

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

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

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 taxation.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person is
- 8 a retail merchant making a retail transaction when ~~he~~ **the person**
- 9 engages in selling at retail.
- 10 (b) A person is engaged in selling at retail when, in the ordinary
- 11 course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~
- 12 **the person:**
- 13 (1) acquires tangible personal property for the purpose of resale;
- 14 and
- 15 (2) transfers that property to another person for consideration.
- 16 (c) For purposes of determining what constitutes selling at retail, it
- 17 does not matter whether:
- 18 (1) the property is transferred in the same form as when it was
- 19 acquired;
- 20 (2) the property is transferred alone or in conjunction with other
- 21 property or services; or
- 22 (3) the property is transferred conditionally or otherwise.
- 23 (d) Notwithstanding subsection (b), a person is not selling at retail
- 24 if ~~he~~ **the person** is making a wholesale sale as described in section 2

1 of this chapter.

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

4 (1) the price of the property transferred, without the rendition of
5 any service; and

6 (2) except as provided in subsection (g), any bona fide charges
7 which are made for preparation, fabrication, alteration,
8 modification, finishing, completion, delivery, or other service
9 performed in respect to the property transferred before its transfer
10 and which are separately stated on the transferor's records.

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

13 (f) Notwithstanding subsection (e):

14 (1) in the case of retail sales of gasoline (as defined in
15 IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22)
16 **made before May 28, 2012, or after September 3, 2012**, the
17 gross retail income received from selling at retail is:

18 (A) the total sales price of the gasoline or special fuel; minus
19 (B) the part of that price attributable to tax imposed under
20 IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of
21 the Internal Revenue Code; and

22 (2) **in the case of retail sales of gasoline (as defined in**
23 **IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22)**
24 **made after May 27, 2012, and before September 4, 2012**, the
25 gross retail income received from selling at retail is:

26 (A) the lesser of:

27 (i) the total sales price of the gasoline or special fuel; or
28 (ii) an amount equal to three dollars (\$3) per gallon of
29 gasoline or special fuel multiplied by the number of
30 gallons of gasoline or special fuel sold; minus

31 (B) the part of that price attributable to tax imposed under
32 IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081
33 of the Internal Revenue Code; and

34 (2) (3) in the case of retail sales of cigarettes (as defined in
35 IC 6-7-1-2), the gross retail income received from selling at retail
36 is the total sales price of the cigarettes including the tax imposed
37 under IC 6-7-1.

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

45 SECTION 2. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007,
46 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

- 1 UPON PASSAGE]: Sec. 1. (a) The definitions in this section apply
 2 throughout this chapter.
- 3 (b) "Kerosene" has the same meaning as the definition contained in
 4 IC 16-44-2-2.
- 5 (c) "Gasoline" has the same meaning as the definition contained in
 6 IC 6-6-1.1-103.
- 7 (d) "Special fuel" has the same meaning as the definition contained
 8 in IC 6-6-2.5-22.
- 9 (e) "E85" has the meaning set forth in IC 6-6-1.1-103.
- 10 (f) "Unit" means the unit of measure, such as a gallon or a liter, by
 11 which gasoline or special fuel is sold.
- 12 (g) "Metered pump" means a stationary pump which is capable of
 13 metering the amount of gasoline or special fuel dispensed from it and
 14 which is capable of simultaneously calculating and displaying the price
 15 of the gasoline or special fuel dispensed.
- 16 (h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.
- 17 (i) "Indiana special fuel tax" means the tax imposed under
 18 IC 6-6-2.5.
- 19 (j) "Federal gasoline tax" means the excise tax imposed under
 20 Section 4081 of the Internal Revenue Code.
- 21 (k) "Federal special fuel tax" means the excise tax imposed under
 22 Section 4041 of the Internal Revenue Code.
- 23 (l) "Price per unit before the addition of state and federal taxes"
 24 means an amount which equals the remainder of:
- 25 (1) the total price per unit; minus
- 26 (2) the state gross retail, Indiana gasoline or special fuel, and
 27 federal gasoline or special fuel taxes which are part of the total
 28 price per unit.
- 29 (m) "Total price per unit" means the price per unit at which gasoline
 30 or special fuel is actually sold, including the state gross retail, Indiana
 31 gasoline or special fuel, and federal gasoline or special fuel taxes which
 32 are part of the sales price.
- 33 (n) "Distributor" means a person who is the first purchaser of
 34 gasoline from a refiner, a terminal operator, or supplier, regardless of
 35 the location of the purchase.
- 36 (o) "Prepayment rate" means a rate per gallon of gasoline
 37 determined by the department under section 14 or 14.1 of this chapter,
 38 **as applicable**, for use in calculating prepayment amounts of gross
 39 retail tax under section 9 of this chapter.
- 40 (p) "Purchase or shipment" means a sale or delivery of gasoline, but
 41 does not include:
- 42 (1) an exchange transaction between refiners, terminal operators,
 43 or a refiner and terminal operator; or
- 44 (2) a delivery by pipeline, ship, or barge to a refiner or terminal
 45 operator.
- 46 (q) "Qualified distributor" means a distributor who:

