



Reprinted  
February 1, 2012

---

---

## SENATE BILL No. 353

---

DIGEST OF SB 353 (Updated January 30, 2012 5:58 pm - DI 58)

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

**Synopsis:** Sales tax on gasoline. Provides a new collection procedure for collecting state gross retail taxes on the sale of gasoline by using a gasoline use tax based on gallons sold. Specifies that the collection point is moved to the first purchaser of gasoline from a refiner, a terminal operator, or supplier. Bases the gasoline use tax on the retail price of gasoline using a rolling monthly average retail price per gallon. Requires the department of state revenue to determine a use tax rate per gallon using a monthly statewide average price and the 7% gross retail tax rate. Requires all reports of gasoline use tax to be filed electronically and the taxes remitted using the department's online tax system. Changes from 25% to 15% the amount the price of gasoline must change before a new use tax rate may be set. Requires a new use tax rate to take effect on the first or sixteenth of the month. Requires the department to publish notices on its Internet web site and provide notices to registered distributors, refiners, and terminal operators using electronic mail with a direct link. Makes corresponding changes.

**Effective:** July 1, 2012; January 1, 2013.

---

---

### 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, engrossed, read third time, passed. Yeas 49, nays 0.

---

---

SB 353—LS 6808/DI 58+



C  
o  
p  
y

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.

## SENATE BILL No. 353

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

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

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

4 **Chapter 3.5. Collection of Use Tax on Gasoline**

5 **Sec. 1. As used in this chapter, "distributor" means a person**  
6 **who is the first purchaser of gasoline from a refiner, a terminal**  
7 **operator, or supplier, regardless of the location of the purchase.**

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

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

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

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

17 **Sec. 6. As used in this chapter, "metered pump" means a**

SB 353—LS 6808/DI 58+



C  
O  
P  
Y

1 stationary pump that is capable of metering the amount of gasoline  
 2 or special fuel dispensed from it and that is capable of  
 3 simultaneously calculating and displaying the price of the gasoline  
 4 or special fuel dispensed.

5 Sec. 7. As used in this chapter, "purchase or shipment" means  
 6 a sale or delivery of gasoline, but does not include:

- 7 (1) an exchange transaction between refiners, terminal  
 8 operators, or a refiner and terminal operator; or  
 9 (2) a delivery by pipeline, ship, or barge to a refiner or  
 10 terminal operator.

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

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

17 Sec. 9. As used in this chapter, "qualified distributor" means a  
 18 distributor who:

- 19 (1) is a licensed distributor under IC 6-6-1.1; and  
 20 (2) holds an unrevoked permit issued under section 17 of this  
 21 chapter.

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

25 Sec. 11. As used in this chapter, "terminal operator" means a  
 26 person that:

- 27 (1) stores gasoline in tanks and equipment used in receiving  
 28 and storing gasoline from interstate or intrastate pipelines  
 29 pending wholesale bulk reshipment; or  
 30 (2) stores gasoline at a boat terminal transfer that is a dock or  
 31 tank, or equipment contiguous to a dock or tank, including  
 32 equipment used in the unloading of gasoline from a ship or  
 33 barge and used in transferring the gasoline to a tank pending  
 34 wholesale bulk reshipment.

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

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

41 Sec. 14. As used in this chapter, "use tax rate" means a rate per  
 42 gallon of gasoline determined by the department under section 15

C  
O  
P  
Y



1 of this chapter and used to calculate the use tax due on the retail  
 2 sale of gasoline under section 16 of this chapter, notwithstanding  
 3 the collection procedures set forth in this chapter.

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

- 6 (1) each refiner and terminal operator and each qualified  
 7 distributor known to the department to be required to collect  
 8 payments of the gasoline use tax under this chapter; and  
 9 (2) any other person that makes a request;

10 a notice of the gasoline use tax rate to be used during the following  
 11 month. The notice shall be published on the department's Internet  
 12 web site, published in the Indiana Register, and provided to  
 13 registered distributors, refiners, and terminal operators by an  
 14 electronic mail message that includes a direct link to the notice on  
 15 the department's Internet web site.

