



February 13, 2013

## SENATE BILL No. 479

DIGEST OF SB 479 (Updated February 12, 2013 12:09 pm - DI 58)

**Citations Affected:** IC 6-2.5; noncode.

**Synopsis:** Use tax on gasoline. Provides a new collection procedure for imposing and collecting state gross retail and use tax on the sale of gasoline based on gallons sold and a rolling four week average retail price per gallon. Specifies that the collection point is moved to the first purchaser of gasoline from a refiner, a terminal operator, or supplier. Requires the department of state revenue to monthly determine a use tax rate per gallon using the 7% gross retail and use tax rate. Requires all reports of gasoline use tax to be filed electronically and the taxes remitted using the department's online tax system. Changes from 25% to 15% the amount the retail price of gasoline must change before a new use tax rate may be set at a time other than at the time of the monthly rate setting. Provides that if the department changes the use tax rate determined for a month because the statewide average retail price per gallon of gasoline has increased by more than 15%, the new rate may not take effect earlier than 10 days after publication of the new rate. Requires the department to publish a tax notice on its Internet web site and provide notices to registered distributors, refiners, and terminal operators using electronic mail with a direct link. Requires the notice to specify the source of the data used to determine the gasoline use tax rate and the statewide average retail price per gallon of gasoline. Makes corresponding changes.

**Effective:** July 1, 2013; January 1, 2014.

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**Walker**

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January 14, 2013, read first time and referred to Committee on Tax and Fiscal Policy.  
February 12, 2013, amended, reported favorably — Do Pass.

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SB 479—LS 6605/DI 58+



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February 13, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## SENATE BILL No. 479

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-2.5-3.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2014]:

4 **Chapter 3.5. Collection of Use Tax on Gasoline**

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

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

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

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

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

17 **Sec. 6. As used in this chapter, "metered pump" means a**

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1 stationary pump that is capable of metering the amount of gasoline  
2 or special fuel dispensed from it and that is capable of  
3 simultaneously calculating and displaying the price of the gasoline  
4 or special fuel dispensed.

5 Sec. 7. As used in this chapter, "price per unit before the  
6 addition of state and federal taxes" means an amount that equals  
7 the remainder of:

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

11 Sec. 8. As used in this chapter, "purchase or shipment" means  
12 a sale or delivery of gasoline, but does not include:

- 13 (1) an exchange transaction between refiners, terminal  
14 operators, or a refiner and terminal operator; or
- 15 (2) a delivery by pipeline, ship, or barge to a refiner or  
16 terminal operator.

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

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

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

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

- 27 (1) stores gasoline in tanks and equipment used in receiving  
28 and storing gasoline from interstate or intrastate pipelines  
29 pending wholesale bulk reshipment; or
- 30 (2) stores gasoline at a boat terminal transfer that is a dock or  
31 tank, or equipment contiguous to a dock or tank, including  
32 equipment used in the unloading of gasoline from a ship or  
33 barge and used in transferring the gasoline to a tank pending  
34 wholesale bulk reshipment.

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

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

41 Sec. 14. As used in this chapter, "use tax rate" means a rate per  
42 gallon of gasoline determined by the department under section 15

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1 of this chapter and used to calculate the use tax due on the retail  
 2 sale of gasoline under section 16 of this chapter, notwithstanding  
 3 the collection procedures set forth in this chapter.

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

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

10 a notice of the gasoline use tax rate to be used during the following  
 11 month and the source of the data used to determine the gasoline  
 12 use tax rate and the statewide average retail price per gallon of  
 13 gasoline. The notice shall be published on the department's  
 14 Internet web site, published in a departmental notice, and provided  
 15 to registered distributors, refiners, and terminal operators by an  
 16 electronic mail message that includes a direct link to the notice on  
 17 the department's Internet web site.