1 (1) is a licensed distributor under IC 6-6-1.1; and
 2 (2) holds an unrevoked permit issued under section 7 of this
 3 chapter.

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

7 (s) "Terminal operator" means a person that:

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

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

16 SECTION 3. IC 6-2.5-7-1.1 IS ADDED TO THE INDIANA CODE
 17 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 18 **UPON PASSAGE]: Sec. 1.1. (a) As used in this chapter, "maximum**
 19 **taxable price per unit before the addition of state and federal**
 20 **taxes" means an amount that equals the remainder of:**

21 **(1) a total price per unit equal to three dollars (\$3) per gallon;**
 22 **minus**

23 **(2) the state gross retail, Indiana gasoline or special fuel, and**
 24 **federal gasoline or special fuel taxes that are part of the total**
 25 **price per unit specified in subdivision (1).**

26 **(b) This section expires December 31, 2012.**

27 SECTION 4. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008,
 28 SECTION 314, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) This section applies**
 30 **before May 28, 2012, and after September 3, 2012.**

31 ~~(a)~~ **(b)** With respect to the sale of gasoline which is dispensed from
 32 a metered pump, a retail merchant shall collect, for each unit of
 33 gasoline sold, state gross retail tax in an amount equal to the product,
 34 rounded to the nearest one-tenth of one cent (\$0.001), of:

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

37 (2) seven percent (7%).

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

41 ~~(b)~~ **(c)** With respect to the sale of special fuel or kerosene which is
 42 dispensed from a metered pump, unless the purchaser provides an
 43 exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant
 44 shall collect, for each unit of special fuel or kerosene sold, state gross
 45 retail tax in an amount equal to the product, rounded to the nearest
 46 one-tenth of one cent (\$0.001), of:

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

3 (2) seven percent (7%).

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

7 SECTION 5. IC 6-2.5-7-3.1 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]: **Sec. 3.1. (a) This section applies after May 27,
10 2012, and before September 4, 2012.**

11 **(b) With respect to the sale of gasoline which is dispensed from
12 a metered pump, a retail merchant shall collect, for each unit of
13 gasoline sold, state gross retail tax in an amount equal to the
14 product, rounded to the nearest one-tenth of one cent (\$0.001), of:**

15 **(1) the lesser of:**

16 **(A) the price per unit before the addition of state and
17 federal taxes; or**

18 **(B) the maximum taxable price per unit before the addition
19 of state and federal taxes; multiplied by**

20 **(2) seven percent (7%).**

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

24 **(c) With respect to the sale of special fuel or kerosene that is
25 dispensed from a metered pump, unless the purchaser provides an
26 exemption certificate in accordance with IC 6-2.5-8-8, a retail
27 merchant shall collect, for each unit of special fuel or kerosene
28 sold, state gross retail tax in an amount equal to the product,
29 rounded to the nearest one-tenth of one cent (\$0.001), of:**

30 **(1) the lesser of:**

31 **(A) the price per unit before the addition of state and
32 federal taxes; or**

33 **(B) the maximum taxable price per unit before the addition
34 of state and federal taxes; multiplied by**

35 **(2) seven percent (7%).**

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

39 **(d) This section expires December 31, 2012.**

40 SECTION 6. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009,
41 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 UPON PASSAGE]: **Sec. 5. (a) This section applies before May 28,
43 2012, and after September 3, 2012.**

44 **(a) (b) Each retail merchant who dispenses gasoline or special fuel
45 from a metered pump shall, in the manner prescribed in IC 6-2.5-6,
46 report to the department the following information:**

