots, Randolph

(HOUSE SPONSORS — DERMODY, GOODIN)

January 9, 2012, read first time and referred to Committee on Tax and Fiscal Policy.
January 26, 2012, amended, reported favorably — Do Pass.
January 30, 2012, read second time, amended, ordered engrossed.
January 31, 2012, engrossed; technical correction.
February 1, 2012, re-engrossed, read third time, passed. Yeas 49, nays 0.
February 2, 2012, re-engrossed.

HOUSE ACTION

February 9, 2012, read first time and referred to Committee on Ways and Means.
February 23, 2012, amended, reported — Do Pass.

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ES 353—LS 6808/DI 58+



February 24, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 353

A BILL FOR AN ACT concerning taxation.

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

- 1 SECTION 1. [EFFECTIVE JULY 1, 2012] (a) **As used in this**
2 **SECTION, "commission" refers to the commission on state tax and**
3 **financing policy established by IC 2-5-3-2.**
4 (b) **The commission shall study all aspects of the manner in**
5 **which the state gross retail tax is imposed upon the sale of motor**
6 **fuel and collected under IC 6-2.5-7.**
7 (c) **The commission shall report its findings and**
8 **recommendations, if any, to the legislative council in an electronic**
9 **format under IC 5-14-6 before November 1, 2012.**
10 (d) **This SECTION expires January 1, 2013.**

ES 353—LS 6808/DI 58+



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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 3 with "[EFFECTIVE JANUARY 1, 2013]".

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

"SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 1. (a) A person is a retail merchant making a retail transaction when ~~he~~ **the person** engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~ **the person:**

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if ~~he~~ **the person** is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

(f) Notwithstanding subsection (e):

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- (1) in the case of retail sales of ~~gasoline (as defined in IC 6-6-1.1-103)~~ and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the ~~gasoline or~~ special fuel minus the part of that price attributable to tax imposed under ~~IC 6-6-1.1; IC 6-6-2.5 or Section 4041(a) or~~ Section 4081 of the Internal Revenue Code; and
- (2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges."

Page 2, line 15, after "department" insert "**electronically**".

Page 2, line 38, after "period" insert "**through the department's online tax filing program**".

Page 4, between lines 20 and 21, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-7-10, AS AMENDED BY P.L. 182-2009(ss), SECTION 181, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 10. (a) Each refiner or terminal operator and each qualified distributor that has received a prepayment of the state gross retail tax under this chapter shall remit the tax received to the department semimonthly, through the department's online tax filing system, according to the following schedule:

- (1) On or before the tenth day of each month for prepayments received after the fifteenth day and before the end of the preceding month.
- (2) On or before the twenty-fifth day of each month for prepayments received after the end of the preceding month and before the sixteenth day of the month in which the prepayments are made.

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file a report **electronically** covering the prepaid taxes received and the gallons of gasoline sold or shipped during the preceding month. The report must include the following:

- (1) The number of gallons of gasoline sold or shipped during the preceding month, identifying each purchaser or receiver as

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required by the department.

(2) The amount of tax prepaid by each purchaser or receiver.

(3) Any other information reasonably required by the department.

SECTION 5. IC 6-2.5-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 11. Each distributor that prepays the state gross retail tax under this chapter shall file a monthly report with the department. The report shall be filed **electronically and** no later than the last day of the month following the month that the report covers. The report must include the following:

(1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor.

(2) The amount of state gross retail tax prepaid to each refiner, terminal operator, or distributor.

(3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of state gross retail tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person, as required by the department.

(4) Any other information reasonably required by the department."

Page 4, line 31, after "period." insert "**The notice shall be published on the department's Internet web site, published in the Indiana Register, and provided to registered distributors, refiners, and terminal operators by an electronic mail message that includes a direct link to the notice on the department's Internet web site.**".

Page 4, line 35, strike "twenty-five percent".

Page 4, line 36, strike "(25%)" and insert "**fifteen percent (15%)**".

Page 4, line 36, after "determination." insert "**A new prepayment rate may not take effect until the immediately following first or fifteenth day of the month, whichever is earlier.**".

Page 4, line 38, delete "attorney general" and insert "**department**".

Page 4, line 38, delete "provide to the" and insert "**determine**".

Page 4, line 39, delete "department".

Page 5, line 1, delete "provided".

Page 5, line 1, strike "to" and insert "**determined by**".

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Page 5, line 1, delete "by the attorney" and insert ".".

Page 5, delete line 2.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 353 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 353 be amended to read as follows:

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

"SECTION 1. IC 6-2.5-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]:

Chapter 3.5. Collection of Use Tax on Gasoline

Sec. 1. As used in this chapter, "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.

Sec. 2. As used in this chapter, "E85" has the meaning set forth in IC 6-6-1.1-103.

