The Indiana Code currently contains four chapters on fuel and gasoline taxes including, The Gasoline Tax (IC 6-6-1.1), The Special Fuel Tax (IC 6-6-2.1 and IC 6-6-2.5), and The Motor Carrier Fuel Tax (IC 6-6-4.1). The first two taxes, the Gasoline and Special Fuel Taxes, are pump taxes and the Motor Carrier Fuel Tax is a road tax. Pump Taxes are designed to impose a tax on the fuel purchased from an Indiana distributor. While the purpose of road tax is to charge motor carriers for the use to the public roads in Indiana. Hi-Way Dispatch, Inc. v. Dep’t of Revenue, 756 N.E.2d 587, 592 (Ind. Tax Ct. 2001).

Each of these taxes are state taxes and no city, town, county, township, or other subdivision or municipal corporation of the state may levy or collect: (1) an excise tax on or measured by the sale, receipt, distribution, or use of gasoline, or (2) and excise, privilege, or occupational tax on the business of manufacturing, selling, or distributing gasoline. See IC 6-6-1.1-1204. The following will discuss the imposition, computation, exemptions, deductions, refunds, penalties, use of the revenues from the taxes by the state, and the filing process with the Department of Revenue for each of the taxes listed above.

THE GASOLINE TAX: IC 6-6-1.1

Introduction and Imposition

The Indiana Gasoline Tax is a license tax imposed one the use of all gasoline used in the state. The rate of this tax is fifteen cents ($0.15) per gallon, which is to be stated separately from the price of the gasoline on all sales or delivery slips, bills and statements. See IC 6-6-1.1-201 and IC 6-6-1.1-1203. Note, however, that House Bill No. 1317 seeks to increase this rate from $0.15 per gallon to a maximum of $0.22 per gallon by the year 2004. For more information see http://www.in.gov/legislative/bills/2002/EH/EH1317.1.html.

The code seeks to impose the burden of the Gasoline Tax upon the ultimate consumer of the gasoline. To effectuate this goal, the distributor of the gasoline pays the tax on the amount “received” less deductions and then adds the tax to the price the consumer pays for the gasoline. See IC 6-6-1.1-201. The term received is a term of art for the purposes of the Gasoline Tax. Gasoline is considered received when it is withdrawn from an in-state refinery or terminal for sale or use in the state or for transfer to a destination in the state, unless the destination is another refinery or terminal. See IC 6-6-1.1-202. The time that receipt takes effect is the time at which the gasoline is unloaded. See IC 6-6-1.1-203. The significance of this is that the time of receipt is the time the tax accrues against the owner of the gasoline.

Gasoline may be considered received at times other than when actually received by an in-state distributor. A supplier bringing or shipping gas in-state may become liable for the gasoline tax if such distributor delivers or sells gasoline to someone other than an Indiana licensed distributor. See IC 6-6-1.1-205. To effectuate this the statute considers the distributor shipping the gasoline in receipt of the gasoline. See IC 6-6-1.1-205.

Other special rules detailing when gasoline is received are as follows: (1) Gasoline that is produced, compounded, or blended in the state at a place other than a refinery or terminal is considered received at the time any by the owner of the gasoline when it is produced, compounded, or blended. See IC 6-6-1.1-206, (2) Gasoline is not received when a vehicle enters the state with gasoline in the supply tank of the vehicle. See IC 6-6-1.1-208.

Liability for Raised Tax Rates

The person who owns gasoline for sale on the effective date of a tax increase is liable for an inventory tax based on the total number of gallons held for sale. Any such owner is required to take an inventory and report to the department within thirty (30) days of the effective date. The amount due as the inventory tax is equal to the difference of the increased tax rate minus the previous tax rate. See IC 6-6-1.1-209. Recall that a current House Bill seeks to increase the rate of the Gasoline Tax.

Licensing to Operate as Distributor

A person will not have to bear the burden of the gasoline tax on gasoline received from suppliers if such person holds a distributor’s license issued by the administrator. See IC 6-6-1.1-401. To obtain a license, a person must file a sworn application before beginning operations containing the following: (1) the name under which the distributor will transact business in Indiana, (2) the location, including the street address, of the applicant’s place of business, (3) the name(s) and complete residence address(es) of the owners, partners, members, or principal officers, and (4) any other information the administrator reasonably requires. See IC 6-6-1.1-402.
stated requirements, a person filing for an application must submit a license fee of one hundred dollars ($100) and current financial statements. See IC 6-6-1.1-405.

Also, concurrently with the application, the Department of Revenue, hereinafter referred to as department, may require the applicant to file a surety bond, a letter of credit, or a cash deposit. The limits on the surety bond, letter of credit or cash deposit include: (1) an amount not less than two thousand dollars ($2,000) nor more than three (3) month tax liability for the applicant as estimated by the administrator, and (2) the surety bond, letter of credit or cash deposit is conditioned upon the prompt filing of true reports and payment of all gasoline taxes levied by the state, together with any penalties and interest. See IC 6-6-1.1-406. Once the administrator determines the amount of the surety bond, cash deposit, or letter of credit, the bond or letter of credit must also comply with these requirements (1) be with a surety company or financial institution approved by the administrator, (2) name the applicant as the principal and the state as the obligee; and (3) be on forms prescribed by the department. See IC 6-6-1.1-406(b). The bond, letter of credit, and cash deposit will continue to be regulated after application as discussed below.

Once the administrator determines that the application has been properly filed, the license fee paid, and the bonding requirements are met, the administrator will issue a temporary license to the applicant to transact business as a distributor in Indiana. The temporary license is valid for one (1) year. See IC 6-6-1.1-411. At the end of the year, if the distributor has complied with all the requirements under the gasoline tax and has also distributed at least five hundred thousand (500,000) gallons of gasoline the administrator shall issue the distributor a permanent license at no charge. See IC 6-6-1.1-412. However, if the distributor does not distribute at least five hundred thousand (500,000) gallons of gasoline during the year the temporary license is held, the administrator may not issue the distributor a permanent license. See IC 6-6-1.1-413.

However, all applicants may not be granted a temporary license to operate as a distributor. The administrator may deny a license to operate a gasoline distributorship in Indiana if: (1) the application is filed by a person whose license has been previously been cancelled, (2) the application is not filed in good faith, as determined by the administrator, (3) the application is filed by some person as a subterfuge for the real person in interest whose license has previously been cancelled for cause, (4) the applicant has an outstanding tax liability, or (5) the applicant has not complied with the filing requirements. See IC 6-6-1.1-403(a). Moreover, a foreign corporation may not gain a license unless such corporation is qualified to do business in Indiana. See IC 6-6-1.1-404. Yet, an applicant is entitled to a hearing with five (5) days written notice in the case the distributor license is denied. See IC 6-6-1.1-403(b).

Further, even after the license has been granted the administrator will continue to regulate the surety bond, letter of credit or cash deposit. The administrator may require a distributor to file a new bond or letter of credit in the same form and amount if: (1) liability upon the old bond or letter of credit is discharged or reduced by judgment rendered, payment made, or otherwise; or (2) in the opinion of the administrator any surety on the old bond or financial institution on the old letter of credit becomes unsatisfactory. Also, if the distributor has a cash deposit with the department and the deposit is reduced in the same manner as the bond or letter of credit mentioned above, the administrator may require the distributor to make an additional deposit equal to the amount of the reduction. See IC 6-6-1.1-407. Also, if the administrator ever determines that the existing amount of bond, letter of credit, or cash deposit is insufficient to insure payment to the state for any tax, penalty, or interest liability, the administrator may require the distributor to file a new bond or letter of credit, or to increase the cash deposit within fifteen (15) days. See IC 6-6-1.1-408. If the administrator determines that the new bond or letter of credit is unsatisfactory the administrator may cancel the distributor’s license. See IC 6-6-1.1-407 and IC 6-6-1.1-408. In making the determination that the bond, letter of credit, or cash deposit is insufficient, the administrator may require the distributor to provide current, certified, and audited financial statements. See IC 6-6-1.1-410.

Release Surety Bond, Letter of Credit, or Cash Deposit

The surety of the bond furnished by the distributor may request release from liability to the state accruing against the distributor. The release will be granted sixty (60) days after the administrator receives a written request for release. However, the release does not release the surety from any liability accruing before the sixty (60) day period. The financial institution issuing a letter of credit may also request release from liability to the state against the distributor. The release will take affect one hundred and eighty (180) days after the written request for release. As with the surety of the bond, the financial institution will not be released from any liability accruing before the one
hundred and eighty (180) day period is over. If a request for release has been made by the surety or financial institution, the administrator shall notify the distributor who shall be given the respective waiting period for each the surety (60 days) and the financial institution (180 days) to obtain a new bond or letter of credit. If the distributor fails to obtain a new bond or letter of credit, the administrator shall cancel the distributor’s license. See IC 6-6-1.1-409.

Also, upon the written request of the distributor the cash deposit may be released from liability after a sixty (60) day waiting period. However, the administrator may keep all or part of the cash deposit for any obligations accruing before the sixty (60) day waiting period is complete. The administrator may hold such part of the cash deposit for up to three (3) years and one (1) day. Also, if the distributor does not obtain a satisfactory surety bond or letter of credit before the end of the sixty (60) day waiting period, the administrator may cancel the distributor’s license. See IC 6-6-1.1-409.

Cancellation of License

The administrator may cancel a distributors license if the distributor: (1) files a false information on a monthly report, (2) fails or refuses to file the monthly report, (3) fails or refuses to pay the full amount of tax imposed on the expiration of the fifteen (15) day notice period, (4) fails to distribute five hundred thousand (500,000) gallons or more of gasoline during a twelve (12) month period, (5) fails to file a surety bond, letter of credit, or cash deposit, (6) fails to honor a subpoena issued by the department, or (7) knowingly breaks the seal on a pump sealed by the administrator. See IC 6-6-1.1-415. In each of these instances, the administrator shall notify the distributor by certified or registered mail within fifteen (15) days of the hearing to cancel his license. At a hearing to cancel a distributor’s license, the distributor may appear and show cause why his license should not be canceled. See IC 6-6-1.1-415. The administrator may also cancel a distributor’s license if the distributor has not received, used, or sold gasoline for a period of six (6) months. In such an instance, the administrator shall give the distributor sixty (60) days written notice of the intention to cancel.

Also, the distributor may cancel his license himself if he files a written request for cancellation with the administrator and has paid all tax, penalty, and interest accruing from the gasoline tax. See IC 6-6-1.1-416.

Transfer of License

A distributor license is not assignable and is valid only in the name of the applicant. If the name or owner of the distributor changes, the distributor shall apply for a new license. See IC 6-6-1.1-414. If the distributor intends to discontinue, sell, or transfer his business he must give written notice, including the date of discontinuance or sale and the name and address of the purchaser or transferee, to the administrator at least ten (10) days prior to ceasing business. See IC 6-6-1.1-512. The distributor is still liable for any tax, penalty, and interest due under the gasoline tax and must file a report with the administrator within ten (10) days of discontinuance, sale, or transfer of the business. See IC 6-6-1.1-513. However, if the distributor fails to give the ten (10) days notice, as required in Section 512, the new owner is liable for any tax, penalty, or interest the distributor owned. However, the liability of the new owner is limited by the value of the property acquired from the distributor. See IC 6-6-1.1-514.

Exemptions

The Gasoline Tax exemptions are listed in IC 6-6-1.1-301. Also included in that section are the requirements for those who qualify to apply for exemption, the exemption filing fees, exemption conditions, and exemption qualifying process is described in IC 6-6-1.1-302 through IC 6-6-1.1-305. The following transactions are exempt from the gasoline tax: (1) gasoline exported from Indiana to another state, territory, or foreign country, (2) gasoline sold to the United States or an agency or instrumentality of the United States, (3) gasoline sold to a post exchange or other concessionaire on a federal reservation within Indiana; however, the post exchange or concessionaire shall collect, report, and pay to the administrator any tax permitted by federal law on gasoline sold, (4) gasoline used by a licensed distributor for any purpose other than the generation of power for the propulsion of motor vehicles on the public highways, and (5) gasoline received by a licensed distributor and thereafter lost or destroyed, except by evaporation, shrinkage, or unknown cause, while the distributor is the owner.

The following persons may apply to the administrator for an exemption permit: (1) a person who operates an airport where he sells gasoline for the exclusive purpose of propelling aircraft engines or motors, (2) a person engaged at an airport in the business of selling gasoline for exclusive use in aircraft engines or motors, (3) a person who operates a marine facility, except a taxable marine facility, and who sells gasoline at the facility for the exclusive purpose of propelling motorboat engines. These persons do not have to be a distributor to apply for exemption. See
IC 6-6-1.1-302. In apply for an exemption permit, these persons must apply on the proper forms and pay the permit fee of fifteen dollars ($15). See IC 6-6-1.1-303(a).

Also, the exemption permit is conditioned on the following terms: (1) the permit holder sells all gasoline purchased tax free under the exemption permit for the exclusive purpose of propelling the engines or motors of aircraft or motorboats, (2) the permit holder keeps complete records for all gasoline purchased, acquired, stored, used, or disposed of by him for three (3) years, (3) the permit holder provides the administrator with reports of gasoline acquired, used, or disposed of as the administrator requires, (4) the permit holder permits the administrator or his agent to examine during regular business hours any of the permit holders records regarding the acquisition, use, or disposition of gasoline and any of the equipment the permit holder uses for the receipt, storage, or use of gasoline, (5) the permit holder shall not purchase gasoline tax free for use in motor vehicles, and (6) the permit holder does not sell any gasoline acquired tax free unless it is sold tax free and delivered into the fuel supply tank of an aircraft or motorboat. See IC 6-6-1.1-303. Once the permit holder is issued a exemption certificate, he may present the certificate to a distributor who may then sell the gasoline to that person tax free. See IC 6-6-1.1-305

Deductions

There are several events that will qualify a distributor for a deduction in gasoline tax liability. First, if a distributor qualifies for one of the five exemptions listed in Section 301 discussed above, that distributor is entitled to a deduction. See IC 6-6-1.1-701. Secondly, a distributor is entitled to a deduction if a distributor receives gasoline in Indiana and then subsequently delivers such gasoline to a distributor who receives under a sale or exchange agreement. Next, a distributor that sells exempt gasoline as described in Section 302 is entitled to a deduction. See IC 6-6-1.1-703. Recall that the reasons for the exemption listed in Section 302 were regarding the sale of gasoline for aircraft and motorboat engines. Each of these deductions must be claimed in the month in which they were incurred. See IC 6-6-1.1-701, 702, 703.

Also, a distributor who pays tax in error or who is entitled to a credit may take a deduction in lieu of such refund or credit. See IC 6-6-1.1-704. Note that the Indiana Code authorizes the administrator to allow distributors to take deduction in lieu of these refunds or credits. See IC 6-6-1.1-908. Lastly, a deduction may be taken if the distributor makes early payment of the gasoline tax. The deduction is equal to one and six-tenths percent (1.6%) of the remainder of: (1) the number of invoiced gallons of gasoline such distributor received in Indiana during the preceding calendar month; minus (2) the deductions claimed under Sections 701 through 704. The purpose of this last deduction is to cover evaporation, shrinkage, losses, and the distributor’s expenses in collecting the timely remitting the tax. See IC 6-6-1.1-705.

Refunds

There are four sections that allow refunds of the gasoline tax. These refunds are: (1) for lost or destroyed gasoline (6-6-1.1-901), (2) for local transit systems (IC 6-6-1.1-902), (3) for rural transit systems (IC 6-6-1.1-902.5), and (4) for certain other qualified purposes (IC 6-6-1.1-903).

First, a person, not a distributor, who has purchased and paid the Indiana gasoline tax is entitled to a refund of tax on lost or destroyed gasoline exceeding one hundred (100) gallons. This loss or destruction does not include evaporation, shrinkage, or unknown cause. See IC 6-6-1.1-901. In order to qualify for this refund, the person suffering the loss must notify the administrator in writing within five (5) days of the loss and the amount of loss or destruction and submit a sworn affidavit within sixty (60) days describing the circumstances of the loss or destruction and the amount of the loss or destruction. See IC 6-6-1.1-901.

Secondly, a local transit system is entitled to a refund on gasoline used: (1) for transporting persons for compensation by means of a motor vehicle or trackless trolley; or (2) in a maintenance or an administrative vehicle that is used by the local transit system to support the transit service. See IC 6-6-1.1-902. Next, a rural transit system is entitled to a refund of tax paid on gasoline used for transporting persons for compensation by means of a motor vehicle or trackless trolley. However, there are two conditions. The transporting must be done: (1) within a service area that is no larger than the rural transit system service area and the counties contiguous to that area; and (2) under a written contract between the rural transit system and the county providers within the service area that meets the requirements prescribed by the department. The persons qualifying for the local or rural transit system refund must file a claim containing: (1) a quarterly operating statement, (2) a current balance sheet, and (3) a schedule of all
salaries in excess of ten thousand dollars ($10,000) per annum paid to any officer or employee. See IC 6-6-1.1-902(b) and IC 6-6-1.1-902.5(b).

