

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 353 be amended to read as follows:

- 1           Page 1, between the enacting clause and line 1, begin a new  
2 paragraph and insert:  
3           "SECTION 1. IC 6-2.5-3.5 IS ADDED TO THE INDIANA CODE  
4 AS A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE**  
5 **JANUARY 1, 2013]:**  
6           **Chapter 3.5. Collection of Use Tax on Gasoline**  
7           **Sec. 1. As used in this chapter, "distributor" means a person**  
8 **who is the first purchaser of gasoline from a refiner, a terminal**  
9 **operator, or supplier, regardless of the location of the purchase.**  
10          **Sec. 2. As used in this chapter, "E85" has the meaning set forth**  
11 **in IC 6-6-1.1-103.**  
12          **Sec. 3. As used in this chapter, "federal gasoline tax" means the**  
13 **excise tax imposed under Section 4081 of the Internal Revenue**  
14 **Code.**  
15          **Sec. 4. As used in this chapter, "gasoline" has the meaning set**  
16 **forth in IC 6-6-1.1-103(g).**  
17          **Sec. 5. As used in this chapter, "Indiana gasoline tax" means the**  
18 **tax imposed under IC 6-6-1.1.**  
19          **Sec. 6. As used in this chapter, "metered pump" means a**  
20 **stationary pump that is capable of metering the amount of gasoline**  
21 **or special fuel dispensed from it and that is capable of**  
22 **simultaneously calculating and displaying the price of the gasoline**  
23 **or special fuel dispensed.**  
24          **Sec. 7. As used in this chapter, "purchase or shipment" means**  
25 **a sale or delivery of gasoline, but does not include:**  
26               **(1) an exchange transaction between refiners, terminal**  
27               **operators, or a refiner and terminal operator; or**  
28               **(2) a delivery by pipeline, ship, or barge to a refiner or**  
29               **terminal operator.**  
30          **Sec. 8. As used in this chapter, "price per unit before the**

1 addition of state and federal taxes" means an amount that equals  
2 the remainder of:

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

6 Sec. 9. As used in this chapter, "qualified distributor" means a  
7 distributor who:

- 8 (1) is a licensed distributor under IC 6-6-1.1; and  
9 (2) holds an unrevoked permit issued under section 17 of this  
10 chapter.

11 Sec. 10. As used in this chapter, "refiner" means a person who  
12 manufactures or produces gasoline by any process involving  
13 substantially more than the blending of gasoline.

14 Sec. 11. As used in this chapter, "terminal operator" means a  
15 person that:

- 16 (1) stores gasoline in tanks and equipment used in receiving  
17 and storing gasoline from interstate or intrastate pipelines  
18 pending wholesale bulk reshipment; or  
19 (2) stores gasoline at a boat terminal transfer that is a dock or  
20 tank, or equipment contiguous to a dock or tank, including  
21 equipment used in the unloading of gasoline from a ship or  
22 barge and used in transferring the gasoline to a tank pending  
23 wholesale bulk reshipment.

24 Sec. 12. As used in this chapter, "total price per unit" means the  
25 price per unit at which gasoline is actually sold, including the  
26 gasoline use, Indiana gasoline, and federal gasoline taxes that are  
27 part of the sales price.

28 Sec. 13. As used in this chapter, "unit" means the unit of  
29 measure, such as a gallon or a liter, by which gasoline is sold.

30 Sec. 14. As used in this chapter, "use tax rate" means a rate per  
31 gallon of gasoline determined by the department under section 15  
32 of this chapter and used to calculate the use tax due on the retail  
33 sale of gasoline under section 16 of this chapter, notwithstanding  
34 the collection procedures set forth in this chapter.

35 Sec. 15. (a) Before the twentieth day of each month, the  
36 department shall determine and provide to:

- 37 (1) each refiner and terminal operator and each qualified  
38 distributor known to the department to be required to collect  
39 payments of the gasoline use tax under this chapter; and  
40 (2) any other person that makes a request;

41 a notice of the gasoline use tax rate to be used during the following  
42 month. The notice shall be published on the department's Internet  
43 web site, published in the Indiana Register, and provided to  
44 registered distributors, refiners, and terminal operators by an  
45 electronic mail message that includes a direct link to the notice on  
46 the department's Internet web site.

47 (b) In determining the gasoline use tax rate under this section,

- 1 the department shall use:
- 2 (1) the statewide average retail price per gallon of gasoline,  
3 excluding the Indiana and federal gasoline taxes, the Indiana  
4 gasoline use tax, and the Indiana gross retail tax; multiplied  
5 by  
6 (2) seven percent (7%).

7 To determine the statewide average retail price, the department  
8 shall use a data service that updates the most recent retail price of  
9 gasoline no less often than monthly. The gasoline use tax rate per  
10 gallon of gasoline determined by the department under this section  
11 shall be rounded to the nearest one-tenth of one cent (\$0.001).

12 (c) The department, after approval by the office of management  
13 and budget, may determine a new gasoline use tax rate if the  
14 department finds that the statewide average retail price per gallon  
15 of gasoline, excluding the Indiana and federal gasoline taxes and  
16 the gasoline use tax, has changed by at least fifteen percent (15%)  
17 since the most recent determination. A notice of the new gasoline  
18 use tax rate shall be provided as required under subsection (a). A  
19 new payment rate under this subsection may not take effect until  
20 the immediately following first or sixteenth day of the month that  
21 follows by at least ten (10) days the date of the notice of the new  
22 rate.

23 **Sec. 16.** A qualified distributor, a refiner, or a terminal operator  
24 that sells gasoline for delivery to a retail merchant located in  
25 Indiana shall remit the gasoline use tax to the department for each  
26 gallon of gasoline sold. The person shall remit that amount  
27 regardless of the amount of gasoline use tax that the person has  
28 actually collected under this chapter. However, the person is  
29 entitled to deduct and retain the amounts prescribed in section 28  
30 of this chapter, IC 6-2.5-6-10, and IC 6-2.5-6-11.

31 **Sec. 17. (a)** A distributor desiring to receive gasoline within  
32 Indiana must hold an uncanceled permit issued by the department  
33 to collect payments of gasoline use tax from purchasers and  
34 recipients of gasoline.