Sec. 3. As used in this chapter, "federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

Sec. 4. As used in this chapter, "gasoline" has the meaning set forth in IC 6-6-1.1-103(g).

Sec. 5. As used in this chapter, "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

Sec. 6. As used in this chapter, "metered pump" means a stationary pump that is capable of metering the amount of gasoline or special fuel dispensed from it and that is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

Sec. 7. As used in this chapter, "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**



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

Sec. 8. As used in this chapter, "price per unit before the addition of state and federal taxes" means an amount that equals the remainder of:

- (1) the total price per unit; minus
- (2) the gasoline use tax, Indiana gasoline, and federal gasoline taxes that are part of the total price per unit.

Sec. 9. As used in this chapter, "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 17 of this chapter.

Sec. 10. As used in this chapter, "refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

Sec. 11. As used in this chapter, "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.

Sec. 12. As used in this chapter, "total price per unit" means the price per unit at which gasoline is actually sold, including the gasoline use, Indiana gasoline, and federal gasoline taxes that are part of the sales price.

Sec. 13. As used in this chapter, "unit" means the unit of measure, such as a gallon or a liter, by which gasoline is sold.

Sec. 14. As used in this chapter, "use tax rate" means a rate per gallon of gasoline determined by the department under section 15 of this chapter and used to calculate the use tax due on the retail sale of gasoline under section 16 of this chapter, notwithstanding the collection procedures set forth in this chapter.

Sec. 15. (a) Before the twentieth day of each month, the department shall determine and provide to:

- (1) each refiner and terminal operator and each qualified distributor known to the department to be required to collect payments of the gasoline use tax under this chapter; and

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(2) any other person that makes a request; a notice of the gasoline use tax rate to be used during the following month. The notice shall be published on the department's Internet web site, published in the Indiana Register, and provided to registered distributors, refiners, and terminal operators by an electronic mail message that includes a direct link to the notice on the department's Internet web site.

(b) In determining the gasoline use tax rate under this section, the department shall use:

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

(2) seven percent (7%).

To determine the statewide average retail price, the department shall use a data service that updates the most recent retail price of gasoline no less often than monthly. The gasoline use tax rate per gallon of gasoline determined by the department under this section shall be rounded to the nearest one-tenth of one cent (\$0.001).

(c) The department, after approval by the office of management and budget, may determine a new gasoline use tax rate if the department finds that the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the gasoline use tax, has changed by at least fifteen percent (15%) since the most recent determination. A notice of the new gasoline use tax rate shall be provided as required under subsection (a). A new payment rate under this subsection may not take effect until the immediately following first or sixteenth day of the month that follows by at least ten (10) days the date of the notice of the new rate.

Sec. 16. A qualified distributor, a refiner, or a terminal operator that sells gasoline for delivery to a retail merchant located in Indiana shall remit the gasoline use tax to the department for each gallon of gasoline sold. The person shall remit that amount regardless of the amount of gasoline use tax that the person has actually collected under this chapter. However, the person is entitled to deduct and retain the amounts prescribed in section 28 of this chapter, IC 6-2.5-6-10, and IC 6-2.5-6-11.

Sec. 17. (a) A distributor desiring to receive gasoline within Indiana must hold an uncanceled permit issued by the department to collect payments of gasoline use tax from purchasers and recipients of gasoline.



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(b) To obtain a permit, a distributor must file with the department a sworn application containing information that the department reasonably requires.

(c) The department may refuse to issue a permit to a distributor if:

- (1) the application is filed by a distributor whose permit has previously been cancelled for cause;
- (2) the application is not filed in good faith, as determined by the department; or
- (3) the application is filed by a person as a subterfuge for the real person in interest whose permit has previously been cancelled for cause.

(d) A permit may not be issued unless the application is accompanied by an audited and current financial statement and a license fee of one hundred dollars (\$100).

(e) A permit issued under this section is not assignable and is valid only for the distributor in whose name it is issued. If there is a change in name or ownership, the distributor must apply for a new permit.

(f) The department may revoke a distributor's permit for good cause.

(g) Before being denied a permit under subsection (c) or before having a permit revoked under subsection (f), a distributor is entitled to a hearing after five (5) days written notice. At the hearing, the distributor may appear in person or by counsel and present testimony.

(h) The department shall keep a record of all qualified distributors.

Sec. 18. (a) The department may require a distributor to file, concurrently with the filing of an application for a permit, a bond:

- (1) in an amount of at least two thousand dollars (\$2,000) and not more than a three (3) month gasoline use tax liability for the distributor, as estimated by the department;
- (2) in cash or with a surety company approved by the department;
- (3) upon which the distributor is the principal obligor and the state is the obligee; and
- (4) conditioned upon the prompt filing of true electronic reports and payment of all gasoline use taxes collected by the distributor, together with any penalties and interest, and upon faithful compliance with this chapter.