Lastly, Section 903 enumerates eight specific instances in which a person is entitled to a refund of gasoline tax. The deduction is for the tax paid on gasoline purchased and used for the following purposes: (1) operating a stationary gas engine, (2) operating equipment mounted on motor vehicles, whether or not operated by the engine propelling the vehicle, (3) operating a tractor for agricultural purposes, (4) operating implements of husbandry, (5) operating motorboats or aircraft, (6) cleaning or dyeing, (7) other commercial uses, except propelling motor vehicles operate in whole or in part on an Indiana public highway, or (8) operating a taxicab. In each of the three proceeding Sections (902, 902.5, and 903), a person is entitled to interest on the refund if the refund is not made within ninety (90) days.

Section 904.1 describes the requirements of the personal statement filed to claim a refund under each of the three proceeding sections (902, 902.5, and 903). The personal statement must: (1) be under the penalties of perjury, (2) include the total amount of gasoline purchased and used for purposes other than to propel a motor vehicle on an Indiana highway, (3) be filed by April 15 of the three year anniversary of the purchase of the gasoline, (4) contain the original invoice or a certified copy thereof. In addition, the original invoice or certified copy must show either: (1) that the gasoline has been paid for and the amount of tax paid thereon, or (2) that the gasoline was charged to an administrator approved credit card that will not lead to the state’s liability for payment in the event the person does not pay. See IC 6-6-1.1-904.1(a).

Then, if the administrator determines that the person has either paid tax in error, is entitled to a refund, or is entitled to a deduction the administrator may issue a warrant to the treasurer of the state who then shall make payment to the person out of the gasoline tax refund account. See IC 6-6-1.1-905 and See IC 6-6-1.1-909 (discussing creation of the gasoline tax refund account).

However, a cash payment is not the only allowable means to rectify the erroneous payment or entitlement to a refund or deduction. The administrator may allow, in lieu of payment by the treasurer, the person to take a deduction on future gasoline taxes. See IC 6-6-1.1-908.

Class actions for refunds may be maintained as long as each individual of the class complies with the requirements of 901 through 908, including the time limits. See IC 6-6-1.1-910.

Monthly Reporting and Tax Computation

On the twentieth of each month the administrator may require a distributor to file a report to determine the distributors tax liability. Such a report may include: (1) an itemized statement of the number of invoiced gallons received by the distributor. The itemized statement may include the date, place, and quantity of each receipt of gasoline, the point of origin, and the method by which and the name of the person from whom the gasoline was received, (2) an itemized statement of the deductions claimed and the details to support each deduction, and (3) an itemized statement showing the number of gallons sold to a marine facility for which the distributor did not receive an exemption certificate. See IC 6-6-1.1-501.

At the time of filing the above detailed monthly report, the distributor shall pay the tax imposed the preceding month computed as follows:

(1) the total number of invoiced gallons of gasoline received during the preceding calendar month,
(2) subtract the number of gallons for which deductions are provided,
(3) subtract the number of gallons sold to a marine facility for which the distributor did not receive an exemption certificate,
(4) multiply the number of invoiced gallons remaining after making the subtractions in (2) and (3) by the tax rate to compute the part of the tax to be deposited in the highway, road, and street fund or in the motor fuel tax fund
(5) multiply the number of gallons subtracted under (3) by the tax rate to compute the part of the tax to be deposited in the fish and wildlife fund

See IC 6-6-1.1-502. If the distributors estimated tax liability for the current year or the distributor’s average monthly gasoline tax for the proceeding year exceeded ten thousand dollars ($10,000) the distributor shall pay the tax by electronic funds transfer (EFT) or by delivering by overnight courier a cashier's check, certified check, or money order payable to the department. IC 6-6-1.1-502. Those who are not licensed distributors but who nonetheless have to
report under this section, include those who receive gasoline without paying tax thereon. However, such persons are not entitled to any deductions or credits against the tax. See IC 6-6-1.1-504.

Until a distributor pays the tax on gasoline he receives, the tax money he collects on the sale of gasoline is state money. A distributor who collects such tax money shall hold it in trust for the state and for payment to the department. In the case of a corporate or partnership distributor, every officer, employee, or member of the employer who in that capacity is under a duty to collect the tax, is personally liable for the tax, penalty, and interest. See IC 6-6-1.1-801.

Deliveries by Non-Distributors and Trucks

Every person, who is not an Indiana licensed distributor, who hauls gasoline from outside Indiana to a point inside Indiana must report such deliveries to the department. The reports must: (1) be made monthly, (2) the name and address of the person who the delivers were made, (3) show the name and address of the originally named consignee, if the gasoline has been delivered to someone other than the originally named consignee, (4) list the point of origin, point of delivery, date of delivery, number and initials of each tank car, and the number of gallons contained in each car, if the gasoline has been shipped by rail, (5) list the number of gallons contained in the boat, barge, or vessel, if the gasoline has been shipped by water, (6) list the number of gallons contained in each tank truck, if the gasoline has been shipped by motor truck, and (7) show how the gasoline was shipped and how many gallons was shipped if not shipped by any of the means listed above. See IC 6-6-1.1-606(a) and (b).

Also, every person, who is not an Indiana licensed distributor, who hauls gasoline from inside Indiana to a point outside Indiana must report such deliveries to the department. The requirements of the report are the same as those for the person shipping gasoline from outside Indiana to a point inside Indiana listed above. See IC 6-6-1.1-606(c) and (d).

The persons listed above who either ships gasoline from outside Indiana to inside Indiana or who ships gasoline from inside Indiana to outside Indiana must obtain a transportation license before engaging in such activity. The administrator shall issue a transportation license to a person who registers. However, a person who registers for a transportation license to ship gasoline from outside Indiana to inside Indiana may not do so unless the party receiving the gasoline pays the tax or the person who receives the gasoline is exempt from paying the tax. Also, a person with a transportation license for shipping gasoline from inside Indiana to a point outside Indiana may not deliver that gasoline to any point inside Indiana. See IC 6-6-1.1-606.5

Moreover, a person with a transportation license to ship gasoline from either inside to outside Indiana or outside to inside Indiana must at the time of registering and on an annual basis report to the administrator a description of all vehicles used to haul the gasoline. See IC 6-6-1.1-606.5. The description of the vehicles shall include the license number and carrying capacity of the vehicle. Also, when a vehicle is added or retired from use the person must notify the administrator within ten (10) days.

A distributor license or transportation license is required to deliver gasoline in Indiana whenever the tank capacity is eight hundred fifty (850) gallons or greater. Also, the driver shall carry an invoice showing the origin, quantity, nature, and destination of the gasoline being transported. See IC 6-6-1.1-606.5.

The identification of any vehicle transporting gasoline is also regulated. A vehicle, which transports gasoline on a public Indiana highway, must have the name and address of the person, firm, limited liability company, or corporation on both sides of the driver’s compartment. The name and address must be in letters at least six (6) inches tall and three-fourths (3/4) inch wide and in a color contrasting the color of the background. However, an Indiana distributor is not required to display his name and address if the vehicle is identified with the trade or product name or insignia generally used to identify the vehicle, and the product name or insignia is well known throughout the area. See IC 6-6-1.1-1202.

Use of Revenues from Gasoline Tax

The tax that distributors, excluding those at marine facilities, pay to the department is used only for highway purposes and for payment of any part of the cost of traffic policing and traffic safety incurred by the state or any of its political subdivisions. See IC 6-6-1.1-801. To effectuate this goal, the administrator shall transfer one-fifteenth (1/15) of the taxes that are collected to the state highway road construction and improvement fund. The administrator shall distribute the next twenty-five million dollars ($25,000,000) to the auditor of the state for distribution in the following manner: (1) thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution
from the local road and street account, (2) thirty percent (30%) to each of the counties, cities, and town eligible to receive a distribution from the motor vehicle highway account, and (3) forty percent (40%) to the Indiana department of transportation. See IC 6-6-1.1-801.5

The administrator shall deposit the remainder of the revenues, after the one-fifteenth (1/15) and the next twenty-five million dollars ($25,000,000), in the following manner: (1) the revenues from marine facilities shall be deposited with the fish and wildlife fund, (2) twenty-five percent (25%) of the reminder minus the marine facility revenues shall be deposited in the highway, road, and street fund, and (3) the remainder of the remainder shall deposited in the motor fuel tax fund of the motor vehicle highway account, which funds may be used for payment of refunds and administration costs. See IC 6-6-1.1-802 and IC 6-6-1.1-803.

Sealing Pumps and Meters; Impounding Vehicles and Tanks; Posting Signs

The administrator may seal a gasoline pump, gasohol pump, aviation gasoline pump, or marina gasoline pump; impound any vehicle or tank that does not have a sealable pump; and post a sign that states that no transactions involving gasoline and/or gasohol may be made at the location upon certain conditions. Those conditions include: (1) a distributor becomes delinquent in the payment of any amount of tax, penalty, or interest due, (2) there is evidence that the revenue of a distributor is in jeopardy, (3) a distributor is operating without a license, (4) a distributor is operating without a bond, letter of credit, or cash deposit, or (5) a person has received gasoline in this state and the gasoline tax has not been remitted to the state. See IC 6-6-1.1-1008. Once the pump is sealed, the vehicle impounded, or the sign posted, it shall remain that way until all the fees, taxes, fines, interest, and penalties are paid; the person obtains a license to be a distributor; the bond, letter of credit, or cash deposit is satisfactory. See IC 6-6-1.1-1008.

The administrator may also seal gallonage totalizers of a metered pump if the gallonage totalizer is not sealed effectively. The administrator may request the distributor to seal the totalizer or replace the pump with a sealable totalizer. If the distributor does not comply with the administrators request, such non-compliance is evidence that the revenue of the distributor is in jeopardy. See IC 6-6-1.1-1110. Recall that such evidence is grounds for the administrator to seal the pump.

Law Suits and Civil and Criminal Penalties

A person may sue the state claiming that the gasoline tax, penalty, or interest was wrongfully imposed, or a person may sue the state claiming that a refund was wrongfully denied. However, the claim must be commenced within three (3) years from either the date of payment of the tax, penalty, or interest, or the date of the final rejection by the administrator of the refund. See IC 6-6-1.1-1206.

Class actions for refunds may be maintained as long as each individual of the class complies with the requirements of 901 through 908, including the time limits. See IC 6-6-1.1-910.

A person who is subject paying tax on received gasoline and who fails to report or files an incomplete report is subject to a civil penalty of one hundred dollars ($100) for each violation. An incomplete report is one that does not contain all the required schedules. See IC 6-6-1.1-1315.

The criminal penalties arising from failure to comply with this tax range from a Class B infraction to a Class D felony. A person who makes a false statement in connection with a refund or credit application, or who collects money which that person is not entitled commits a Class B infraction. See IC 6-6-1.1-1306.

A person who purchases tax-exempt gasoline for export outside of Indiana and uses or sells part or all of such gasoline in Indiana commits a Class A misdemeanor. Further, that person is taxed on such gasoline used or sold at the regular rate and is penalized at fifty percent (50%) of the rate. See IC 6-6-1.1-1311

A person who submits the same original invoice or certified copy of an invoice for a refund more than once commits a Class B misdemeanor. See IC 6-6-1.1-1307. A distributor who either recklessly fails to file the returns or statements and to pay the gasoline tax or knowingly fails to keep correct records, books, or accounts commits a Class B misdemeanor. See IC 6-6-1.1-1309. A person who knowingly uses gasoline on which tax has not been paid commits a Class B misdemeanor. See IC 6-6-1.1-1310. If a person recklessly violates any other provision of the gasoline tax for which there is no specific penalty commits a Class B misdemeanor. See IC 6-6-1.1-1312. A person who removes, alters, defaces, or covers a sign posted by the department that states that no transactions may be made at a location commits a Class B misdemeanor. See IC 6-6-1.1-1316.

A person who collects money as gasoline tax on gasoline he has not paid tax and knowingly fails to pay the
money to the administrator as tax commits a Class D felony. See IC 6-6-1.1-1308. If a person who submits the same original invoice or certified copy of an invoice for a refund more than once; fails to file the required returns or statements or keep correct records, books, and accounts; or uses gasoline on which tax has not been paid with the intent to evade the gasoline tax commits a Class D felony. See IC 6-6-1.1-1313. A person who knowingly breaks a seal on a sealed pump or who knowingly fails or refuses to report meter readings commits a Class D felony. See IC 6-6-1.1-1316. A dealer or distributor who fails to notify the department of a broken fuel pump seal or removed, altered, defaced, or covered sign posted by the department within two (2) days commits a class D felony. See IC 6-6-1.1-1316. A person who removes, alters, defaces, or covers a sign posted by the department that states that no transactions may be made at a location with the intent to evade tax commits a Class D felony. See IC 6-6-1.1-1316.

THE SPECIAL FUEL TAX: IC 6-6-2.5

Special fuel means all combustible gases and liquids that are suitable for the generation of power in an internal combustion engine or used exclusively for heating, industrial, or farm purposes other than for the operation of a motor vehicle. The term, special fuel, does not include gasoline; ethanol produced, stored, or sold for the manufacture of or compounding or blending with gasoline; alternative fuels; kerosene; and jet fuel. See IC 6-6-2.5-22. Alternative fuel means a liquefied petroleum gas, compressed natural gas product, or a combination of those used in an internal combustion engine or motor to propel any form of vehicle or machine. Alternative fuel includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas. See IC 6-6-2.5-1. Therefore, diesel fuel will be taxed under the Special Fuel Tax.

The Special Fuel Tax imposed under IC 6-6-2.5 is a license tax of sixteen cents ($0.16) per gallon on all special fuel sold or used in producing or generating power to propel vehicles. However, if the special fuel is not used for highway purposes but, rather, for a purpose such as heating, the tax does not apply. See IC 6-6-2.5-28(a).

The tax is measured by invoiced gallons of nonexempt fuel received by an in-state licensed supplier for sale or resale in the state, or the tax may be measured under a precollection agreement as discussed below. See IC 6-6-2.5-28(b). The term received is a term of art for the Special Fuel Tax. The term received means the removal from any refinery or terminal in Indiana, or the entry into Indiana of any special fuel for consumption, use, sale, or warehousing. However, if the special fuel is transferred in bulk into or within a terminal in the state between suppliers it will not be considered received. See IC 6-6-2.5-20. Transfers in bulk include moving fuel on a marine barge from a refinery or terminal to a terminal, pipeline movements from a refinery or terminal to a terminal, book transfers of product within a terminal between suppliers before completion of removal across the rack (that is a platform or dock which measures the fuel coming into the terminal), and two party exchanges between license suppliers and permissive suppliers. See IC 6-6-2.5-25.1 and IC 6-6-2.5-19.

Tax Increases

The following will discuss who is liable for the tax in the event the rates are increased. Persons who own special fuel and are holding it for resale on the effective date of an increase in the Special Fuel Tax are subject to an inventory tax. The inventory tax is based on the gallons in storage as of the close of the business day preceding the effective date of the tax increase. The people who own and are holding the fuel for resale must take an inventory of the number of gallons held in storage and report the number of gallons to the department and pay the tax thereon within thirty (30) days after the inventory date. See IC 6-6-2.5-29. The amount of tax is equal to the inventory tax rate times the gallons in storage. The inventory tax rate is the equal to the difference in the increased rate minus the previous rate. Therefore, effectively the inventory rate is taxing the fuel in storage by the amount the rate has increased. See IC 6-6-2.5-29.

However, some fuel, besides tax exempt fuel, may be excluded in the computation from the inventory tax. The amount of fuel that will not be pumped out of the storage tank because the special fuel is below the draw pipe may be excluded. The maximum a person may exclude because it will not be pumped out is two hundred (200) gallons for a tank with a capacity of less than ten thousand (10,000) gallons and four hundred (400) gallons for a tank with a capacity greater than ten thousand (10,000) gallons. See IC 6-6-2.5-29.

Licenses and Applications for Licenses

A person may obtain a supplier’s license, permissive supplier’s license, terminal operator’s license,
exporter’s license, transporter’s license, importer’s license, or a blender’s license. To obtain any license the person will have to file an application with the department and include thereon at least the applicant’s federal identification number. See IC 6-6-2.5-42(a). Also, a bond or cash deposit will have to be filed concurrently with the application. The bond and cash deposit are discussed in depth below. Once a license is issued, it is valid until suspended, revoked for cause, or canceled. See IC 6-6-2.5-51. While the license has an indefinable life with the original applicant, the license may not be transferred to any other person. See IC 6-6-2.5-52. Also, once issued, the licensee must display the license at their place of business. See IC 6-6-2.5-53. A person who operates a business, which requires one of the licenses listed above and discussed below, without a license commits a Class D felony. See IC 6-6-2.5-62(d).