35 (b) To obtain a permit, a distributor must file with the  
36 department a sworn application containing information that the  
37 department reasonably requires.

38 (c) The department may refuse to issue a permit to a distributor  
39 if:

- 40 (1) the application is filed by a distributor whose permit has  
41 previously been cancelled for cause;  
42 (2) the application is not filed in good faith, as determined by  
43 the department; or  
44 (3) the application is filed by a person as a subterfuge for the  
45 real person in interest whose permit has previously been  
46 cancelled for cause.

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

1 accompanied by an audited and current financial statement and a  
2 license fee of one hundred dollars (\$100).

3 (e) A permit issued under this section is not assignable and is  
4 valid only for the distributor in whose name it is issued. If there is  
5 a change in name or ownership, the distributor must apply for a  
6 new permit.

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

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

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

16 **Sec. 18. (a)** The department may require a distributor to file,  
17 concurrently with the filing of an application for a permit, a bond:

18 (1) in an amount of at least two thousand dollars (\$2,000) and  
19 not more than a three (3) month gasoline use tax liability for  
20 the distributor, as estimated by the department;

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

23 (3) upon which the distributor is the principal obligor and the  
24 state is the obligee; and

25 (4) conditioned upon the prompt filing of true electronic  
26 reports and payment of all gasoline use taxes collected by the  
27 distributor, together with any penalties and interest, and upon  
28 faithful compliance with this chapter.

29 The department shall determine the amount of the distributor's  
30 bond, if any.

31 (b) If after a hearing (after at least five (5) days written notice)  
32 the department determines that the amount of a distributor's bond  
33 is insufficient, the distributor shall upon written demand of the  
34 department file a new bond.

35 (c) The department may require a distributor to file a new bond  
36 with a satisfactory surety in the same form and amount if:

37 (1) liability upon the old bond is discharged or reduced by  
38 judgment rendered, payment made, or otherwise; or

39 (2) in the opinion of the department, any surety on the old  
40 bond becomes unsatisfactory.

41 (d) If a new bond obtained under subsection (b) or (c) is  
42 unsatisfactory, the department shall cancel the permit of the  
43 distributor. If the new bond is satisfactorily furnished, the  
44 department shall release in writing the surety on the old bond from  
45 any liability accruing after the effective date of the new bond.

46 (e) Sixty (60) days after making a written request for release to  
47 the department, the surety of a bond furnished by a distributor is

1 released from any liability to the state accruing on the bond. The  
2 release does not affect any liability accruing before expiration of  
3 the sixty (60) day period. The department shall promptly notify the  
4 distributor furnishing the bond that the surety has requested  
5 release. Unless the distributor obtains a new bond that meets the  
6 requirements of this section and files the new bond with the  
7 department within the sixty (60) day period, the department shall  
8 cancel the distributor's permit.

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

12 Sec. 19. (a) Except as provided in section 23 of this chapter, at  
13 the time of purchase or shipment of gasoline from a refiner or  
14 terminal operator to a distributor that is not a qualified  
15 distributor, the refiner or terminal operator shall collect and the  
16 distributor shall pay to the refiner or terminal operator the  
17 gasoline use tax in an amount determined under subsection (d).

18 (b) At the time of purchase or shipment of gasoline from a  
19 qualified distributor to a retail merchant, the qualified distributor  
20 shall collect and the retail merchant shall pay to the qualified  
21 distributor the gasoline use tax in an amount determined under  
22 subsection (d).

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

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

31 (1) the gasoline use tax rate per gallon of gasoline; multiplied  
32 by

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

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

37 Sec. 20. (a) Each refiner or terminal operator and each qualified  
38 distributor that is required to remit gasoline use tax under this  
39 chapter shall remit the tax due to the department semimonthly,  
40 through the department's online tax filing system, according to the  
41 following schedule:

42 (1) On or before the tenth day of each month for gasoline sold  
43 after the fifteenth day and before the end of the preceding  
44 month.

45 (2) On or before the twenty-fifth day of each month for  
46 gasoline sold after the end of the preceding month and before  
47 the sixteenth day of the month in which the gasoline was sold.

1           **(b) Before the end of each month, each refiner or terminal**  
2 **operator and each qualified distributor shall file an electronic**  
3 **report covering the taxes owed and the gallons of gasoline sold or**  
4 **shipped during the preceding month. The report must include the**  
5 **following:**

6           **(1) The number of gallons of gasoline sold or shipped during**  
7 **the preceding month, identifying each purchaser or receiver**  
8 **as required by the department.**

9           **(2) The amount of tax paid by each purchaser or recipient.**

10           **(3) Any other information reasonably required by the**  
11 **department.**

12           **(c) The gasoline use tax collected under this chapter shall be**  
13 **deposited in the same manner as state gross retail and use taxes are**  
14 **required to be deposited under IC 6-2.5-10-1.**

15           **Sec. 21. Each distributor that pays the gasoline use tax under**  
16 **this chapter shall file monthly an electronic report with the**  
17 **department. The report shall be filed not later than the last day of**  
18 **the month following the month that the report covers. The report**  
19 **must include the following:**

20           **(1) The number of gallons of gasoline purchased or received**  
21 **by the distributor from each refiner, terminal operator, or**  
22 **another distributor.**

23           **(2) The amount of gasoline use tax paid to each refiner,**  
24 **terminal operator, or distributor.**

25           **(3) The number of gallons of gasoline sold to each distributor,**  
26 **retail merchant, exempt purchaser, or other person and the**  
27 **amount of gasoline use tax collected from each distributor,**  
28 **retail merchant, or other person identifying the location of**  
29 **each distributor, retail merchant, exempt purchaser, or other**  
30 **person, as required by the department.**

31           **(4) Any other information reasonably required by the**  
32 **department.**

33           **Sec. 22. (a) Except as provided in subsection (b), a distributor**  
34 **that pays the gasoline use tax under this chapter shall separately**  
35 **state the amount of tax paid on the invoice the distributor issues to**  
36 **its purchaser or recipient. The purchaser or recipient shall pay to**  
37 **the distributor an amount equal to the gasoline use tax paid.**