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

- 18 (1) the statewide average retail price per gallon of gasoline,  
 19 excluding the Indiana and federal gasoline taxes, the Indiana  
 20 gasoline use tax, and the Indiana gross retail tax; multiplied  
 21 by  
 22 (2) seven percent (7%).

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

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

39 **Sec. 16. A qualified distributor, a refiner, or a terminal operator**  
 40 **that sells gasoline for delivery to a retail merchant located in**  
 41 **Indiana shall remit the gasoline use tax to the department for each**  
 42 **gallon of gasoline sold. The person shall remit that amount**



C  
O  
P  
Y

1 regardless of the amount of gasoline use tax that the person has  
 2 actually collected under this chapter. However, the person is  
 3 entitled to deduct and retain the amounts prescribed in section 28  
 4 of this chapter, IC 6-2.5-6-10, and IC 6-2.5-6-11.

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

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

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

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

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

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

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

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

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

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

- 39 (1) in an amount of at least two thousand dollars (\$2,000) and  
 40 not more than a three (3) month gasoline use tax liability for  
 41 the distributor, as estimated by the department;
- 42 (2) in cash or with a surety company approved by the

C  
O  
P  
Y



1 department;  
 2 (3) upon which the distributor is the principal obligor and the  
 3 state is the obligee; and  
 4 (4) conditioned upon the prompt filing of true electronic  
 5 reports and payment of all gasoline use taxes collected by the  
 6 distributor, together with any penalties and interest, and upon  
 7 faithful compliance with this chapter.  
 8 The department shall determine the amount of the distributor's  
 9 bond, if any.  
 10 (b) If after a hearing (after at least five (5) days written notice)  
 11 the department determines that the amount of a distributor's bond  
 12 is insufficient, the distributor shall upon written demand of the  
 13 department file a new bond.  
 14 (c) The department may require a distributor to file a new bond  
 15 with a satisfactory surety in the same form and amount if:  
 16 (1) liability upon the old bond is discharged or reduced by  
 17 judgment rendered, payment made, or otherwise; or  
 18 (2) in the opinion of the department, any surety on the old  
 19 bond becomes unsatisfactory.  
 20 (d) If a new bond obtained under subsection (b) or (c) is  
 21 unsatisfactory, the department shall cancel the permit of the  
 22 distributor. If the new bond is satisfactorily furnished, the  
 23 department shall release in writing the surety on the old bond from  
 24 any liability accruing after the effective date of the new bond.  
 25 (e) Sixty (60) days after making a written request for release to  
 26 the department, the surety of a bond furnished by a distributor is  
 27 released from any liability to the state accruing on the bond. The  
 28 release does not affect any liability accruing before expiration of  
 29 the sixty (60) day period. The department shall promptly notify the  
 30 distributor furnishing the bond that the surety has requested  
 31 release. Unless the distributor obtains a new bond that meets the  
 32 requirements of this section and files the new bond with the  
 33 department within the sixty (60) day period, the department shall  
 34 cancel the distributor's permit.  
 35 (f) The department may require a distributor to furnish audited  
 36 annual financial statements to determine if any change is required  
 37 in the amount of the distributor's bond.  
 38 Sec. 19. (a) Except as provided in section 23 of this chapter, at  
 39 the time of purchase or shipment of gasoline from a refiner or  
 40 terminal operator to a distributor that is not a qualified  
 41 distributor, the refiner or terminal operator shall collect and the  
 42 distributor shall pay to the refiner or terminal operator the

COPY



1 gasoline use tax in an amount determined under subsection (d).

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

7 (c) If gasoline is delivered to a retail outlet for resale and the  
8 gasoline use tax in the amount determined under subsection (d) has  
9 not been paid on the gasoline, the refiner, terminal operator, or  
10 qualified distributor making the delivery shall pay to the  
11 department the gasoline use tax in an amount determined under  
12 subsection (d). A bulk plant is not considered to be a retail outlet.

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

15 (1) the gasoline use tax rate per gallon of gasoline; multiplied  
16 by

17 (2) the number of invoiced gallons purchased or shipped.

