

SENATE BILL No. 266

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5; IC 6-6-2.5; IC 8-14-2; IC 8-23-29-2.

Synopsis: Special fuel taxation. Eliminates the sales and use tax on special fuel. Repeals the law concerning precollection of sales tax on special fuel. Increases the gallonage tax from \$0.16 to \$0.19 per gallon on special fuel sold or used in producing or generating power for propelling motor vehicles. Changes from 55% to 65% the amount the state highway fund receives from the highway, road and street fund and changes from 45% to 35% the amount the local road and street account receives from the highway, road and street fund. Provides that biodiesel fuel that is manufactured in Indiana and shipped out of state is exempt from the special fuel tax and motor carrier fuel tax. (Under current law, a refund must be claimed.)

Effective: July 1, 2017.

Walker

January 9, 2017, read first time and referred to Committee on Tax and Fiscal Policy.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 266

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 6-2.5-5-51 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2017]: **Sec. 51. A transaction involving special fuel (as defined in**
4 **IC 6-6-2.5-22) is exempt from the state gross retail tax.**

5 SECTION 2. IC 6-2.5-6-7, AS AMENDED BY P.L.146-2008,
6 SECTION 311, IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2017]: Sec. 7. Except as otherwise provided in
8 ~~IC 6-2.5-7~~ or in this chapter, a retail merchant shall pay to the
9 department, for a particular reporting period, an amount equal to the
10 product of:

- 11 (1) seven percent (7%); multiplied by
- 12 (2) the retail merchant's total gross retail income from taxable
- 13 transactions made during the reporting period.

14 The amount determined under this section is the retail merchant's state
15 gross retail and use tax liability regardless of the amount of tax the
16 retail merchant actually collects.

17 SECTION 3. IC 6-2.5-6-10, AS AMENDED BY P.L.227-2013,



1 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2017]: Sec. 10. (a) In order to compensate retail merchants
3 and those required to remit gasoline use tax for collecting and timely
4 remitting the state gross retail tax, the state use tax, and the gasoline
5 use tax, every retail merchant or person required to remit the gasoline
6 use tax, except as provided in subsection (c), is entitled to deduct and
7 retain from the amount of those taxes otherwise required to be remitted
8 under ~~IC 6-2.5-7-5~~, IC 6-2.5-3.5 or under this chapter, if timely
9 remitted, a retail merchant's collection allowance.

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

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

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

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

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

24 (3) Twenty-six hundredths percent (0.26%), if the retail
25 merchant's state gross retail and use tax liability or the person's
26 gasoline use tax accrued during the state fiscal year ending on
27 June 30 of the immediately preceding calendar year was greater
28 than six hundred thousand dollars (\$600,000).

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

33 SECTION 4. IC 6-2.5-7 IS REPEALED [EFFECTIVE JULY 1,
34 2017]. (Collection and Remittance of State Gross Retail Tax on Motor
35 Fuel).

36 SECTION 5. IC 6-2.5-9-4 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) ~~Except as~~
38 ~~provided in IC 6-2.5-7~~, A person who:

39 (1) displays an advertised price, marked price, or publicly stated
40 price that includes the state gross retail or use taxes;

41 (2) offers to assume or absorb part of a customer's state gross
42 retail or use tax on a sale; or



1 (3) offers to refund part of a customer's state gross retail or use tax
 2 as a part of a sale;
 3 commits a Class B infraction.

4 (b) A retail merchant who:

- 5 (1) uses a metered pump to dispense gasoline; or special fuel;
 6 (2) is required to display on the pump the total price per unit of
 7 the gasoline or special fuel under IC 6-2.5-7-2; and
 8 (3) advertises the gasoline or special fuel at a price other than that
 9 required by IC 6-2.5-7-2;

10 commits a Class B infraction:

11 SECTION 6. IC 6-6-2.5-1.7 IS ADDED TO THE INDIANA CODE
 12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 2017]: **Sec. 1.7. As used in this chapter, "biodiesel manufacturing
 14 plant" means a facility that is located in Indiana and is used for the
 15 production of biodiesel.**

16 SECTION 7. IC 6-6-2.5-20 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 20. As used in this
 18 chapter, "received" means the removal from any refinery or terminal in
 19 Indiana, **including a biodiesel manufacturing plant**, or the entry into
 20 Indiana of any special fuel for consumption, use, sale, or warehousing,
 21 except for transfers in bulk into or within a terminal in Indiana between
 22 registered suppliers. The tax imposed under section 28 of this chapter
 23 with respect to special fuel removed from terminals within Indiana and
 24 with respect to special fuel which is the subject of a tax precollection
 25 agreement pursuant to section 35(j) of this chapter, shall be imposed at
 26 the same time and in the same manner as the tax imposed by Sections
 27 4081 to 4083 of the Internal Revenue Code. The definitions of the
 28 terms "removal", "entry", and "transfers in bulk" shall have the same
 29 meanings described in the Internal Revenue Code or Code of Federal
 30 Regulations.