38           **(b) A distributor that:**

39           **(1) pays the gasoline use tax under this chapter;**

40           **(2) is a retail merchant; and**

41           **(3) sells gasoline that is exempt from the gasoline use tax, as**  
42 **evidenced by a purchaser's exemption certificate issued by the**  
43 **department;**

44           **may not require the exempt purchaser to pay the gasoline use taxes**  
45 **paid on the gasoline sold to the exempt purchaser. A distributor**  
46 **that has paid gasoline use taxes and has not been reimbursed**  
47 **because the gasoline is sold to an exempt purchaser may file a**

1 claim for a refund, if the amount of unreimbursed gasoline use  
2 taxes exceeds five hundred dollars (\$500). A claim for a refund  
3 must be on the form approved by the department and must include  
4 all supporting documentation reasonably required by the  
5 department. If a distributor files a completed refund claim form  
6 that includes all supporting documentation, the department shall  
7 authorize the auditor of state to issue a warrant for the refund.

8 Sec. 23. (a) If a purchase or shipment of gasoline is made to a  
9 distributor (other than a qualified distributor) outside Indiana for  
10 shipment into and subsequent sale or use by the distributor within  
11 Indiana, the distributor shall make the payment required by  
12 section 19 of this chapter directly to the department. The  
13 distributor shall pay the tax and submit the electronic report  
14 according to the schedule set forth in section 20 of this chapter.

15 (b) If a purchase or shipment is made within Indiana for  
16 shipment and subsequent sale outside Indiana, the purchase or  
17 shipment is exempt from the gasoline use tax payment  
18 requirements of section 19 of this chapter. In such a case, if the  
19 gasoline use tax has already been paid on the purchase or  
20 shipment, the distributor (including a qualified distributor) may  
21 claim a credit for that gasoline use tax against the amount required  
22 to be remitted if the distributor provides evidence that the  
23 shipment and subsequent sale were outside Indiana.

24 Sec. 24. (a) A refiner, terminal operator, or distributor  
25 (including a qualified distributor) that fails to remit the tax or file  
26 the returns or reports required by this chapter is subject to the  
27 penalties set forth in IC 6-8.1-10.

28 (b) A distributor that fails to file the reports required by section  
29 21 of this chapter is subject to the penalties set forth in IC 6-8.1-10.

30 Sec. 25. A retail merchant shall display on the pump the total  
31 price per unit of the gasoline. A retail merchant may not advertise  
32 the gasoline at a price that is different than the price that the retail  
33 merchant is required to display on the metered pump.

34 Sec. 26. If a sale of gasoline is exempt from the gasoline use tax,  
35 the person who pays the tax to the retail merchant may file a claim  
36 for refund with the department. The person must file the claim on  
37 the form, in the manner, and with the supporting documentation,  
38 prescribed by the department. If a person properly files a claim for  
39 refund, the department shall refund to the person the gasoline use  
40 tax collected with respect to the exempt transaction.

41 Sec. 27. (a) Each person required to remit the gasoline use tax  
42 under this chapter shall, in the manner prescribed in IC 6-2.5-6,  
43 report electronically to the department the following information:

44 (1) The total number of gallons of gasoline sold during the  
45 period covered by the report.

46 (2) The total number of gallons of E85 sold during the period  
47 covered by the report.

1           (3) The total amount of money received which represents state  
2           and federal taxes imposed under this article, IC 6-6-1.1, or  
3           Section 4081 of the Internal Revenue Code from the sale of  
4           gasoline described in subdivision (1) during the period  
5           covered by the report.

6           Sec. 28. (a) As used in this section, "qualified reporting period"  
7           refers to a reporting period beginning after December 31 and  
8           ending before April 1 of each year.

9           (b) Subject to subsections (c) and (d), for qualified reporting  
10          periods beginning after December 31, 2012, and ending before July  
11          1, 2020, a person that remits the gasoline use tax to the department  
12          is entitled to deduct from the amount of gasoline use tax required  
13          to be remitted an amount equal to the product of:

14               (1) eighteen cents (\$0.18); multiplied by

15               (2) the number of gallons of E85 sold to a purchaser or  
16               recipient during the period covered by the person's report.

17          For purposes of this section, a payment of the gasoline use tax is  
18          presumed to occur on the date on which it is invoiced.

19          (c) The total amount of deductions allowed under subsection (b)  
20          may not exceed the amount of money that the budget agency  
21          determines is available in the E85 deduction reimbursement fund  
22          established under IC 15-15-12-30.5 for the deductions for all  
23          persons required to remit the gasoline use tax in a particular  
24          qualified reporting period. A person is not required to apply for an  
25          allocation of deductions under subsection (b). Before August 1 of  
26          each year, the budget agency shall estimate whether the amount of  
27          deductions from the immediately preceding qualified reporting  
28          period that are subject to reimbursement under  
29          IC 15-15-12-30.5(f) and the deductions expected to be reported  
30          under subsection (b) for the qualified reporting periods beginning  
31          after December 31 and ending before April 1 of the following year  
32          will exceed the amount of money available in the E85 deduction  
33          reimbursement fund for the deductions. If the budget agency  
34          determines that the amount of money in the retail merchant E85  
35          deduction reimbursement fund is insufficient to cover the amount  
36          of the deductions expected to be reported, the budget agency shall  
37          publish in the Indiana Register a notice that the deduction  
38          program under subsection (b) is suspended with respect to the  
39          qualified reporting periods occurring in the following calendar  
40          year and that no deductions will be granted for retail transactions  
41          occurring in the qualified reporting periods occurring in the  
42          following calendar year.