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

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

26 (1) On or before the tenth day of each month for gasoline sold  
27 after the fifteenth day and before the end of the preceding  
28 month.

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

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

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

40 (2) The amount of tax paid by each purchaser or recipient.

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



C  
O  
P  
Y

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

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

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

12 (2) The amount of gasoline use tax paid to each refiner,  
 13 terminal operator, or distributor.

14 (3) The number of gallons of gasoline sold to each distributor,  
 15 retail merchant, exempt purchaser, or other person and the  
 16 amount of gasoline use tax collected from each distributor,  
 17 retail merchant, or other person identifying the location of  
 18 each distributor, retail merchant, exempt purchaser, or other  
 19 person, as required by the department.

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

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

27 (b) A distributor that:

28 (1) pays the gasoline use tax under this chapter;

29 (2) is a retail merchant; and

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

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



C  
O  
P  
Y

1 authorize the auditor of state to issue a warrant for the refund.

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

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

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

22 (b) A distributor that fails to file the reports required by section  
23 21 of this chapter is subject to the penalties set forth in IC 6-8.1-10.

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

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

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

- 38 (1) The total number of gallons of gasoline sold during the  
39 period covered by the report.
- 40 (2) The total number of gallons of E85 sold during the period  
41 covered by the report.
- 42 (3) The total amount of money received which represents state



C  
o  
p  
y

1 and federal taxes imposed under this article, IC 6-6-1.1, or  
2 Section 4081 of the Internal Revenue Code from the sale of  
3 gasoline described in subdivision (1) during the period  
4 covered by the report.

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

8 (b) Subject to subsections (c) and (d), for qualified reporting  
9 periods beginning after December 31, 2012, and ending before July  
10 1, 2020, a person that remits the gasoline use tax to the department  
11 is entitled to deduct from the amount of gasoline use tax required  
12 to be remitted an amount equal to the product of:

13 (1) eighteen cents (\$0.18); multiplied by

14 (2) the number of gallons of E85 sold to a purchaser or  
15 recipient during the period covered by the person's report.

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

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

42 (d) The budget agency may suspend the deduction program

C  
O  
P  
Y

1 under subsection (b) for a particular year at any time during a  
 2 qualified reporting period if the budget agency determines that the  
 3 amount of money in the E85 deduction reimbursement fund and  
 4 the amount of money that will be transferred to the fund on July  
 5 1 will not be sufficient to provide the deductions expected to occur  
 6 before the deduction program for the year ends on March 31. The  
 7 budget agency shall immediately provide notice to all persons that  
 8 remitted the gasoline use tax in the preceding month of the decision  
 9 to suspend the deduction program for that year.

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

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

17 SECTION 2. IC 6-2.5-4-1 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 1. (a) A person is  
 19 a retail merchant making a retail transaction when ~~he~~ **the person**  
 20 engages in selling at retail.

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

24 (1) acquires tangible personal property for the purpose of resale;  
 25 and

26 (2) transfers that property to another person for consideration.

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

29 (1) the property is transferred in the same form as when it was  
 30 acquired;

31 (2) the property is transferred alone or in conjunction with other  
 32 property or services; or

33 (3) the property is transferred conditionally or otherwise.

34 (d) Notwithstanding subsection (b), a person is not selling at retail  
 35 if ~~he~~ **the person** is making a wholesale sale as described in section 2  
 36 of this chapter. **However, in the case of sales of gasoline (as defined**  
 37 **in IC 6-6-1.1-103), a person shall collect the gasoline use tax as**  
 38 **provided in IC 6-2.5-3.5.**

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

41 (1) the price of the property transferred, without the rendition of  
 42 any service; and

C  
o  
p  
y



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

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

8 (f) Notwithstanding subsection (e):

9 (1) in the case of retail sales of gasoline (as defined in  
10 ~~IC 6-6-1.1-103~~) and special fuel (as defined in IC 6-6-2.5-22), the  
11 gross retail income received from selling at retail is the total sales  
12 price of the gasoline or special fuel minus the part of that price  
13 attributable to tax imposed under ~~IC 6-6-1.1~~, IC 6-6-2.5 or ~~Section~~  
14 ~~4041(a)~~ or Section 4081 of the Internal Revenue Code; and

15 (2) in the case of retail sales of cigarettes (as defined in  
16 IC 6-7-1-2), the gross retail income received from selling at retail  
17 is the total sales price of the cigarettes including the tax imposed  
18 under IC 6-7-1.

