January 23, 2012

HOUSE BILL No. 1128

DIGEST OF HB 1128 (Updated January 17, 2012 11:37 am - DI 77)

Citations Affected: IC 6-2.5; IC 15-15.

Synopsis: Corn marketing council. Repeals provisions concerning deductions to retail merchants under the E 85 reimbursement program. Amends the definition of "producer" for purposes of the corn marketing laws. Adds requirement that a producer has had an assessment in the previous two years to qualify as a member on the corn marketing council (council). Changes the date that a petition for candidacy to the council may be filed. Provides that the council operates on a fiscal year. (Current law requires the council to operate on a state fiscal year.) Establishes a formula to determine the maximum administrative expenses of the council. Provides that the cost of processing refunds and applying for grants are not administrative expenses. Requires a first purchaser of corn to remit the assessment when payment is received. Provides that a first purchaser that is not subject to assessment is to sign and date an exemption form. Establishes an assessment refund schedule based upon the amount owed. Makes a technical change.

Effective: July 1, 2012.

Lehe

January 9, 2012, read first time and referred to Committee on Agriculture and Rural Development.
January 23, 2012, amended, reported — Do Pass.

C o p y

January 23, 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.

C o p y

HOUSE BILL No. 1128

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

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

SECTION 1. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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 represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

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

(5) The total amount of money received from the sale of special

fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) 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 (c),~~ 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 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~~

C o p y

~~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 2. IC 6-2.5-7-6 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~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:~~

~~(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~~

C o p y

~~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 3. IC 6-2.5-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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;

(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

C o p y

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 4. IC 15-15-12-13, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. As used in this chapter, "producer" means a person engaged in the business of producing and marketing corn in Indiana under:

(1) the producer's own name; **or**

(2) the name of an entity in which the producer has ownership.

SECTION 5. IC 15-15-12-17, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) The Indiana corn marketing council is established. The council is a public body corporate and politic, and though it is separate from the state, the exercise by the council of its powers constitutes an essential governmental function. The council may sue and be sued and plead and be impleaded.

(b) The council consists of seventeen (17) voting and eight (8) ex officio, nonvoting members. The elected members from districts listed under section 21(a) of this chapter must: ~~be:~~

(1) **be** registered as voters in Indiana;

(2) **be** at least eighteen (18) years of age; ~~and~~

(3) **be** producers; **and**

(4) have an assessment on corn under section 32 of this chapter made during the previous two (2) years.

(c) Each elected member of the council must reside in the district identified in section 21(a) of this chapter from which the member is elected.

(d) Each member of the council is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency. However, council members are not entitled to a salary or per diem.

SECTION 6. IC 15-15-12-23, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 23. (a) The ballot for the election of a district council member must include the name of each producer who:

(1) meets the qualifications set forth in section 17(b) of this

C o p y

chapter; and

(2) files with the council, ~~before~~ **not later than** June 30 of the year of the election, a petition in support of candidacy signed by ten (10) other producers who reside in the district.

(b) The council shall provide petition forms upon request and shall make forms available:

(1) at cooperative extension service offices located in the district; and

(2) via the council's Internet web site.

(c) The council shall allow a producer to request a ballot through the council's Internet web site.

(d) A name other than the names of the producers who have qualified under this section may not be printed on the ballot by the council. All names on the ballot must be listed in alphabetical order based on the producer's surname.

(e) The council shall require each producer who submits a ballot to provide a separate attestation that the person is an eligible producer.

SECTION 7. IC 15-15-12-29, AS AMENDED BY P.L.148-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 29. (a) The council shall pay all expenses incurred under this chapter with money from the assessments remitted to the council under this chapter.

(b) The council may invest all money the council receives under this chapter, including gifts or grants that are given for the express purpose of implementing this chapter, in the same way allowed by law for public funds.

(c) The council may expend money from assessments and from investment income not needed for expenses for market development, promotion, and research.

(d) The council may not use money received, collected, or accrued under this chapter for any purpose other than the purposes authorized by this chapter. The amount of money expended on administering this chapter in ~~a state~~ **the council's** fiscal year may not exceed ten percent (10%) of the ~~total~~ **average** amount of assessments, grants, and gifts received by the council ~~in that state fiscal year.~~ **as calculated under subsection (e).**

(e) The council shall determine the amount that it may expend to administer this chapter, using the following formula:

STEP ONE: Determine the amount of assessments, grants, and gifts received by the council in each of the preceding five (5) fiscal years beginning with the immediately preceding fiscal year.

C o p y

STEP TWO: Determine the average annual amount of assessments, grants, and gifts received by the council in each fiscal year using three (3) of the five (5) fiscal years described in STEP ONE after excluding the two (2) years in which the amount of assessments, grants, and gifts received by the council were the highest and lowest totals.

STEP THREE: Divide the amount in STEP TWO by ten (10). The amount in STEP THREE is the maximum amount that the council may expend on administering this chapter for the current fiscal year.

(f) The cost of processing refunds and applying for grants is not an administrative expense under this section.