The department shall determine the amount of the distributor's

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bond, if any.

(b) If after a hearing (after at least five (5) days written notice) the department determines that the amount of a distributor's bond is insufficient, the distributor shall upon written demand of the department file a new bond.

(c) The department may require a distributor to file a new bond with a satisfactory surety in the same form and amount if:

- (1) liability upon the old bond is discharged or reduced by judgment rendered, payment made, or otherwise; or
- (2) in the opinion of the department, any surety on the old bond becomes unsatisfactory.

(d) If a new bond obtained under subsection (b) or (c) is unsatisfactory, the department shall cancel the permit of the distributor. If the new bond is satisfactorily furnished, the department shall release in writing the surety on the old bond from any liability accruing after the effective date of the new bond.

(e) Sixty (60) days after making a written request for release to the department, the surety of a bond furnished by a distributor is released from any liability to the state accruing on the bond. The release does not affect any liability accruing before expiration of the sixty (60) day period. The department shall promptly notify the distributor furnishing the bond that the surety has requested release. Unless the distributor obtains a new bond that meets the requirements of this section and files the new bond with the department within the sixty (60) day period, the department shall cancel the distributor's permit.

(f) The department may require a distributor to furnish audited annual financial statements to determine if any change is required in the amount of the distributor's bond.

Sec. 19. (a) Except as provided in section 23 of this chapter, at the time of purchase or shipment of gasoline from a refiner or terminal operator to a distributor that is not a qualified distributor, the refiner or terminal operator shall collect and the distributor shall pay to the refiner or terminal operator the gasoline use tax in an amount determined under subsection (d).

(b) At the time of purchase or shipment of gasoline from a qualified distributor to a retail merchant, the qualified distributor shall collect and the retail merchant shall pay to the qualified distributor the gasoline use tax in an amount determined under subsection (d).

(c) If gasoline is delivered to a retail outlet for resale and the gasoline use tax in the amount determined under subsection (d) has

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not been paid on the gasoline, the refiner, terminal operator, or qualified distributor making the delivery shall pay to the department the gasoline use tax in an amount determined under subsection (d). A bulk plant is not considered to be a retail outlet.

(d) The amount of tax that must be paid under this section equals:

- (1) the gasoline use tax rate per gallon of gasoline; multiplied by
- (2) the number of invoiced gallons purchased or shipped.

(e) A purchaser or receiver of gasoline that makes a payment under this chapter is not subject to any liability to the state for the amount of the payment.

Sec. 20. (a) Each refiner or terminal operator and each qualified distributor that is required to remit gasoline use tax under this chapter shall remit the tax due to the department semimonthly, through the department's online tax filing system, according to the following schedule:

- (1) On or before the tenth day of each month for gasoline sold after the fifteenth day and before the end of the preceding month.
- (2) On or before the twenty-fifth day of each month for gasoline sold after the end of the preceding month and before the sixteenth day of the month in which the gasoline was sold.

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file an electronic report covering the taxes owed and the gallons of gasoline sold or shipped during the preceding month. The report must include the following:

- (1) The number of gallons of gasoline sold or shipped during the preceding month, identifying each purchaser or receiver as required by the department.
- (2) The amount of tax paid by each purchaser or recipient.
- (3) Any other information reasonably required by the department.

(c) The gasoline use tax collected under this chapter shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.

Sec. 21. Each distributor that pays the gasoline use tax under this chapter shall file monthly an electronic report with the department. The report shall be filed not later than the last day of the month following the month that the report covers. The report must include the following:

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- (1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor.
- (2) The amount of gasoline use tax paid to each refiner, terminal operator, or distributor.
- (3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of gasoline use tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person, as required by the department.
- (4) Any other information reasonably required by the department.

Sec. 22. (a) Except as provided in subsection (b), a distributor that pays the gasoline use tax under this chapter shall separately state the amount of tax paid on the invoice the distributor issues to its purchaser or recipient. The purchaser or recipient shall pay to the distributor an amount equal to the gasoline use tax paid.

(b) A distributor that:

- (1) pays the gasoline use tax under this chapter;
- (2) is a retail merchant; and
- (3) sells gasoline that is exempt from the gasoline use tax, as evidenced by a purchaser's exemption certificate issued by the department;

may not require the exempt purchaser to pay the gasoline use taxes paid on the gasoline sold to the exempt purchaser. A distributor that has paid gasoline use taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund, if the amount of unreimbursed gasoline use taxes exceeds five hundred dollars (\$500). A claim for a refund must be on the form approved by the department and must include all supporting documentation reasonably required by the department. If a distributor files a completed refund claim form that includes all supporting documentation, the department shall authorize the auditor of state to issue a warrant for the refund.

