SENATE BILL No. 353

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-7.

Synopsis: Sales tax on gasoline. Provides that gross retail taxes imposed on gasoline shall be imposed on a per gallon basis. Requires the department of state revenue to determine a prepayment tax rate per gallon using a quarterly statewide average price provided by the attorney general and the 7% gross retail tax rate.

Effective: Upon passage; July 1, 2012.

Walker

January 9, 2012, read first time and referred to Committee on Tax and Fiscal Policy.

Introduced

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:

SECTION 1. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008, SECTION 314, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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), of:

(1) the ~~price per unit before the addition of state and federal taxes;~~ **number of gallons of gasoline sold;** multiplied by ~~(2) seven percent (7%).~~

(2) the prepayment rate per gallon that is in effect at the time of the sale.

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 2. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: 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 represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.~~

~~(4)~~ **(2)** The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

~~(5)~~ **(3)** The total amount of money received from the sale of special fuel during the period covered by the report.

~~(6)~~ **(4)** That portion of the amount described in subdivision ~~(5)~~ **(3)** that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

~~(7)~~ **(5)** 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:

(1) the state gross retail taxes imposed on the sale of the gasoline for the number of gallons of gasoline sold during the period; plus

(2) 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 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 3. IC 6-2.5-7-14, AS AMENDED BY P.L.182-2009(ss), SECTION 182, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. (a) Before **March 10,** June 10, **September 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)~~ **three (3)** 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) **Before the end of the month immediately following each calendar quarter, the attorney general shall provide to the department the statewide average retail price of gasoline for the most recently completed calendar quarter.** In determining the ~~prepayment rate~~ **retail price per gallon of gasoline** under this section, the department shall use the ~~most recent~~ **statewide average** retail price of gasoline ~~available~~ **provided** to the department **by the attorney general.**

(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~~ **THREE** 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:~~ **THREE:** Round the STEP ~~THREE~~ **TWO** result to the nearest one-tenth of one cent ($0.001).

SECTION 4. [EFFECTIVE UPON PASSAGE] **(a) Before June 10, 2012, and for purposes of IC 6-2.5-7, the department of state revenue shall publish the gross retail tax prepayment rate prescribed by IC 6-2.5-7-14, as amended by this act, that will apply to sales of gasoline for the period beginning July 1, 2012, through September 30, 2012.**

(b) Each retail merchant covered by IC 6-2.5-7 shall, for sales made before July 1, 2012, take an inventory of the gasoline in storage on the commencement of business on July 1, 2012, and reconcile the amount of gross retail taxes owed on sales of gasoline through June 30, 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 September 1, 2012, and shall be accompanied by a payment for any gross retail taxes owed on gasoline sold through June 30, 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 June 30, 2012.

(c) This SECTION expires January 1, 2013.

SECTION 5. **An emergency is declared for this act.**