Every person who wants to be a supplier or permissive supplier must obtain a supplier’s or permissive supplier’s license. With such a license, the supplier or permissive supplier may collect the special fuel tax. The fee for obtaining a supplier’s license is five hundred dollars ($500). The fee for a permissive supplier’s license is fifty dollars ($50). The difference in a supplier and a permissive supplier is that the permissive supplier does not meet the jurisdictional connections to Indiana as required of a supplier but who holds an inventory position in a federally qualified terminal located outside Indiana. A supplier, however, imports into Indiana special fuel by pipeline or marine vessel from within the United States or imports special fuel from foreign country, or that refines special fuel in Indiana, or that owns a special fuel in a pipeline or terminal distribution and is subject to the general taxing or police jurisdiction of Indiana. See IC 6-6-2.5-41(a) and (b) and IC 6-6-2.5-16.1 and IC 6-6-2.5-23. Hereinafter, supplier and permissive supplier will be referred to as supplier unless specifically stated.

A person who wants to be a terminal operator must also obtain a license and pay a fee of three hundred dollars ($300). See IC 6-6-2.5-41(c). A terminal is a fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which the fuel may be removed for delivery. See IC 6-6-2.5-24.

Every person who wants to export, meaning delivering special fuel out of state for a purchaser, must obtain an exporter’s license. Also, the person must also be licensed either to collect and remit special fuel taxes or be licensed to deal in tax free special fuel in the other specified state. The fee for an exporter’s license is two hundred dollars ($200). See IC 6-6-2.5-41(d). On an application for an export license, the person must furnish a copy of the applicant’s license to purchase or handle special fuel tax free in the specified destination state(s) for which the export license is issued. See IC 6-6-2.5-42(a). A person who knowingly violates the above requirements for exporters or aids and abets another person in violating the requirements commits a Class D Felony. See IC 6-6-2.5-62(b).

A transporter’s license is needed to transport special fuel from a point inside Indiana to a point outside Indiana or from a point outside Indiana to a point inside Indiana. This is regardless of whether the person is engaged in hire in interstate or intrastate commerce. The registration fee for a transporter’s license is fifty dollars ($50). However, if a person has a supplier’s license a transporter’s license is not required. See IC 6-6-2.5-41(e).

An importer’s license is required to deliver special fuel into Indiana for a person’s own behalf or for resale to an Indiana purchaser from another state in a vehicle having a capacity greater than five thousand four hundred (5,400) gallons. The fee for an importer’s license is two hundred dollars ($200). However, an importer’s license is not required to import nonexempt special fuel that is subject to one or more tax precollection agreements and the tax precollection agreement is expressly evidenced on the terminal-issued shipping document. See IC 6-6-2.5-41(f). If a licensed importer who wants to import fuel and has not entered into a tax precollection agreement must: (1) obtain an import verification number from the department for each shipment not earlier than twenty-four (24) hours before entering the state and (2) display a proper import verification number on the shipping document. See IC 6-6-2.5-41(g).

Every person who wants to blend fuel may be required to obtain a blender’s license. Blending special fuel means mixing of one of the petroleum products with another product regardless of the original character of the product blended if the product obtained is capable of propelling a vehicle, airplane, or boat. The blending that occurs in the process of refining is not included in this definition. See IC 6-6-2.5-41(h) and IC 6-6-2.5-3. Blenders are required to collect and remit tax on the untaxed portion of the fuel blended. If a person knowingly violates or aids and abets another in violating this requirement commits a Class D felony. See IC 6-6-2.5-62(i).

Also, a person may be required to register with the department as a dyed fuel user if the person is subject to the Special Fuel Tax, qualifies for a federal diesel tax exemption and is purchasing dyed fuel.
Not all applicants will be granted the license for which they apply. A application for license may be rejected for any of the following reasons: (1) the application is not filed in good faith, (2) the applicant is not the real party in interest, (3) the license of the real property in interest has been revoked for cause, or (4) any other reasonable cause. See IC 6-6-2.5-42(b). However, no applicant will be denied a license without first being granted an opportunity for a hearing. Notification of the hearing must be at least five (5) days in advance. See IC 6-6-2.5-49.

Another condition of obtaining a license is fingerprinting. Applicants, including corporate officers, partners, and individuals for a license may be required to submit their fingerprints. However, officers of publicly held corporations and their subsidiaries are exempt from fingerprinting. The commissioner may forward the fingerprints to the Federal Bureau of Investigation or another agency for processing. The license application fee is used to pay the fee for processing the fingerprints. See IC 6-6-2.5-42(c).

A licensee must notify the department and surrender their license if they discontinue their business. See IC 6-6-2.5-54. Also, if a licensee intends to discontinue, sell, or transfer their business the licensee must notify the department of the day of discontinuance, sale, or transfer. In addition, if the business is sold or transferred the licensee must tell the department the name and address of the new owner. However, the licensee will continue to be liable for all tax, penalty, and interest arising before notifying the department of the transfer. See IC 6-6-2.5-55. The requirement for a final report is also imposed upon a licensee discontinuing, selling, or transferring their business. This requirement is discussed in the Monthly reporting section.

Filing and Release of Surety Bond and Cash Deposit

Concurrently with filing an application for any license discussed above, the department may require the applicant to file a surety bond or cash deposit with the department. The limits of such a bond or cash deposit include: (1) in an amount not less than two thousand dollars ($2,000) or not more than two months tax liability for the applicant as estimated by the commissioner and (2) conditioned upon the keeping of records and the making of full and complete reports and payments of the tax. See IC 6-6-2.5-44. Also, if the applicant files a bond, the bond must be with a surety company approved by the commissioner; the bond must name the applicant as the principal and the state as the obligee; and the bond must be on forms prescribed by the department. See IC 6-6-2.5-44.

Also, under certain conditions, the department may also require the licensee to file a new bond in the same form and amount or a new bond or deposit of greater amount. If liability upon the previous bond is discharged or reduced by judgment, payment, or otherwise, or in the opinion of the commissioner, any surety on the previous bond becomes unsatisfactory the department may require a new bond. The same is true with a cash deposit. If the cash deposit is reduced by judgment, payment, or otherwise, the department may require the licensee to file a new cash deposit in the same amount as the old deposit. See IC 6-6-2.5-46.

The department may also require the licensee to a new bond or increase the cash deposit if the existing bond or cash deposit is insufficient to ensure payment to the state of the tax and any penalty and interest for with the licensee is or may be liable. The department must give the licensee at least thirty (30) days to increase the bond or cash deposit. However, if the new bond or increase in cash deposit is unsatisfactory, the department may cancel the licensee’s license. See IC 6-6-2.5-47.

Either the surety or the licensee may request and gain release of the bond or cash deposit. Once a surety requests release of a bond, the department must wait sixty (60) days and release the bond. The surety’s liability ceases at the expiration of the sixty (60) day waiting period. Also, a cash deposit must be released after a similar sixty (60) day waiting period. However, the commission may retain all or part of the cash deposit for up to three (3) years and one (1) day as security for any obligations accruing before the effective date of cancellation. If the surety or licensee is seeking release of the bond or cash deposit, respectively, and the licensee wishes to continue to stay licensed, he must furnish a new surety bond before the expiration of the sixty (60) day waiting period. If the licensee does not furnish a new bond, the department must cancel the license. See IC 6-6-2.5-48.

Monthly Reporting

Suppliers, importer, terminal operators, exporters, and transporters are required to file monthly reports. In addition, licensees discontinuing, selling or transferring their business are required to file a final report. The purpose of these reports is to determine the amount of tax the reporting party owes or only for information collection purposes, such as to track the movement of special fuel. See IC 6-6-2.5-56.5(a). All of the following reports must be filed on
the twentieth of each month and reflect information for the preceding month. See IC 6-6-2.5-56.5(b). If a licensee holds more than one license, the department may aggregate the information to avoid duplicate reporting. See IC 6-6-2.5-61.

Suppliers reports are to contain the following information: (1) all loads of special fuel received by the supplier for export to another state and (2) all loads of special fuel removed by the supplier out of an out-of-state terminal for delivery to Indiana and sold tax free to persons for import into Indiana. This information should be reflective of the shipping documents the terminal operators issue to the supplier. See IC 6-6-2.5-56.5(b) and (c). Shipping documents are discussed below. The supplier commits a Class D felony if he knowingly violates any of the monthly reporting requirements. See IC 6-6-2.5-56.5(c).

An importer is required to file a monthly report showing the importers operations within Indiana. If the importer knowingly violates the monthly reporting requirements commits a Class D felony. See IC 6-6-2.5-56.5(d).

Exports are required to file monthly reports reflecting the amount of special exported from Indiana. The report must contain the amount of special fuel loaded in Indiana for delivery outside of Indiana, the gallons delivered to taxing jurisdictions outside Indiana, the name and federal employer identification number of the receiver of the exported special fuel, and the date of the shipments. See IC 6-6-2.5-59.

Likewise, transporters are required to file monthly reports so the department may track the movement of special fuel in Indiana. If the transporter fails to make monthly reports, the transporter will be subject to a civil penalty of one thousand dollars ($1000) for each violation. However, since transporter reports are for information purposes only, the department may choose to waive the filing requirement. See IC 6-6-2.5-60.

A final report must be filed whenever a licensee discontinues, sales, or transfers their business or upon the cancellation or revocation of a license. The licensee must mark such a report as “Final Report.” See IC 6-6-2.5-58.

Collection and Eligible Purchaser Status

Suppliers, including licensed and permissive supplier, hereinafter referred to as supplier, are considered collection agents for the state and the supplier must list the amount of tax added to the price of the fuel on a separate line on all invoices and bills to purchasers. See IC 6-6-2.5-35(h). The tax the supplier collects on the sale of special fuel belongs to the state and the supplier must hold the money in trust until it is remitted to the state. In the case the supplier is a corporation or partnership, each officer, employee, or member of the employer who is in the capacity to collect the tax is under a duty to collect the tax and is personally liable for the tax, penalty, and interest. See IC 6-6-2.5-38.

In all instances the supplier does not have to collect the tax at the time of the sale. If the purchaser elects and is eligible, the seller may not require the purchaser to pay the tax earlier than the date on which the supplier is required to remit the tax to the department. For a purchaser to make this election, he must be an “eligible purchaser.” An eligible purchaser means a person who is licensed and in good standing as a special fuel dealer or user who has purchased a minimum of two hundred forty thousand (240,000) taxable gallons of special fuel each year in the preceding two (2) years, or who otherwise meets the financial responsibility and bonding requirements. The financial responsibility and bonding requirements are discussed below. Another condition for this election is the eligible purchaser’s remittances of tax due the seller are paid by electronic funds transfer on or before the due date of the seller. See IC 6-6-2.5-35(c) and (d).

To recap, the purchaser pays the tax at the time he purchases the fuel. However, an eligible purchaser may pay the supplier on or before the supplier’s due date by electronic funds transfer. Also, to be an eligible purchaser, the purchaser must be in good standing, have purchased two hundred forty thousand (240,000) taxable gallons for the preceding two (2) years or meet the financial and bonding requirements. Eligible purchasers are usually retail dealers or bulk end users.

If a purchaser desires to be an eligible purchaser and has not purchased 240,00 taxable gallons for the past 2 years may in lieu thereof, meet the following financial and bonding requirements. The department may require a purchaser that pays the tax to a supplier to file with the department a surety bond payable to the state, upon which the purchaser is the obligor or other financial security, in an amount satisfactory to the department. The department may require that the bond indemnify the department against bad debt deductions claimed by the supplier. See IC
6-6-2.5-35(e). After the purchaser receives eligible purchaser status, the department still retains the authority to rescind such eligibility. If the department has good cause the department may rescind eligible purchaser status. Good cause includes failure to make timely payment to the supplier of the tax due. See IC 6-6-2.5-35(f).

Remittance

Suppliers must remit the tax collected on or before the fifteenth of each month to the department. The amount the supplier remits is an estimate of the transactions in the previous month equal to: (1) one hundred percent (100%) of the amount remitted by the licensed supplier for the month preceding the previous calendar month or (2) ninety-five percent (95%) of the amount actually due and payable by the supplier for the previous month. Any actual tax imposed that is below the estimated tax paid is due must be paid on or before the twentieth day of the following month. See IC 6-6-2.5-35(a) and (b). Underpayment of estimated taxes are subject to penalty in the manner described in IC 6-6-2.5-63(a). This is discussed in the Penalties and Crimes section below.

Suppliers are also limited in the mode of remitting taxes to the department. All suppliers must remit the tax due by electronic funds transfer, by delivery in person, by overnight courier a payment in cashier’s check, certified check, or money order to the department. Again, the payment must be made on or before the date the tax is due. See IC 6-6-2.5-36.

Imported Fuel Taxation

The special fuel tax on nonexempt fuel imported from another state must be paid by the licensed importer not later than three (3) business days after the earlier of the time the nonexempt special fuel entered into the state or the time that a valid import verification number was assigned by the department. However, an exception to this three (3) day rule is if the department, importer, reseller to an importer, and supplier have entered into a tax precollection agreement. Under a tax precollection agreement, the tax will be paid by the supplier in the same manner and at the same time as the tax would arise and be paid if the special fuel had been received by the supplier at a terminal in Indiana. However, the supplier may also simply elect to treat imported fuel as received from a terminal in Indiana. In that case no tax precollection agreement is necessary. See IC 6-6-2.5-35(j). Therefore, instead of the importer paying the tax, in both instances the end purchaser will pay the tax.

A limitation to entering into the tax precollection agreement is that the capacity of the vehicle the importer ships the fuel in is greater than five thousand four hundred (5,400) gallons. In the case the importer uses a vehicle with capacity less than five thousand four hundred (5,400) gallons, the importer must remit the special fuel tax for the preceding month’s activities with the importers monthly report, which is discussed below. In the case the importer timely and correctly reports the tax due, the importer may keep one and six one hundredths percent (1.06%) of the tax due to pay for reporting and collecting fees. See IC 6-6-2.5-35(k) and (l).

In Shell Oil Co v. Dep’t of Revenue, 2001 Ind. Tax Lexis 57, the tax court considered the issue whether the department’s tax precollection form, Form SF-10A, was ambiguous. Shell, a licensed supplier, had not collected special fuel tax on fuel it imported to Indiana prior to July 1, 1994. However, in 1994 the Department sent Shell a Form SF-10A, which consisted of a Tax Precollection Agreement. Indiana Code 6-6-2.5-35(j) allows the Department to enter into such agreements. This is discussed in depth above. Form SF-10A allowed Shell chose one of three options for collecting tax on the fuel it imported.

Shell chose option 1. The instruction on option 1 said, “Option One: Elect the “blanket” option. Under this option, the [supplier] will continue to collect Indiana special fuel tax due on import sales into Indiana in the same manner which they have prior to July 1. This alleviates administration requirements, notice requirements, and reporting changes which are required under Option Two or Option Three.” More specifically, Option 1 on the form said, “I chose option 1 and agree to treat all out-of-state terminal removals of undyed special fuel, for export into Indiana, as if they were received in Indiana, and will collect the Indiana special fuel tax from every purchaser.”

However, Shell interpreted this option on the form in conjunction with the instruction on option 1 as saying that it was only required to collect in the same manner in which it had prior to July 1994, which was no collection at all. Therefore, based on the instructions and the option Shell checked on the form, it was under the impression that it was only required to collect taxes to the extent it had prior to July 1, 1994.

Subsequently to returning the Form SF-10A, the department audited Shell. The audit revealed that Shell did not pay any tax. When the Department assessed tax against Shell, Shell argued that it was not liable for the tax because Form SF-10A was ambiguous and any ambiguity should be resolved in its favor.
The tax court examined the form and the instructions for ambiguity and determined as a matter of law that the instructions were not ambiguous. Rather, the tax court said the form and instruction made it clear that “option one required a taxpayer to collect the special fuel tax from all of its customers on import sales into Indiana, option two required a taxpayer to collect the special fuel tax from only some of its customers, and option three allowed a taxpayer not to collect the special fuel tax.” Id. at 9-10.

Shipping Documents

Set out in detail below is the issuance of a shipping document by the refinery, terminal, or bulk plant of the fuel, the carrying of the shipping document by the person delivering the fuel, the examination and retention of the shipping document by the retail outlet or bulk plant, and other specific rules governing these transactions.

Every person operating a refinery, terminal, or bulk plant in the state must prepare and provide drivers receiving fuel at the facility a shipping document setting out the destination state as represented by the shipper or shipper’s agent. The person preparing the shipping document is entitled to rely on shipper’s statement regarding the destination state. If any tax arises due to the fuel being diverted from the represented state of destination, the shipper or importer and not the terminal operator shall be jointly and severally liable. See IC 6-6-2.5-40(g). The point of this is the terminal operator or person supplying the shipper may rely on the shipper’s statement regarding the delivery destination and be released from liability if the destination changes to a taxable destination.