18 (b) In determining the gasoline use tax rate under this section,  
 19 the department shall use:

- 20 (1) the statewide average retail price per gallon of gasoline  
 21 (based on the retail price per gallon of gasoline during the  
 22 previous four (4) weeks), excluding the Indiana and federal  
 23 gasoline taxes, the Indiana gasoline use tax, and the Indiana  
 24 gross retail tax (if any); multiplied by  
 25 (2) seven percent (7%).

26 To determine the statewide average retail price, the department  
 27 shall use a data service that updates the most recent retail price of  
 28 gasoline. The gasoline use tax rate per gallon of gasoline  
 29 determined by the department under this section shall be rounded  
 30 to the nearest one-tenth of one cent (\$0.001).

31 (c) The department, after approval by the office of management  
 32 and budget, may determine a new gasoline use tax rate if the  
 33 department finds that the statewide average retail price per gallon  
 34 of gasoline, excluding the Indiana and federal gasoline taxes and  
 35 the gasoline use tax, has changed by at least fifteen percent (15%)  
 36 since the most recent determination. A notice of the new gasoline  
 37 use tax rate shall be provided as required under subsection (a). A  
 38 new payment rate under this subsection may not take effect earlier  
 39 than ten (10) days after the date of the notice of the new rate.

40 Sec. 16. A qualified distributor, a refiner, or a terminal operator  
 41 that sells gasoline for delivery to a retail merchant located in  
 42 Indiana shall remit the gasoline use tax to the department for each



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1 gallon of gasoline sold. The person shall remit that amount  
 2 regardless of the amount of gasoline use tax that the person has  
 3 actually collected under this chapter. However, the person is  
 4 entitled to deduct and retain the amounts prescribed in  
 5 IC 6-2.5-6-10 and IC 6-2.5-6-11.

6 Sec. 17. (a) A distributor desiring to receive gasoline within  
 7 Indiana must hold an uncanceled permit issued by the department  
 8 to collect payments of gasoline use tax from purchasers and  
 9 recipients of gasoline.

10 (b) To obtain a permit, a distributor must file with the  
 11 department a sworn application containing information that the  
 12 department reasonably requires.

13 (c) The department may refuse to issue a permit to a distributor  
 14 if:

- 15 (1) the application is filed by a distributor whose permit has
- 16 previously been canceled for cause;
- 17 (2) the application is not filed in good faith, as determined by
- 18 the department; or
- 19 (3) the application is filed by a person as a subterfuge for the
- 20 real person in interest whose permit has previously been
- 21 canceled for cause.

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

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

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

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

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

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

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



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- 1           (2) in cash or with a surety company approved by the
- 2           department;
- 3           (3) upon which the distributor is the principal obligor and the
- 4           state is the obligee; and
- 5           (4) conditioned upon the prompt filing of true electronic
- 6           reports and payment of all gasoline use taxes collected by the
- 7           distributor, together with any penalties and interest, and upon
- 8           faithful compliance with this chapter.

9           The department shall determine the amount of the distributor's  
10          bond, if any.

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

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

- 17           (1) liability upon the old bond is discharged or reduced by
- 18           judgment rendered, payment made, or otherwise; or
- 19           (2) in the opinion of the department, any surety on the old
- 20           bond becomes unsatisfactory.

21          (d) If a new bond obtained under subsection (b) or (c) is  
22          unsatisfactory, the department shall cancel the permit of the  
23          distributor. If the new bond is satisfactorily furnished, the  
24          department shall release in writing the surety on the old bond from  
25          any liability accruing after the effective date of the new bond.

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

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

39          Sec. 19. (a) Except as provided in section 23 of this chapter, at  
40          the time of purchase or shipment of gasoline from a refiner or  
41          terminal operator to a distributor that is not a qualified  
42          distributor, the refiner or terminal operator shall collect and the

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1 distributor shall pay to the refiner or terminal operator the  
2 gasoline use tax in an amount determined under subsection (d).

3 (b) At the time of purchase or shipment of gasoline from a  
4 qualified distributor to a retail merchant, the qualified distributor  
5 shall collect and the retail merchant shall pay to the qualified  
6 distributor the gasoline use tax in an amount determined under  
7 subsection (d).