- 1 (1) The total number of gallons of gasoline sold from a metered
 2 pump during the period covered by the report.
- 3 (2) The total amount of money received from the sale of gasoline
 4 described in subdivision (1) during the period covered by the
 5 report.
- 6 (3) That portion of the amount described in subdivision (2) which
 7 represents state and federal taxes imposed under this article,
 8 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- 9 (4) The total number of gallons of special fuel sold from a
 10 metered pump during the period covered by the report.
- 11 (5) The total amount of money received from the sale of special
 12 fuel during the period covered by the report.
- 13 (6) That portion of the amount described in subdivision (5) that
 14 represents state and federal taxes imposed under this article,
 15 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- 16 (7) The total number of gallons of E85 sold from a metered pump
 17 during the period covered by the report.
- 18 ~~(b)~~ (c) Concurrently with filing the report, the retail merchant shall
 19 remit the state gross retail tax in an amount which equals six and
 20 fifty-four hundredths percent (6.54%) of the gross receipts, including
 21 state gross retail taxes but excluding Indiana and federal gasoline and
 22 special fuel taxes, received by the retail merchant from the sale of the
 23 gasoline and special fuel that is covered by the report and on which the
 24 retail merchant was required to collect state gross retail tax. The retail
 25 merchant shall remit that amount regardless of the amount of state
 26 gross retail tax which the merchant has actually collected under this
 27 chapter. However, the retail merchant is entitled to deduct and retain
 28 the amounts prescribed in subsection ~~(c)~~; (d), IC 6-2.5-6-10, and
 29 IC 6-2.5-6-11.
- 30 ~~(c)~~ (d) A retail merchant is entitled to deduct from the amount of
 31 state gross retail tax required to be remitted under subsection ~~(b)~~ (c) the
 32 amount determined under STEP THREE of the following formula:
 33 STEP ONE: Determine:
 34 (A) the sum of the prepayment amounts made during the
 35 period covered by the retail merchant's report; minus
 36 (B) the sum of prepayment amounts collected by the retail
 37 merchant, in the merchant's capacity as a qualified distributor,
 38 during the period covered by the retail merchant's report.
- 39 STEP TWO: Subject to subsections ~~(d)~~ (e) and ~~(f)~~; (g), for
 40 qualified reporting periods beginning after June 30, 2009, and
 41 ending before July 1, 2020, determine the product of:
 42 (A) eighteen cents (\$0.18); multiplied by
 43 (B) the number of gallons of E85 sold at retail by the retail
 44 merchant during the period covered by the retail merchant's
 45 report.
- 46 STEP THREE: Add the amounts determined under STEPS ONE

- 1 and TWO.
 2 For purposes of this section, a prepayment of the gross retail tax is
 3 presumed to occur on the date on which it is invoiced.
- 4 ~~(d)~~ (e) The total amount of deductions allowed under subsection ~~(e)~~
 5 (d) STEP TWO may not exceed the amount of money that the budget
 6 agency determines is available in the retail merchant E85 deduction
 7 reimbursement fund established under IC 15-15-12-30.5 for the
 8 deductions for all retail merchants in a particular qualified reporting
 9 period. A retail merchant is not required to apply for an allocation of
 10 deductions under subsection ~~(e)~~ (d) STEP TWO. Before August 1 of
 11 each year, the budget agency shall estimate whether the amount of
 12 deductions from the immediately preceding qualified reporting period
 13 that are subject to reimbursement under IC 15-15-12-30.5(f) and the
 14 deductions expected to be reported under subsection ~~(e)~~ (d) STEP
 15 TWO for the qualified reporting periods beginning after December 31
 16 and ending before April 1 of the following year will exceed the amount
 17 of money available in the retail merchant E85 deduction
 18 reimbursement fund for the deductions. If the budget agency
 19 determines that the amount of money in the retail merchant E85
 20 deduction reimbursement fund is insufficient to cover the amount of
 21 the deductions expected to be reported, the budget agency shall publish
 22 in the Indiana Register a notice that the deduction program under
 23 subsection ~~(e)~~ (d) STEP TWO is suspended with respect to the
 24 qualified reporting periods occurring in the following calendar year and
 25 that no deductions will be granted for retail transactions occurring in
 26 the qualified reporting periods occurring in the following calendar year.
- 27 ~~(e)~~ (f) As used in this section, "qualified reporting period" refers to
 28 a reporting period beginning after December 31 and ending before
 29 April 1 of each year.
- 30 ~~(f)~~ (g) The budget agency may suspend the deduction program
 31 under subsection ~~(e)~~ (d) STEP TWO for a particular year at any time
 32 during a qualified reporting period if the budget agency determines that
 33 the amount of money in the retail merchant E85 deduction
 34 reimbursement fund and the amount of money that will be transferred
 35 to the fund on July 1 will not be sufficient to reimburse the deductions
 36 expected to occur before the deduction program for the year ends on
 37 March 31. The budget agency shall immediately provide notice to the
 38 participating retail merchants of the decision to suspend the deduction
 39 program for that year.
- 40 SECTION 7. IC 6-2.5-7-5.1 IS ADDED TO THE INDIANA CODE
 41 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 42 **UPON PASSAGE]: Sec. 5.1. (a) This section applies after May 27,**
 43 **2012, and before September 4, 2012.**
- 44 **(b) Each retail merchant who dispenses gasoline or special fuel**
 45 **from a metered pump shall, in the manner prescribed in IC 6-2.5-6,**
 46 **report to the department the following information:**