Sec. 23. (a) If a purchase or shipment of gasoline is made to a distributor (other than a qualified distributor) outside Indiana for shipment into and subsequent sale or use by the distributor within Indiana, the distributor shall make the payment required by section 19 of this chapter directly to the department. The distributor shall pay the tax and submit the electronic report according to the schedule set forth in section 20 of this chapter.



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(b) If a purchase or shipment is made within Indiana for shipment and subsequent sale outside Indiana, the purchase or shipment is exempt from the gasoline use tax payment requirements of section 19 of this chapter. In such a case, if the gasoline use tax has already been paid on the purchase or shipment, the distributor (including a qualified distributor) may claim a credit for that gasoline use tax against the amount required to be remitted if the distributor provides evidence that the shipment and subsequent sale were outside Indiana.

Sec. 24. (a) A refiner, terminal operator, or distributor (including a qualified distributor) that fails to remit the tax or file the returns or reports required by this chapter is subject to the penalties set forth in IC 6-8.1-10.

(b) A distributor that fails to file the reports required by section 21 of this chapter is subject to the penalties set forth in IC 6-8.1-10.

Sec. 25. A retail merchant shall display on the pump the total price per unit of the gasoline. A retail merchant may not advertise the gasoline at a price that is different than the price that the retail merchant is required to display on the metered pump.

Sec. 26. If a sale of gasoline is exempt from the gasoline use tax, the person who pays the tax to the retail merchant may file a claim for refund with the department. The person must file the claim on the form, in the manner, and with the supporting documentation, prescribed by the department. If a person properly files a claim for refund, the department shall refund to the person the gasoline use tax collected with respect to the exempt transaction.

Sec. 27. (a) Each person required to remit the gasoline use tax under this chapter shall, in the manner prescribed in IC 6-2.5-6, report electronically to the department the following information:

- (1) The total number of gallons of gasoline sold during the period covered by the report.
- (2) The total number of gallons of E85 sold during the period covered by the report.
- (3) The total amount of money received which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code from the sale of gasoline described in subdivision (1) during the period covered by the report.

Sec. 28. (a) As used in this section, "qualified reporting period" refers to a reporting period beginning after December 31 and ending before April 1 of each year.

(b) Subject to subsections (c) and (d), for qualified reporting

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periods beginning after December 31, 2012, and ending before July 1, 2020, a person that remits the gasoline use tax to the department is entitled to deduct from the amount of gasoline use tax required to be remitted an amount equal to the product of:

- (1) eighteen cents (\$0.18); multiplied by
- (2) the number of gallons of E85 sold to a purchaser or recipient during the period covered by the person's report.

For purposes of this section, a payment of the gasoline use tax is presumed to occur on the date on which it is invoiced.

(c) The total amount of deductions allowed under subsection (b) may not exceed the amount of money that the budget agency determines is available in the E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions for all persons required to remit the gasoline use tax in a particular qualified reporting period. A person is not required to apply for an allocation of deductions under subsection (b). Before August 1 of each year, the budget agency shall estimate whether the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and the deductions expected to be reported under subsection (b) for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year will exceed the amount of money available in the E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund is insufficient to cover the amount of the deductions expected to be reported, the budget agency shall publish in the Indiana Register a notice that the deduction program under subsection (b) is suspended with respect to the qualified reporting periods occurring in the following calendar year and that no deductions will be granted for retail transactions occurring in the qualified reporting periods occurring in the following calendar year.

(d) The budget agency may suspend the deduction program under subsection (b) for a particular year at any time during a qualified reporting period if the budget agency determines that the amount of money in the E85 deduction reimbursement fund and the amount of money that will be transferred to the fund on July 1 will not be sufficient to provide the deductions expected to occur before the deduction program for the year ends on March 31. The budget agency shall immediately provide notice to all persons that remitted the gasoline use tax in the preceding month of the decision



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to suspend the deduction program for that year.

Sec. 29. (a) The gasoline use tax collected under this chapter is considered equivalent to the state gross retail tax that would be collected by a retail merchant in a retail sale and replaces the obligation of the retail merchant to collect the state gross retail tax on the sale of gasoline.

(b) The exemptions set forth in IC 6-2.5-5 apply to the gasoline use tax imposed by this chapter."

Page 2, line 3, after "chapter." insert "**However, in the case of sales of gasoline (as defined in IC 6-6-1.1-103), a person shall collect the gasoline use tax as provided in IC 6-2.5-3.5."**

Page 2, delete lines 33 through 42, begin a new paragraph and insert:

"SECTION 3. IC 6-2.5-6-10, AS AMENDED BY P.L.146-2008, SECTION 313, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 10. (a) In order to compensate retail merchants **and those required to remit gasoline use tax** for collecting and timely remitting the state gross retail tax, ~~and~~ the state use tax, **and the gasoline use tax**, every retail merchant, except a retail merchant referred to in subsection (c) **or a person required to remit the gasoline use tax**, is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under IC 6-2.5-7-5, **IC 6-2.5-3.5**, or under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax **or the person's gasoline use tax** liability accrued during a calendar year, specified as follows:

(1) Seventy-three hundredths percent (0.73%), if the retail merchant's state gross retail and use tax **or gasoline use tax** liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars (\$60,000).