8 (c) If gasoline is delivered to a retail outlet for resale and the  
9 gasoline use tax in the amount determined under subsection (d) has  
10 not been paid on the gasoline, the refiner, terminal operator, or  
11 qualified distributor making the delivery shall pay to the  
12 department the gasoline use tax in an amount determined under  
13 subsection (d). A bulk plant is not considered to be a retail outlet.

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

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

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

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

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

29 (1) On or before the tenth day of each month for gasoline sold  
30 after the fifteenth day and before the end of the preceding  
31 month.

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

35 (b) Before the end of each month, each refiner or terminal  
36 operator and each qualified distributor shall file an electronic  
37 report covering the taxes owed and the gallons of gasoline sold or  
38 shipped during the preceding month. The report must include the  
39 following:

40 (1) The number of gallons of gasoline sold or shipped during  
41 the preceding month, identifying each purchaser or receiver  
42 as required by the department.

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- (2) The amount of tax paid by each purchaser or recipient.
- (3) Any other information reasonably required by the department.

(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.

Sec. 21. Each distributor that pays the gasoline use tax under this chapter shall file monthly an electronic report with the department. The report shall be filed not 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 gasoline use tax paid 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 gasoline use tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person, as required by the department.
- (4) Any other information reasonably required by the department.

Sec. 22. (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, if the amount of unreimbursed gasoline use taxes exceeds five hundred dollars (\$500). A claim for a refund must be on the form approved by the department and must include

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1 all supporting documentation reasonably required by the  
 2 department. If a distributor files a completed refund claim form  
 3 that includes all supporting documentation, the department shall  
 4 authorize the auditor of state to issue a warrant for the refund.

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

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

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

25 (b) A distributor that fails to file the reports required by section  
 26 21 of this chapter is subject to the penalties set forth in IC 6-8.1-10.

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

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

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

- 41 (1) The total number of gallons of gasoline sold during the  
 42 period covered by the report.



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

**Sec. 28. (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.**

SECTION 2. IC 6-2.5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 1. (a) A person is a retail merchant making a retail transaction when ~~he~~ **the person** engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~ **the person:**

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if ~~he~~ **the person** is making a wholesale sale as described in section 2 of this chapter. **However, in the case of sales of gasoline (as defined in IC 6-6-1.1-103), a person shall collect the gasoline use tax as provided in IC 6-2.5-3.5.**

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer

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1 and which are separately stated on the transferor's records.  
2 For purposes of this subsection, a transfer is considered to have  
3 occurred after delivery of the property to the purchaser.

4 (f) Notwithstanding subsection (e):

5 (1) in the case of retail sales of gasoline (as defined in  
6 ~~IC 6-6-1.1-103~~) and special fuel (as defined in IC 6-6-2.5-22), the  
7 gross retail income received from selling at retail is the total sales  
8 price of the gasoline or special fuel minus the part of that price  
9 attributable to tax imposed under ~~IC 6-6-1.1~~, IC 6-6-2.5 or ~~Section~~  
10 ~~4041(a)~~ or Section 4081 of the Internal Revenue Code; and

11 (2) in the case of retail sales of cigarettes (as defined in  
12 IC 6-7-1-2), the gross retail income received from selling at retail  
13 is the total sales price of the cigarettes including the tax imposed  
14 under IC 6-7-1.

15 (g) Gross retail income does not include income that represents  
16 charges for serving or delivering food and food ingredients furnished,  
17 prepared, or served for consumption at a location, or on equipment,  
18 provided by the retail merchant. However, the exclusion under this  
19 subsection only applies if the charges for the serving or delivery are  
20 stated separately from the price of the food and food ingredients when  
21 the purchaser pays the charges.