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

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

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

40 (1) Seventy-three hundredths percent (0.73%), if the retail  
41 merchant's state gross retail and use tax **or gasoline use tax**  
42 liability accrued during the state fiscal year ending on June 30 of

C  
o  
p  
y



- 1 the immediately preceding calendar year did not exceed sixty
- 2 thousand dollars (\$60,000).
- 3 (2) Fifty-three hundredths percent (0.53%), if the retail merchant's
- 4 state gross retail and use tax **or gasoline use tax** liability accrued
- 5 during the state fiscal year ending on June 30 of the immediately
- 6 preceding calendar year:
- 7 (A) was greater than sixty thousand dollars (\$60,000); and
- 8 (B) did not exceed six hundred thousand dollars (\$600,000).
- 9 (3) Twenty-six hundredths percent (0.26%), if the retail
- 10 merchant's state gross retail and use tax liability **or gasoline use**
- 11 **tax** accrued during the state fiscal year ending on June 30 of the
- 12 immediately preceding calendar year was greater than six hundred
- 13 thousand dollars (\$600,000).
- 14 (c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not
- 15 entitled to the allowance provided by this section. **A retail merchant**
- 16 **is not entitled to the allowance provided by this section with**
- 17 **respect to gasoline use taxes imposed by IC 6-2.5-3.5.**
- 18 SECTION 4. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007,
- 19 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JANUARY 1, 2013]: Sec. 1. (a) The definitions in this section apply
- 21 throughout this chapter.
- 22 (b) "Kerosene" has the same meaning as the definition contained in
- 23 IC 16-44-2-2.
- 24 (c) "Gasoline" has the same meaning as the definition contained in
- 25 ~~IC 6-6-1.1-103:~~
- 26 (d) (c) "Special fuel" has the same meaning as the definition
- 27 contained in IC 6-6-2.5-22.
- 28 (e) "E85" has the meaning set forth in ~~IC 6-6-1.1-103:~~
- 29 (f) (d) "Unit" means the unit of measure, such as a gallon or a liter,
- 30 by which ~~gasoline or~~ special fuel is sold.
- 31 (g) (e) "Metered pump" means a stationary pump which is capable
- 32 of metering the amount of ~~gasoline or~~ special fuel dispensed from it
- 33 and which is capable of simultaneously calculating and displaying the
- 34 price of the ~~gasoline or~~ special fuel dispensed.
- 35 (h) "Indiana gasoline tax" means the tax imposed under ~~IC 6-6-1.1:~~
- 36 (i) (f) "Indiana special fuel tax" means the tax imposed under
- 37 IC 6-6-2.5.
- 38 (j) "Federal gasoline tax" means the excise tax imposed under
- 39 Section 4081 of the Internal Revenue Code:
- 40 (k) (g) "Federal special fuel tax" means the excise tax imposed
- 41 under Section 4041 of the Internal Revenue Code.
- 42 (l) (h) "Price per unit before the addition of state and federal taxes"

C  
o  
p  
y



1 means an amount which equals the remainder of:

2 (1) the total price per unit; minus

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

6 ~~(m)~~ (i) "Total price per unit" means the price per unit at which  
7 ~~gasoline or~~ special fuel is actually sold, including the state gross retail,  
8 Indiana ~~gasoline or~~ special fuel, and federal ~~gasoline or~~ special fuel  
9 taxes which are part of the sales price.

10 (n) "Distributor" means a person who is the first purchaser of  
11 gasoline from a refiner, a terminal operator, or supplier, regardless of  
12 the location of the purchase.