(2) Fifty-three hundredths percent (0.53%), if the retail merchant's state gross retail and use tax **or gasoline use tax** liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:

(A) was greater than sixty thousand dollars (\$60,000); and

(B) did not exceed six hundred thousand dollars (\$600,000).

(3) Twenty-six hundredths percent (0.26%), if the retail merchant's state gross retail and use tax liability **or gasoline use tax** accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than six hundred

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thousand dollars (\$600,000).

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section. **A retail merchant is not entitled to the allowance provided by this section with respect to gasoline use taxes imposed by IC 6-2.5-3.5.**

SECTION 4. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

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

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

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

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

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

(g) "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.

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

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

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

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

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

- (1) the total price per unit; minus
- (2) 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.

(m) "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.

(n) "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.



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(o) "Prepayment rate" means a rate per gallon of gasoline determined by the department under section 14 of this chapter for use in calculating prepayment amounts of gross retail tax under section 9 of this chapter.

(p) "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.

(q) "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.

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

(s) "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 5. IC 6-2.5-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 2. Except as provided in section 2.5 of this chapter, a retail merchant who uses a metered pump to dispense gasoline or special fuel shall display on the pump the total price per unit of the gasoline or special fuel. Subject to the provisions of section 2.5 of this chapter, a retail merchant may not advertise the gasoline or special fuel at a price that is different than the price that ~~he~~ **the retail merchant** is required to display on the metered pump.

SECTION 6. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008, SECTION 314, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: 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 (\$0.001); ~~of:~~

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- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7%).

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 (\$0.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7%).

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 7. IC 6-2.5-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 4. (a) If a sale of ~~gasoline or~~ special fuel is exempt from the state gross retail tax, the person who pays the tax to the retail merchant may file a claim for refund with the department. The person must file the claim on the form, in the manner, and with the supporting documentation, prescribed by the department. If a person properly files a claim for refund, the department shall refund to ~~him~~ **the person** the state gross retail tax collected with respect to the exempt transaction.

(b) Notwithstanding the other provisions of this section, the department may prescribe simplified procedures to make adjustments for exempt transactions.

SECTION 8. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 5. (a) Each retail merchant who dispenses ~~gasoline or~~ special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

- (1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.
- (2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.
- (3) That portion of the amount described in subdivision (2) which

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represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

~~(4)~~ (1) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

~~(5)~~ (2) The total amount of money received from the sale of special fuel during the period covered by the report.

~~(6)~~ (3) That portion of the amount described in subdivision ~~(5)~~ (2) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

~~(7)~~ The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals six and fifty-four hundredths percent (6.54%) of the gross receipts, including state gross retail taxes, but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection ~~(e)~~; IC 6-2.5-6-10 and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsections (d) and (f), for qualified reporting periods beginning after June 30, 2009, and ending before July 1, 2020, determine the product of:

(A) eighteen cents (\$0.18); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is

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presumed to occur on the date on which it is invoiced:

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed the amount of money that the budget agency determines is available in the retail merchant E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions for all retail merchants in a particular qualified reporting period. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. Before August 1 of each year, the budget agency shall estimate whether the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and the deductions expected to be reported under subsection (c) STEP TWO for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year will exceed the amount of money available in the retail merchant E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund is insufficient to cover the amount of the deductions expected to be reported, the budget agency shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is suspended with respect to the qualified reporting periods occurring in the following calendar year and that no deductions will be granted for retail transactions occurring in the qualified reporting periods occurring in the following calendar year.

(e) As used in this section, "qualified reporting period" refers to a reporting period beginning after December 31 and ending before April 1 of each year.

(f) The budget agency may suspend the deduction program under subsection (c) STEP TWO for a particular year at any time during a qualified reporting period if the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund and the amount of money that will be transferred to the fund on July 1 will not be sufficient to reimburse the deductions expected to occur before the deduction program for the year ends on March 31. The budget agency shall immediately provide notice to the participating retail merchants of the decision to suspend the deduction program for that year.

SECTION 9. IC 6-2.5-7-6 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 6: (a) If the deduction under section 5(c) of this chapter exceeds the amount of gross retail tax required to be remitted under section 5(b) of this chapter, the retail merchant is entitled to a credit. The credit shall be used as follows:

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(1) First, the credit shall be applied against gross retail and use tax liability of the retail merchant that is required to be remitted under IC 6-2.5-6.