22 SECTION 3. IC 6-2.5-6-10, AS AMENDED BY P.L.146-2008,  
23 SECTION 313, IS AMENDED TO READ AS FOLLOWS  
24 [EFFECTIVE JANUARY 1, 2014]: Sec. 10. (a) In order to compensate  
25 retail merchants **and those required to remit gasoline use tax** for  
26 collecting and timely remitting the state gross retail tax, ~~and~~ the state  
27 use tax, **and the gasoline use tax**, every retail merchant, except a retail  
28 merchant referred to in subsection (c) **or a person required to remit**  
29 **the gasoline use tax**, is entitled to deduct and retain from the amount  
30 of those taxes otherwise required to be remitted under IC 6-2.5-7-5,  
31 **IC 6-2.5-3.5**, or under this chapter, if timely remitted, a retail  
32 merchant's collection allowance.

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

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

41 (2) Fifty-three hundredths percent (0.53%), if the retail merchant's  
42 state gross retail and use tax **or gasoline use tax** liability accrued

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- 1 during the state fiscal year ending on June 30 of the immediately
- 2 preceding calendar year:
- 3 (A) was greater than sixty thousand dollars (\$60,000); and
- 4 (B) did not exceed six hundred thousand dollars (\$600,000).
- 5 (3) Twenty-six hundredths percent (0.26%), if the retail
- 6 merchant's state gross retail and use tax liability **or gasoline use**
- 7 **tax** accrued during the state fiscal year ending on June 30 of the
- 8 immediately preceding calendar year was greater than six hundred
- 9 thousand dollars (\$600,000).
- 10 (c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not
- 11 entitled to the allowance provided by this section. **A retail merchant**
- 12 **is not entitled to the allowance provided by this section with**
- 13 **respect to gasoline use taxes imposed by IC 6-2.5-3.5.**
- 14 SECTION 4. IC 6-2.5-7-1, AS AMENDED BY P.L.1-2007,
- 15 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 16 JANUARY 1, 2014]: Sec. 1. (a) The definitions in this section apply
- 17 throughout this chapter.
- 18 (b) "Kerosene" has the same meaning as the definition contained in
- 19 IC 16-44-2-2.
- 20 (c) "Gasoline" has the same meaning as the definition contained in
- 21 ~~IC 6-6-1.1-103.~~
- 22 (d) (c) "Special fuel" has the same meaning as the definition
- 23 contained in IC 6-6-2.5-22.
- 24 (e) "E85" has the meaning set forth in ~~IC 6-6-1.1-103.~~
- 25 (f) (d) "Unit" means the unit of measure, such as a gallon or a liter,
- 26 by which ~~gasoline~~ or special fuel is sold.
- 27 (g) (e) "Metered pump" means a stationary pump which is capable
- 28 of metering the amount of ~~gasoline~~ or special fuel dispensed from it
- 29 and which is capable of simultaneously calculating and displaying the
- 30 price of the ~~gasoline~~ or special fuel dispensed.
- 31 (h) ~~"Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.~~
- 32 (i) (f) "Indiana special fuel tax" means the tax imposed under
- 33 IC 6-6-2.5.
- 34 (j) ~~"Federal gasoline tax" means the excise tax imposed under~~
- 35 ~~Section 4081 of the Internal Revenue Code.~~
- 36 (k) (g) "Federal special fuel tax" means the excise tax imposed
- 37 under Section 4041 of the Internal Revenue Code.
- 38 (l) (h) "Price per unit before the addition of state and federal taxes"
- 39 means an amount which equals the remainder of:
- 40 (1) the total price per unit; minus
- 41 (2) the state gross retail, Indiana ~~gasoline~~ or special fuel, and
- 42 federal ~~gasoline~~ or special fuel taxes which are part of the total