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

17 (p) "Purchase or shipment" means a sale or delivery of gasoline; but  
18 does not include:

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

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

23 (q) "Qualified distributor" means a distributor who:

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

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

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

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

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

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

39 SECTION 5. IC 6-2.5-7-2 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 2. Except as  
41 provided in section 2.5 of this chapter, a retail merchant who uses a  
42 metered pump to dispense ~~gasoline or~~ special fuel shall display on the

C  
O  
P  
Y



1 pump the total price per unit of the ~~gasoline or~~ special fuel. Subject to  
2 the provisions of section 2.5 of this chapter, a retail merchant may not  
3 advertise the ~~gasoline or~~ special fuel at a price that is different than the  
4 price that ~~he~~ **the retail merchant** is required to display on the metered  
5 pump.

6 SECTION 6. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008,  
7 SECTION 314, IS AMENDED TO READ AS FOLLOWS  
8 [EFFECTIVE JANUARY 1, 2013]: Sec. 3. (a) ~~With respect to the sale~~  
9 ~~of gasoline which is dispensed from a metered pump~~, a retail merchant  
10 shall collect, for each unit of gasoline sold, state gross retail tax in an  
11 amount equal to the product, rounded to the nearest one-tenth of one  
12 cent (\$0.001), of:

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

15 (2) seven percent (7%).

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

19 (b) With respect to the sale of special fuel or kerosene which is  
20 dispensed from a metered pump, unless the purchaser provides an  
21 exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant  
22 shall collect, for each unit of special fuel or kerosene sold, state gross  
23 retail tax in an amount equal to the product, rounded to the nearest  
24 one-tenth of one cent (\$0.001), of:

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

27 (2) seven percent (7%).

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

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

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

C  
O  
P  
Y



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

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

9 (2) ~~The total amount of money received from the sale of gasoline~~  
 10 ~~described in subdivision (1) during the period covered by the~~  
 11 ~~report.~~

12 (3) ~~That portion of the amount described in subdivision (2) which~~  
 13 ~~represents state and federal taxes imposed under this article,~~  
 14 ~~IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.~~

15 (4) (1) ~~The total number of gallons of special fuel sold from a~~  
 16 ~~metered pump during the period covered by the report.~~

17 (5) (2) ~~The total amount of money received from the sale of~~  
 18 ~~special fuel during the period covered by the report.~~

19 (6) (3) ~~That portion of the amount described in subdivision (5) (2)~~  
 20 ~~that 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 pump~~  
 23 ~~during the period covered by the report.~~

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

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

39 STEP ONE: Determine:

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

42 (B) ~~the sum of prepayment amounts collected by the retail~~



C  
o  
p  
y

- 1 merchant; in the merchant's capacity as a qualified distributor;  
 2 during the period covered by the retail merchant's report.
- 3 STEP TWO: Subject to subsections (d) and (f); for qualified  
 4 reporting periods beginning after June 30, 2009; and ending  
 5 before July 1, 2020; determine the product of:  
 6 (A) eighteen cents (\$0.18); multiplied by  
 7 (B) the number of gallons of E85 sold at retail by the retail  
 8 merchant during the period covered by the retail merchant's  
 9 report.
- 10 STEP THREE: Add the amounts determined under STEPS ONE  
 11 and TWO.
- 12 For purposes of this section, a prepayment of the gross retail tax is  
 13 presumed to occur on the date on which it is invoiced.
- 14 (d) The total amount of deductions allowed under subsection (c)  
 15 STEP TWO may not exceed the amount of money that the budget  
 16 agency determines is available in the retail merchant E85 deduction  
 17 reimbursement fund established under IC 15-15-12-30.5 for the  
 18 deductions for all retail merchants in a particular qualified reporting  
 19 period. A retail merchant is not required to apply for an allocation of  
 20 deductions under subsection (c) STEP TWO. Before August 1 of each  
 21 year, the budget agency shall estimate whether the amount of  
 22 deductions from the immediately preceding qualified reporting period  
 23 that are subject to reimbursement under IC 15-15-12-30.5(f) and the  
 24 deductions expected to be reported under subsection (c) STEP TWO  
 25 for the qualified reporting periods beginning after December 31 and  
 26 ending before April 1 of the following year will exceed the amount of  
 27 money available in the retail merchant E85 deduction reimbursement  
 28 fund for the deductions. If the budget agency determines that the  
 29 amount of money in the retail merchant E85 deduction reimbursement  
 30 fund is insufficient to cover the amount of the deductions expected to  
 31 be reported; the budget agency shall publish in the Indiana Register a  
 32 notice that the deduction program under subsection (c) STEP TWO is  
 33 suspended with respect to the qualified reporting periods occurring in  
 34 the following calendar year and that no deductions will be granted for  
 35 retail transactions occurring in the qualified reporting periods occurring  
 36 in the following calendar year.
- 37 (e) As used in this section; "qualified reporting period" refers to a  
 38 reporting period beginning after December 31 and ending before April  
 39 1 of each year.
- 40 (f) The budget agency may suspend the deduction program under  
 41 subsection (c) STEP TWO for a particular year at any time during a  
 42 qualified reporting period if the budget agency determines that the