43          (d) The budget agency may suspend the deduction program  
44          under subsection (b) for a particular year at any time during a  
45          qualified reporting period if the budget agency determines that the  
46          amount of money in the E85 deduction reimbursement fund and  
47          the amount of money that will be transferred to the fund on July



1 **1 will not be sufficient to provide the deductions expected to occur**  
 2 **before the deduction program for the year ends on March 31. The**  
 3 **budget agency shall immediately provide notice to all persons that**  
 4 **remitted the gasoline use tax in the preceding month of the decision**  
 5 **to suspend the deduction program for that year.**

6 **Sec. 29. (a) The gasoline use tax collected under this chapter is**  
 7 **considered equivalent to the state gross retail tax that would be**  
 8 **collected by a retail merchant in a retail sale and replaces the**  
 9 **obligation of the retail merchant to collect the state gross retail tax**  
 10 **on the sale of gasoline.**

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

13 Page 2, line 3, after "chapter." insert "**However, in the case of sales**  
 14 **of gasoline (as defined in IC 6-6-1.1-103), a person shall collect the**  
 15 **gasoline use tax as provided in IC 6-2.5-3.5."**

16 Page 2, delete lines 33 through 42, begin a new paragraph and  
 17 insert:

18 "SECTION 3. IC 6-2.5-6-10, AS AMENDED BY P.L.146-2008,  
 19 SECTION 313, IS AMENDED TO READ AS FOLLOWS  
 20 [EFFECTIVE JANUARY 1, 2013]: Sec. 10. (a) In order to compensate  
 21 retail merchants **and those required to remit gasoline use tax** for  
 22 collecting and timely remitting the state gross retail tax, ~~and~~ the state  
 23 use tax, **and the gasoline use tax**, every retail merchant, except a retail  
 24 merchant referred to in subsection (c) **or a person required to remit**  
 25 **the gasoline use tax**, is entitled to deduct and retain from the amount  
 26 of those taxes otherwise required to be remitted under IC 6-2.5-7-5,  
 27 **IC 6-2.5-3.5**, or under this chapter, if timely remitted, a retail  
 28 merchant's collection allowance.

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

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

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

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

42 (B) did not exceed six hundred thousand dollars (\$600,000).

43 (3) Twenty-six hundredths percent (0.26%), if the retail  
 44 merchant's state gross retail and use tax liability **or gasoline use**  
 45 **tax** accrued during the state fiscal year ending on June 30 of the  
 46 immediately preceding calendar year was greater than six hundred

1 thousand dollars (\$600,000).

2 (c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not  
3 entitled to the allowance provided by this section. **A retail merchant**  
4 **is not entitled to the allowance provided by this section with**  
5 **respect to gasoline use taxes imposed by IC 6-2.5-3.5.**

6 SECTION 4. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007,  
7 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JANUARY 1, 2013]: Sec. 1. (a) The definitions in this section apply  
9 throughout this chapter.

10 (b) "Kerosene" has the same meaning as the definition contained in  
11 IC 16-44-2-2.

12 ~~(c) "Gasoline" has the same meaning as the definition contained in~~  
13 ~~IC 6-6-1.1-103.~~

14 ~~(d) (c) "Special fuel" has the same meaning as the definition~~  
15 ~~contained in IC 6-6-2.5-22.~~

16 ~~(e) "E85" has the meaning set forth in IC 6-6-1.1-103.~~

17 ~~(f) (d) "Unit" means the unit of measure, such as a gallon or a liter,~~  
18 ~~by which gasoline or special fuel is sold.~~

19 ~~(g) (e) "Metered pump" means a stationary pump which is capable~~  
20 ~~of metering the amount of gasoline or special fuel dispensed from it~~  
21 ~~and which is capable of simultaneously calculating and displaying the~~  
22 ~~price of the gasoline or special fuel dispensed.~~

23 ~~(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.~~

24 ~~(i) (f) "Indiana special fuel tax" means the tax imposed under~~  
25 ~~IC 6-6-2.5.~~

26 ~~(j) "Federal gasoline tax" means the excise tax imposed under~~  
27 ~~Section 4081 of the Internal Revenue Code.~~

28 ~~(k) (g) "Federal special fuel tax" means the excise tax imposed~~  
29 ~~under Section 4041 of the Internal Revenue Code.~~

30 ~~(l) (h) "Price per unit before the addition of state and federal taxes"~~  
31 ~~means an amount which equals the remainder of:~~

32 (1) the total price per unit; minus

33 (2) the state gross retail, Indiana ~~gasoline or~~ special fuel, and  
34 federal ~~gasoline or~~ special fuel taxes which are part of the total  
35 price per unit.

36 ~~(m) (i) "Total price per unit" means the price per unit at which~~  
37 ~~gasoline or special fuel is actually sold, including the state gross retail,~~  
38 ~~Indiana gasoline or special fuel, and federal gasoline or special fuel~~  
39 ~~taxes which are part of the sales price.~~

40 ~~(n) "Distributor" means a person who is the first purchaser of~~  
41 ~~gasoline from a refiner, a terminal operator, or supplier, regardless of~~  
42 ~~the location of the purchase.~~

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

- 1 (p) "Purchase or shipment" means a sale or delivery of gasoline, but
- 2 does not include:
- 3 (1) an exchange transaction between refiners, terminal operators,
- 4 or a refiner and terminal operator; or
- 5 (2) a delivery by pipeline, ship, or barge to a refiner or terminal
- 6 operator.
- 7 (q) "Qualified distributor" means a distributor who:
- 8 (1) is a licensed distributor under IC 6-6-1.1; and
- 9 (2) holds an unrevoked permit issued under section 7 of this
- 10 chapter.
- 11 (r) "Refiner" means a person who manufactures or produces
- 12 gasoline by any process involving substantially more than the blending
- 13 of gasoline.
- 14 (s) "Terminal operator" means a person that:
- 15 (1) stores gasoline in tanks and equipment used in receiving and
- 16 storing gasoline from interstate or intrastate pipelines pending
- 17 wholesale bulk reshipment; or
- 18 (2) stores gasoline at a boat terminal transfer that is a dock or
- 19 tank; or equipment contiguous to a dock or tank; including
- 20 equipment used in the unloading of gasoline from a ship or barge
- 21 and used in transferring the gasoline to a tank pending wholesale
- 22 bulk reshipment.
- 23 SECTION 5. IC 6-2.5-7-2 IS AMENDED TO READ AS
- 24 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 2. Except as
- 25 provided in section 2.5 of this chapter, a retail merchant who uses a
- 26 metered pump to dispense gasoline or special fuel shall display on the
- 27 pump the total price per unit of the gasoline or special fuel. Subject to
- 28 the provisions of section 2.5 of this chapter, a retail merchant may not
- 29 advertise the gasoline or special fuel at a price that is different than the
- 30 price that ~~he~~ **the retail merchant** is required to display on the metered
- 31 pump.
- 32 SECTION 6. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008,
- 33 SECTION 314, IS AMENDED TO READ AS FOLLOWS
- 34 [EFFECTIVE JANUARY 1, 2013]: Sec. 3. (a) ~~With respect to the sale~~
- 35 ~~of gasoline which is dispensed from a metered pump;~~ a retail merchant
- 36 shall collect, for each unit of gasoline sold, state gross retail tax in an
- 37 amount equal to the product, rounded to the nearest one-tenth of one
- 38 cent (\$0.001); of:
- 39 (1) the price per unit before the addition of state and federal taxes;
- 40 multiplied by
- 41 (2) seven percent (7%).
- 42 The retail merchant shall collect the state gross retail tax prescribed in
- 43 this section even if the transaction is exempt from taxation under
- 44 IC 6-2.5-5.
- 45 (b) With respect to the sale of special fuel or kerosene which is
- 46 dispensed from a metered pump, unless the purchaser provides an