(2) Second, any amount remaining shall be applied against the gasoline tax liability of the retail merchant, as determined under IC 6-6-1.1, excluding any liability for gasoline delivered to a taxable marine facility.

A retail merchant may file a claim for a refund instead of taking a credit or for a refund of any excess tax payment remaining after the credits allowed by this section. In addition, a retail merchant may file a claim for a refund under section 12 of this chapter.

(b) A retail merchant that is entitled to a refund under this section must file a claim for the refund on the form approved by the department and must include any supporting documentation reasonably required by the department. If a retail merchant files a completed refund claim form that includes all supporting documentation, the excess tax payment that is not refunded within ninety (90) days accrues interest as provided in IC 6-8.1-9-2.

(c) Before the fifth day of each month, the department shall determine and notify the treasurer of state of the amount of credits applied during the preceding month against the gasoline tax under this section. The treasurer of state shall transfer from the general fund:

- (1) to the highway, road, and street fund, twenty-five percent (25%) of the amount set forth in the department's notice; and
- (2) to the motor fuel tax fund of the motor vehicle highway account, seventy-five percent (75%) of the amount set forth in the department's notice.

SECTION 10. IC 6-2.5-7-7 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 7: (a) A distributor desiring to receive gasoline within Indiana without prepaying gross retail tax must hold an uncanceled permit issued by the department to collect prepayments of gross retail tax from retail merchants.

(b) To obtain a permit, a distributor must file with the department a sworn application containing information that the department reasonably requires:

- (c) The department may refuse to issue a permit to a distributor if:
- (1) the application is filed by a distributor whose permit has previously been cancelled for cause;
 - (2) the application is not filed in good faith, as determined by the department; or
 - (3) the application is filed by some person as a subterfuge for the real person in interest whose permit has previously been cancelled



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for cause:

(d) A permit may not be issued unless the application is accompanied by an audited and current financial statement and a license fee of one hundred dollars (\$100):

(e) A permit issued under this section is not assignable and is valid only for the distributor in whose name it is issued: If there is a change in name or ownership, the distributor must apply for a new permit:

(f) The department may revoke a distributor's permit for good cause:

(g) Before being denied a permit under subsection (e) or before having a permit revoked under subsection (f); a distributor is entitled to a hearing after five (5) days written notice. At the hearing the distributor may appear in person or by counsel and present testimony:

(h) The department shall keep a record of all qualified distributors:

SECTION 11. IC 6-2.5-7-8 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 8: (a) The department may require a distributor to file, concurrently with the filing of an application for a permit, a bond:

(1) in an amount of not less than two thousand dollars (\$2,000) nor more than a three (3) month prepayment tax liability for the distributor; as estimated by the department;

(2) in cash or with a surety company approved by the department;

(3) upon which the distributor is the principal obligor and the state is the obligee; and

(4) conditioned upon the prompt filing of true reports and payment of all prepayment of gross retail taxes collected by the distributor; together with any penalties and interest; and upon faithful compliance with this chapter:

The department shall determine the amount of the distributor's bond; if any:

(b) If after a hearing (after at least five (5) days written notice) the department determines that the amount of a distributor's bond is insufficient, the distributor shall upon written demand of the department file a new bond:

(c) The department may require a distributor to file a new bond with a satisfactory surety in the same form and amount if:

(1) liability upon the old bond is discharged or reduced by judgment rendered; payment made; or otherwise; or

(2) in the opinion of the department any surety on the old bond becomes unsatisfactory:

(d) If a new bond obtained under subsection (b) or (c) is unsatisfactory; the department shall cancel the permit of the distributor: If the new bond is satisfactorily furnished; the department shall release

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in writing the surety on the old bond from any liability accruing after the effective date of the new bond.

(e) Sixty (60) days after making a written request for release to the department, the surety of a bond furnished by a distributor is released from any liability to the state accruing on the bond. The release does not affect any liability accruing before expiration of the sixty (60) day period. The department shall promptly notify the distributor furnishing the bond that the surety has requested release. Unless the distributor obtains a new bond that meets the requirements of this section and files the new bond with the department within the sixty (60) day period, the department shall cancel the distributor's permit.

(f) The department may require a distributor to furnish audited annual financial statements to determine if any change is required in the amount of the distributor's bond.