C  
o  
p  
y

1 amount of money in the retail merchant E85 deduction reimbursement  
 2 fund and the amount of money that will be transferred to the fund on  
 3 July 1 will not be sufficient to reimburse the deductions expected to  
 4 occur before the deduction program for the year ends on March 31. The  
 5 budget agency shall immediately provide notice to the participating  
 6 retail merchants of the decision to suspend the deduction program for  
 7 that year.

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

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

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

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

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

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

35 (1) to the highway, road, and street fund, twenty-five percent  
 36 (25%) of the amount set forth in the department's notice; and

37 (2) to the motor fuel tax fund of the motor vehicle highway  
 38 account, seventy-five percent (75%) of the amount set forth in the  
 39 department's notice.

40 SECTION 10. IC 6-2.5-7-7 IS REPEALED [EFFECTIVE  
 41 JANUARY 1, 2013]. Sec. 7. (a) A distributor desiring to receive  
 42 gasoline within Indiana without prepaying gross retail tax must hold an

C  
O  
P  
Y



1 uncanceled permit issued by the department to collect prepayments of  
2 gross retail tax from retail merchants.

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

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

7 (1) the application is filed by a distributor whose permit has  
8 previously been cancelled for cause;

9 (2) the application is not filed in good faith, as determined by the  
10 department; or

11 (3) the application is filed by some person as a subterfuge for the  
12 real person in interest whose permit has previously been cancelled  
13 for cause.

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

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

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

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

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

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

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

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

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

36 (4) conditioned upon the prompt filing of true reports and  
37 payment of all prepayment of gross retail taxes collected by the  
38 distributor, together with any penalties and interest, and upon  
39 faithful compliance with this chapter.

40 The department shall determine the amount of the distributor's bond,  
41 if any.

42 (b) If after a hearing (after at least five (5) days written notice) the

C  
o  
p  
y



1 department determines that the amount of a distributor's bond is  
2 insufficient, the distributor shall upon written demand of the  
3 department file a new bond:

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

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

8 (2) in the opinion of the department any surety on the old bond  
9 becomes unsatisfactory.

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

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

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

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

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

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

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



C  
o  
p  
y

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42

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:

- (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;

C  
O  
P  
Y



1 retail merchant; or other person identifying the location of each  
2 distributor; retail merchant; exempt purchaser; or other person; as  
3 required by the department.

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

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

- 11 (b) A distributor that:
  - 12 (1) prepays the state gross retail tax under this chapter;
  - 13 (2) is a retail merchant; and
  - 14 (3) sells gasoline that is exempt from the gross retail tax; as  
15 evidenced by a purchaser's exemption certificate issued by the  
16 department;

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

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

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

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

C  
o  
p  
y



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

5 a notice of the prepayment rate to be used during the following six (6)  
 6 month period. The department, after approval by the office of  
 7 management and budget, may determine a new prepayment rate if the  
 8 department finds that the statewide average retail price per gallon of  
 9 gasoline, excluding the Indiana and federal gasoline taxes and the  
 10 Indiana gross retail tax, has changed by at least twenty-five percent  
 11 (25%) since the most recent determination.