1 exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant  
2 shall collect, for each unit of special fuel or kerosene sold, state gross  
3 retail tax in an amount equal to the product, rounded to the nearest  
4 one-tenth of one cent (\$0.001), of:

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

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

11 SECTION 7. IC 6-2.5-7-4 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 4. (a) If a sale of  
13 ~~gasoline or~~ special fuel is exempt from the state gross retail tax, the  
14 person who pays the tax to the retail merchant may file a claim for  
15 refund with the department. The person must file the claim on the form,  
16 in the manner, and with the supporting documentation, prescribed by  
17 the department. If a person properly files a claim for refund, the  
18 department shall refund to ~~him~~ **the person** the state gross retail tax  
19 collected with respect to the exempt transaction.

20 (b) Notwithstanding the other provisions of this section, the  
21 department may prescribe simplified procedures to make adjustments  
22 for exempt transactions.

23 SECTION 8. IC 6-2.5-7-5, AS AMENDED BY P.L.148-2009,  
24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JANUARY 1, 2013]: Sec. 5. (a) Each retail merchant who dispenses  
26 ~~gasoline or~~ special fuel from a metered pump shall, in the manner  
27 prescribed in IC 6-2.5-6, report to the department the following  
28 information:

- 29 ~~(1) The total number of gallons of gasoline sold from a metered~~  
30 ~~pump during the period covered by the report.~~
- 31 ~~(2) The total amount of money received from the sale of gasoline~~  
32 ~~described in subdivision (1) during the period covered by the~~  
33 ~~report.~~
- 34 ~~(3) That portion of the amount described in subdivision (2) which~~  
35 ~~represents state and federal taxes imposed under this article,~~  
36 ~~IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.~~
- 37 ~~(4) (1) The total number of gallons of special fuel sold from a~~  
38 ~~metered pump during the period covered by the report.~~
- 39 ~~(5) (2) The total amount of money received from the sale of~~  
40 ~~special fuel during the period covered by the report.~~
- 41 ~~(6) (3) That portion of the amount described in subdivision (5) (2)~~  
42 ~~that represents state and federal taxes imposed under this article,~~  
43 ~~IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.~~
- 44 ~~(7) The total number of gallons of E85 sold from a metered pump~~  
45 ~~during the period covered by the report.~~

46 (b) Concurrently with filing the report, the retail merchant shall

1 remit the state gross retail tax in an amount which equals six and  
 2 fifty-four hundredths percent (6.54%) of the gross receipts, including  
 3 state gross retail taxes, but excluding Indiana and federal ~~gasoline and~~  
 4 special fuel taxes, received by the retail merchant from the sale of the  
 5 ~~gasoline and~~ special fuel that is covered by the report and on which the  
 6 retail merchant was required to collect state gross retail tax. The retail  
 7 merchant shall remit that amount regardless of the amount of state  
 8 gross retail tax which the merchant has actually collected under this  
 9 chapter. However, the retail merchant is entitled to deduct and retain  
 10 the amounts prescribed in subsection (c); IC 6-2.5-6-10 and  
 11 IC 6-2.5-6-11.

12 (c) A retail merchant is entitled to deduct from the amount of state  
 13 gross retail tax required to be remitted under subsection (b) the amount  
 14 determined under STEP THREE of the following formula:

15 STEP ONE: Determine:

16 (A) the sum of the prepayment amounts made during the  
 17 period covered by the retail merchant's report; minus

18 (B) the sum of prepayment amounts collected by the retail  
 19 merchant; in the merchant's capacity as a qualified distributor;  
 20 during the period covered by the retail merchant's report.

21 STEP TWO: Subject to subsections (d) and (f); for qualified  
 22 reporting periods beginning after June 30, 2009; and ending  
 23 before July 1, 2020; determine the product of:

24 (A) eighteen cents (\$0.18); multiplied by

25 (B) the number of gallons of E85 sold at retail by the retail  
 26 merchant during the period covered by the retail merchant's  
 27 report.

28 STEP THREE: Add the amounts determined under STEPS ONE  
 29 and TWO:

30 For purposes of this section, a prepayment of the gross retail tax is  
 31 presumed to occur on the date on which it is invoiced:

32 (d) The total amount of deductions allowed under subsection (c)  
 33 STEP TWO may not exceed the amount of money that the budget  
 34 agency determines is available in the retail merchant E85 deduction  
 35 reimbursement fund established under IC 15-15-12-30.5 for the  
 36 deductions for all retail merchants in a particular qualified reporting  
 37 period. A retail merchant is not required to apply for an allocation of  
 38 deductions under subsection (c) STEP TWO. Before August 1 of each  
 39 year, the budget agency shall estimate whether the amount of  
 40 deductions from the immediately preceding qualified reporting period  
 41 that are subject to reimbursement under IC 15-15-12-30.5(f) and the  
 42 deductions expected to be reported under subsection (c) STEP TWO  
 43 for the qualified reporting periods beginning after December 31 and  
 44 ending before April 1 of the following year will exceed the amount of  
 45 money available in the retail merchant E85 deduction reimbursement  
 46 fund for the deductions. If the budget agency determines that the

1 amount of money in the retail merchant E85 deduction reimbursement  
2 fund is insufficient to cover the amount of the deductions expected to  
3 be reported, the budget agency shall publish in the Indiana Register a  
4 notice that the deduction program under subsection (c) STEP TWO is  
5 suspended with respect to the qualified reporting periods occurring in  
6 the following calendar year and that no deductions will be granted for  
7 retail transactions occurring in the qualified reporting periods occurring  
8 in the following calendar year.