However, a shipping document is not required in all instances. An operator of a bulk plant is not required to provide such a document if the vehicle is less than five thousand four hundred (5,400) gallons and the destination of the fuel is an end consumer in Indiana. See IC 6-6-2.5-40(a).

If the terminal or bulk plant is required to provide the shipping document to the driver, the driver is required to carry the document in the vehicle. Again, if the driver received the fuel at a bulk plant in the state, the vehicle capacity is less than five thousand four hundred (5,400) gallons, and delivery is to be made to an end user in the state the driver is not required to carry a shipping document. A person who fails to properly carry the shipping document during delivery commits a Class A infraction. See IC 6-6-2.5-40(b). However, if the driver is required to carry the shipping document, the document must set out, if applicable, the fuel: (1) purchased under a claim of exempt use, a notation describing the load or the appropriate portion of the load as Indiana tax exempt special fuel, (2) if not purchased under a claim of exempt use, a notation describing the load or the appropriate portion thereof as Indiana taxed or pretaxed special fuel, and (3) if imported by on the behalf of a licensed importer instead of the pretaxed notation, a valid verification number provided before entry into Indiana by the department. A person who does not comply with (1), (2), or (3) from above commits a Class A infraction. See IC 6-6-2.5-62(e).

The person delivering the fuel then must provide the original or copy of the terminal issued shipping document to the retail outlet or bulk plant receiving the shipment. A person who knowingly violates or knowingly aids and abets another person in violating this requirement commits a Class D felony. See IC 6-6-2.5-40(c). This means that if a person delivering the fuel or the person accepting the fuel knows that the person delivering the fuel does not have a proper shipping document and still completes the transaction commits a Class D felony.

The operator of the retail outlet or bulk plant must receive, examine, and retain the shipping document. A person may not knowingly accept delivery of special fuel into storage facilities in Indiana if that delivery is not accompanied by a shipping document issued by a terminal operator or bulk plant operator that sets out Indiana as the delivery destination. If a person accepts delivery of fuel without a proper shipping document or aids and abets another in violating these requirements commits a Class D felony. See IC 6-6-2.5-40(e).

If the shipping document is proper, the retail outlet or bulk plant operator may accept delivery of the fuel. The operator must then keep the document on the premises where the fuel was received for a period of thirty (30) days and continue to retain the shipping document for three (3) years offsite. If an person knowingly violates or knowingly aids and abets another person in violating these requirements commits a Class D felony. See IC 6-6-2.5-40(d).

Vehicles

Every transporter must at the time of filing for a transporter’s license and then annually list a description of all vehicles the transporter will use to transport fuel on the highways of Indiana. The description must include the vehicles license number, carrying capacity, and the type of vehicle, meaning tractor-trailer or other. If a transporter either intends to use a different vehicle or put an existing vehicle out of service, the transporter must notify the commissioner within ten (10) days. See IC 6-6-2.5-43.
Deductions

A supplier is entitled to a deduction from the tax amount in the amount of tax that has become uncollectible from a purchaser. The supplier must claim the deduction on the first due date following default by the purchaser. The supplier must submit evidence in support of the deduction. Further, the claim must identify the defaulting purchaser and any tax liability that remains unpaid. If a purchaser fails to make timely payments of the amount of tax due, the supplier’s deduction will be limited to the amount due the purchaser plus any tax that accrues from that purchaser for a period of ten (10) days following the date of failure to pay. No additional deduction is allowed until the department has authorized the purchaser to make the eligible purchaser election. Therefore, the purpose of this limitation is to disallow seller’s to sell fuel to ineligible purchasers and then claim a deduction for uncollectible tax. See IC 6-6-2.5-35(g).

Another deduction is the proper remittance deduction. Every supplier who properly remits the Special Fuel Tax is allowed to retain one and six-tenths percent (1.6%) of the tax to cover the costs of collecting, reporting, and timely remitting the tax. However, the supplier must distribute the amount retained under conditions. The supplier may retain one-third (1/3) for himself. The supplier is to distribute two-thirds (2/3) to the wholesale distributor. Yet, if the special fuel is resold by the wholesale distributor to an eligible purchaser, the wholesale distributor must pass one-half (1/2) of the two-thirds (2/3) to the eligible purchaser. Under a separate fact pattern, if the eligible purchaser purchases directly from the supplier and that eligible purchaser is responsible for shipping the fuel, then the supplier must distribute two-thirds (2/3) to the eligible purchaser and retain one-third (1/3) for themselves. However, if the supplier is responsible for shipping the fuel, the supplier may retain two-thirds (2/3) and distribute one-third (1/3) to the eligible purchaser. Remember, though, that this deduction may be taken only if the tax is properly and timely remitted to the department. See IC 6-6-2.5-37.

Exemptions

It is a rebuttable presumption that special fuel consumed by a motor vehicle for general highway use is subject to the tax. However, a person may claim an exemption. The person claiming an exemption bears the burden to prove they are entitled to the exemption. Therefore, adequate records must be kept to determine either taxable or exempt consumption of special fuel. See IC 6-6-2.5-28(f).

Fuel may be exempt from the tax because of the place it is stored. For example, all special fuel being transferred from tank steamers at boat terminals and held in storage pending wholesale bulk distribution by land transportation, or in tanks and equipment used in receiving and storing special fuel from interstate pipelines pending wholesale bulk reshipment is not subject to tax. See IC 6-6-2.5-28(e).

However, fuel may be exempt because of the use of the fuel. The following are exempt from paying the Special Fuel Tax: (1) special fuel is sold by a supplier to a licensed exporter for export from Indiana to another state or country, or exports for which the destination state special fuel tax has been paid, (2) special fuel sold to the United States of an agency or instrumentality thereof, (3) special fuel sold to a post exchange or other concessionaire on a federal reservation within the state. However, the post exchange or concessionary must collect, report, and pay quarterly department and special fuel tax permitted by federal law, (4) special fuel sold to a public transit department of a municipality and used for the transportation of persons for compensation within a service area, (5) special fuel sold to a public transit department of a municipality and used for the transportation of persons for compensation within a service area, and no part of the service area is more than five (5) miles outside of the municipality corporate limits, (6) special fuel sold to a common carrier of passengers, including a business operating a taxicab and used by a carrier to transport passengers within a service area that is not larger than one (1) county, and counties contiguous to that county, (7) the portion of special fuel tax used to operate equipment attached to a motor vehicle, which equipment and propulsion engine share a common reservoir, (8) special fuel used for nonhighway purposes, used as heating oil, or in trains, (9) sales of transmix between licensed suppliers. See IC 6-6-2.5-30(a).

The exemptions in (4) through (7) from above are granted through the refund process discussed below. See IC 6-6-2.5-30(b). The refund process is the only way that a customer of special fuel may seek to offset liability for tax paid. See IC 6-6-2.5-34.

The special fuel exempt under IC 6-6-2.5-30(a)(8), fuel used for nonhighway purposes, used as heating oil, or in trains, must have dye added to it at or before the time it is withdrawn from a terminal or refinery. The supplier may elect that the dye be either added pursuant to Environmental Protection Agency standards or pursuant to standards
of the department. The department may also require that the special fuel have a marker added to it. See IC 6-6-2.5-31. Once dye or a marker has been added, the fuel may not be used in a vehicle on the highway. That restriction does not apply if the fuel is added to the vehicle’s tank before the vehicle enters Indiana or the person is registered as a dyed fuel user. If a person knowingly violates or aids and abets another person in violating the use restriction commits a Class A infraction. However, if the person has committed one prior unrelated violation of the use restriction the charge will be raised to a Class A misdemeanor. Also, the charge will be raised to a Class D felony if the person has committed more than one violation of the dyed fuel use restriction. See IC 6-6-2.5-62(c).

In Shoup Buses, Inc. v. Dep’t of Revenue, 635 N.E.2d 1165 (Ind. Tax Ct. 1994), three taxpayer carrier’s challenged the department’s interpretation of and regulations implementing IC 6-6-2.1-301(a)(6), which is now 6-6-2.5-30(a)(6). Recall that subsection reads, “The following are exempt from paying the Special Fuel Tax: . . . (6) special fuel sold to a common carrier of passengers, including a business operating a taxicab and used by a carrier to transport passengers within a service area that is not larger than one (1) county, and counties contiguous to that county. . . .” See IC 6-6-2.5-30(a)(6).

The two issues the court had to determine was (1) whether contiguous counties meant only Indiana counties, and (2) whether the department’s regulation that said “for the sole purpose of transporting passengers within the services area . . .” meant that if the carrier transported passengers out of the service area the carrier was not entitled a proportional exemption. Shoup Buses, Inc., 635 N.E.2d at 1166. The Tax Court rule in favor of the carriers on both issues.

First, the court addressed whether the term contiguous counties were only Indiana counties or whether contiguous counties could include out-of-state counties. The court held that contiguous counties included out-of-state counties that were touching along boundaries with the Indiana counties. The court reasoned that the statute made no mention of contiguous counties including only in-state counties and, therefore, the department could not vary or enlarge its statutory authority and create a rule disallowing the exemption for contiguous but out-of-state counties. Id. at 1168.

Next, the court addressed whether travel outside a service area renders a carrier ineligible for a proportional exemption for the fuel consumed in the service area. Id. at 1169. The pertinent part of the regulation at issue said, “(a) Special fuel sold to or used by a common carrier is exempt provided that the special fuel is placed into the fuel supply tank or a common carrier for the sole purpose of transporting passengers within a service area which is not larger than one county and counties contiguous to that county, all of which are located in Indiana. . . . (d) To be afforded this exemption, common carriers must embark, transport, and disembark passengers within the service area of the common carrier. Special fuel sold and delivered into the fuel supply tank of a motor vehicle operated by a common carrier for the purpose of transporting persons over routes that are outside the service area of the common carrier is subject to tax.” See 45 IAC 10-3-7.

The carrier argued that although the passengers may embark or disembark outside the service areas that should not preclude the carrier from receiving an exemption for the fuel consumed while operating in the service area, but rather, that the carrier should get a proportional exemption for the fuel consumed while in the service area. Shoup Buses, Inc., 635 N.E.2d at 1169. However, the department argued that the legislature did not intend such a proportional exemption and the legislature did not “intend to subsidize shuttle transportation to and from major metropolitan airports.” Id. Relying upon the purpose of the motor carrier fuel tax’s purpose and the purpose of the exemption, Tax Court agreed with the taxpayer. The court said the purpose of the tax was to “generate funds for highway purposes, traffic safety, and policing costs.” Id. Further, the court said the purpose of the exemption was to “reduce the operating expenses of public transportation providers to enable them to provide low fare service to those who do not use or cannot afford private transportation.” Id. Therefore, the court held that the department exceeded its authority in denying an exemption for the portion of fuel the carrier consumed in its service area. Id.

Refunds

There are several instances in which a person is entitled to a refund of the special fuel tax. The fuel exempt under IC 6-6-2.5(a)(4) through (7) listed above receive the exemption through the refund process. Fuel exempt under IC 6-6-2.5-30(a)(8), which was used for nonhighway purposes, used as heating oil or in trains but was not dyed at the time of use, upon which fuel the tax was paid may be refunded to the user upon proof of use for an exempt purpose. Also, if a licensed exporter paid the tax on fuel and then exported the fuel, such exporter is also entitled to a refund.
See IC 6-6-32(a) and (b). Similarly, a wholesale distributor is entitled to a refund for undyed fuel shipped to a destination of not more than twenty-five (25) miles from the state. However, this refund is also subject to the limitation that the must be shipped in a vehicle not capable of carrying over five thousand four hundred (5,400) gallons. See IC 6-6-2.5-30(d). In addition, any other fuel tax erroneously paid is subject to refund. See IC 6-6-2.5-32(c). Another specific refund is for a person that pays the special fuel tax and uses the fuel in the operation of an intercity bus. See IC 6-6-2.5-32.5.

To claim a refund a person must present to the department a statement subject to several conditions. Those conditions include that the statement: (1) be written, (2) verify that the claim is made under the penalties of perjury, (3) must list the total amount of special fuel purchased and used for non-highway purposes, (4) be filed not more than three (3) years after the date the special fuel was purchased, and (5) must show that payment for the purchase has been made and the amount of tax paid on the purchase has been remitted to the department. See IC 6-6-2.5-32(d).

A person claiming a refund under Indiana Code 6-6-2.5-32 may be entitled to interest on their refund. If the department does not pay the refund within ninety (90) days the person is entitled to interest. The interest is charged from the ninety (90) day mark until a point not preceding thirty (30) days before the refund is made. See IC 6-6-2.5-33.

An intercity bus operator may also be entitled to a refund. In order to receive the intercity bus refund, the person claiming the refund must: (1) show the special fuel was consumed outside Indiana, (2) show that the special fuel tax or highway use tax in at least one state or other jurisdiction was paid, and (3) file a proper claim with the department as discussed below. A proper claim for refund includes the following information: (1) proof of payment of the Indiana Special Fuel Tax, (2) proof of payment of taxes in another state or jurisdiction outside Indiana. A person claiming a refund under the intercity bus refund is not entitled to interest. See IC 6-6-2.5-32.5.

Dyed Fuel Restrictions

Recall that fuel exempt because it is used for nonhighway purposes must have dye added to it according to Environmental Protection Agency standards or standards set by the department. See IC 6-6-2.5-30(a)(8) and IC 6-6-2.5-31. A person may not manipulate the dye or marker concentration of a special fuel or the coloration of special fuel after the special fuel is removed from a terminal or refinery rack for sale or use in Indiana. A person who knowingly violates or aids and abets another person in violating this manipulation restriction commits a Class D felony. However, this manipulation restriction does not apply to: (1) a person who inadvertently manipulates the dye or maker concentration of the special fuel or coloration of special fuel and contacts the department within one day after manipulation occurs, or (2) a person that affects the dye or maker concentration of special fuel by engaging in the blending of fuel, if the blender collects ore remits all special fuel tax due, maintains adequate records to account for the fuel that is blended and its status as a taxable or exempt sale or use, and is otherwise in compliance with the special fuel tax regulations. See IC 6-6-2.5-62(g).

A person may not sell or consume special fuel if the fuel dye or marker concentration or coloration has been manipulated, inadvertently or otherwise, after the special fuel was been removed from a terminal or refinery rack for sale or use in Indiana. This restriction does not apply with (2) in the preceding paragraph, which refers to blenders exemption from dye or marker manipulation. If a person knowingly sells or consumes manipulated dyed or marked fuel or aids and abets another in selling or consuming manipulated dyed or marked fuel that person commits a Class D felony. See IC 6-6-2.5-62(h).

Use of Revenues

The special fuel tax collected may only be used for highway purposes and for payment of any part of the cost of traffic policing and traffic safety incurred by the state or any of its political subdivisions. See IC 6-6-2.5-27. The auditor of the state must hold all amount collected from the department during a particular month and must distribute the amount collected on the fifth day of the immediately succeeding month. The administrator must transfer twenty-five million dollars ($25,000,000) of the taxes collected and received during the period beginning July 1 of a year and ending on June 30 o the immediately succeeding year to the auditor of the state for distribution in the following manner: (1) thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution from the local road and street account, (2) thirty percent (30%) to each of the counties, cities, and towns eligible to receive a distribution from the motor vehicle highway account, and (3) forty percent (40%) to the Indiana department of transportation. See IC 6-6-2.5-68. The remainder of the revenues, that is the amount over and above the
twenty-five million dollars ($25,000,000) listed above, is to be distributed in the same manner as the gasoline tax in Indiana Code 6-6-1.1-802. That section says the remainder of the revenues is to be deposited in the motor fuel tax fund of the motor vehicle highway account. See IC 6-6-1.1-802.

Inspections and Police Aid

The department may conduct inspection for and enforce the laws concerning coloration of diesel fuel violations, sulfur content violations, marker violations, and shipping paper violations at any place where taxable fuel is or may be loaded in transport vehicles, produced, or stored. These places may include but are not limited to a terminal, fuel storage facility that is not a terminal, a designated inspection sight, such as weigh station, agricultural inspection stations, or mobile station. See IC 6-6-2.5-70(a). However, the department is not only agency of the state that may conduct the inspections to determine if people are in compliance with the special fuel tax. The Indiana state police motor carrier inspectors and any other law enforcement officer acting under the department’s procedures may also conduct the inspections. Any such law enforcement officer has the same authority to issue infractions and violations of the special fuel tax as does any agent of the department. See IC 6-6-2.5-70(b).

Class Actions

A class action for a refund may not be maintained on behalf of a person who has not complied with sections 32 and 33, which are the refund procedures. A refund of taxes to a member of a class is subject to the time limits in sections 33 and 34. The time limits are based on the time the class member filed the required claim for refund with the department. See IC 6-6-2.5-69.

Seizure of Vehicle and Pump Restrictions

The department has authority to seize a vehicle and its cargo under circumstances. If a person is found operating a motor vehicle without a proper terminal issued shipping document or a proper import verification number, the vehicle and its cargo may be impounded, seized, and sold. See IC 6-6-2.5-65(a).

