
SENATE BILL No. 479

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5.

Synopsis: Use tax on gasoline. Provides a new collection procedure for imposing and collecting state gross retail and use tax on the sale of gasoline based on gallons sold and a rolling monthly average retail price per gallon. Specifies that the collection point is moved to the first purchaser of gasoline from a refiner, a terminal operator, or supplier. Requires the department of state revenue to determine a use tax rate per gallon using the 7% gross retail and use 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 retail 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 that follows a determination. 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, 2013; January 1, 2014.

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January 14, 2013, read first time and referred to Committee on Tax and Fiscal Policy.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 479



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, 2014]:
- 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**



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, "price per unit before the
 6 addition of state and federal taxes" means an amount that equals
 7 the remainder of:

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

11 Sec. 8. As used in this chapter, "purchase or shipment" means
 12 a sale or delivery of gasoline, but does not include:

- 13 (1) an exchange transaction between refiners, terminal
 14 operators, or a refiner and terminal operator; or
- 15 (2) a delivery by pipeline, ship, or barge to a refiner or
 16 terminal operator.

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

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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**

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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
 4 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 canceled 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 canceled 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

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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

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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.

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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

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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 amount of money received which represents state
41 and federal taxes imposed under this article, IC 6-6-1.1, or
42 Section 4081 of the Internal Revenue Code from the sale of

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1 gasoline described in subdivision (1) during the period
2 covered by the report.

3 **Sec. 28. (a) The gasoline use tax collected under this chapter is**
4 **considered equivalent to the state gross retail tax that would be**
5 **collected by a retail merchant in a retail sale and replaces the**
6 **obligation of the retail merchant to collect the state gross retail tax**
7 **on the sale of gasoline.**

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

10 SECTION 2. IC 6-2.5-4-1 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 1. (a) A person is
12 a retail merchant making a retail transaction when ~~he~~ **the person**
13 engages in selling at retail.

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

17 (1) acquires tangible personal property for the purpose of resale;
18 and

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

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

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

24 (2) the property is transferred alone or in conjunction with other
25 property or services; or

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

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

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

34 (1) the price of the property transferred, without the rendition of
35 any service; and

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

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

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

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

19 SECTION 3. IC 6-2.5-6-10, AS AMENDED BY P.L.146-2008,
 20 SECTION 313, IS AMENDED TO READ AS FOLLOWS
 21 [EFFECTIVE JANUARY 1, 2014]: Sec. 10. (a) In order to compensate
 22 retail merchants **and those required to remit gasoline use tax** for
 23 collecting and timely remitting the state gross retail tax, ~~and~~ the state
 24 use tax, **and the gasoline use tax**, every retail merchant, except a retail
 25 merchant referred to in subsection (c) **or a person required to remit**
 26 **the gasoline use tax**, is entitled to deduct and retain from the amount
 27 of those taxes otherwise required to be remitted under IC 6-2.5-7-5,
 28 **IC 6-2.5-3.5**, or under this chapter, if timely remitted, a retail
 29 merchant's collection allowance.

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

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

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

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

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1 (B) did not exceed six hundred thousand dollars (\$600,000).
 2 (3) Twenty-six hundredths percent (0.26%), if the retail
 3 merchant's state gross retail and use tax liability **or gasoline use**
 4 **tax** accrued during the state fiscal year ending on June 30 of the
 5 immediately preceding calendar year was greater than six hundred
 6 thousand dollars (\$600,000).
 7 (c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not
 8 entitled to the allowance provided by this section. **A retail merchant**
 9 **is not entitled to the allowance provided by this section with**
 10 **respect to gasoline use taxes imposed by IC 6-2.5-3.5.**
 11 SECTION 4. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007,
 12 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JANUARY 1, 2014]: Sec. 1. (a) The definitions in this section apply
 14 throughout this chapter.
 15 (b) "Kerosene" has the same meaning as the definition contained in
 16 IC 16-44-2-2.
 17 (c) ~~"Gasoline" has the same meaning as the definition contained in~~
 18 ~~IC 6-6-1.1-103.~~
 19 (d) (c) "Special fuel" has the same meaning as the definition
 20 contained in IC 6-6-2.5-22.
 21 (e) ~~"E85" has the meaning set forth in IC 6-6-1.1-103.~~
 22 (f) (d) "Unit" means the unit of measure, such as a gallon or a liter,
 23 by which ~~gasoline or~~ special fuel is sold.
 24 (g) (e) "Metered pump" means a stationary pump which is capable
 25 of metering the amount of ~~gasoline or~~ special fuel dispensed from it
 26 and which is capable of simultaneously calculating and displaying the
 27 price of the ~~gasoline or~~ special fuel dispensed.
 28 (h) ~~"Indiana gasoline tax" means the tax imposed under IC 6-6-1.1-~~
 29 (i) (f) "Indiana special fuel tax" means the tax imposed under
 30 IC 6-6-2.5.
 31 (j) ~~"Federal gasoline tax" means the excise tax imposed under~~
 32 ~~Section 4081 of the Internal Revenue Code.~~
 33 (k) (g) "Federal special fuel tax" means the excise tax imposed
 34 under Section 4041 of the Internal Revenue Code.
 35 (l) (h) "Price per unit before the addition of state and federal taxes"
 36 means an amount which equals the remainder of:
 37 (1) the total price per unit; minus
 38 (2) the state gross retail, Indiana ~~gasoline or~~ special fuel, and
 39 federal ~~gasoline or~~ special fuel taxes which are part of the total
 40 price per unit.
 41 (m) (i) "Total price per unit" means the price per unit at which
 42 ~~gasoline or~~ special fuel is actually sold, including the state gross retail,