31 SECTION 8. IC 6-6-2.5-20.5 IS ADDED TO THE INDIANA
 32 CODE AS A NEW SECTION TO READ AS FOLLOWS
 33 [EFFECTIVE JULY 1, 2017]: **Sec. 20.5. As used in this chapter,
 34 "refinery" has the meaning set forth in 26 CFR 48.4081-1. The
 35 term also includes a biodiesel manufacturing plant.**

36 SECTION 9. IC 6-6-2.5-23 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 23. As used in this
 38 chapter, "supplier" means a person that imports or acquires
 39 immediately upon import into Indiana special fuel by pipeline or
 40 marine vessel from within a state, territory, or possession of the United
 41 States into a terminal or that imports special fuel into Indiana from a
 42 foreign country, or that produces, manufactures, or refines special fuel



1 within Indiana, **including a person that produces biodiesel or both**
 2 **biodiesel and blended biodiesel at a biodiesel manufacturing plant,**
 3 or that owns special fuel in the pipeline and terminal distribution
 4 system in Indiana, and is subject to the general taxing or police
 5 jurisdiction of Indiana, and in any case is also registered under Section
 6 4101 of the Internal Revenue Code for transactions in taxable motor
 7 fuels in the bulk distribution system. A terminal operator shall not be
 8 considered a supplier merely because the terminal operator handles
 9 special fuel consigned to it within a terminal.

10 SECTION 10. IC 6-6-2.5-28, AS AMENDED BY P.L.190-2014,
 11 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2017]: Sec. 28. (a) A license tax of ~~sixteen~~ **nineteen** cents
 13 (~~\$0.16~~) **(\$0.19)** per:

14 (1) gallon;

15 (2) diesel gallon equivalent (as defined in IC 6-6-4.1-1(f)), in the
 16 case of a special fuel that is liquid natural gas; or

17 (3) gasoline gallon equivalent (as defined in IC 6-6-4.1-1(g)), in
 18 the case of a special fuel that is compressed natural gas;

19 is imposed on all special fuel sold or used in producing or generating
 20 power for propelling motor vehicles except fuel used under section
 21 30(a)(8) or 30.5 of this chapter. The tax shall be paid at those times, in
 22 the manner, and by those persons specified in this section and section
 23 35 of this chapter.

24 (b) The department shall consider it a rebuttable presumption that
 25 all undyed or unmarked special fuel, or both, received in Indiana is to
 26 be sold for use in propelling motor vehicles.

27 (c) Except as provided in subsection (d), the tax imposed on special
 28 fuel by subsection (a) shall be measured by invoiced gallons (or diesel
 29 or gasoline gallon equivalents in the case of a special fuel described in
 30 subsection (a)(2) or (a)(3)) of nonexempt special fuel received by a
 31 licensed supplier in Indiana for sale or resale in Indiana or with respect
 32 to special fuel subject to a tax precollection agreement under section
 33 35(d) of this chapter, such special fuel removed by a licensed supplier
 34 from a terminal outside of Indiana for sale for export or for export to
 35 Indiana and in any case shall generally be determined in the same
 36 manner as the tax imposed by Section 4081 of the Internal Revenue
 37 Code and Code of Federal Regulations.

38 (d) The tax imposed by subsection (a) on special fuel imported into
 39 Indiana, other than into a terminal, is imposed at the time the product
 40 is entered into Indiana and shall be measured by invoiced gallons
 41 received at a terminal or at a bulk plant.

42 (e) In computing the tax, all special fuel in process of transfer from



1 tank steamers at boat terminal transfers and held in storage pending
2 wholesale bulk distribution by land transportation, or in tanks and
3 equipment used in receiving and storing special fuel from interstate
4 pipelines pending wholesale bulk reshipment, shall not be subject to
5 tax.

6 (f) The department shall consider it a rebuttable presumption that
7 special fuel consumed in a motor vehicle plated for general highway
8 use is subject to the tax imposed under this chapter. A person claiming
9 exempt use of special fuel in such a vehicle must maintain adequate
10 records as required by the department to document the vehicle's taxable
11 and exempt use.

12 (g) A person that engages in blending fuel for taxable sale or use in
13 Indiana is primarily liable for the collection and remittance of the tax
14 imposed under subsection (a). The person shall remit the tax due in
15 conjunction with the filing of a monthly report in the form prescribed
16 by the department.

17 (h) A person that receives special fuel that has been blended for
18 taxable sale or use in Indiana is secondarily liable to the state for the
19 tax imposed under subsection (a).

20 (i) A person may not use special fuel on an Indiana public highway
21 if the special fuel contains a sulfur content that exceeds five
22 one-hundredths of one percent (0.05%). A person who knowingly:

23 (1) violates; or

24 (2) aids or abets another person to violate;

25 this subsection commits a Class A infraction. However, the violation
26 is a Class A misdemeanor if the person has committed one (1) prior
27 unrelated violation of this subsection, and a Level 6 felony if the person
28 has committed more than one (1) unrelated violation of this subsection.