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- 1 price per unit.
- 2 ~~(m)~~ (i) "Total price per unit" means the price per unit at which
- 3 gasoline or special fuel is actually sold, including the state gross retail,
- 4 Indiana gasoline or special fuel, and federal gasoline or special fuel
- 5 taxes which are part of the sales price.
- 6 (n) "Distributor" means a person who is the first purchaser of
- 7 gasoline from a refiner, a terminal operator, or supplier, regardless of
- 8 the location of the purchase.
- 9 (o) "Prepayment rate" means a rate per gallon of gasoline
- 10 determined by the department under section 14 of this chapter for use
- 11 in calculating prepayment amounts of gross retail tax under section 9
- 12 of this chapter.
- 13 (p) "Purchase or shipment" means a sale or delivery of gasoline, but
- 14 does not include:
- 15 (1) an exchange transaction between refiners, terminal operators;
- 16 or a refiner and terminal operator; or
- 17 (2) a delivery by pipeline, ship, or barge to a refiner or terminal
- 18 operator.
- 19 (q) "Qualified distributor" means a distributor who:
- 20 (1) is a licensed distributor under IC 6-6-1.1; and
- 21 (2) holds an unrevoked permit issued under section 7 of this
- 22 chapter.
- 23 (r) "Refiner" means a person who manufactures or produces
- 24 gasoline by any process involving substantially more than the blending
- 25 of gasoline.
- 26 (s) "Terminal operator" means a person that:
- 27 (1) stores gasoline in tanks and equipment used in receiving and
- 28 storing gasoline from interstate or intrastate pipelines pending
- 29 wholesale bulk reshipment; or
- 30 (2) stores gasoline at a boat terminal transfer that is a dock or
- 31 tank, or equipment contiguous to a dock or tank, including
- 32 equipment used in the unloading of gasoline from a ship or barge
- 33 and used in transferring the gasoline to a tank pending wholesale
- 34 bulk reshipment.
- 35 SECTION 5. IC 6-2.5-7-2 IS AMENDED TO READ AS
- 36 FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 2. Except as
- 37 provided in section 2.5 of this chapter, a retail merchant who uses a
- 38 metered pump to dispense gasoline or special fuel shall display on the
- 39 pump the total price per unit of the gasoline or special fuel. Subject to
- 40 the provisions of section 2.5 of this chapter, a retail merchant may not
- 41 advertise the gasoline or special fuel at a price that is different than the
- 42 price that ~~he~~ **the retail merchant** is required to display on the metered

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SECTION 6. IC 6-2.5-7-3, AS AMENDED BY P.L.146-2008, SECTION 314, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: 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; multiplied by
- (2) seven percent (7%).

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 7. IC 6-2.5-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 4. (a) If a sale of ~~gasoline or~~ special fuel is exempt from the state gross retail tax, the person who 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 ~~him~~ **the person** the state gross retail tax collected with respect to the exempt transaction.

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

SECTION 8. IC 6-2.5-7-5, AS AMENDED BY P.L.98-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2014]: Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner

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1 prescribed in IC 6-2.5-6, report to the department the following  
2 information:

3 (1) The total number of gallons of gasoline sold from a metered  
4 pump during the period covered by the report.

5 (2) The total amount of money received from the sale of gasoline  
6 described in subdivision (1) during the period covered by the  
7 report.

8 (3) That portion of the amount described in subdivision (2) which  
9 represents state and federal taxes imposed under this article;  
10 IC 6-6-1.1; or Section 4081 of the Internal Revenue Code.

11 (4) (1) The total number of gallons of special fuel sold from a  
12 metered pump during the period covered by the report.

13 (5) (2) The total amount of money received from the sale of  
14 special fuel during the period covered by the report.

15 (6) (3) That portion of the amount described in subdivision (5) (2)  
16 that represents state and federal taxes imposed under this article,  
17 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

18 (7) The total number of gallons of E85 sold from a metered pump  
19 during the period covered by the report.

20 (b) Concurrently with filing the report, the retail merchant shall  
21 remit the state gross retail tax in an amount which equals six and  
22 fifty-four hundredths percent (6.54%) of the gross receipts, including  
23 state gross retail taxes but excluding Indiana and federal gasoline and  
24 special fuel taxes, received by the retail merchant from the sale of the  
25 gasoline and special fuel that is covered by the report and on which the  
26 retail merchant was required to collect state gross retail tax. The retail  
27 merchant shall remit that amount regardless of the amount of state  
28 gross retail tax which the merchant has actually collected under this  
29 chapter. However, the retail merchant is entitled to deduct and retain  
30 the amounts prescribed in IC 6-2.5-6-10, and IC 6-2.5-6-11.