9 (e) As used in this section, "qualified reporting period" refers to a  
10 reporting period beginning after December 31 and ending before April  
11 1 of each year.

12 (f) The budget agency may suspend the deduction program under  
13 subsection (c) STEP TWO for a particular year at any time during a  
14 qualified reporting period if the budget agency determines that the  
15 amount of money in the retail merchant E85 deduction reimbursement  
16 fund and the amount of money that will be transferred to the fund on  
17 July 1 will not be sufficient to reimburse the deductions expected to  
18 occur before the deduction program for the year ends on March 31. The  
19 budget agency shall immediately provide notice to the participating  
20 retail merchants of the decision to suspend the deduction program for  
21 that year.

22 SECTION 9. IC 6-2.5-7-6 IS REPEALED [EFFECTIVE JANUARY  
23 1, 2013]. Sec. 6. (a) If the deduction under section 5(c) of this chapter  
24 exceeds the amount of gross retail tax required to be remitted under  
25 section 5(b) of this chapter, the retail merchant is entitled to a credit.  
26 The credit shall be used as follows:

27 (1) First, the credit shall be applied against gross retail and use  
28 tax liability of the retail merchant that is required to be remitted  
29 under IC 6-2.5-6.

30 (2) Second, any amount remaining shall be applied against the  
31 gasoline tax liability of the retail merchant, as determined under  
32 IC 6-6-1.1, excluding any liability for gasoline delivered to a  
33 taxable marine facility.

34 A retail merchant may file a claim for a refund instead of taking a  
35 credit or for a refund of any excess tax payment remaining after the  
36 credits allowed by this section. In addition, a retail merchant may file  
37 a claim for a refund under section 12 of this chapter.

38 (b) A retail merchant that is entitled to a refund under this section  
39 must file a claim for the refund on the form approved by the  
40 department and must include any supporting documentation reasonably  
41 required by the department. If a retail merchant files a completed  
42 refund claim form that includes all supporting documentation, the  
43 excess tax payment that is not refunded within ninety (90) days accrues  
44 interest as provided in IC 6-8.1-9-2.

45 (c) Before the fifth day of each month, the department shall  
46 determine and notify the treasurer of state of the amount of credits

1 applied during the preceding month against the gasoline tax under this  
2 section. The treasurer of state shall transfer from the general fund:

- 3 (1) to the highway, road, and street fund, twenty-five percent
- 4 (25%) of the amount set forth in the department's notice; and
- 5 (2) to the motor fuel tax fund of the motor vehicle highway
- 6 account, seventy-five percent (75%) of the amount set forth in the
- 7 department's notice.

8 SECTION 10. IC 6-2.5-7-7 IS REPEALED [EFFECTIVE  
9 JANUARY 1, 2013]. Sec. 7: (a) A distributor desiring to receive  
10 gasoline within Indiana without prepaying gross retail tax must hold an  
11 uncanceled permit issued by the department to collect prepayments of  
12 gross retail tax from retail merchants.

13 (b) To obtain a permit, a distributor must file with the department  
14 a sworn application containing information that the department  
15 reasonably requires:

- 16 (c) The department may refuse to issue a permit to a distributor if:
- 17 (1) the application is filed by a distributor whose permit has
- 18 previously been cancelled for cause;
- 19 (2) the application is not filed in good faith, as determined by the
- 20 department; or
- 21 (3) the application is filed by some person as a subterfuge for the
- 22 real person in interest whose permit has previously been cancelled
- 23 for cause.

24 (d) A permit may not be issued unless the application is  
25 accompanied by an audited and current financial statement and a  
26 license fee of one hundred dollars (\$100):

27 (e) A permit issued under this section is not assignable and is valid  
28 only for the distributor in whose name it is issued. If there is a change  
29 in name or ownership, the distributor must apply for a new permit.

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

31 (g) Before being denied a permit under subsection (e) or before  
32 having a permit revoked under subsection (f), a distributor is entitled  
33 to a hearing after five (5) days written notice. At the hearing the  
34 distributor may appear in person or by counsel and present testimony:

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

36 SECTION 11. IC 6-2.5-7-8 IS REPEALED [EFFECTIVE  
37 JANUARY 1, 2013]. Sec. 8: (a) The department may require a  
38 distributor to file, concurrently with the filing of an application for a  
39 permit, a bond:

- 40 (1) in an amount of not less than two thousand dollars (\$2,000)
- 41 nor more than a three (3) month prepayment tax liability for the
- 42 distributor, as estimated by the department;
- 43 (2) in cash or with a surety company approved by the department;
- 44 (3) upon which the distributor is the principal obligor and the
- 45 state is the obligee; and
- 46 (4) conditioned upon the prompt filing of true reports and

1 payment of all prepayment of gross retail taxes collected by the  
 2 distributor; together with any penalties and interest; and upon  
 3 faithful compliance with this chapter.