12 (b) In determining the prepayment rate under this section, the  
 13 department shall use the most recent retail price of gasoline available  
 14 to the department.

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

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

21 STEP TWO: Determine the product of the following:

- 22 (A) The STEP ONE amount.  
 23 (B) The Indiana gross retail tax rate.  
 24 (C) Eighty percent (80%).

25 STEP THREE: Determine the lesser of:

- 26 (A) the STEP TWO result; or  
 27 (B) the product of:

- 28 (i) the prepayment rate in effect on the day immediately  
 29 preceding the day on which the prepayment rate is  
 30 redetermined under this section; multiplied by  
 31 (ii) one hundred twenty-five percent (125%);

32 STEP FOUR: Round the STEP THREE result to the nearest  
 33 one-tenth of one cent (\$.001).

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

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

41 SECTION 19. IC 15-15-12-30.5, AS ADDED BY P.L.148-2009,  
 42 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C  
O  
P  
Y



1 JANUARY 1, 2013]: Sec. 30.5. (a) The ~~retail merchant~~ E85 deduction  
2 reimbursement fund is established. The fund consists of:

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

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

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

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

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

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

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

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

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

SB 353—LS 6808/DI 58+



C  
o  
p  
y

1           (1) five hundred thousand dollars (\$500,000); minus  
 2           (2) the balance remaining in the fund on June 30.  
 3 However, the amount transferred under this subsection may not exceed  
 4 five hundred thousand dollars (\$500,000).  
 5       SECTION 21. [EFFECTIVE JULY 1, 2012] (a) **Before December**  
 6 **20, 2012, and for purposes of IC 6-2.5-3.5, as added by this act, the**  
 7 **department of state revenue shall publish the gasoline use tax rate**  
 8 **prescribed by IC 6-2.5-3.5, as added by this act, that will apply to**  
 9 **sales of gasoline in January 2013.**  
 10       (b) **Each retail merchant covered by IC 6-2.5-7, shall, before**  
 11 **January 1, 2013, for sales made before January 1, 2013, take an**  
 12 **inventory of the gasoline in storage on the commencement of**  
 13 **business on January 1, 2013, and reconcile the amount of gross**  
 14 **retail taxes owed on sales of gasoline through December 31, 2012,**  
 15 **in the manner and on the forms prescribed by the department of**  
 16 **state revenue. The reconciliation shall be filed with the department**  
 17 **of state revenue before March 1, 2013, and shall be accompanied**  
 18 **by a payment for any gross retail taxes owed on gasoline sold**  
 19 **through December 31, 2012, or by a claim for a credit, if the retail**  
 20 **merchant's reconciliation indicates the retail merchant has**  
 21 **overpaid gross retail taxes on gasoline sold through December 31,**  
 22 **2012.**  
 23       (c) **This SECTION expires January 1, 2014.**

C  
o  
p  
y



## 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):

C  
o  
p  
y



- (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

C  
o  
p  
y



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**".

C  
O  
P  
Y



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**



COPY

(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

C  
O  
P  
Y



(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.



C  
O  
P  
Y

(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

C  
O  
P  
Y



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

C  
O  
P  
Y



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:

C  
O  
P  
Y



- (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.



C  
O  
P  
Y

(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

C  
O  
P  
Y



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



C  
O  
P  
Y

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

C  
O  
P  
Y



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.



C  
O  
P  
Y

(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); or:~~

SB 353—LS 6808/DI 58+



C  
O  
P  
Y

- (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

C  
O  
P  
Y



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 (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



C  
o  
p  
y

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:

SB 353—LS 6808/DI 58+



C  
O  
P  
Y

(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



C  
O  
P  
Y

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

C  
o  
p  
y



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:



C  
O  
P  
Y

(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;



C  
O  
P  
Y

(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

C  
O  
P  
Y



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**).

SB 353—LS 6808/DI 58+



C  
O  
P  
Y

(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**

C  
O  
P  
Y



**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

C  
O  
P  
Y