31 SECTION 9. IC 6-2.5-7-7 IS REPEALED [EFFECTIVE JANUARY  
32 1, 2014]. Sec. 7: (a) A distributor desiring to receive gasoline within  
33 Indiana without prepaying gross retail tax must hold an uncanceled  
34 permit issued by the department to collect prepayments of gross retail  
35 tax from retail merchants.

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

39 (c) The department may refuse to issue a permit to a distributor 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 the

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1 department; or  
2 (3) the application is filed by some person as a subterfuge for the  
3 real person in interest whose permit has previously been cancelled  
4 for cause.

5 (d) A permit may not be issued unless the application is  
6 accompanied by an audited and current financial statement and a  
7 license fee of one hundred dollars (\$100).

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

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

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

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

17 SECTION 10. IC 6-2.5-7-8 IS REPEALED [EFFECTIVE  
18 JANUARY 1, 2014]. See: 8. (a) The department may require a  
19 distributor to file, concurrently with the filing of an application for a  
20 permit, a bond:

21 (1) in an amount of not less than two thousand dollars (\$2,000)  
22 nor more than a three (3) month prepayment tax liability for the  
23 distributor, as estimated by the department;

24 (2) in cash or with a surety company approved by the department;  
25 (3) upon which the distributor is the principal obligor and the  
26 state is the obligee; and

27 (4) conditioned upon the prompt filing of true reports and  
28 payment of all prepayment of gross retail taxes collected by the  
29 distributor, together with any penalties and interest, and upon  
30 faithful compliance with this chapter.

31 The department shall determine the amount of the distributor's bond,  
32 if any.

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

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

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

41 (2) in the opinion of the department any surety on the old bond  
42 becomes unsatisfactory.

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1 (d) If a new bond obtained under subsection (b) or (c) is  
 2 unsatisfactory, the department shall cancel the permit of the distributor.  
 3 If the new bond is satisfactorily furnished, the department shall release  
 4 in writing the surety on the old bond from any liability accruing after  
 5 the effective date of the new bond.

6 (e) Sixty (60) days after making a written request for release to the  
 7 department, the surety of a bond furnished by a distributor is released  
 8 from any liability to the state accruing on the bond. The release does  
 9 not affect any liability accruing before expiration of the sixty (60) day  
 10 period. The department shall promptly notify the distributor furnishing  
 11 the bond that the surety has requested release. Unless the distributor  
 12 obtains a new bond that meets the requirements of this section and files  
 13 the new bond with the department within the sixty (60) day period, the  
 14 department shall cancel the distributor's permit.

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

18 SECTION 11. IC 6-2.5-7-9 IS REPEALED [EFFECTIVE  
 19 JANUARY 1, 2014]. Sec. 9: (a) Except as provided in section 13 of  
 20 this chapter, at the time of purchase or shipment of gasoline from a  
 21 refiner or terminal operator, a distributor who is not a qualified  
 22 distributor shall prepay to the refiner or terminal operator the state  
 23 gross retail tax in an amount determined under subsection (d).

24 (b) At the time of purchase or shipment of gasoline from a qualified  
 25 distributor, a retail merchant shall prepay to the qualified distributor  
 26 the state gross retail tax in an amount determined under subsection (d).

27 (c) If gasoline is delivered to a retail outlet for resale and the gross  
 28 retail tax in the amount determined under subsection (d) has not been  
 29 prepaid on the gasoline, the refiner, terminal operator, or qualified  
 30 distributor making the delivery shall prepay to the department the gross  
 31 retail tax in an amount determined under subsection (d). A bulk plant  
 32 is not considered to be a retail outlet.

