

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

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

Affected: IC 6-7-3-1; IC 35-48-2

Sec. 2. (a) Except as provided in subsection (b), "controlled substance" means a drug, substance, or immediate precursor listed in IC 35-48-2-4, IC 35-48-2-6, IC 35-48-2-8, IC 35-48-2-10, and IC 35-48-2-12.

(b) A controlled substance does not include a drug, substance, or immediate precursor that has been reclassified, by an adopted rule of the Indiana state board of pharmacy, as a substance that is not a controlled substance. (*Department of State Revenue; 45 IAC 19-1-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718*)

45 IAC 19-1-3 "Delivery" defined

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

Affected: IC 6-7-3-2

Sec. 3. "Delivery" means an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship, or the organizing or supervising of such a transfer. (*Department of State Revenue; 45 IAC 19-1-3; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718*)

45 IAC 19-1-4 "Department" defined

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

Affected: IC 6-7-3-3

Sec. 4. "Department" means the department of state revenue. (*Department of State Revenue; 45 IAC 19-1-4; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718*)

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

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

Affected: IC 6-7-3-4

Sec. 6. (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

(b) "Manufacture" also means the organizing or supervising of an activity described in subsection (a).

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(c) "Manufacture" does not mean the following:

(1) The preparation or compounding of a controlled substance by an individual for personal use.

(2) The preparation, compounding, packaging, or labeling of a controlled substance by a practitioner or the practitioner's agent:

(A) as an incident to the administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(B) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(d) As used in this section, "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other institution or individual licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in Indiana.

(e) As used in this section, "practitioner's agent" means a person authorized to act on behalf of a practitioner or at the direction of a practitioner. (*Department of State Revenue; 45 IAC 19-1-6; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1718*)

Rule 2. Imposition and Payment of the Tax

45 IAC 19-2-1 Imposition

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

Affected: IC 6-7-3-5; IC 6-7-3-7; IC 35-48-3; IC 35-48-4

Sec. 1. (a) The controlled substance excise tax is imposed on a controlled substance that is:

(1) delivered;

(2) possessed; or

(3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

(b) The tax is not imposed on a controlled substance that is distributed, manufactured, or dispensed by a person authorized to do so under IC 35-48-3.

(c) A person who delivers a controlled substance to a law enforcement officer is not relieved of the duty to pay the tax. (*Department of State Revenue; 45 IAC 19-2-1; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1719*)

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.*]

(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

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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

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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

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

Affected: IC 6-7-3-11; IC 35-48-4-11

Sec. 2. (a) Except as provided in subsection (b), a person who knowingly or intentionally delivers, possesses, or manufactures a controlled substance without having paid the tax imposed by this article commits a Class D felony.

(b) Subsection (a) does not apply to a person in violation of IC 35-48-4-11, if the violation is a Class A misdemeanor.

(Department of State Revenue; 45 IAC 19-5-2; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1720)

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