SECTION 8. IC 15-15-12-30.5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~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) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)).~~

~~(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) in the immediately preceding qualified reporting period (as defined in IC 6-2.5-7-5(e)), 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.~~

C o p y

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

SECTION 9. IC 15-15-12-32, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 32. (a) An assessment of one-half cent ($0.005) per bushel must be collected on all corn sold in Indiana. The assessment may be imposed and collected on a quantity of corn only once and must be collected by the first purchaser. A buyer of corn who purchases more than one hundred thousand (100,000) bushels annually for the buyer's own use as seed or feed is responsible only for collecting checkoff assessments on corn purchases made after the buyer exceeds the one hundred thousand (100,000) bushel threshold and becomes a first purchaser. The rate of the assessment imposed by this section may be changed only by the general assembly.

(b) The first purchaser of a quantity of corn shall deduct the assessment on the corn from the money to be paid to the producer based on the sale of the corn. A first purchaser shall accumulate assessments collected under this subsection throughout each of the following periods:

(1) January, February, and March.
(2) April, May, and June.
(3) July, August, and September.
(4) October, November, and December.

(c) At the end of each period, the first purchaser shall remit to the council all assessments collected during the period. A first purchaser who remits all assessments collected during a period within thirty (30) days after the end of the period is entitled to retain three percent (3%) of the total of the assessments as a handling fee.

(d) The assessment on the sale of the corn must occur when the payment for the corn is received by the producer.

(e) A first purchaser who is not subject to the assessment under this section shall sign and date an exemption form. The council shall prepare the exemption form.

SECTION 10. IC 15-15-12-32.5 IS REPEALED [EFFECTIVE JULY 1, 2012]. ~~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:~~

C o p y

~~(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 11. IC 15-15-12-33, AS AMENDED BY P.L.148-2009, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 33. (a) If a producer has sold corn and the state assessment was deducted from the sale price of the corn, the producer may secure a refund equal to the amount deducted upon filing a written application.

(b) A producer's application for a refund under this section must be made to the council not more than one hundred eighty (180) days after the state assessment is deducted from the sale price of the producer's corn.

(c) The council shall provide application forms to a first purchaser for purposes of this section upon request and make application forms available on the council's Internet web site. ~~Before July 1, 2009, a first purchaser shall provide an application form to each producer along with each settlement form that shows a deduction. After June 30, 2009,~~ A first purchaser shall make application forms available in plain view at the first purchaser's place of business.

(d) Proof that an assessment has been deducted from the sale price of a producer's corn must be attached to each application for a refund submitted under this section by a producer. The proof that an assessment was deducted may be in the form of a duplicate or an original copy of the purchase invoice or settlement sheet from the first purchaser. The refund form and proof of assessment may be mailed or faxed to the council. The refund form must clearly state how to request a refund, the address where the form may be mailed, and the fax number where the form may be faxed.

(e) If a refund is due under this section, the council shall remit the refund to the producer **as follows:**

(1) For:

(A) refunds of more than twenty-five dollars ($25); or

(B) multiple refunds that total more than twenty-five dollars ($25);

not later than thirty (30) days after the date the producer's completed application and proof of assessment are received.

(2) For refunds of twenty-five dollars ($25) or less:

(A) on March 31 if the producer's completed application and proof of assessment are received before March 1; or

(B) on September 30 if the producer's completed

C o p y

application and proof of assessment are received on or after March 1 and before September 1.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred House Bill 1128, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, between lines 22 and 23, begin a new paragraph and insert:

"SECTION 3. IC 6-2.5-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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;

(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 4. IC 15-15-12-13, AS ADDED BY P.L.2-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. As used in this chapter, "producer" means a person engaged in the business of producing and marketing corn in Indiana under:

(1) the producer's own name; **or**

(2) the name of an entity in which the producer has ownership.".

Page 4, line 35, after "producers;" insert "**and**".

Page 4, delete line 36.

C o p y

Page 4, line 37, delete "(5)" and insert "**(4)**".

Page 4, line 38, delete "years; and" and insert "**years.**".

Page 4, delete lines 39 through 40.

Page 4, line 41, delete "(c)", begin a new paragraph and insert:

"(c)".

Page 7, delete lines 27 through 41, begin a new paragraph and insert:

"(b) The first purchaser of a quantity of corn shall deduct the assessment on the corn from the money to be paid to the producer based on the sale of the corn. A first purchaser shall accumulate assessments collected under this subsection throughout each of the following periods:

(1) January, February, and March.

(2) April, May, and June.

(3) July, August, and September.

(4) October, November, and December.

(c) At the end of each period, the first purchaser shall remit to the council all assessments collected during the period. A first purchaser who remits all assessments collected during a period within thirty (30) days after the end of the period is entitled to retain three percent (3%) of the total of the assessments as a handling fee.

(d) The assessment on the sale of the corn must occur when the payment for the corn is received by the producer.".

Page 7, line 42, delete "(d)" and insert "**(e)**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1128 as introduced.)

LEHE, Chair

Committee Vote: yeas 8, nays 0.

C o p y