4 The department shall determine the amount of the distributor's bond;  
 5 if any:

6 (b) If after a hearing (after at least five (5) days written notice) the  
 7 department determines that the amount of a distributor's bond is  
 8 insufficient; the distributor shall upon written demand of the  
 9 department file a new bond:

10 (c) The department may require a distributor to file a new bond with  
 11 a satisfactory surety in the same form and amount if:

12 (1) liability upon the old bond is discharged or reduced by  
 13 judgment rendered; payment made; or otherwise; or

14 (2) in the opinion of the department any surety on the old bond  
 15 becomes unsatisfactory:

16 (d) If a new bond obtained under subsection (b) or (c) is  
 17 unsatisfactory; the department shall cancel the permit of the distributor:  
 18 If the new bond is satisfactorily furnished; the department shall release  
 19 in writing the surety on the old bond from any liability accruing after  
 20 the effective date of the new bond:

21 (e) Sixty (60) days after making a written request for release to the  
 22 department; the surety of a bond furnished by a distributor is released  
 23 from any liability to the state accruing on the bond. The release does  
 24 not affect any liability accruing before expiration of the sixty (60) day  
 25 period: The department shall promptly notify the distributor furnishing  
 26 the bond that the surety has requested release: Unless the distributor  
 27 obtains a new bond that meets the requirements of this section and files  
 28 the new bond with the department within the sixty (60) day period; the  
 29 department shall cancel the distributor's permit:

30 (f) The department may require a distributor to furnish audited  
 31 annual financial statements to determine if any change is required in  
 32 the amount of the distributor's bond:

33 SECTION 12. IC 6-2.5-7-9 IS REPEALED [EFFECTIVE  
 34 JANUARY 1, 2013]. Sec. 9: (a) Except as provided in section 13 of  
 35 this chapter; at the time of purchase or shipment of gasoline from a  
 36 refiner or terminal operator; a distributor who is not a qualified  
 37 distributor shall prepay to the refiner or terminal operator the state  
 38 gross retail tax in an amount determined under subsection (d):

39 (b) At the time of purchase or shipment of gasoline from a qualified  
 40 distributor; a retail merchant shall prepay to the qualified distributor  
 41 the state gross retail tax in an amount determined under subsection (d):

42 (c) If gasoline is delivered to a retail outlet for resale and the gross  
 43 retail tax in the amount determined under subsection (d) has not been  
 44 prepaid on the gasoline; the refiner; terminal operator; or qualified  
 45 distributor making the delivery shall prepay to the department the gross  
 46 retail tax in an amount determined under subsection (d): A bulk plant



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is not considered to be a retail outlet:

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

- (1) the prepayment rate per gallon of gasoline; multiplied by
- (2) the number of invoiced gallons purchased or shipped:

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

SECTION 13. IC 6-2.5-7-10 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 10: (a) Each refiner or terminal operator and each qualified distributor that has received a prepayment of the state gross retail tax under this chapter shall remit the tax received 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 prepayments received after the fifteenth day and before the end of the preceding month:

(2) On or before the twenty-fifth day of each month for prepayments received after the end of the preceding month and before the sixteenth day of the month in which the prepayments are made:

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file a report covering the prepaid taxes received 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 prepaid by each purchaser or receiver.
- (3) Any other information reasonably required by the department.

SECTION 14. IC 6-2.5-7-11 IS REPEALED [EFFECTIVE JANUARY 1, 2013]. Sec. 11: Each distributor that prepays the state gross retail tax under this chapter shall file a monthly report with the department. The report shall be filed no later than the last day of the month following the month that the report covers. The report must include the following:

- (1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor.
- (2) The amount of state gross retail tax prepaid to each refiner, terminal operator, or distributor.
- (3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of state gross retail tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person; as

1 required by the department.  
2 (4) Any other information reasonably required by the department.  
3 SECTION 15. IC 6-2.5-7-12 IS REPEALED [EFFECTIVE  
4 JANUARY 1, 2013]. Sec. 12: (a) Except as provided in subsection (b),  
5 a distributor that prepays the state gross retail tax under this chapter  
6 shall separately state the amount of tax prepaid on the invoice the  
7 distributor issues to its purchaser or recipient. The purchaser or  
8 recipient shall pay to the distributor an amount equal to the prepaid tax.  
9 (b) A distributor that:  
10 (1) prepays the state gross retail tax under this chapter;  
11 (2) is a retail merchant; and  
12 (3) sells gasoline that is exempt from the gross retail tax; as  
13 evidenced by a purchaser's exemption certificate issued by the  
14 department;  
15 may not require the exempt purchaser to pay the gross retail taxes  
16 prepaid in the gasoline sold to the exempt purchaser. A distributor that  
17 has prepaid gross retail taxes and has not been reimbursed because the  
18 gasoline is sold to an exempt purchaser may file a claim for a refund (in  
19 addition to any claim for a refund under section 6 of this chapter); if the  
20 amount of unreimbursed prepaid gross retail taxes exceeds five  
21 hundred dollars (\$500). A claim for a refund must be on the form  
22 approved by the department and include all supporting documentation  
23 reasonably required by the department. If a distributor files a completed  
24 refund claim form that includes all supporting documentation; the  
25 department shall authorize the auditor of state to issue a warrant for the  
26 refund.  
27 SECTION 16. IC 6-2.5-7-13 IS REPEALED [EFFECTIVE  
28 JANUARY 1, 2013]. Sec. 13: (a) If a purchase or shipment of gasoline  
29 is made to a distributor (other than a qualified distributor) outside  
30 Indiana for shipment into and subsequent sale or use by the distributor  
31 within Indiana; the distributor shall make the prepayment required by  
32 section 9 of this chapter directly to the department. The distributor  
33 shall pay the tax and submit the report according to the schedule set  
34 forth in section 10 of this chapter.  
35 (b) If a purchase or shipment is made within Indiana for shipment  
36 and subsequent sale outside Indiana; the purchase or shipment is  
37 exempt from the prepayment requirements of section 9 of this chapter.  
38 SECTION 17. IC 6-2.5-7-14 IS REPEALED [EFFECTIVE  
39 JANUARY 1, 2013]. Sec. 14: (a) Before June 10 and December 10 of  
40 each year; the department shall determine and provide to:  
41 (1) each refiner and terminal operator and each qualified  
42 distributor known to the department to be required to collect  
43 prepayments of the state gross retail tax under this chapter; and  
44 (2) any other person that makes a request;  
45 a notice of the prepayment rate to be used during the following six (6)  
46 month period. The department; after approval by the office of

1 management and budget; may determine a new prepayment rate if the  
 2 department finds that the statewide average retail price per gallon of  
 3 gasoline, excluding the Indiana and federal gasoline taxes and the  
 4 Indiana gross retail tax; has changed by at least twenty-five percent  
 5 (25%) since the most recent determination.