It is an infraction of the Special Fuel Tax to operate a motor vehicle on an Indiana highway with dyed to marked fuel. See IC 6-6-2.5-62(c). However, if a person is found to be operating a motor vehicle with dyed or marked fuel the department may issue a release of that fuel if the person pays the tax on the fuel. The release will allow the person to operate the vehicle on the state highways for a period of twenty-four (24) hours. After the grace period expires, the person is again considered in violation of Section 62(c).

The department also has authority to seal pumps in certain circumstances. The department may seal a special fuel or kerosene pump or impound a vehicle that does not have a sealable pump. The department may also post a sign that states that transactions involving special fuel or kerosene may not be made at the person’s location if any of the following conditions exist: (1) a person becomes delinquent in payment of the special fuel tax, (2) there is evidence that the revenue of the seller is in jeopardy (an example of revenue being in jeopardy is if the person does not have an effectively sealed gallonage totalizer as discussed below), (3) a person sells special fuel or kerosene without being licensed, (4) a person sells special fuel or kerosene without being bonded, (5) a person sells fuel that is taxable without charging special fuel tax; however, this does not apply to a seller that acts in good faith and sells undyed special fuel to a person with a valid tax exemption certificate on file with the seller, and (6) a person sells dyed or marked special fuel for use in a motor vehicle operated on a public highway. See IC 6-6-2.5-71(a).

The department may continue to keep the pump sealed and sign posted until the person meets certain conditions. All of the following conditions must be met to unseal the pump and the sign removed: (1) all reports are filed and all the fees and taxes paid, (2) the interest and penalties under the special fuel tax are paid, (3) the license is obtained, and (4) the bond, letter of credit, or cash deposit required by the special fuel tax is provided in the amount required by the department. See IC 6-6-2.5-71(b). If a person removes, alters, defaces, or covers such a sign, the person commits a Class B misdemeanor. However, if the sign was removed, altered, defaced, or covered with the intent to evade special fuel tax, the person commits a Class D felony. See IC 6-6-2.5-71(f).

The department also as authority to monitor and regulate sellers gallonage totalizers. Sellers of special fuel must allow the department to check and seal their gallonage totalizers. If the department discovers that a person is selling special fuel or kerosene without an effectively sealed gallonage totalizer, the department may demand that the seller: (1) adapt the pump to the department’s specifications so that the pump may be effectively sealed; or (2) replace, in whole or in part, the pump with a pump employing an effectively sealable gallonage totalizer. See IC 6-6-2.5-71(c) and IC 6-6-2.5-71(d).
Further, a person that sells special fuel tax or kerosene has a duty to notify the department of an ineffectively sealed pump or removed, altered, defaced, or covered sign. If a seller fails to give such notification to the department, the seller commits a Class D felony. See IC 6-6-2.5-71(h) and IC 6-6-2.5-71(i).

Penalties and Crimes

A person may not use special fuel on the highway if it contains a sulfur content that exceeds five one-hundredths of one percent (0.05%). If a person knowingly violates or aids or abets another person to violate this restriction commits a Class A infraction. The charge may be raised to a Class A misdemeanor if the person has committed one prior unrelated violation.

Also, the charge may be raised to a Class D felony if the person has committed more than one unrelated violation. See IC 6-6-2.5-28(i).

A person may not use special fuel on the highway if it contains a sulfur content that exceeds five one-hundredths of one percent (0.05%). If a person knowingly violates or aids or abets another person to violate this restriction commits a Class A infraction. The charge may be raised to a Class A misdemeanor if the person has committed one prior unrelated violation.

Also, the charge may be raised to a Class D felony if the person has committed more than one unrelated violation. See IC 6-6-2.5-28(i).

A supplier is subject to penalty for underpayment of estimated taxes. The penalty is the same as that in IC 6-6-2.5-63(a). See 6-6-2.5-35. That section says that a person who fails to collect or remit the tax collected will be liable for a penalty equal to one hundred percent (100%) of the uncollected tax.

A person who fails to properly carry the shipping document during delivery commits a Class A infraction. See IC 6-6-2.5-40(b)

Every person delivering fuel to a retail outlet or bulk plant must provide that person with a proper shipping document. A person who knowingly violates or knowingly aids and abets another person in violating this the requirement of giving a person receiving a shipment of a proper shipping document commits a Class D felony. See IC 6-6-2.5-40(c). This means that if a person delivering the fuel or the person accepting the fuel knows that the person delivering the fuel does not have a proper shipping document and still completes the transaction commits a Class D felony.

A person may not knowingly accept delivery of special fuel into storage facilities in Indiana if that delivery is not accompanied by a shipping document issued by a terminal operate or bulk plant operator that sets out Indiana as the delivery destination. If a person accepts delivery of fuel without a proper shipping document or aids and abets another in violating these requirements commits a Class D felony. See IC 6-6-2.5-40(e).

An operator of a retail outlet or bulk plant is required to retain the shipping document from each shipment of fuel received onsite for thirty (30) days and offsite for three (3) years. If a person knowingly violates or knowingly aids and abets another person in violating these requirements commits a Class D felony. See IC 6-6-2.5-40(d).

A supplier who knowingly fails to collect or timely remit tax is liable for the uncollected tax plus a penalty equal to one hundred percent (100%) of the uncollected tax. See IC 6-6-2.5-63(a). A person who fails or refuses to pay over to the state the tax on special fuel in a timely manner commits a Class D felony. See IC 6-6-2.5-63(c). A person who fraudulently withholds or appropriates the any portion of the tax collected commits a Class D felony. See IC 6-6-2.5-63(c). A person who negligently disregards any provision of the special fuel tax is subject to a civil penalty of five hundred dollars ($500) for each act of negligence. See IC 6-6-2.5-63(d).

If a person files a false or fraudulent return, there may be added to the tax amount an amount equal to the tax the person evaded or attempted to evade. See IC 6-6-2.5-64(a).

If a person does not have adequate shipping papers, as required by sections 40, 41, and 62 as discussed above, the department may impose civil penalties. The fine for the first occurrence is one thousand dollars ($1,000) and any subsequent penalty is five thousand dollars ($5,000). See IC 6-6-2.5-64(b).

The department may also impose a civil penalty for a violation of the prohibition of use of dyed or marked fuel if that person is not exempt under the Internal Revenue Code and registered with the department as a dyed fuel user. Also, the department may impose a civil penalty for the use of special fuel in violation of section 28(i), which highway use of fuel with a sulfur content that exceeds five one hundredths of one percent (0.05%). The initial penalty is two hundred dollars ($200), the second penalty is two thousand five hundred dollars ($2,500), and each subsequent
penalty for either of the above violations is five thousand dollars ($5,000). See IC 6-6-2.5-64(c).

If a supplier makes sales for export to a person who does not have an exporter’s license or does not collect the destination state tax is subject to a civil penalty. The civil penalty is equal to the amount of Indiana’s special fuel tax in addition to the tax due. See IC 6-6-2.5-64(d).

If a terminal operator does not issue a proper shipping document, the department may impose a one thousand dollar ($1,000) civil penalty. The penalty is the same amount for each subsequent violation. See IC 6-6-2.5-64(e).

Each importer or transporter who knowingly imports undyed or unmarked special fuel in a transport truck without a valid importer’s license, supplier’s license, import verification number, or a shipping document showing that Special Fuel Tax is not due is subject to a civil penalty of ten thousand dollars ($10,000). The penalty is the same for each subsequent violation. See IC 6-6-2.5-64(f).

There is also a civil penalty for manipulating dyed or marked fuel. A person that manipulates the dye or marker concentration of special fuel or the coloration of special fuel after the fuel is removed from the terminal and the person that receives the fuel are jointly and severally liable for the special fuel tax and the greater of one hundred percent (100%) of the tax due or one thousand dollars ($1,000). See IC 6-6-2.5-64(g). This does not apply to a person who inadvertently manipulates the dye or marker and notifies the department within one (1) business day. See IC 6-6-2.5-64(g) and IC 6-6-2.5-62(g).

Blending penalty. A person that engages in blending fuel for taxable sale or use in Indiana and does not collect and remit all tax due is liable for the tax due plus a penalty that is equal to greater than one hundred percent (100%) of the tax or one thousand dollars ($1,000). See IC 6-6-2.5-64(h).

THE SPECIAL FUEL TAX: IC 6-6-2.1

Alternative Fuel Tax Decal and Annual Fee

The owner of a vehicle that is propelled by an alternative fuel must obtain a decal from the state and pay an annual fee. The fee for the respective types of vehicles is as follows: (1) $100 for a passenger vehicle, truck, or bus with a gross weight of 9,000 pound or less that is owned by a public or private utility, (2) $100 for a recreation vehicle that is owned by a public or private utility, (3) $175 dollars for a truck or buss with a gross weight between 9,000 pounds and 11,000 pounds that is owned by a public or private utility, (4) $250 for an alternative fuel delivery truck powered by alternative fuel which has a gross weight greater than 11,000 pounds, (5) $300 for a truck or bus with a gross weight greater than 11,000 that is not an alternative fuel delivery truck, and (5) $500 for a tractor designed to be used with a semitrailer. See IC 6-6-2.1-203.

The Special Fuel Tax in Indiana Code 6-6-2.1, now replaced by the above discussed chapter 2.5, was imposed upon “(1) the placing of special fuel into the taxable storage facility of an authorized unlicensed user or an authorized unlicensed special fuel dealer, and (2) the use of special fuel,” which is defined as “the delivery or placing of special fuel into the supply tank of a motor vehicle in Indiana.” Storm, Inc. v. Dep’t of Revenue, 663 N.E.2d 552 (Ind. Tax Ct. 1996) (internal quotations omitted). In that case Storm owned, operated and supplied at different and varying times throughout a period of four years two separate gasoline service stations.

Specifically, for the first station, the New Washington Station, Storm was the owner, operator, and supplier during January and February of 1985. Then from March 1985 to the end of the audit period of 1988, Storm was the supplier to different owner’s and operators. For the second station, the Hanover Station, Storm was the owner and supplier for the period from January 1985 to July 1985. Also, Storm was the owner and operator of the Hanover Station from July 1986 to August 1987.

The issue the court addressed was whether Storm delivered or placed special fuel into the supply tank of a motor vehicle in Indiana during the period at issue and, therefore, was subject to the special fuel tax under Indiana Code 6-6-2.1. For the New Washington Station, during the period of January and February 1985, Storm was the owner, operator, and supplier of the station. Consequently, there is no question that Storm was liable for the special fuel tax. Id. at 556.

Next, for the period of March through December 1988 at the New Washington Station and January 1985 through July 1985 at the Hanover Station, the department argued Storm was liable for the special fuel tax under two theories, which are (1) that Storm was the owner of the fuel at the time the fuel was sold to the consumer and (2) Storm was liable under a consignment agreement. However, the Tax Court ruled that Storm was not liable under either theory at either station for the special fuel tax. First, the court said that the department’s ownership argument
was not correct. While the fuel was owned by Storm in the storage tank of the station, the ownership of the passed from Storm to the station operators at the time the fuel passed through the meter into the motor vehicle. Therefore, Storm did not deliver or place fuel into the supply tank of a motor vehicle. Id.

Likewise, the court said the department’s consignment theory must fail. In a consignment agreement the ownership of the goods does not pass to the consignee. However, the court had decided that the title to the fuel passed from Storm to the station operator as the fuel passed through the metered pump. Therefore, Storm was not liable under the consignment theory either. Id. at 556-57.

The last period the department argued Storm was liable for special fuel taxes was July 27, 1986 through August 31, 1987 at the Hanover Station. During that period Storm was the owner and operator of the station and conceded liability for the special fuel tax. However, Storm claimed that it had already paid the tax the station’s special fuel supplier and the supplier was to remit the tax to the department. Storm’s argument failed because Storm had not entered into an agreement with the department and the supplier to effectuate this agreement. Therefore, Storm was liable for the taxes during that period. Id. at 557.

In total, Storm was liable for the special fuel tax during January and February 1985 at the New Washington Station and during July 27, 1986 through August 31, 1987 at the Hanover Station. Id.

THE MOTOR CARRIER FUEL TAX: IC 6-6-4.1

This tax is composed of a consumption tax and a surcharge tax. The consumption tax is imposed on carriers operating on the highways of Indiana. The rate of the consumption tax is the same as the Special Fuel Tax under Indiana Code 6-6-2.5 discussed above, which rate was twenty-eight cents ($0.28) per gallon. See IC 6-6-2.5-28(a) and IC 6-6-4.1-4. The surcharge tax is also imposed upon carriers operations in Indiana. The surcharge tax rate is eleven cents ($0.11) per gallon. See IC 6-6-1-4.5.

Both of these taxes, the consumption tax and the surcharge tax, are paid quarterly and due on or before the last day of the month immediately following the quarter. For example, tax due on the quarter of January through March would be due on or before April 30th. To figure the amount of tax due figure all the fuel the carrier consumed in its operations multiplied by a fraction the numerator is the number of miles traveled on Indiana highways and the denominator is the total number of miles. See IC 6-6-4.1-4 and IC 6-6-1-4.5. Effectively this is figuring the percent of miles traveled in Indiana and, therefore, the same percentage of total fuel used that is attributable to fuel consumed in Indiana. The carrier is then liable for the tax on this figure. If there are no records showing otherwise, and the carrier is not filing jointly, there is a presumption that the carrier consumes one (1) gallon for every six (6) miles traveled. See IC 6-6-4.1-9.

For example, if a carrier consumed 100,000 gallons of fuel in total operations, traveled 1,000,000 miles in total, and of the total 20,000 of the miles were traveled in Indiana the tax would be figured as follows: 100,000 * (20,000/1,000,000) = 2,000. Therefore, 2,000 gallons of fuel were consumed in Indiana. The 2,000 would be multiplied by the consumption tax rate and the surcharge tax rate individually to determine the total amount of tax owed under this chapter.

This tax applies to vehicles that seat nine (9) or more passengers, road tractors, tractor trucks, trucks having more than two (2) axles, trucks having a gross weight greater than twenty-six thousand (26,000) pounds, and vehicles used in combination that have gross weight of greater then twenty-six thousand (26,000) pounds. See IC 6-6-4.1-2.

Recall that this tax is imposed for operation of a motor vehicle upon the highways of the state. In Area Interstate Trucking, Inc. et. al v. Dept’of Revenue, 605 N.E.2d 272, (Ind. Tax Ct. 1992), the court considered the issue whether an Indiana toll road is a “highway” as defined by IC 6-6-4.1-1(f). The definition of highway says: “Highway means the entire width between the boundary lines of every publicly maintained way that is open in any part to the use of the public for purposes of vehicular travel.” See IC 6-6-4.1-1(f) (internal quotations omitted).

Therefore, if the toll road were not a highway, the department would not be able to impose and collect Motor Fuel Tax for the miles the trucking companies operated on the toll roads. The trucking companies argued that the toll road was not open and, therefore, not a highway for purposes of the Motor Fuel Tax. However, the Tax Court disagreed. While the court said that statues are to be strictly construed, they are not to be selectively read. The court said that the legislature intended to distinguish between private and public roads, not toll and non-toll roads. Id. at 274.

The trucking companies then argued that statutory schemes for the management and funding of Indiana’s roads
provide evidence that the legislature did not intend for the motor carrier fuel tax to apply to the consumption of fuel used on the toll roads. Id. at 275 The statutory schemes referred to included the ability of the Transportation Finance Authority and the Indiana Department of Transportation may, with the governors approval may determine that any state highway should become a toll road. The Tax Court, again, disagreed with the trucking companies and said that although the statute distinguishes between highways and toll roads, it did not foreclose the idea that a toll road could also be a highway. Moreover, the court, as well as the trucking companies, recognized that the revenues collected from tolls and the Motor Fuel Tax are used to fund different areas. Id.

The court in Area Interstate Trucking, Inc. then addressed the issue whether the imposition of the Motor Fuel Tax upon operators on toll roads was constitutional. The trucking companies argued that taxing their fuel consumption on the toll roads violated their due process and equal protection rights under the United States and Indiana Constitutions. The court used a rational basis test because this did not involve a fundamental right or a suspect class. The operators argued that they were similarly situated to consumers of fuel for auxiliary equipment, vehicles operated exclusively on private roads, and vehicles operated out-of-state because the toll road is not supported by the tax. Id. at 277. The operator’s argument was based on the premise that the Motor Fuel Tax’s purpose was to support the toll road. Id.

However, the court did not agree with the operators. The court reasoned that the legislature may make classifications for taxes and since there was a rational relation to the classification to the tax the tax was constitutional. The rational relationship was the degree of wear and tear the different types of vehicle caused to the toll road. Id. at 278.

