

ARTICLE 19. CONTROLLED SUBSTANCE EXCISE TAX

Rule 1. Definitions

45 IAC 19-1-1 Applicability

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3

Sec. 1. The definitions in this rule apply throughout this article. (*Department of State Revenue; 45 IAC 19-1-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718*)

45 IAC 19-1-2 "Controlled substance" defined (Repealed)

Sec. 2. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

45 IAC 19-1-3 "Delivery" defined (Repealed)

Sec. 3. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

45 IAC 19-1-4 "Department" defined (Repealed)

Sec. 4. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

45 IAC 19-1-5 "Law enforcement agency" defined

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3-16

Sec. 5. "Law enforcement agency" means an agency or department of any level of government whose principal function is the apprehension of criminal offenders. (*Department of State Revenue; 45 IAC 19-1-5; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718*)

45 IAC 19-1-6 "Manufacture" defined (Repealed)

Sec. 6. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

Rule 2. Imposition and Payment of the Tax

45 IAC 19-2-1 Imposition (Repealed)

Sec. 1. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

45 IAC 19-2-2 Assessment

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3-13; IC 6-7-3-14; IC 6-8.1-5-3

Sec. 2. (a) It shall be prima facie evidence that a controlled substance exists when it is detected in a field test conducted by a law enforcement agency. This evidence may be refuted by a test performed by a certified laboratory.

(b) An assessment for the tax due under this article is a jeopardy assessment subject to the collection provisions of IC 6-8.1-5-3.

(c) However, the jeopardy assessment lien shall be secondary to the following:

(1) The seizure and forfeiture authority of the state board of pharmacy under IC 16-6-8.5 [*IC 16-6 was repealed by P.L.2-1993, SECTION 209, effective July 1, 1993.*].

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(2) The forfeiture provisions of IC 34-4-30.1 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]*.

(3) The seizure and forfeiture provisions of IC 34-4-30.5 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]* concerning racketeering activity.

(4) The seizure and forfeiture provisions of any federal law.

(Department of State Revenue; 45 IAC 19-2-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)

45 IAC 19-2-3 Payment

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3

Sec. 3. (a) Payment of the tax is due when a person receives delivery of, takes possession of, or manufactures a controlled substance.

(b) The tax is calculated by multiplying a certain dollar amount times each gram, and a proportionable amount for each fraction of a gram, of a controlled substance as follows:

(1) Forty dollars (\$40) on each gram of a Schedule I, II, or III substance.

(2) Twenty dollars (\$20) on each gram of a Schedule IV substance.

(3) Ten dollars (\$10) on each gram of a Schedule V substance.

(c) The weight of the controlled substance is determined without regard to whether the substance is pure, impure, or diluted.

(d) Payment will not be accepted and a receipt will not be issued on a controlled substance weighing less than one (1) gram in total.

(e) Payment of the tax may be made by mail or in person on a form prescribed by the department. The district offices of the department may be utilized for the purpose of paying the tax.

(f) The department shall issue a receipt which will include the following information:

(1) The amount of tax paid.

(2) The schedule number of the controlled substance.

(3) The weight in grams of the controlled substance.

(4) The expiration time, to the hour and minute, of the receipt.

(g) In order to receive credit for taxes paid, a person who delivers, possesses, or manufactures a controlled substance must have a valid receipt in such person's possession at the time the tax is imposed under section 1 of this rule.

(h) A receipt is valid proof of payment for forty-eight (48) hours after the payment is received by the department.

(i) At the time the tax is paid, a person may not be required to give any information that will reveal the person's identity.

(Department of State Revenue; 45 IAC 19-2-3; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)

Rule 3. Refunds and Credits

45 IAC 19-3-1 Refunds

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3

Sec. 1. (a) Except as provided in subsection (b), a refund will not be made by the department for the payment of the controlled substance excise tax.

(b) A refund of taxes paid may be made if such taxes were paid as a result of a jeopardy assessment and the department finds that the assessment is incorrect and the taxes were overpaid. *(Department of State Revenue; 45 IAC 19-3-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719)*

45 IAC 19-3-2 Credits

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3

Sec. 2. (a) Credit for a similar tax paid to another state may be given if such payment is evidenced by stamps affixed to the controlled substance.

(b) Any credit given in subsection (a) shall be equal to the lesser of the actual taxes paid the other state or the amount due to Indiana on the controlled substance under this article. (*Department of State Revenue; 45 IAC 19-3-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720*)

Rule 4. Controlled Substance Tax Fund

45 IAC 19-4-1 Payment of awards

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3-16

Sec. 1. (a) Awards, based upon a percentage of the tax collected under this article, may be paid to any person or law enforcement agency providing information leading to the collection of such tax.

(b) For purposes of an award under subsection (a), a tax is not collected until all protest periods have expired, all appeals have been adjudicated, and all periods for filing a claim for refund have expired.

(c) A person claiming an award must file such claim on a form prescribed by the department within ninety (90) days of the day of the arrest leading to the assessment of tax. The claim form must be signed by the claimant under penalty of perjury or it is not valid.

(d) Awards will not be made to the following:

(1) A law enforcement officer.

(2) An employee of the department.

(3) An employee of the Internal Revenue Service.

(4) An employee of the federal Drug Enforcement Agency.

(*Department of State Revenue; 45 IAC 19-4-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720*)

45 IAC 19-4-2 Method of payment

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3-16

Sec. 2. (a) An award paid shall be based on the collections from each individual assessment that resulted from information supplied to the department by the claimant.

(b) If a law enforcement group is due an award, the department will divide the award equally among the participating agencies. (*Department of State Revenue; 45 IAC 19-4-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720*)

Rule 5. Penalties

45 IAC 19-5-1 Civil penalties

Authority: IC 6-7-3-12; IC 6-8.1-3-3

Affected: IC 6-7-3-11

Sec. 1. In addition to the tax, a person who fails or refuses to pay the tax imposed by this article is subject to a penalty of one hundred percent (100%) of the tax due. (*Department of State Revenue; 45 IAC 19-5-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720*)

45 IAC 19-5-2 Criminal penalties (Repealed)

Sec. 2. (*Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA*)

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