SECTION 12. IC 6-2.5-7-9 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 9: (a) Except as provided in section 13 of this chapter, at the time of purchase or shipment of gasoline from a refiner or terminal operator, a distributor who is not a qualified distributor shall prepay to the refiner or terminal operator the state gross retail tax in an amount determined under subsection (d):

(b) At the time of purchase or shipment of gasoline from a qualified distributor, a retail merchant shall prepay to the qualified distributor the state gross retail tax in an amount determined under subsection (d):

(c) If gasoline is delivered to a retail outlet for resale and the gross retail tax in the amount determined under subsection (d) has not been prepaid on the gasoline, the refiner, terminal operator, or qualified distributor making the delivery shall prepay to the department the gross retail tax in an amount determined under subsection (d). A bulk plant is not considered to be a retail outlet.

(d) The amount of tax that must be prepaid under this section equals:

- (1) the prepayment rate per gallon of gasoline; multiplied by
- (2) the number of invoiced gallons purchased or shipped.

(e) A purchaser or receiver of gasoline that makes a prepayment under this chapter is not subject to any liability to the state for the amount of the prepayment.

SECTION 13. IC 6-2.5-7-10 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 10: (a) Each refiner or terminal operator and each qualified distributor that has received a prepayment of the state gross retail tax under this chapter shall remit the tax received to the department semimonthly, through the department's online tax filing system, according to the following schedule:



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(1) On or before the tenth day of each month for prepayments received after the fifteenth day and before the end of the preceding month:

(2) On or before the twenty-fifth day of each month for prepayments received after the end of the preceding month and before the sixteenth day of the month in which the prepayments are made:

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file a report covering the prepaid taxes received and the gallons of gasoline sold or shipped during the preceding month. The report must include the following:

(1) The number of gallons of gasoline sold or shipped during the preceding month, identifying each purchaser or receiver as required by the department:

(2) The amount of tax prepaid by each purchaser or receiver:

(3) Any other information reasonably required by the department:

SECTION 14. IC 6-2.5-7-11 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 11. Each distributor that prepays the state gross retail tax under this chapter shall file a monthly report with the department. The report shall be filed no later than the last day of the month following the month that the report covers. The report must include the following:

(1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor:

(2) The amount of state gross retail tax prepaid to each refiner, terminal operator, or distributor:

(3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of state gross retail tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person, as required by the department:

(4) Any other information reasonably required by the department:

SECTION 15. IC 6-2.5-7-12 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 12. (a) Except as provided in subsection (b), a distributor that prepays the state gross retail tax under this chapter shall separately state the amount of tax prepaid on the invoice the distributor issues to its purchaser or recipient. The purchaser or recipient shall pay to the distributor an amount equal to the prepaid tax:

(b) A distributor that:

(1) prepays the state gross retail tax under this chapter;



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(2) is a retail merchant; and

(3) sells gasoline that is exempt from the gross retail tax, as evidenced by a purchaser's exemption certificate issued by the department;

may not require the exempt purchaser to pay the gross retail taxes prepaid in the gasoline sold to the exempt purchaser. A distributor that has prepaid gross retail taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund (in addition to any claim for a refund under section 6 of this chapter), if the amount of unreimbursed prepaid gross retail taxes exceeds five hundred dollars (\$500). A claim for a refund must be on the form approved by the department and include all supporting documentation reasonably required by the department. If a distributor files a completed refund claim form that includes all supporting documentation, the department shall authorize the auditor of state to issue a warrant for the refund.

SECTION 16. IC 6-2.5-7-13 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 13. (a) If a purchase or shipment of gasoline is made to a distributor (other than a qualified distributor) outside Indiana for shipment into and subsequent sale or use by the distributor within Indiana, the distributor shall make the prepayment required by section 9 of this chapter directly to the department. The distributor shall pay the tax and submit the report according to the schedule set forth in section 10 of this chapter.

(b) If a purchase or shipment is made within Indiana for shipment and subsequent sale outside Indiana, the purchase or shipment is exempt from the prepayment requirements of section 9 of this chapter.

SECTION 17. IC 6-2.5-7-14 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 14. (a) Before June 10 and December 10 of each year, the department shall determine and provide to:

- (1) each refiner and terminal operator and each qualified distributor known to the department to be required to collect prepayments of the state gross retail tax under this chapter; and
- (2) any other person that makes a request;

a notice of the prepayment rate to be used during the following six (6) month period. The department, after approval by the office of management and budget, may determine a new prepayment rate if the department finds that the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax, has changed by at least twenty-five percent (25%) since the most recent determination.

(b) In determining the prepayment rate under this section, the

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department shall use the most recent retail price of gasoline available to the department:

(c) The prepayment rate per gallon of gasoline determined by the department under this section is the amount per gallon of gasoline determined under STEP FOUR of the following formula:

STEP ONE: Determine the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax:

STEP TWO: Determine the product of the following:

- (A) The STEP ONE amount;
- (B) The Indiana gross retail tax rate;
- (C) Eighty percent (80%);

STEP THREE: Determine the lesser of:

- (A) the STEP TWO result; or
- (B) the product of:
 - (i) the prepayment rate in effect on the day immediately preceding the day on which the prepayment rate is redetermined under this section; multiplied by
 - (ii) one hundred twenty-five percent (125%);

STEP FOUR: Round the STEP THREE result to the nearest one-tenth of one cent (\$0.001).