The constitutionality of imposing Motor Carrier Fuel Tax on carriers operating on Indiana toll roads was again challenged in M.X. Express, Co. v. Dep’t of Revenue, 758 N.E.2d 597 (Ind. Tax Ct. 2001). However, unlike Area Interstate Trucking Inc., which argued that taxation on toll roads violated its due process and equal protection rights as discussed above, M.X. Express argued that the Motor Carrier Fuel Tax violates the Commerce Clause of the United States constitution because the tax was not fairly related to the services of the state. This claim was based upon the fact that none of the revenue collected from the Motor Carrier Fuel Tax is used to maintain the toll roads of Indiana. Id. at 600-01.

For a state tax statute will not be in violation of the Commerce Clause if it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is “fairly related” to the services provided by the state. Id. at 601. Therefore, M.X. Express argued that the motor carrier fuel tax violated the forth prong of this test.

The standard with which the forth prong is measured depended upon whether the court categorized the tax as a tax or as a user fee. A tax is compulsory and entitles the taxpayer to receive nothing in return, other than the rights of government, which are enjoyed by all citizens alike. However, a user fee is an optional specific charge for the use of publicly owned or provided facilities or services that afford a particular benefit to the payer. M.X. Express argued that the motor carrier fuel tax was a user fee charged for using Indiana highways. However, the court disagreed because the motor carrier fuel tax was mandatory and M.X. Express received no benefit in particular to itself. Id. at 602.

Therefore, since the motor carrier fuel tax is a tax and not a user fee, the term “fairly related” only requires that the tax be in some fair proportion to the claimant’s activity with the state. The fair proportion was measured in the percent of the carrier’s fuel consumed on Indiana highways. Therefore, since M.X. Express received general government protections in connection with its activities on the toll roads, the motor carrier fuel tax did not violate the Commerce Clause. Id.

Another Tax Court case, Roehl Transport, Inc. v. Dep’t of Revenue, addressed the meaning of on Indiana highways versus off Indiana highways for the purpose of imposing the Motor Carrier Fuel Tax. 653 N.E.2d 539 (1995). Specifically, the carrier, Roehl Transport, argued that it should not be subject to the Motor Carrier Fuel Tax for the fuel that was consumed while in Indiana but off Indiana highways because the statute said that the Motor Carrier Fuel Tax is imposed on a carrier “in its operations on highways in Indiana. Id. at 542. See IC 6-6-4.1-4 and IC 6-6-4.1-4.5.

Roehl had installed computer monitors on the engines of its vehicles that monitored the time that the vehicle was idling for periods of eight minutes or longer. Any time that the vehicle moved the slightest, the counter started
over. Therefore, Roehl said, the idling time in a traffic jam or stop light would not count in the off highway idling time the computers monitored. However, when the department audited Roehl, the department found that Roehl erred in excluding the fuel consumed while idling for periods of eight minutes or longer. Id. at 541.

Thus, the issues presented to the Tax Court on appeal was whether a motor carrier is liable for tax on fuel consumed while its vehicles idle off the highway, and also, the constitutionality of the tax formula in the context of the Commerce Clause and the Equal Protection Clause. Id. at 540.

First, Roehl argued that the language of the statute stated unambiguously that the tax is imposed on fuel consumed on Indiana highways only, and therefore, fuel consumed off the highway is not taxable. The relevant part of the statute reads in subsection (b) of both Indiana Code 6-6-4.1-4 and 6-6-4.1-4.5 as follows: “The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator or the fraction is the total number of miles traveled on highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without of Indiana.” The court answered Roehl’s first argument by saying that the formula above to calculate the tax defines and includes “on highways in Indiana” as the total amount of fuel consumed in a carrier’s entire operations regardless of where and in what manner the fuel was consumed. Id. at 542.

Next, Roehl argued that the department’s regulations support the position that fuel consumed off the highway is not to be included in the calculation of Motor Carrier Fuel Tax liability. Specifically, Roehl pointed to the regulation that said the department is to presume all fuel is consumed solely for propelling the vehicle along the highways. See 45 IAC 1-4-4. Therefore, Roehl argued, based upon the generally accepted standard that presumptions may be overcome with satisfactory evidence, the department created the inference that the presumption may be overcome and Roehl could prove that the fuel was not consumed on the highways in Indiana. To overcome that presumption, Roehl pointed to regulation 45 IAC 13-4-7, which established the proportional use exemptions for thirty-four vehicles specifically and the catchall section of that regulation that stated that vehicles that were not specifically listed but which consumed fuel for purposes other than locomotion on a public highway were eligible for the credit. Id. at 543. However, the court did not accept this argument.

The court’s reason for rejecting Roehl’s argument regarding the presumption was based upon legislative intent. The purpose of regulations are to implement the statute; however, the department cannot “enlarge or vary by its rules and regulations the power conferred upon it by the legislature or create a rule out of harmony with the statute.” Id. at 544. The statute in this case created a proportional use credit for vehicles that ran auxiliary equipment from the same fuel that propelled the vehicle on the highways. The purpose of the regulations was to delineate the amount of such credit for different types of vehicles. The statute did not give the department authority to grant proportional use credits for idling time, even if it the idling time was for running the heat or air conditioning. The statute only allowed the department to grant credits for vehicles that operated auxiliary equipment sharing a fuel reservoir with the propulsion engine. Therefore, the court held, since the tax calculation formula included all fuel regardless of where it was consumed and the legislature did not provide an exemption for idling time, that Roehl was not entitled to take an exemption for fuel consumed while idling for periods of longer than eight minutes. Id.

Roehl’s next two claims were attempts to have the statute declared unconstitutional under the Commerce Clause and the Equal Protection Clause. First, Roehl argues that the motor fuel tax is not fairly apportioned and therefore violates the Commerce Clause of the United States Constitution. Id. at 545. “A statute will withstand a challenge under the Commerce Clause if the tax [1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the state.” Id. (citing Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977) (internal quotations omitted).

Roehl claims the tax is unfairly apportioned because the computation formula does not calculate its “true” miles per gallon. Recall the formula is the total gallons of fuel consumed in operations multiplied by a fraction, the numerator of is the total number of miles travelled in Indiana and the numerator is the total miles traveled without and within Indiana. Roehl argued that because department requiring it to include off highway consumed fuel in the formula its miles per gallon ratio went down. Therefore, since the mile per gallon ratio was reduced the number of gallons consumed in Indiana would be perceived higher than reality. Id. at 545.

For example, had Roehl consumed 10,000 gallons of fuel in a year and 500 were consumed during idling times the
amount of fuel consumed would change depending upon how the department calculated the tax. If a truck drove 65,000 miles in a year, 25,000 of which were in Indiana, the tax would be as follows for first the department’s computation and then for Roehl’s proposed computation: 10,000 * (25,000/65,000) = 3846 gallons consumed in Indiana; however Roehl would calculate as follows: 9,500 * (25,000/65,000) = 3653 gallons consumed in Indiana. The difference in these is 203 gallons.

However, the court held that the tax computation formula did not violate the Commerce Clause. The court reasoned that the statute did not discriminate against interstate commerce and Roehl did not prove the formula did not reflect a fair approximation of the use of Indiana’s highways. Id. at 545-46.

Roehl’s last argument was that it was denied equal protection. Specifically, Roehl claimed that it was similarly situated to vehicles that received auxiliary equipment credits but it did not receive the same tax treatment. However, the court said Roehl was again wrong. Roehl was not denied auxiliary equipment credits and Roehl was not singled out and tax differently than other carriers. Id. at 547. Therefore, all of Roehl’s claims failed.

Exempt Vehicles

There are several types of vehicles whose operators are exempt from paying the Motor Fuel Tax. The first category of exempt organizations is political organizations including any vehicle operated by: (1) the state of Indiana, (2) a political subdivision of Indiana, (3) the United States, or (4) an agency of states and the United States. The second group of vehicles is school buses operated by, for, or on the behalf of a state, political subdivision, or a private school. Other exempt buses are those used in casual or charter operations or an intercity bus. The third category of exempt vehicles is qualified farm vehicles including any truck, trailer, or semitrailer and tractor that are used as farm vehicles and registered by the bureau of motor vehicles or under a similar law of another state. The fourth category of exempt vehicles are those displaying a dealer registration plate. The last category of exempt vehicles are recreational vehicles. See IC 6-6-4.1-2.

Leased Motor Vehicles

Normally the lessee carrier of a commercial motor vehicle is the party who is liable for the Motor Fuel Tax. However, the department may consider the lessor of a commercial motor vehicle to the a carrier with respect to the operation of the vehicles it leases to others if the lessor supplies or pays for the motor fuel consumed by the vehicles or makes rental or other charges calculated to include the cost of the motor fuel consumed by the vehicles. If a lessee operates motor vehicles that are subject to the motor fuel tax and also leases vehicles that are determined to be attributable to the lessor for motor fuel tax purposes, the lessee does not have to include the leased vehicles in its quarterly reports. However, if the lessor or lessee who is determined to be liable for the motor fuel tax fails to pay the tax liability, in whole or party, the other party is jointly and severally liable for the tax to the extent the tax liability has not been paid plus any applicable costs and penalties. See IC 6-6-4.1-3.

However, if the motor vehicle is leased to the same person for two or more consecutive leases the above rules do not apply. In that case the lessee will be the carrier that is liable for the motor fuel tax and any quarterly reporting. Also, if the vehicle is leased for less than thirty (30) days, the holder of the annual permit is liable for the motor fuel tax. See IC 6-6-4.1-3.

Quarterly Reporting

Each carrier subject to the Motor Fuel Tax must submit quarterly reports to the department of the operations of commercial motor vehicles giving rise to the carrier’s tax liability. The quarterly reports are due on or before the last day of the month immediately following the quarter. See IC 6-6-4.1-10. For example, for the quarter beginning January 1st and ending March 31st the quarterly report would be due on or before April 30th.

The department may exempt a carrier from quarterly reporting if the carrier submits an annual affidavit attesting that: (1) all or substantially all to the mileage of the carrier in the previous calendar year was the result of operations in Indiana, (2) all or substantially all of the motor fuel used in the operations of the carrier in the previous calendar year was purchased in Indiana, or (3) the carrier is from a state that has a reciprocity agreement with Indiana relating to Motor Fuel Taxes. However, the department may only grant such an reporting exemption to a carrier if the exemption will not adversely affect the enforcement of the Motor Fuel Tax and the carriers that apply for the exemption purchase an equitable amount of motor fuel in Indiana. See IC 6-6-4.1-10.

Also, another exception to quarterly filing by each carrier is joint reporting. In lieu of filing individual quarterly reports, two or more carriers regularly engaged in the transportation of passengers on through buses and
through tickets in polled service may make joint reports of their operations in Indiana. If the carriers decide to report jointly, they must include all carriers engaged in the pooled operations with them in Indiana to join them in filing joint reports. The tax is calculated as if the carriers reporting jointly are one carrier and the carriers are jointly and severally liable for the tax. The joint reports must list the total number of miles traveled in Indiana and the total number of gallons of motor fuel purchased in Indiana. Unless the carriers filing jointly prove otherwise, there is a presumption that the average miles per gallon consumed is six (6) miles per gallon and the tax will be calculated accordingly. Credits or refunds to which the carriers making joint return are entitled are not allowed as credits or refunds to any other carrier. See IC 6-6-4.1-11.

Surety Bond, Letter of Credit, and Cash Deposit

In order to ensure that the motor fuel tax is paid and to permit the department to make a refund to the carrier, the department may request upon a finding of cause that a carrier furnish a surety bond, letter of credit, or cash deposit. The department has cause for requiring security from a carrier if: (1) a carrier fails to file timely reports, (2) a carrier fails to remit the motor fuel tax, or (3) an audit of a carrier’s operations causes the department to reasonably believe that tax collection is in jeopardy. See IC 6-6-4.1-8.

The surety bond, letter of credit, or cash deposit must be: (1) in an amount of at least two times the amount of tax due or refund requested, (2) payable to the state, (3) conditioned that the carrier will pay all motor fuel taxes for which the carrier is or becomes liable from the date of the bond, letter of credit, or cash deposit to thirty (30) days after the carrier, the surety, or financial institution notifies the department that the bond, letter of credit, or cash deposit has been cancelled, and (4) executed by a surety authorized under Indiana law in the case of a bond or by a financial institution approved by the commissioner in the case of a letter of credit. See IC 6-6-4.1-8.

A surety of a bond may be released from liability upon written request and a waiting period of sixty (60) days from such request. The liability ends after the expiration of the sixty (60) days; however, the surety remains liable until the date of release. The same is true for a financial institution seeking release of a letter of credit. However, the waiting period is one hundred eighty (180) days. If the surety or financial institution seeks release of the bond or letter of credit the notify the carrier. Upon such notification the carrier has sixty (60) and one hundred and eighty (180) days respectively to obtain a new bond or letter of credit. If the carrier does not obtain a new bond or letter of credit, the commissioner will cancel the carrier’s annual permit. See IC 6-6-4.1-8.

Again, as with the bond and letter of credit, the moment of actual release and written request requirement are the same for the carrier’s cash deposit. The waiting period for actual release of the cash deposit is sixty (60) days. However, unlike the bond or letter of credit, the commissioner may retain all or part of the cash deposit for up to three (3) years and one (1) day as security for any obligation accruing before the effective date of the cancellation. If a carrier seeks release of a cash deposit, the carrier must provide a bond or letter of credit before the expiration of the sixty (60) day period or the commission will cancel the carrier’s annual permit. See IC 6-6-4.1-8.

Annual Permit, Cab Card, and Emblem

A carrier may not operate a commercial motor vehicle upon the highways in Indiana unless the carrier has been issued an annual permit, cab card, and emblem. A carrier may obtain an annual permit, cab card, and emblem by completing an application and paying to the department an annual permit fee of twenty-five dollars ($25). The annual permit, cab card, and emblem are effective from January 1st through December 31st. However, the department may extend the effective date of each for a maximum of sixty (60) days. Even though the annual permit, cab card and emblem are distributed to a carrier; the items remain the property of the state and may be revoked for any violation of the Motor Fuel Tax. See IC 6-6-4.1-12.

The cab card and emblem must be displayed, in and on respectively, each commercial motor vehicle while the carrier is operating the vehicle in the state. This display is evidence of compliance with the licensing. Also, the carrier must retain the original annual permit at the address shown on the annual permit. During December the carrier must display the current years cab card and emblem as well as the cab card and emblem for the ensuing year. However, if the department grants an extension, recall the department may grant a maximum sixty (60) day extension, the carrier must continue to display the cab card and emblem upon which the extension was granted. If more than one carrier operates a commercial motor vehicle, each carrier must display in the vehicle a reproduced copy of the carrier’s annual permit.

If a person fails to display an emblem on a commercial motor vehicle and who does not have proof of a valid annual
permit while operating a vehicle on a highway in the state commits a Class C infraction. Further, each day of operation without an emblem constitutes a separate infraction and the fine of one hundred dollars ($100) shall be imposed for each such infraction. See IC 6-6-4.1-12. Also, if a person displays an altered, false, or fictitious cab card, does not have proof in the vehicle that an annual permit has been obtained, and operates that vehicle on an Indiana highway commits a Class C infraction. See IC 6-6-4.1-12.

PERMITS

Trip Permit

A carrier may in lieu of paying the Motor Fuel Tax obtain a trip permit authorizing the carrier to operate the commercial motor vehicle for a period of five (5) consecutive days. The fee for a trip permit is fifty dollars ($50). The carrier obtaining a trip permit is not required to file the quarterly reports as discussed above. See IC 6-6-4.1-13.

Temporary Written Authorization

The department may issue a temporary written authorization if unforeseen or uncertain circumstances require operation by a carrier of a commercial motor vehicle for which neither a trip permit not an annual permit has been obtained. A temporary authorization may be issued only if the department finds that undue hardship would result if operation under a temporary authorization were prohibited. A carrier who receives a temporary authorization must pay the trip permit fee, recall that fee is fifty dollars ($50) or subsequently apply for and obtain an annual permit.

International Fuel Tax Agreement

A carrier may obtain an annual International Fuel Tax Agreement (IFTA) repair and maintenance permit to travel from another state into Indiana to repair or maintain any of the carrier’s motor vehicles, semitrailers or trailers and return to the same state after the repair or maintenance is completed. Instead of paying the quarterly motor fuel tax, a carrier may pay an annual IFTA fee of forty dollars ($40) and receive an IFTA permit. The IFTA permit applies to all motor vehicles operated by the carrier. However, the IFTA permit is not transferable to another carrier. Also, a carrier operating a motor vehicle for the purposes an IFTA permit is issued, which is to travel into Indiana to repair and maintain the carrier’s motor vehicles, semitrailers, and trailers, may not carry cargo or passengers. However, this permit applies to all motor vehicles operated by the carrier. Again, as with the trip permit and temporary authorization, the carrier obtaining an IFTA permit is not required to file quarterly reports. See IC 6-6-4.1-13.