- 1 (1) For each price point at which the retail merchant sold
 2 gasoline from a metered pump during the period covered by
 3 the report, the total number of gallons of gasoline sold from
 4 a metered pump at the specified price point during the period
 5 covered by the report.
- 6 (2) The total amount of money received from the sale of
 7 gasoline described in subdivision (1) during the period
 8 covered by the report.
- 9 (3) The part of the amount described in subdivision (2) that
 10 represents state and federal taxes imposed under this article,
 11 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- 12 (4) For each price point at which the retail merchant sold
 13 special fuel from a metered pump during the period covered
 14 by the report, the total number of gallons of special fuel sold
 15 from a metered pump at the specified price point during the
 16 period covered by the report.
- 17 (5) The total amount of money received from the sale of
 18 special fuel during the period covered by the report.
- 19 (6) The part of the amount described in subdivision (5) that
 20 represents state and federal taxes imposed under this article,
 21 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- 22 (7) The total number of gallons of E85 sold from a metered
 23 pump during the period covered by the report.
- 24 (c) Concurrently with filing the report, the retail merchant shall
 25 remit the state gross retail tax that the retail merchant was
 26 required to collect from the sale of the gasoline and special fuel
 27 under section 3.1 of this chapter for the period that is covered by
 28 the report. The retail merchant shall remit that amount regardless
 29 of the amount of state gross retail tax which the merchant has
 30 actually collected under this chapter. However, the retail merchant
 31 is entitled to deduct and retain the amounts prescribed in
 32 subsection (d), IC 6-2.5-6-10, and IC 6-2.5-6-11.
- 33 (d) A retail merchant is entitled to deduct from the amount of
 34 state gross retail tax required to be remitted under subsection (c)
 35 the amount determined under STEP THREE of the following
 36 formula:
- 37 STEP ONE: Determine:
- 38 (A) the sum of the prepayment amounts made during the
 39 period covered by the retail merchant's report; minus
- 40 (B) the sum of prepayment amounts collected by the retail
 41 merchant, in the merchant's capacity as a qualified
 42 distributor, during the period covered by the retail
 43 merchant's report.
- 44 STEP TWO: Subject to subsections (e) and (g), for qualified
 45 reporting periods beginning after June 30, 2009, and ending
 46 before July 1, 2020, determine the product of:
- 47 (A) eighteen cents (\$0.18); multiplied by

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

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

6 **For purposes of this section, a prepayment of the gross retail tax is**
 7 **presumed to occur on the date on which it is invoiced.**

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

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

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

45 **(h) This section expires December 31, 2012.**

46 **SECTION 8. IC 6-2.5-7-6 IS AMENDED TO READ AS**
 47 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) If the**

1 deduction under section ~~5(e)~~ **5(d) or 5.1(d)** of this chapter, **as**
 2 **applicable**, exceeds the amount of gross retail tax required to be
 3 remitted under section ~~5(b)~~ **5(c) or 5.1(c)** of this chapter, **as**
 4 **applicable**, the retail merchant is entitled to a credit. The credit shall
 5 be used as follows:

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

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

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

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

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

- 28 (1) to the highway, road, and street fund, twenty-five percent
- 29 (25%) of the amount set forth in the department's notice; and
- 30 (2) to the motor fuel tax fund of the motor vehicle highway
- 31 account, seventy-five percent (75%) of the amount set forth in the
- 32 department's notice.

