IC 6-2.5-3.5

Chapter 3.5. Collection of Use Tax on Gasoline

Effective 7-1-2014.

IC 6-2.5-3.5-1

"Distributor"

Effective 7-1-2014.

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

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-2

"E85"

Effective 7-1-2014.

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

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-3

"Federal gasoline tax"

Effective 7-1-2014.

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

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-4

"Gasoline"

Effective 7-1-2014.

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

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-5

"Indiana gasoline tax"

Effective 7-1-2014.

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

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-6

"Metered pump"

Effective 7-1-2014.

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.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-7
"Price per unit before the addition of state and federal taxes"

Effective 7-1-2014.

Sec. 7. 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 tax, and federal gasoline taxes that are part of the total price per unit.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-8
"Purchase or shipment"

Effective 7-1-2014.

Sec. 8. 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

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

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-9
"Qualified distributor"

Effective 7-1-2014.

Sec. 9. As used in this chapter, "qualified distributor" means a distributor that:

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

(2) holds an uncanceled permit issued under section 17 of this chapter.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-10
"Refiner"

Effective 7-1-2014.

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.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-11
"Terminal operator"

Effective 7-1-2014.

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.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-12
"Total price per unit"

Effective 7-1-2014.

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 tax, Indiana gasoline tax, and federal gasoline tax that are part of the sales price.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-13
"Unit"

Effective 7-1-2014.

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.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-14
"Use tax rate"

Effective 7-1-2014.

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.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-15
Monthly notice of the gasoline use tax rate

Effective 7-1-2014.

Sec. 15. (a) Before the twenty-second day of each month, the department shall determine and provide a notice of the gasoline use tax rate to be used during the following month and the source of the data used to determine the gasoline use tax rate and the statewide average retail price per gallon of gasoline. The notice shall be published on the department's Internet web site in a departmental notice.

(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 (based on the retail price per gallon of gasoline from the sixteenth day of the previous month to the fifteenth day of the current month), excluding the Indiana gasoline tax, federal gasoline tax, the Indiana gasoline use tax, and Indiana gross retail tax (if any); 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. 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).
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-16
Remittance of gasoline use tax to the department
Effective 7-1-2014.

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 IC 6-2.5-6-10 and IC 6-2.5-6-11.
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-17
Permit to receive gasoline without paying the gasoline use tax
Effective 7-1-2014.

Sec. 17. (a) A distributor, refiner, or terminal operator desiring to receive gasoline within Indiana without paying the gasoline use tax must hold an uncanceled permit issued by the department to collect payments of gasoline use tax from purchasers and recipients of gasoline.

(b) To obtain a permit, a distributor, refiner, or terminal operator 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, refiner, or terminal operator if:

(1) the application is filed by a distributor, refiner, or terminal operator whose permit has previously been canceled for cause;
(2) the application is not filed in good faith, as determined by the department;
(3) the application is filed by a person as a subterfuge for the real person in interest whose permit has previously been canceled for cause; or
(4) the distributor, refiner, or terminal operator has outstanding tax liability with the department for which a tax warrant has been issued.

(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, refiner, or terminal operator in whose name it is issued. If there is a change in name or ownership, the distributor, refiner, or terminal operator must apply for a new permit.

(f) The department may revoke a permit for good cause.

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

(h) The department shall keep a record of all qualified distributors, refiners, and terminal operators.

(i) The department may publish a list of qualified distributors on the department's Internet web site. The list must be limited to the following information:

(1) The name of each qualified distributor.

(2) The complete address of each qualified distributor.

(3) The telephone number of each qualified distributor.

(j) The information contained in a list published under subsection (i) is not confidential under IC 6-8.1-7-1.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-18

Bond associated with a permit

Effective 7-1-2014.

Sec. 18. (a) The department may require a distributor, refiner, or terminal operator 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 an amount equal to 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 bond, if any.

(b) If after a hearing (conducted 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 certified public accountant reviewed or audited annual financial statements to determine if any change is required in the amount of the distributor's bond.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-19
Collection of gasoline use tax

Effective 7-1-2014.

Sec. 19. (a) Except as provided in section 22 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 merchant for resale and the gasoline use tax in the amount determined under subsection (d) has 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). For purposes of this chapter, a bulk plant is considered to be a retail merchant, except when the bulk plant is also a qualified distributor.

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

(1) the gasoline use tax rate per gallon of gasoline, as determined by the department under section 15 of this chapter; multiplied by

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

(e) A purchaser or receiver of gasoline that purchases the gasoline at retail from a metered pump and makes a payment under this chapter is not subject to any liability to the state for the amount of the payment.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-20
Remittance of gasoline use tax; reporting
Effective 7-1-2014.

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, including statistics to meet federal requirements.

(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.

As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-21
Invoicing; sales to exempt purchasers
Effective 7-1-2014.

Sec. 21. (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. 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.
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-22
Purchases or shipments of gasoline to or from locations outside Indiana

Effective 7-1-2014.

Sec. 22. (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.

(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.

(c) A distributor importing gasoline into Indiana must obtain a permit from the department under section 17 of this chapter.
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-23
Consequences for failure to pay and failure to file

Effective 7-1-2014.

Sec. 23. (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 this chapter is subject to the penalties set forth in IC 6-8.1-10.
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-24
Display of price

Effective 7-1-2014.

Sec. 24. A retail merchant shall display on the metered 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.
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-25
Exempt transactions; refunds; procedures

Effective 7-1-2014.

Sec. 25. If a sale of gasoline is exempt from the gasoline use tax, the person that 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.
As added by P.L.227-2013, SEC.1.

IC 6-2.5-3.5-26
Relation to the state gross retail tax; exemptions
Effective 7-1-2014.

Sec. 26. (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.
As added by P.L.227-2013, SEC.1.