6 (b) In determining the prepayment rate under this section; the  
 7 department shall use the most recent retail price of gasoline available  
 8 to the department.

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

12 STEP ONE: Determine the statewide average retail price per  
 13 gallon of gasoline, excluding the Indiana and federal gasoline  
 14 taxes and the Indiana gross retail tax.

15 STEP TWO: Determine the product of the following:

- 16 (A) The STEP ONE amount.
- 17 (B) The Indiana gross retail tax rate.
- 18 (C) Eighty percent (80%).

19 STEP THREE: Determine the lesser of:

- 20 (A) the STEP TWO result; or
- 21 (B) the product of:
  - 22 (i) the prepayment rate in effect on the day immediately
  - 23 preceding the day on which the prepayment rate is
  - 24 redetermined under this section; multiplied by
  - 25 (ii) one hundred twenty-five percent (125%).

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

28 SECTION 18. IC 6-2.5-7-15 IS REPEALED [EFFECTIVE  
 29 JANUARY 1, 2013]. Sec. 15. (a) A refiner, terminal operator, or  
 30 distributor (including a qualified distributor) that fails to remit the tax  
 31 or file the returns or reports required by this chapter is subject to the  
 32 penalties set forth in IC 6-8.1-10.

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

35 SECTION 19. IC 15-15-12-30.5, AS ADDED BY P.L.148-2009,  
 36 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JANUARY 1, 2013]: Sec. 30.5. (a) The retail merchant E85 deduction  
 38 reimbursement fund is established. The fund consists of:

- 39 (1) assessments transferred by the council for deposit in the fund
- 40 under section 32.5 of this chapter;
- 41 (2) gifts; and
- 42 (3) grants.

43 (b) Except as provided in subsection (g), money in the fund may  
 44 only be used for the purposes described in subsection (d).

45 (c) On May 1, the budget agency shall determine the sum of all  
 46 retail merchant deductions allowed under IC 6-2.5-7-5(d)

1 **IC 6-2.5-3.5-28** in the immediately preceding qualified reporting  
2 period (as defined in ~~IC 6-2.5-7-5(e)~~; **IC 6-2.5-3.5-28**).

3 (d) The budget agency shall transfer the amount determined under  
4 subsection (c) from the fund for deposit. The amount transferred under  
5 this subsection shall be deposited in the same manner as state gross  
6 retail and use taxes are required to be deposited under IC 6-2.5-10-1.

7 (e) The treasurer of state shall invest the money in the fund not  
8 currently needed to meet the obligations of the fund in the same  
9 manner as other public money may be invested. Interest that accrues  
10 from these investments shall be deposited in the fund.

11 (f) If the amount of money in the fund on May 1 is insufficient to  
12 reimburse the state for all ~~retail merchant~~ deductions allowed under  
13 ~~IC 6-2.5-7-5(d)~~ **IC 6-2.5-3.5-28** in the immediately preceding qualified  
14 reporting period (as defined in ~~IC 6-2.5-7-5(e)~~; **IC 6-2.5-3.5-28**), the  
15 budget agency shall deduct from any amounts transferred for deposit  
16 into the fund in the remainder of that calendar year an amount  
17 sufficient to cure the insufficiency. The budget agency shall transfer  
18 any amounts deducted under this subsection for deposit in the same  
19 manner as state gross retail and use taxes are required to be deposited  
20 under IC 6-2.5-10-1.

21 (g) If the ~~retail merchant~~ E85 deduction program is terminated, any  
22 balance in the fund must be transferred to the council.

23 SECTION 20. IC 15-15-12-32.5, AS ADDED BY P.L.148-2009,  
24 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
25 JANUARY 1, 2013]: Sec. 32.5. (a) ~~On July 1, 2010, the council shall~~  
26 ~~transfer five hundred thousand dollars (\$500,000) to the budget agency~~  
27 ~~for deposit in the retail merchant E85 deduction reimbursement fund~~  
28 ~~established by section 30.5 of this chapter.~~

29 (b) On July 1, 2011, and each year thereafter, the council shall  
30 transfer to the budget agency for deposit in the ~~retail merchant~~ E85  
31 deduction reimbursement fund established by section 30.5 of this  
32 chapter an amount equal to the difference between:

- 33 (1) five hundred thousand dollars (\$500,000); minus  
34 (2) the balance remaining in the fund on June 30.

35 ~~However, the amount transferred under this subsection may not exceed~~  
36 ~~five hundred thousand dollars (\$500,000).~~

37 SECTION 21. [EFFECTIVE JULY 1, 2012] (a) **Before December**  
38 **20, 2012, and for purposes of IC 6-2.5-3.5, as added by this act, the**  
39 **department of state revenue shall publish the gasoline use tax rate**  
40 **prescribed by IC 6-2.5-3.5, as added by this act, that will apply to**  
41 **sales of gasoline in January 2013.**

42 (b) **Each retail merchant covered by IC 6-2.5-7, shall, before**  
43 **January 1, 2013, for sales made before January 1, 2013, take an**  
44 **inventory of the gasoline in storage on the commencement of**  
45 **business on January 1, 2013, and reconcile the amount of gross**  
46 **retail taxes owed on sales of gasoline through December 31, 2012,**

1       **in the manner and on the forms prescribed by the department of**  
2       **state revenue. The reconciliation shall be filed with the department**  
3       **of state revenue before March 1, 2013, and shall be accompanied**  
4       **by a payment for any gross retail taxes owed on gasoline sold**  
5       **through December 31, 2012, or by a claim for a credit, if the retail**  
6       **merchant's reconciliation indicates the retail merchant has**  
7       **overpaid gross retail taxes on gasoline sold through December 31,**  
8       **2012.**

9       **(c) This SECTION expires January 1, 2014."**  
10       Delete pages 3 through 8.  
11       Renumber all SECTIONS consecutively.  
      (Reference is to SB 353 as printed January 27, 2012.)

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Senator WALKER