29 SECTION 11. IC 6-6-2.5-57.5 IS ADDED TO THE INDIANA
30 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2017]: **Sec. 57.5. (a) Each person operating**
32 **a biodiesel manufacturing plant in Indiana shall file monthly**
33 **reports of operations within Indiana on forms prescribed by the**
34 **department. The department may require the reporting of any**
35 **information the department considers reasonably necessary.**

36 **(b) For purposes of reporting and determining tax liability**
37 **under this chapter, every licensee shall maintain inventory records**
38 **as required by the department.**

39 SECTION 12. IC 8-14-2-3 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) The auditor of
41 state shall credit the state highway fund established under IC 8-23-9-54
42 monthly with ~~fifty-five~~ **sixty-five** percent (~~55%~~) (**65%**) of the money



1 deposited in the highway, road and street fund.

2 (b) Funds allocated to the department under this chapter must be
3 appropriated.

4 SECTION 13. IC 8-14-2-4, AS AMENDED BY P.L.182-2007,
5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2017]: Sec. 4. (a) The auditor of state shall establish a special
7 account to be called the "local road and street account" and credit this
8 account monthly with ~~forty-five~~ **thirty-five** percent (~~45%~~) (**35%**) of
9 the money deposited in the highway, road and street fund.

10 (b) The auditor shall distribute to units of local government money
11 from this account each month. Before making any other distributions
12 under this chapter, the auditor shall distribute E85 incentive payments
13 to all political subdivisions entitled to a payment under section 8 of this
14 chapter.

15 (c) After distributing E85 incentive payments required under section
16 8 of this chapter, the auditor of state shall allocate to each county the
17 remaining money in this account on the basis of the ratio of each
18 county's passenger car registrations to the total passenger car
19 registrations of the state. The auditor shall further determine the
20 suballocation between the county and the cities within the county as
21 follows:

22 (1) In counties having a population of more than fifty thousand
23 (50,000), sixty percent (60%) of the money shall be distributed on
24 the basis of the population of the city or town as a percentage of
25 the total population of the county and forty percent (40%)
26 distributed on the basis of the ratio of city and town street mileage
27 to county road mileage.

28 (2) In counties having a population of fifty thousand (50,000) or
29 less, twenty percent (20%) of the money shall be distributed on
30 the basis of the population of the city or town as a percentage of
31 the total population of the county and eighty percent (80%)
32 distributed on the basis of the ratio of city and town street mileage
33 to county road mileage.

34 (3) For the purposes of allocating funds as provided in this
35 section, towns which become incorporated as a town between the
36 effective dates of decennial censuses shall be eligible for
37 allocations upon the effectiveness of a corrected population count
38 for the town under IC 1-1-3.5.

39 (4) Money allocated under the provisions of this section to
40 counties containing a consolidated city shall be credited or
41 allocated to the department of transportation of the consolidated
42 city.



1 (d) Each month the auditor of state shall inform the department of
 2 the amounts allocated to each unit of local government from the local
 3 road and street account.

4 SECTION 14. IC 8-23-29-2, AS ADDED BY P.L.208-2014,
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2017]: Sec. 2. The department shall contract with a third party
 7 to study transportation infrastructure funding mechanisms. The contract
 8 must include the following terms:

9 (1) A description of the funding mechanisms that will be studied.

10 The funding mechanisms must include the following:

11 (A) An option that is based on variables, including vehicle
 12 gross weight and miles traveled.

13 (B) An option that accounts for variations in usage and degree
 14 of damage caused to transportation infrastructure by vehicles
 15 of different sizes and configurations.

16 (C) A flat per vehicle fee.

17 (D) Adjustments to one (1) or more of the following:

18 ~~(i) The state gross retail tax on motor fuel imposed under~~
 19 ~~IC 6-2.5-7.~~

20 ~~(ii) (i) The gasoline tax imposed under IC 6-6-1.1.~~

21 ~~(iii) (ii) The special fuel tax imposed under IC 6-6-2.5.~~

22 ~~(iv) (iii) The motor carrier fuel tax imposed under~~
 23 ~~IC 6-6-4.1, including the surcharge tax imposed under~~
 24 ~~IC 6-6-4.1-4.5.~~

25 (E) Tolls.

26 (F) Any other mechanism the department determines is
 27 appropriate.

28 (2) The duration of the study, which must be an adequate length
 29 of time to ensure that a quality and comprehensive analysis of all
 30 topics will be thoroughly reviewed, but is not to exceed two (2)
 31 years.

32 (3) An inventory of the transportation infrastructure that will be
 33 maintained through revenue generated by the funding
 34 mechanisms included in the study. The inventory must include
 35 state and local highways, roads, and streets.

36 (4) The rating system by which the maintenance of the
 37 transportation infrastructure will be evaluated.