SECTION 18. IC 6-2.5-7-15 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 15. (a) A refiner, terminal operator, or distributor (including a qualified distributor) that fails to remit the tax or file the returns or reports required by this chapter is subject to the penalties set forth in IC 6-8.1-10.

(b) A distributor that fails to file the reports required by section 11 of this chapter is subject to the penalties set forth in IC 6-8.1-10.

SECTION 19. IC 15-15-12-30.5, AS ADDED BY P.L.148-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 30.5. (a) The ~~retail merchant~~ E85 deduction reimbursement fund is established. The fund consists of:

- (1) assessments transferred by the council for deposit in the fund under section 32.5 of this chapter;
- (2) gifts; and
- (3) grants.

(b) Except as provided in subsection (g), money in the fund may only be used for the purposes described in subsection (d).

(c) On May 1, the budget agency shall determine the sum of all ~~retail merchant~~ deductions allowed under ~~IC 6-2.5-7-5(d)~~ **IC 6-2.5-3.5-28** in the immediately preceding qualified reporting period (as defined in ~~IC 6-2.5-7-5(e)~~: **IC 6-2.5-3.5-28**).

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(d) The budget agency shall transfer the amount determined under subsection (c) from the fund for deposit. The amount transferred under this subsection shall be deposited in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(f) If the amount of money in the fund on May 1 is insufficient to reimburse the state for all ~~retail merchant~~ deductions allowed under ~~IC 6-2.5-7-5(d)~~ **IC 6-2.5-3.5-28** in the immediately preceding qualified reporting period (as defined in ~~IC 6-2.5-7-5(e)~~), **(IC 6-2.5-3.5-28)**, the budget agency shall deduct from any amounts transferred for deposit into the fund in the remainder of that calendar year an amount sufficient to cure the insufficiency. The budget agency shall transfer any amounts deducted under this subsection for deposit in the same manner as state gross retail and use taxes are required to be deposited under IC 6-2.5-10-1.

(g) If the ~~retail merchant~~ E85 deduction program is terminated, any balance in the fund must be transferred to the council.

SECTION 20. IC 15-15-12-32.5, AS ADDED BY P.L.148-2009, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 32.5. (a) ~~On July 1, 2010, the council shall transfer five hundred thousand dollars (\$500,000) to the budget agency for deposit in the retail merchant E85 deduction reimbursement fund established by section 30.5 of this chapter.~~

~~(b)~~ On July 1, 2011, and each year thereafter, the council shall transfer to the budget agency for deposit in the ~~retail merchant~~ E85 deduction reimbursement fund established by section 30.5 of this chapter an amount equal to the difference between:

- (1) five hundred thousand dollars (\$500,000); minus
- (2) the balance remaining in the fund on June 30.

~~However, the amount transferred under this subsection may not exceed five hundred thousand dollars (\$500,000).~~

SECTION 21. [EFFECTIVE JULY 1, 2012] **(a) Before December 20, 2012, and for purposes of IC 6-2.5-3.5, as added by this act, the department of state revenue shall publish the gasoline use tax rate prescribed by IC 6-2.5-3.5, as added by this act, that will apply to sales of gasoline in January 2013.**

(b) Each retail merchant covered by IC 6-2.5-7, shall, before January 1, 2013, for sales made before January 1, 2013, take an inventory of the gasoline in storage on the commencement of

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business on January 1, 2013, and reconcile the amount of gross retail taxes owed on sales of gasoline through December 31, 2012, in the manner and on the forms prescribed by the department of state revenue. The reconciliation shall be filed with the department of state revenue before March 1, 2013, and shall be accompanied by a payment for any gross retail taxes owed on gasoline sold through December 31, 2012, or by a claim for a credit, if the retail merchant's reconciliation indicates the retail merchant has overpaid gross retail taxes on gasoline sold through December 31, 2012.

(c) This SECTION expires January 1, 2014."

Delete pages 3 through 8.

Re-number all SECTIONS consecutively.

(Reference is to SB 353 as printed January 27, 2012.)

WALKER

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure reports that pursuant to Senate Rule 35(c), the following technical corrections are to be made to Engrossed Senate Bill 353.

Page 3, line 13, delete "distributers," and insert "**distributors**,".

(Reference is to ESB 353 as reprinted January 31, 2012.)

LONG, Chairperson

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 353, 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:

Delete the title and insert the following:

A BILL FOR AN ACT concerning taxation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 353 as reprinted February 1, 2012.)

ESPICH, Chair

Committee Vote: yeas 18, nays 0.

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