“The IFTA is a multi-jurisdictional agreement that is intended to “encourage cooperation in the administration and collection of motor fuel use tax.”” Hi-Way Dispatch, Inc. 756 N.E.2d at 594. The IFTA “enables carriers to file a consolidated tax return in one state for all of their operations. Upon collection, this “base state” distributes the revenue to the other states in which the carriers operate. . . . The policy behind IFTA is to encourage cooperation in the administration and collection of motor fuel use tax. Indiana became an member to the agreement in 1990, and subsequently Congress passed the Intermodal Surface Transportation Efficiency Act, which requires states to conform with IFTA.” See 42 U.S.C. § 31705 (1997). Owner-Operator Independent Drivers Assoc. v. State of Indiana, 725 N.E.2d 891, 892 (Ct. App. Ind. 2000).

Case on the relationship between IFTA and Indiana Motor Carrier Fuel Tax Statute. Another carrier attempted to challenge the department’s taxation of fuel consumed while idling, the portion of the Indiana Motor Carrier Fuel Tax statute with IFTA provisions, and the constitutionality of the Motor Carrier Fuel Tax in Hi-Way Dispatch, Inc. v. Dep’t of Revenue, 756 N.E.2d 587 (Ind. Tax Ct. 2001). In that case the department audited the carrier, Hi-Way, and the department found that Hi-Way had wrongly deducted fuel consumed during idle time from its taxable fuel consumption.

First, the department argued that idle time must be included as part of a carrier’s fuel consumed figure for the purpose of determining its motor carrier fuel tax liability because Indiana Code 6-6-4.1-4 does not allow removal of idle time form the tax liability computation. Id. at 596. However, the carrier argued that the IFTA defined the taxable event as the “consumption of motor fuels used in the propulsion f qualified motor vehicles” and, therefore, since Indiana Code 6-8.1-3-14(d) says that the IFTA provisions prevail over the Indiana Code, Indiana cannot tax fuel consumed during idle time. Id. at 595-96. The court did not agree with the carrier.

The Tax Court said it viewed the IFTA language on taxable event based on the relationship between the IFTA and member state fuel tax statute. What that meant was that the IFTA only governs how the jurisdictions administer and collect taxes and the member jurisdictions determine the scope of their road taxes. This, the court said, was
evidenced by the fact that the IFTA does not impose tax or grant exemptions. Therefore, it was up to Indiana to determine the scope of fuel consumption taxation. Id. at 597. Therefore, based upon Roehl Transport, Inc., 653 N.E.2d at 544, which held that fuel consumed during idle time is to be included in the formula for purposes of calculating motor carrier fuel tax liability, Hi-Way was liable for fuel consumed while idling off Indiana highways. Id. at 596-97.

Hi-Way’s next argument was that the IFTA demanded Hi-Way be granted a full credit for tax-paid fuel for the fuel it purchased in Indiana by consumed in a non-IFTA jurisdiction. Hi-Way contended that it should get the tax-paid credit for either of two reasons. First, Hi-Way argued that an IFTA credit provision trumped the Indiana Statute’s credit provision. Indiana Code 6-6-4.1-6(a)(3) says, “(a) A carrier is entitled to a credit against the tax imposed under section 4 of this chapter if the carrier . . . (3) paid a gasoline, special fuel, or road tax with respect to the fuel in one (1) or more other states or jurisdictions.” However, IFTA Article XIII(A) states that a “licensee shall receive full credit or refund for tax-paid fuel used outside the jurisdiction where the fuel was purchased.” Therefore, Hi-Way argued that because the IFTA provision does not give the state authority to require proof that a tax has been paid, there is a conflict with IC 6-6-4.1-6(a)(3). Id. at 601-02. Recall that Indiana Code 6-8.1-3-14 said if the IFTA and Indiana Code conflict the IFTA would prevail.

However, the court did not agree with Hi-Way. The IFTA is replete with references to “member jurisdictions.” Specifically, the court noted, IFTA Article XIII(A) stated that the “base jurisdiction shall allow credits and issue refunds for all of its licensees on behalf of member jurisdictions.” Id. Therefore, based upon the references to “member jurisdictions,” the held that IFTA required that licensees receive full credits or refunds where the fuel was purchased in another member jurisdiction. Id.

Next, Hi-Way contended that it should get the tax-paid credit because Indiana Code 6-6-4.1-6(a)(3) violated the Commerce Clause of the United States Constitution. Hi-Way’s challenge alleged that the Indiana statute violated the dormant implication of the Commerce Clause, which prohibits taxation by a state in a manner that discriminates against or unduly burdens interstate commerce. Id. A state tax statute “will survive a Commerce Clause challenge if the tax (1) is imposed on an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce in favor or local commerce, and (4) is fairly related to services the state provides.” Id. at 604

Hi-Way argues that the Indiana statute violates both the fair apportionment and discrimination prongs of the above test. First, Hi-Way argued that IC 6-6-4.1-6(a)(3) violated the fairly apportioned prong because it applies only to the out-of-state activities of an interstate carrier. Therefore, Hi-Way argues, the denial of the tax-paid credit requires it to pay additional tax on fuel used outside of Indiana. Id. To determine if a tax statute is fairly apportioned, courts will ask whether the statute is internally and externally consistent. Id. Here, however, Hi-Way only asserted that the statute was only externally inconsistent. External consistency, the Tax Court said, looks to the “economic justification for the State’s claim upon the value taxed, to discover whether a State’s tax reaches beyond that portion of vale that is fairly attributable to economic activity within the taxing State.” Id. Specifically, Hi-Way argued that the taxed event, out of state fuel use, bore no relation to the taxpayer’s activity in Indiana. Id.

The Tax Court disagreed with Hi-Way. The court reasoned that the taxed event was not out of state fuel use. Rather, the taxed event is the consumption of fuel upon Indiana’s highways. Also, if Hi-Way were allowed the tax-paid credit without substantiating the right to it, the effect would be to thwart the attempt of the Indiana Statute to prevent double taxation and, rather, to cause Indiana to receive less road tax revenue than it was entitled. Id. Therefore, the court held that the statute was not externally inconsistent; therefore, IC 6-6-4.1-6(a)(3) did not violate the fair apportionment requirement. Id.

Next, Hi-Way argued that IC 6-6-4.1-6(a)(3) violated the third prong to the Commerce Clause test, which was that the tax statute discriminated against interstate commerce. Hi-Way argues that the discrimination is that the intrastate carriers are afforded a credit without substantiating the credit while out-of-state carriers only received the credit upon substantiation of the credit. Id. at 604. That is, intrastate carriers exclude the portion of fuel on which it paid the pump tax (gas or special fuel tax) from its road tax computation. Interstate carriers who pay the Indiana pump tax but consumed the fuel outside of Indiana, however, must substantiate that it paid a corresponding tax in the other jurisdiction. Id. However, the court again disagreed with Hi-Way. In the above example, the intrastate carrier was not granted the same credit as Hi-Way and, also, if the intrastate carrier traveled interstate it too would have to
substantiate that a corresponding out of state tax was paid. Id. Therefore, the court held, interstate and intrastate carriers were treated and same and consequently the statute did not discriminate against interstate commerce. Id. at 604-05.

International Registration Plan

A carrier may obtain an annual International Registration Plan (IRP) repair and maintenance permit to travel from another state into Indiana to repair or maintain any of the carrier’s motor vehicles, semitrailers, or trailers and return to the same state after the repair or maintenance is complete. The fee for this permit is forty dollars ($40). As with the IFTA permit, a carrier obtaining an IRP permit is not permitted to carry cargo or passengers or transfer an IRP permit to another carrier. However, this permit applies to all motor vehicles operated by the carrier. The department is to deposit the revenues collected from the annual IFTA and IRP permits in the motor carrier regulation fund. See IC 6-6-4.1-13

Repair, Maintenance, and Relocation Permit

In lieu of paying the motor fuel tax, a carrier may obtain a repair, maintenance, and relocation permit to move a yard tractor from a terminal, loading, or spotting facility to a maintenance or repair facility or another terminal, loading, or repair facility and return the yard tractor to its place of origin. The fee forty dollars ($40) for the permit, the permit is nontransferable, the carrier holding the permit may not carry passengers, cargo or draw a semitrailer or other vehicle under the permit. This permit applies to all yard tractors operated by the carrier; however, each yard tractor operated on the highways of Indiana must display a qualified license plate issued under Indiana Code. See IC 6-6-4.1-13

Suspension or Revocation of Permits and Impounding of Motor Vehicle

Upon the happening of certain events, the commissioner may suspend a carrier’s permit. If a carrier: (1) fails to file a quarterly report, (2) fails to pay the consumption or surcharge tax imposed by the motor fuel tax, (3) files a report untimely, (4) with respect to a listed tax, which is defined in IC 6-8.1-1-1, fails to file all tax returns or information reports or pay all taxes penalties, and interest; the commissioner may suspend or revoke any annual permit, trip permit, temporary authorization, or repair and maintenance permit. Once the carrier files all required returns and reports and pays all outstanding liabilities the commissioner may reinstate a permit or temporary authorization. See IC 6-6-4.1-17.

The department or state police may impound a carrier’s motor vehicle if: (1) the carrier has not obtained an annual permit, a trip permit, a temporary authorization, or a repair and maintenance permit and the vehicle is operating on an Indiana highway, (2) there is not an emblem displayed on the vehicle, the driver does not have proof in the vehicle that the annual permit has been obtained, and the vehicle is operating on an Indiana highway, or (3) the cab card is altered, false, or fictitious, the driver does not have proof in the vehicle that the annual permit has been obtained, and the vehicle is operating on an Indiana highway. See IC 6-6-4.1-19

To obtain possession of a vehicle that was impounded, the carrier must first obtain an annual permit, trip permit, temporary authorization, or repair and maintenance permit, a cab card, and an emblem for the vehicle. However, any cargo may be released before the vehicle is released if such cargo is loaded into another commercial motor vehicle that is in compliance with the motor fuel tax requirements. See IC 6-6-4.1-19

Credits

The proportional use credit. Carriers are entitled to a proportional use credit against the tax for that portion of motor fuel used to propel equipment mounted on a motor vehicle having a common reservoir with the engine that propels the vehicle on the highway. See IC 6-6-4.1-4 and IC 6-6-4.1-4.5. In order to get this credit the carrier must do the following: (1) file with the department to become certified to claim the credit, (2) file a claim with the department for the taxable quarter during which the credit is claimed, and (3) pay the full taxes to which the credit applies. See IC 6-6-4.1-4.8.

The application the carrier must file to become certified for the credit has the following requirements: (1) upon the forms prescribed by the department (What form Stu see website????), (2) be signed by the carrier, (3) list the carrier’s federal Social Security number of federal tax identification number, (4) list the address of the carriers principal place of business, (5) describe each of the carrier’s vehicles that has a common fuel supply reservoir for both locomotion on a public highway and a commercial purpose, (6) list the vehicle identification number for each vehicle described, and (7) pay a one time fee of seven dollars ($7). Also, the carrier must notify the department of
any address changes within ten (10) days of a change of address. The department may not issue, revoke, or suspend the certification to file for the credit if the carrier does not comply with these requirements. Also, the certificate to file for the credit is not transferable. See IC 6-6-4.1-4.7.

However, even if the carrier complies with the requirements listed above for the application and filing, the carrier may not receive a credit if the department has exceeded the allowable dollar limits on refunding credits. The department may not approve more than three million five hundred thousand dollars ($3,500,000) of proportional use credits in a state fiscal year. Also, the department has quarter dollar limits on refunds. For the quarter ending March 31 the department may not refund more than six hundred twenty-five thousand dollars ($625,000) plus the greater of zero or the result of the limit determined for the previous quarter, which is also $625,000, minus the aggregate amount of claims approved for the previous quarter. See IC 6-6-4.1-4.8. Effectively this is a limit for the quarter plus the excess that was not distributed in the previous quarter. For example, if the department did not distribute $100,000 of the $625,000 for the quarter ending December 31, the department would be allowed to distribute $725,000 for the quarter ending March 31.

Further, each of the quarter has a dollar limit on proportional use credit refunds, as does the quarter ending March 31. For the quarter ending June 30, the limit is eight hundred seventy-five thousand dollars ($875,000). Then for the quarters ending September 30 the limit is one million three hundred seventy-five thousand dollars ($1,375,000) and the limit for the period ending December 31 is six hundred twenty-five thousand dollars ($625,000). Also, for each quarter the excess from the previous quarter may be added to the limit that department is authorized to distribute. See IC 6-6-4.1-4.8. Distribution of the excess is discussed above.

Under the department’s regulations to implement the proportional use credit, the department allows different percentages of credit depending on the type of vehicle. In 1993, the regulations provided for a twenty-four percent (24%) credit for tank trucks having a common fuel reservoir for both locomotion on the highway and the operation of pumping equipment. See 45 IAC 13-4-7. For example in Bulkmatic Transport Co. v. Dep’t of Revenue, 629 N.E.2d 955 (Ind. Tax Ct. 1994), overruled, 648 N.E.2d 1156 (Ind. 1995), the department audited Bulkmatic Transport Company and assessed tax and penalty for taking the twenty four percent (24%) credit for its pneumatic, tractor trailer combination trucks for the period of 1987-1989. The department said that Bulkmatic’s vehicles were properly classified as “other motor vehicles” under the regulation and, therefore, only allowed a percentage credit as determined by the department. The department said that Bulkmatic was entitled to a fifteen percent (15%) credit. Also, the department held that the proportional use credit only applied to the motor fuel tax and not the additional surcharge tax under the motor fuel tax. Bulkmatic Transport Co. v. Dep’t of Revenue, 629 N.E.2d 955 (Ind. Tax Ct. 1994), overruled, 648 N.E.2d 1156 (Ind. 1995).

Therefore, the issues the Tax Court addressed was whether Bulkmatic’s pneumatic, tractor/trailer combinations qualified under the regulation as a “tank truck” and therefore entitled to the twenty-four percent (24%) credit. The other issue then was whether the credit applied to both portions of the Motor Fuel Tax, the consumption portion as well as the surcharge portion of the tax. Id. at 957-58.

The Tax Court ruled in favor of Bulkmatic in both instances. The court held, while relying upon an affidavit of the president of a tank truck company saying the meaning of “tank trucks” includes both single unit configuration and tractor/trailer combinations, that the term “tank truck” was broad enough to include Bulkmatics vehicles. Id.

However, the Supreme Court of Indiana overruled the Tax Court. Dep’t of Revenue v. Bulkmatic Transport Co., 648 N.E.2d 1156 (1995). The Supreme Court gave heed to the historical interpretation which illustrated that the department, in clarifying the regulations in 1991 to state specifically that tractor/trailer combinations would be considered “other motor vehicles” and therefore subject to a percentage credit as determined by the department, did not take the tractor/trailer combinations out of the twenty four percent credit. Rather, the court said that the department’s regulations made clear the historical application of the regulations to tractor/trailer combinations. Id. at 1159. Therefore, the court held that the department properly included Bulkmatic’s vehicles in the “other motor vehicles” category. Also, the court concluded that the department did not have authority to extend the credit to the surcharge portion of the tax to Bulkmatic’s vehicles even if the regulations allowed because such an allowance would exceed the statutory authority, which at the time only allowed a credit of the surcharge tax to concrete trucks. Id. at 1160. However, note that now IC 6-6-4.1-4.5(d) allows a proportional use credit to the same extent as the consumption portion of the tax. See and Compare IC 6-6-4.1-4(d) and IC 6-6-4.1-4.5(d).
Another case involving Bulkmatic Transport Company challenged the constitutionality of the proportional use credit under an earlier wording of the IC 6-6-4.1-4(d) and 6-6-4.1-4.5(d). Bulkmatic Transport Co v. Dep’t of Revenue, 691 N.E.2d 1371 (Ind. Tax Ct. 1998) (Bulkmatic II). At the time of that case, the subsection of the statute in question read in part as follows: “[T]he tax imposed under this section does not apply to that portion of motor fuel used in Indiana to propel equipment mounted on a motor vehicle having a common reservoir for locomotion on the highway and the operation of the equipment, as determined by rule of the commissioner.” IC 6-6-4.1-4(d) and IC 6-6-4.1-4.5(d) (as amended 1991) (emphasis added). Before the 1991 amendment, the proportional use credit was available to any carrier using such equipment, which was power take off (PTO) driven, regardless of where the equipment was used. Id. at 1372. Therefore, Bulkmatic argued that the statute, as amended in 1991, violated the Commerce Clause of the United States Constitution when the credit was limited the availability of the credit use of PTO equipment in Indiana. Bulkmatic Transport Co., 691 N.E.2d at 1372.

To calculate a carrier’s Motor Fuel Tax liability, the fuel used to operate PTO equipment regardless of whether it was consumed in-state or out-of-state is included in the computation. However, only those carriers who operate its PTO in Indiana were eligible for the proportional use exemption. Therefore, Bulkmatic argued that the exemption creates an incentive for carriers to deliver products in Indiana because the carrier will pay less tax for the delivery due to the exemption. As a result more deliveries will be made to Indiana and away from out-of-state competitors and, therefore, this scheme violates the Commerce Clause. Id. at 1374.