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

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

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

40 SECTION 12. IC 6-2.5-7-10 IS REPEALED [EFFECTIVE  
 41 JANUARY 1, 2014]. Sec. 10: (a) Each refiner or terminal operator and  
 42 each qualified distributor that has received a prepayment of the state

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1 gross retail tax under this chapter shall remit the tax received to the  
2 department semimonthly, through the department's online tax filing  
3 system, according to the following schedule:

4 (1) On or before the tenth day of each month for prepayments  
5 received after the fifteenth day and before the end of the  
6 preceding month:

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

11 (b) Before the end of each month, each refiner or terminal operator  
12 and each qualified distributor shall file a report covering the prepaid  
13 taxes received and the gallons of gasoline sold or shipped during the  
14 preceding month. The report must include the following:

15 (1) The number of gallons of gasoline sold or shipped during the  
16 preceding month, identifying each purchaser or receiver as  
17 required by the department.

18 (2) The amount of tax prepaid by each purchaser or receiver.

19 (3) Any other information reasonably required by the department.

20 SECTION 13. IC 6-2.5-7-11 IS REPEALED [EFFECTIVE  
21 JANUARY 1, 2014]. Sec. 11: Each distributor that prepays the state  
22 gross retail tax under this chapter shall file a monthly report with the  
23 department. The report shall be filed no later than the last day of the  
24 month following the month that the report covers. The report must  
25 include the following:

26 (1) The number of gallons of gasoline purchased or received by  
27 the distributor from each refiner, terminal operator, or another  
28 distributor.

29 (2) The amount of state gross retail tax prepaid to each refiner,  
30 terminal operator, or distributor.

31 (3) The number of gallons of gasoline sold to each distributor,  
32 retail merchant, exempt purchaser, or other person and the  
33 amount of state gross retail tax collected from each distributor,  
34 retail merchant, or other person identifying the location of each  
35 distributor, retail merchant, exempt purchaser, or other person, as  
36 required by the department.

37 (4) Any other information reasonably required by the department.

38 SECTION 14. IC 6-2.5-7-12 IS REPEALED [EFFECTIVE  
39 JANUARY 1, 2014]. Sec. 12: (a) Except as provided in subsection (b);  
40 a distributor that prepays the state gross retail tax under this chapter  
41 shall separately state the amount of tax prepaid on the invoice the  
42 distributor issues to its purchaser or recipient. The purchaser or

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1 recipient shall pay to the distributor an amount equal to the prepaid tax:

2 (b) A distributor that:

3 (1) prepays the state gross retail tax under this chapter;

4 (2) is a retail merchant; and

5 (3) sells gasoline that is exempt from the gross retail tax; as  
6 evidenced by a purchaser's exemption certificate issued by the  
7 department;

8 may not require the exempt purchaser to pay the gross retail taxes  
9 prepaid in the gasoline sold to the exempt purchaser. A distributor that  
10 has prepaid gross retail taxes and has not been reimbursed because the  
11 gasoline is sold to an exempt purchaser may file a claim for a refund (in  
12 addition to any claim for a refund under section 6 of this chapter); if the  
13 amount of unreimbursed prepaid gross retail taxes exceeds five  
14 hundred dollars (\$500). A claim for a refund must be on the form  
15 approved by the department and include all supporting documentation  
16 reasonably required by the department. If a distributor files a completed  
17 refund claim form that includes all supporting documentation, the  
18 department shall authorize the auditor of state to issue a warrant for the  
19 refund.

20 SECTION 15. IC 6-2.5-7-13 IS REPEALED [EFFECTIVE  
21 JANUARY 1, 2014]. Sec. 13: (a) If a purchase or shipment of gasoline  
22 is made to a distributor (other than a qualified distributor) outside  
23 Indiana for shipment into and subsequent sale or use by the distributor  
24 within Indiana, the distributor shall make the prepayment required by  
25 section 9 of this chapter directly to the department. The distributor  
26 shall pay the tax and submit the report according to the schedule set  
27 forth in section 10 of this chapter.

28 (b) If a purchase or shipment is made within Indiana for shipment  
29 and subsequent sale outside Indiana, the purchase or shipment is  
30 exempt from the prepayment requirements of section 9 of this chapter.