33 SECTION 9. IC 6-2.5-7-14, AS AMENDED BY P.L.182-2009(ss),
 34 SECTION 182, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE UPON PASSAGE]: Sec. 14. **(a) This section applies**
 36 **before May 28, 2012, and after September 3, 2012.**

37 **(a) (b)** Before June 10 and December 10 of each year, the
 38 department shall determine and provide to:

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

43 a notice of the prepayment rate to be used during the following six (6)
 44 month period. The department, after approval by the office of
 45 management and budget, may determine a new prepayment rate if the
 46 department finds that the statewide average retail price per gallon of

1 gasoline, excluding the Indiana and federal gasoline taxes and the
2 Indiana gross retail tax, has changed by at least twenty-five percent
3 (25%) since the most recent determination.

4 ~~(b)~~ (c) In determining the prepayment rate under this section, the
5 department shall use the most recent retail price of gasoline available
6 to the department.

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

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

13 STEP TWO: Determine the product of the following:

- 14 (A) The STEP ONE amount.
- 15 (B) The Indiana gross retail tax rate.
- 16 (C) Eighty percent (80%).

17 STEP THREE: Determine the lesser of:

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

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

26 SECTION 10. IC 6-2.5-7-14.1 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE UPON PASSAGE]: **Sec. 14.1. (a) This section applies**
29 **after May 27, 2012, and before September 4, 2012.**

30 **(b) Before June 10 and December 10 of each year, the**
31 **department shall determine and provide to:**

- 32 **(1) each refiner and terminal operator and each qualified**
- 33 **distributor known to the department to be required to collect**
- 34 **prepayments of the state gross retail tax under this chapter;**
- 35 **and**

36 **(2) any other person that makes a request;**
37 **a notice of the prepayment rate to be used during the following six**
38 **(6) month period. The department, after approval by the office of**
39 **management and budget, may determine a new prepayment rate**
40 **if the department finds that the statewide average retail price per**
41 **gallon of gasoline, excluding the Indiana and federal gasoline taxes**
42 **and the Indiana gross retail tax, has changed by at least twenty-five**
43 **percent (25%) since the most recent determination.**

44 **(c) In determining the prepayment rate under this section, the**
45 **department shall use the most recent retail price of gasoline**
46 **available to the department.**

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

4 STEP ONE: Determine the lesser of:

- 5 (A) the statewide average retail price per gallon of
- 6 gasoline, excluding the Indiana and federal gasoline taxes
- 7 and the Indiana gross retail tax; or
- 8 (B) the maximum taxable price per gallon of gasoline
- 9 before the addition of state and federal taxes.

10 STEP TWO: Determine the product of the following:

- 11 (A) The STEP ONE amount.
- 12 (B) The Indiana gross retail tax rate.
- 13 (C) Eighty percent (80%).

14 STEP THREE: Determine the lesser of:

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

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

23 (e) This section expires December 31, 2012.

24 SECTION 11. IC 15-15-12-30.5, AS ADDED BY P.L.148-2009,
25 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 UPON PASSAGE]: Sec. 30.5. (a) The retail merchant E85 deduction
27 reimbursement fund is established. The fund consists of:

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

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

34 (c) On May 1, the budget agency shall determine the sum of all
35 retail merchant deductions allowed under ~~IC 6-2.5-7-5(d)~~
36 **IC 6-2.5-7-5(e) or IC 6-2.5-7-5.1(e), as applicable**, in the immediately
37 preceding qualified reporting period (as defined in ~~IC 6-2.5-7-5(e)~~
38 **IC 6-2.5-7-5(f) or IC 6-2.5-7-5.1(f), as applicable**).

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

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

1 (f) If the amount of money in the fund on May 1 is insufficient to
 2 reimburse the state for all retail merchant deductions allowed under
 3 ~~IC 6-2.5-7-5(d)~~ **IC 6-2.5-7-5(e) or IC 6-2.5-7-5.1(e), as applicable**, in
 4 the immediately preceding qualified reporting period (as defined in
 5 ~~IC 6-2.5-7-5(e)~~ **IC 6-2.5-7-5(f) or IC 6-2.5-7-5.1(f), as applicable**),
 6 the budget agency shall deduct from any amounts transferred for
 7 deposit into the fund in the remainder of that calendar year an amount
 8 sufficient to cure the insufficiency. The budget agency shall transfer
 9 any amounts deducted under this subsection for deposit in the same
 10 manner as state gross retail and use taxes are required to be deposited
 11 under IC 6-2.5-10-1.

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

14 Page 1, after line 10, begin a new paragraph and insert:
 15 "SECTION 13. **An emergency is declared for this act.**"
 16 Renumber all SECTIONS consecutively.
 (Reference is to ESB 353 as printed February 24, 2012.)

Representative Pelath