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1 Indiana gasoline or special fuel, and federal gasoline or special fuel
2 taxes which are part of the sales price.

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

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

10 (p) "Purchase or shipment" means a sale or delivery of gasoline, but
11 does not include:

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

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

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

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

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

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

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

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

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

32 SECTION 5. IC 6-2.5-7-2 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 2. Except as
34 provided in section 2.5 of this chapter, a retail merchant who uses a
35 metered pump to dispense gasoline or special fuel shall display on the
36 pump the total price per unit of the gasoline or special fuel. Subject to
37 the provisions of section 2.5 of this chapter, a retail merchant may not
38 advertise the gasoline or special fuel at a price that is different than the
39 price that ~~he~~ **the retail merchant** is required to display on the metered
40 pump.

41 SECTION 6. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008,
42 SECTION 314, IS AMENDED TO READ AS FOLLOWS

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1 [EFFECTIVE JANUARY 1, 2014]: Sec. 3. (a) ~~With respect to the sale~~
2 ~~of gasoline which is dispensed from a metered pump, a retail merchant~~
3 ~~shall collect, for each unit of gasoline sold, state gross retail tax in an~~
4 ~~amount equal to the product, rounded to the nearest one-tenth of one~~
5 ~~cent (\$0.001); of:~~

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

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

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

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

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

24 SECTION 7. IC 6-2.5-7-4 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 4. (a) ~~If a sale of~~
26 ~~gasoline or special fuel is exempt from the state gross retail tax, the~~
27 ~~person who pays the tax to the retail merchant may file a claim for~~
28 ~~refund with the department. The person must file the claim on the form,~~
29 ~~in the manner, and with the supporting documentation, prescribed by~~
30 ~~the department. If a person properly files a claim for refund, the~~
31 ~~department shall refund to ~~him~~ **the person** the state gross retail tax~~
32 ~~collected with respect to the exempt transaction.~~

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

36 SECTION 8. IC 6-2.5-7-5, AS AMENDED BY P.L.98-2012,
37 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JANUARY 1, 2014]: Sec. 5. (a) Each retail merchant who dispenses
39 gasoline or special fuel from a metered pump shall, in the manner
40 prescribed in IC 6-2.5-6, report to the department the following
41 information:

- 42 (1) ~~The total number of gallons of gasoline sold from a metered~~

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- 1 pump during the period covered by the report.
- 2 (2) The total amount of money received from the sale of gasoline
- 3 described in subdivision (1) during the period covered by the
- 4 report.
- 5 (3) That portion of the amount described in subdivision (2) which
- 6 represents state and federal taxes imposed under this article;
- 7 IC 6-6-1.1; or Section 4081 of the Internal Revenue Code.
- 8 (4) (1) The total number of gallons of special fuel sold from a
- 9 metered pump during the period covered by the report.
- 10 (5) (2) The total amount of money received from the sale of
- 11 special fuel during the period covered by the report.
- 12 (6) (3) That portion of the amount described in subdivision (5) (2)
- 13 that represents state and federal taxes imposed under this article,
- 14 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- 15 (7) The total number of gallons of E85 sold from a metered pump
- 16 during the period covered by the report.
- 17 (b) Concurrently with filing the report, the retail merchant shall
- 18 remit the state gross retail tax in an amount which equals six and
- 19 fifty-four hundredths percent (6.54%) of the gross receipts, including
- 20 state gross retail taxes but excluding Indiana and federal gasoline and
- 21 special fuel taxes, received by the retail merchant from the sale of the
- 22 gasoline and special fuel that is covered by the report and on which the
- 23 retail merchant was required to collect state gross retail tax. The retail
- 24 merchant shall remit that amount regardless of the amount of state
- 25 gross retail tax which the merchant has actually collected under this
- 26 chapter. However, the retail merchant is entitled to deduct and retain
- 27 the amounts prescribed in IC 6-2.5-6-10, and IC 6-2.5-6-11.
- 28 SECTION 9. IC 6-2.5-7-7 IS REPEALED [EFFECTIVE JANUARY
- 29 1, 2014]. Sec. 7: (a) A distributor desiring to receive gasoline within
- 30 Indiana without prepaying gross retail tax must hold an uncanceled
- 31 permit issued by the department to collect prepayments of gross retail
- 32 tax from retail merchants:
- 33 (b) To obtain a permit, a distributor must file with the department
- 34 a sworn application containing information that the department
- 35 reasonably requires:
- 36 (c) The department may refuse to issue a permit to a distributor if:
- 37 (1) the application is filed by a distributor whose permit has
- 38 previously been cancelled for cause;
- 39 (2) the application is not filed in good faith, as determined by the
- 40 department; or
- 41 (3) the application is filed by some person as a subterfuge for the
- 42 real person in interest whose permit has previously been cancelled