31 SECTION 16. IC 6-2.5-7-14 IS REPEALED [EFFECTIVE  
32 JANUARY 1, 2014]. Sec. 14: (a) Before June 10 and December 10 of  
33 each year, the department shall determine and provide to:

34 (1) each refiner and terminal operator and each qualified  
35 distributor known to the department to be required to collect  
36 prepayments of the state gross retail tax under this chapter; and

37 (2) any other person that makes a request;

38 a notice of the prepayment rate to be used during the following six (6)  
39 month period. The department, after approval by the office of  
40 management and budget, may determine a new prepayment rate if the  
41 department finds that the statewide average retail price per gallon of  
42 gasoline, excluding the Indiana and federal gasoline taxes and the

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1 Indiana gross retail tax; has changed by at least twenty-five percent  
2 (25%) since the most recent determination.

3 (b) In determining the prepayment rate under this section; the  
4 department shall use the most recent retail price of gasoline available  
5 to the department:

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

9 STEP ONE: Determine the statewide average retail price per  
10 gallon of gasoline; excluding the Indiana and federal gasoline  
11 taxes and the Indiana gross retail tax:

12 STEP TWO: Determine the product of the following:

- 13 (A) The STEP ONE amount.
- 14 (B) The Indiana gross retail tax rate.
- 15 (C) Eighty percent (80%).

16 STEP THREE: Determine the lesser of:

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

23 STEP FOUR: Round the STEP THREE result to the nearest  
24 one-tenth of one cent (\$0.001):

25 SECTION 17. IC 6-2.5-7-15 IS REPEALED [EFFECTIVE  
26 JANUARY 1, 2014]. Sec. 15: (a) A refiner, terminal operator, or  
27 distributor (including a qualified distributor) that fails to remit the tax  
28 or file the returns or reports required by this chapter is subject to the  
29 penalties set forth in IC 6-8.1-10:

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

32 SECTION 18. [EFFECTIVE JULY 1, 2013] (a) **Before December**  
33 **20, 2013, and for purposes of IC 6-2.5-3.5, as added by this act, the**  
34 **department of state revenue shall publish the gasoline use tax rate**  
35 **prescribed by IC 6-2.5-3.5, as added by this act, that will apply to**  
36 **sales of gasoline in January 2014.**

37 (b) Each retail merchant covered by IC 6-2.5-7 shall, before  
38 January 1, 2014, for sales made before January 1, 2014, take an  
39 inventory of the gasoline in storage on the commencement of  
40 business on January 1, 2014, and reconcile the amount of gross  
41 retail taxes owed on sales of gasoline through December 31, 2013,  
42 in the manner and on the forms prescribed by the department of

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1 state revenue. The reconciliation shall be filed with the department  
2 of state revenue before March 1, 2014, and shall be accompanied  
3 by a payment for any gross retail taxes owed on gasoline sold  
4 through December 31, 2013, or by a claim for a credit, if the retail  
5 merchant's reconciliation indicates the retail merchant has  
6 overpaid gross retail taxes on gasoline sold through December 31,  
7 2013.

8 (c) This SECTION expires January 1, 2015.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 479, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 11, delete "month." and insert "**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.**".

Page 3, line 12, delete "the Indiana Register," and insert "**a departmental notice,**".

Page 3, line 18, delete "gasoline," and insert "**gasoline (based on the retail price per gallon of gasoline during the previous four (4) weeks),**".

Page 3, line 20, after "retail tax" delete ";" and insert "**(if any);**".

Page 3, line 25, delete "no less often than monthly." and insert ".".

Page 3, line 35, delete "until" and insert "**earlier than**".

Page 3, delete line 36.

Page 3, line 37, delete "follows by at least".

Page 3, line 37, after "days" insert "**after**".

Page 6, line 15, after "of gasoline" delete ";" and insert "**, as determined by the department under section 15 of this chapter;**".

Page 6, line 18, after "that" insert "**purchases the gasoline at retail from a metered pump and**".

and when so amended that said bill do pass.

(Reference is to SB 479 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

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