The oft cited dormant commerce clause test found Complete Auto Transit, Inc v. Brady, 430 U.S. 274 (1997), is cited here by the Tax Court. According to that test, a state tax statute will be upheld against a Commerce Clause challenge when “the tax [1] is applied to an activity with a substantial nexus with the taxing State, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the state.” Bulkmatic Transport Co., 691 N.E.2d at 1375. Here, however, Bulkmatic only alleges that IC 6-6-4.1-4(d) and IC 6-6-4.1-4.5(d) is not fairly apportioned and that it discriminates against interstate commerce. That is, Bulkmatic argued that the proportional use exemption violated the second and third prong of the Complete Auto test. Id.

First, Bulkmatic argues that the “in Indiana” exemption “skews the notion of fair apportionment because the exemption is dependent upon where the presumptive fuel consumption occurs.” Id. However, due to the unsupported generality of this claim, the court said it was not fit for summary judgment because the court would not make the claimants case for them. Id.

However, Bulkmatic’s second claim, that the statute discriminated against interstate commerce, was fit for decision. The department made three arguments rebutting the allegation that the statute discriminated against interstate commerce. First, the department argued that the statute did not treat out-of-state companies more harshly than in-state companies. Secondly, the department argued that the exemption was given generously and, therefore, is not discriminatory. Lastly, the department argues that despite the fact that some carriers pay more tax than others, the Commerce Clause does not required exactness. Id.

The Supreme Court of the United States has defined discrimination in the context of the Commerce Clause as the “differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” Id. at 1376 (citing Oregon Waste Sys., Inc. v. Dep’t of Envtl. Quality, 511 U.S. 93, 98 (1994)). According to the Tax Court, this test does not is not limited to taxing companies incorporated out-of-state more heavily than companies incorporated in-state. Rather, the in-state and out-of-state distinction also is the place at which the taxed event or transaction takes place. Id. Therefore, the department’s first argument must fail due to the false distinction regarding state of incorporation and fair treatment of in-state corporations versus out-of-state corporations.

Next, the department argued that the statute did not discriminate against interstate commerce because the department was very generous in granting the exemption. However, the court said regardless of whether the burden was great on interstate commerce, the court need not know how unequal the tax is before concluding it discriminates. Id. at 1379.

Finally, the department argued that the Commerce Clause did not require exactness. To support this contention, the department cited the Tax Court saying Indiana is not required to calculate fuel consumption on a “drop for drop, fume for fume basis.” Id. at 1379. The court answered this simply by acknowledging the statement and its application to the computation of tax but then asserted that the statement does not overcome the Supreme Court’s
However, despite the three failed arguments that the statute did not discriminate against interstate commerce, there was ample authority to support show otherwise. “The Supreme Court has specifically stated that it is unconstitutional to ‘tax[] a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the state.’” Id. at 1376 (citing Fulton Corp. v. Falkner, 116 S. Ct. 848, 854 (1996)). That is exactly what Indiana did. Indiana granted a different price for the use of its roads based upon the location of the use of PTO equipment. A simple case illustrates this unequal taxation. Two carriers drive the same amount of distance on Indiana highways and, therefore, have the same taxable event. However, one carrier operates PTO equipment in the state and is granted the exemption. Therefore, the carrier using the PTO equipment is liable for less tax. Despite the clarity of the inappositeness of the Indiana statute to the Fulton principle, the court considered analogous case law.

The first case the court considered was Camps Newfound/Owatonna v. Town of Harrison, the court considered a property tax exemptions. If a camp in Maine operated primarily for the benefit of nonresidents it could not qualify for the total exemption. In that case the court reasoned that the Maine exemption provided a strong incentive to avoid doing business with nonresidents of Maine and, therefore, discriminated against interstate commerce. The Tax Court said such considerations were present with the PTO exemption. The proportional use exemption provided a strong incentive for carriers to make deliveries using a PTO in Indiana. Id. at 1376-77. The court cited a commentator summarizing the exemption saying. “You are already subject to our taxing power because you have engaged in the taxable activity in this state. If you would like to reduce those burdens, you may do so by directing additional business activity to this state. Should you decline our invitation, we will continue to exert our taxing power over you as before . . .” Id.

The next case the court discussed was Boston Stock Exch. V. New York State Tax Comm’n, 429 U.S. 318 (1977). In that case New York imposed a tax on the sale of securities in or relating to the state. However, there were exemptions for certain transactions occurring in the state. Therefore, the out-of-state transactions were taxed more heavily. The motor carrier fuel tax exemption operates in the same manner. While the taxed event is the same, the in-state transactions were subject to a lower tax. Bulkmatic Transport, Co., 691 N.E.2d at 1378.

The last case the court cited also arose in New York. In Westinghouse Elec. Corp. v. Tully, 466 U.S. 388 (1984), a tax payer challenged a credit granted by New York. Congress had given tax incentives to Domestic International Sales Corporations (DISC) in order to increase U.S. exports. New York income taxed DISC income. However, New York gave a credit against the tax for the portion of the export business actually done from New York, which had the effect of encouraging DISC to operate more heavily in New York. The Supreme Court held the credit unconstitutional because it “foreclosed tax neutral decisions.” Id. at 406. The Tax Court then recognized that the exemption gained by using PTO equipment in Indiana had the same effect of foreclosing tax neutral decisions. Therefore, based upon those Supreme Court cases, the court held that the exemption granted in IC 6-6-4.1-4(d) and IC 6-6-4.1-4.5(d) unconstitutionally discriminated against interstate commerce. Id. at 1378.

In additional to the proportional use credit, under IC 6-6-4.1-6, a carrier is entitled to a credit imposed under Section 4, the consumption tax, if the carrier has: (1) paid the Gasoline Tax or Special Fuel Tax on motor fuel purchased in Indiana, (2) consumed the motor fuel outside of Indiana, and (3) paid a gasoline, special fuel, or road tax with respect to the fuel in one or more other states or jurisdictions. The amount of the credit is the amount of tax on the fuel that meets the above three qualifications. A credit earned by a carrier in a particular quarter shall be applied against the carrier’s tax liability under the Motor Fuel tax for that quarter before any credit carryover is applied against the liability under Section 7. See IC 6-6-4.1-6.

Section 7 allows the department to refund to a carrier any erroneously paid tax or penalty, or Section 6 credit that is in excess of the tax liability of the carrier under Section 4, the consumption tax. In order to receive this refund, the carrier must submit an application within three (3) years after the end of: (1) the quarter for which the credit accrued, or (2) the calendar year that contains the taxable period in which the tax or penalty was erroneously paid. The carrier must not have taken the erroneously paid tax or penalty, or Section 6 credit as a deduction against any tax due in a prior period. Effectively this is disallowing the carrier from taking a double benefit, that is, a deduction and a refund, from the erroneous payment or credit.

Also, the department may have to pay a carrier interest for a Section 7 refund of the Section 6 credit or erroneous payment under certain conditions. The statute enumerates when the department will be liable for interest
and the time period when the department will be liable to the carrier for interest on the refund. That is, the department will be liable to the carrier for interest if the refund is not made within ninety (90) days after the date on which all of the following have been completed: (1) the filing of the application for refund or the quarterly return on which a refund is claimed, (2) the submission of any evidence required by the department of the tax imposed under the Gasoline Tax or the Special Fuel Tax, (3) the submission of reports required by the department under the Motor Fuel Tax, and (4) the furnishing of a surety bond, letter of credit, or cash deposit under Section 8 of the Motor Fuel Tax. The time period which the department must pay interest is from either: (1) the date the refund application was filed or (2) the date the quarterly return was filed on which a refund was claimed until a date determined by the department that does not precede the date on which the refund is made by more than thirty (30) days. See IC 6-6-4.1-7.

Use of Revenues

Indiana Code 6-6-4.1-5 regulates the department’s use of the revenues collected from the Motor Fuel Tax. The department is to deposit the revenues collected under the consumption portion (§4) of the motor fuel tax and the fees carriers pay for obtaining an annual permit, cab card, and emblem of fines carriers pay for failing to display an emblem (§12) in the state highway fund. The portion of the motor fuel tax attributable to the surcharge tax (§4.5) is to be deposited as follows: (1) forty-five and one-half percent (45.5%) in the state highway fund, (2) forty-five and one-half percent (45.5%) in the motor vehicle highway account, and (3) nine percent (9%) in the motor carrier regulation fund administered by the department. The department must deposit the revenues collected from the fees paid for the trip permit, temporary authorizations, International Fuel Tax Agreement repair and maintenance permit, International Registration Plan repair and maintenance permit, and repair, maintenance, and relocation permit (§13) as follows: (1) thirty-five percent (35%) in the motor vehicle highway account, and (2) sixty-five percent (65%) in the state highway fund. See IC 6-6-4.1-5.

Reciprocity Agreements

The commissioner or reciprocity commission may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements from any other state or jurisdiction which all or part of the requirements of the Indiana Administrative Code are waived with respect to motor carriers that use Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. Any reciprocal agreement may be made only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to Indiana. See IC 6-6-4.1-14.

Also, the commissioner or reciprocity commission may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed under IC 6-6-4.1. Such requirements that would be exempted include the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. Any such agreement may be made only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana. See IC 6-6-4.1-14.

The department may enter into the International Fuel Tax Agreement or any other agreement for furnishing information to and receiving information from other states, jurisdictions, or the International Fuel Tax Agreement clearinghouse and the cooperative audit of the reports and returns of carriers with the appropriate authorities of any other state or jurisdiction that imposes a tax similar to the Motor Fuel Tax. See IC 6-6-4.1-16.

While the commissioner or the reciprocity commission may enter into the International Fuel Tax Agreement, there are limits to the allowable scope of such agreement. The International Fuel Tax Agreement may only be entered into for: (1) determining the base states for users, (2) specifying records requirements for users, (3) specifying audit procedures, (4) exchanging information, (5) defining persons eligible for tax licensing, (6) defining qualified motor vehicles, (7) determining if bonding is required, (8) specifying reporting requirements for establishing uniform penalties and interest rates for late reporting and determining methods for collecting and forwarding motor fuel taxes, special fuel taxes, and penalties to another state or jurisdiction, and (9) any other provisions designed to facilitate the administration of the agreement. See IC 6-6-4.1-14.5.

However, the International Fuel Tax Agreement does not limit the general assembly from: (1) determining whether to impose a tax, (2) determining tax rates, (3) defining tax exemptions or deductions, (4) determining what constitutes a taxable event that results in the imposition of the tax, or (5) determining any other matters related to the
other powers listed in (1) through (4). See IC 6-6-4.1-14.5.

Assessment, Penalties, and Interest

If the department believes that a person has not paid the proper amount of tax due, the department must make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is considered a tax payment not made by the due date, subject to interest charges (See IC 6-6-4.1-22 discussed below) and penalties (See IC 6-6-4.1-23 discussed below) and subject to penalties and interest under IC 6-8.1-10. See IC 6-6-4.1-24. Under IC 6-8.1-10 the penalties and interest are the same as that penalty for failing to keep books and records as discussed below.

Once the department has made such an assessment, it shall issue a notice and period for payment and protest. The notice of proposed assessment is prima facie evidence that the department’s claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests upon the person being assessed. If the person files a protest and requires a hearing on the protest, the department shall set the hearing and notify the person of the time, date and location of the hearing by U.S. mail. See IC 6-6-4.1-24.

If a person, who is subject to the motor fuel taxes, fails to keep books and records is subject to a penalty imposed under Indiana Code 6-8.1-10-4. See IC 6-6-4.1-20.

Also, if a person subject to the motor fuel tax fails to file a quarterly report will be subject to a civil penalty of three hundred dollars ($300) for each report that is not filed. See IC 6-6-4.1-21.

A person will also be subject to a penalty and interest thereon if a person: (1) fails to file a return for taxes on or by the due date for the return, (2) fails to pay the full amount of tax shown on the person’s return on or by the due date for the payment, or (3) incurs a deficiency that is due to negligence. The amount of the penalty and interest is calculated under the penalty and interest provisions of the International Fuel Tax Agreement entered into by the department with other states as discussed above. See IC 6-6-4.1-22 and IC 6-6-4.1-23.

The Tax Court addressed the taxpayer’s burden of proof when appealing an assessment made under the authority of Indiana Code 6-6-4.1-24 in Great American Lines, Inc. v. Dep’t of Revenue, 742 N.E.2d 53 (2000). In that case the carrier challenged the department’s method of assessment that used a miles-per-gallon ratio ceiling, which had the effect of excluding some sample vehicles in determining the average mpg for the leased vehicles in Great American’s fleet. The department had set the ceiling because the carrier had failed to keep records and the records the carrier provided to determine the actual mpg were deemed untrustworthy by the department; therefore, the department imposed a ceiling at a level it considered reasonable. Id. at 5-7. Great American argued that the department should have calculated an average mpg ration for its vehicles regardless of the individual mpg ratios. Id. at 12.

Recall that when the department makes an assessment under this statutory authority, the assessment is prima facie evidence that the department’s claim for unpaid tax is valid and the burden of proof rests on the person against whom the assessment is made. Id. at 11. See IC 6-6-4.1-24. The burden of proof consists of two parts, the burden of persuasion and the burden of production. “The burden of persuasion is the taxpayer’s duty to convince the fact-finder to view the facts in the way that favors that party.” Id. at 13-14. The burden of production is the “taxpayers duty to introduce enough evidence on an issue to have the issued decided by the fact-finder.” Id. at 14.

Therefore, here Great American needed to submit evidence that the department improperly refused to consider mpg ratios above the ceiling. Id. at 15. The department was under a duty to select a method of audit to reasonably reflect the amount of tax due by the taxpayer. The department refused to use the outliers, those mpg ratios that exceeded the ceiling, because the outliers were inherently untrustworthy due to incomplete records. Id. at 16-17. Since neither the department nor Great American submitted authority on outliers and either the inclusion or exclusion of such data, the court held that Great American did not bear its burden of proof. Id. at 18-20.

The Department, Bureau of Motor Vehicles and Department of Transportation

There are situations in which the bureau of motor vehicles may not register or issues licenses or permits unless a person complies with the Motor Fuel Tax. Also, there are situations in which the department, bureau of motor vehicles, and the department of transportation may or are restricted from sharing information.

The bureau of motor vehicles may not register or license a motor bus, truck, tractor, trailer, or semitrailer used or intended to be used by the owner for transportation of property until the owner furnishes the bureau of motor
vehicles with reasonable proof that the owner has a permit or license issued by the department. This restriction on the bureau of motor vehicles applies when the owner is required to obtain an annual permit or license under the International Fuel Tax Agreement.

Also, a special permit may not be issued under Indiana Code 9-20-6 to a carrier that is required to be registered under the Motor Fuel Tax or under the International Fuel Tax Agreement under IC 6-8.1-3-14 until the carrier furnishes proof of registration under the Motor Fuel Tax or under the International Fuel Tax Agreement and under IC 9-18-2, if applicable. See IC 6-6-4.1-26.

The department, the bureau of motor vehicles, and the Indiana department of transportation shall share information regarding motor carriers and motor vehicles that is reasonably necessary for the effective administration and enforcement of the Motor Fuel Tax, the Special Fuel Tax, and IC 9. However, the department may not divulge information regarding the motor carrier fuel taxes paid by specific carriers or information contained on quarterly reports of specific motor carriers. The department may provide to the bureau of motor vehicles and the department of transportation statistical information that does not identify the amount of tax paid by a specific carrier. See IC 6-6-4.1-27.

Lawsuits, Infractions, and Crimes

A class action for the refund of any portion of the Motor Fuel Tax may not be maintained in any court on behalf of a person who has not complied with the requirements of section 7 before the certification of the class. See IC 6-6-4.1-7.1. Recall those requirements were for filing an application for refund within three (3) years of certain dates. This is discussed above in greater detail.

If a person fails to display an emblem on a commercial motor vehicle and who does not have proof of a valid annual permit while operating a vehicle on a highway in the state commits a Class C infraction. See IC 6-6-4.1-12. Further, each day of operation without an emblem constitutes a separate infraction and the fine of one hundred dollars ($100) shall be imposed for each such infraction. See IC 6-6-4.1-12. Also, if a person displays an altered, false, or fictitious cab card, does not have proof in the vehicle that an annual permit has been obtained, and operates that vehicle on an Indiana highway commits a Class C infraction. See IC 6-6-4.1-12.

If is a Class C infraction to knowingly make a false statement or knowingly present a fraudulent receipt for the sale of motor fuel for the purpose of obtaining, attempting or obtain, or assisting any other person to obtain or attempt to obtain a credit, refund, or reduction of liability for the Motor Fuel Tax. See IC 6-6-4.1-18.

The state police department assists the department in enforcing the provisions on infractions and crimes. See IC 6-6-4.1-15.