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1 for cause.

2 (d) A permit may not be issued unless the application is

3 accompanied by an audited and current financial statement and a

4 license fee of one hundred dollars (\$100).

5 (e) A permit issued under this section is not assignable and is valid

6 only for the distributor in whose name it is issued. If there is a change

7 in name or ownership, the distributor must apply for a new permit.

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

9 (g) Before being denied a permit under subsection (e) or before

10 having a permit revoked under subsection (f); a distributor is entitled

11 to a hearing after five (5) days written notice. At the hearing the

12 distributor may appear in person or by counsel and present testimony.

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

14 SECTION 10. IC 6-2.5-7-8 IS REPEALED [EFFECTIVE

15 JANUARY 1, 2014]. Sec. 8: (a) The department may require a

16 distributor to file, concurrently with the filing of an application for a

17 permit, a bond:

18 (1) in an amount of not less than two thousand dollars (\$2,000)

19 nor more than a three (3) month prepayment tax liability for the

20 distributor; as estimated by the department;

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

22 (3) upon which the distributor is the principal obligor and the

23 state is the obligee; and

24 (4) conditioned upon the prompt filing of true reports and

25 payment of all prepayment of gross retail taxes collected by the

26 distributor; together with any penalties and interest; and upon

27 faithful compliance with this chapter.

28 The department shall determine the amount of the distributor's bond;

29 if any:

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

31 department determines that the amount of a distributor's bond is

32 insufficient, the distributor shall upon written demand of the

33 department file a new bond:

34 (c) The department may require a distributor to file a new bond with

35 a satisfactory surety in the same form and amount if:

36 (1) liability upon the old bond is discharged or reduced by

37 judgment rendered; payment made; or otherwise; or

38 (2) in the opinion of the department any surety on the old bond

39 becomes unsatisfactory.

40 (d) If a new bond obtained under subsection (b) or (c) is

41 unsatisfactory, the department shall cancel the permit of the distributor.

42 If the new bond is satisfactorily furnished, the department shall release

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

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

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

15 SECTION 11. IC 6-2.5-7-9 IS REPEALED [EFFECTIVE
16 JANUARY 1, 2014]. Sec. 9: (a) Except as provided in section 13 of
17 this chapter, at the time of purchase or shipment of gasoline from a
18 refiner or terminal operator, a distributor who is not a qualified
19 distributor shall prepay to the refiner or terminal operator the state
20 gross retail tax in an amount determined under subsection (d):

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

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

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

32 (1) the prepayment rate per gallon of gasoline, multiplied by

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

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

37 SECTION 12. IC 6-2.5-7-10 IS REPEALED [EFFECTIVE
38 JANUARY 1, 2014]. Sec. 10: (a) Each refiner or terminal operator and
39 each qualified distributor that has received a prepayment of the state
40 gross retail tax under this chapter shall remit the tax received to the
41 department semimonthly, through the department's online tax filing
42 system, according to the following schedule:



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- 1 (1) On or before the tenth day of each month for prepayments
- 2 received after the fifteenth day and before the end of the
- 3 preceding month:
- 4 (2) On or before the twenty-fifth day of each month for
- 5 prepayments received after the end of the preceding month and
- 6 before the sixteenth day of the month in which the prepayments
- 7 are made.
- 8 (b) Before the end of each month, each refiner or terminal operator
- 9 and each qualified distributor shall file a report covering the prepaid
- 10 taxes received and the gallons of gasoline sold or shipped during the
- 11 preceding month. The report must include the following:
- 12 (1) The number of gallons of gasoline sold or shipped during the
- 13 preceding month, identifying each purchaser or receiver as
- 14 required by the department.
- 15 (2) The amount of tax prepaid by each purchaser or receiver.
- 16 (3) Any other information reasonably required by the department.
- 17 SECTION 13. IC 6-2.5-7-11 IS REPEALED [EFFECTIVE
- 18 JANUARY 1, 2014]. Sec. 11. Each distributor that prepays the state
- 19 gross retail tax under this chapter shall file a monthly report with the
- 20 department. The report shall be filed no later than the last day of the
- 21 month following the month that the report covers. The report must
- 22 include the following:
- 23 (1) The number of gallons of gasoline purchased or received by
- 24 the distributor from each refiner, terminal operator, or another
- 25 distributor.
- 26 (2) The amount of state gross retail tax prepaid to each refiner,
- 27 terminal operator, or distributor.
- 28 (3) The number of gallons of gasoline sold to each distributor,
- 29 retail merchant, exempt purchaser, or other person and the
- 30 amount of state gross retail tax collected from each distributor,
- 31 retail merchant, or other person identifying the location of each
- 32 distributor, retail merchant, exempt purchaser, or other person, as
- 33 required by the department.
- 34 (4) Any other information reasonably required by the department.
- 35 SECTION 14. IC 6-2.5-7-12 IS REPEALED [EFFECTIVE
- 36 JANUARY 1, 2014]. Sec. 12. (a) Except as provided in subsection (b),
- 37 a distributor that prepays the state gross retail tax under this chapter
- 38 shall separately state the amount of tax prepaid on the invoice the
- 39 distributor issues to its purchaser or recipient. The purchaser or
- 40 recipient shall pay to the distributor an amount equal to the prepaid tax.
- 41 (b) A distributor that:
- 42 (1) prepays the state gross retail tax under this chapter;

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1 (2) is a retail merchant; and

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

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

17 SECTION 15. IC 6-2.5-7-13 IS REPEALED [EFFECTIVE
18 JANUARY 1, 2014]. Sec. 13. (a) If a purchase or shipment of gasoline
19 is made to a distributor (other than a qualified distributor) outside
20 Indiana for shipment into and subsequent sale or use by the distributor
21 within Indiana; the distributor shall make the prepayment required by
22 section 9 of this chapter directly to the department. The distributor
23 shall pay the tax and submit the report according to the schedule set
24 forth in section 10 of this chapter.

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

28 SECTION 16. IC 6-2.5-7-14 IS REPEALED [EFFECTIVE
29 JANUARY 1, 2014]. Sec. 14. (a) Before June 10 and December 10 of
30 each year; the department shall determine and provide to:

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

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

42 (b) In determining the prepayment rate under this section; the

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1 department shall use the most recent retail price of gasoline available
 2 to the department.

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

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

9 STEP TWO: Determine the product of the following:

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

13 STEP THREE: Determine the lesser of:

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

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

22 SECTION 17. IC 6-2.5-7-15 IS REPEALED [EFFECTIVE
 23 JANUARY 1, 2014]. Sec. 15. (a) A refiner, terminal operator, or
 24 distributor (including a qualified distributor) that fails to remit the tax
 25 or file the returns or reports required by this chapter is subject to the
 26 penalties set forth in IC 6-8.1-10.

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

29 SECTION 18. [EFFECTIVE JULY 1, 2013] (a) **Before December**
 30 **20, 2013, and for purposes of IC 6-2.5-3.5, as added by this act, the**
 31 **department of state revenue shall publish the gasoline use tax rate**
 32 **prescribed by IC 6-2.5-3.5, as added by this act, that will apply to**
 33 **sales of gasoline in January 2014.**

34 (b) **Each retail merchant covered by IC 6-2.5-7 shall, before**
 35 **January 1, 2014, for sales made before January 1, 2014, take an**
 36 **inventory of the gasoline in storage on the commencement of**
 37 **business on January 1, 2014, and reconcile the amount of gross**
 38 **retail taxes owed on sales of gasoline through December 31, 2013,**
 39 **in the manner and on the forms prescribed by the department of**
 40 **state revenue. The reconciliation shall be filed with the department**
 41 **of state revenue before March 1, 2014, and shall be accompanied**
 42 **by a payment for any gross retail taxes owed on gasoline sold**

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1 through December 31, 2013, or by a claim for a credit, if the retail
2 merchant's reconciliation indicates the retail merchant has
3 overpaid gross retail taxes on gasoline sold through December 31,
4 2013.

5 (c) This SECTION expires January 1, 2015.

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