HOUSE BILL No. 1395

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.1-3-24.5; IC 6-2.1-6-3; IC 6-2.1-6-3.1; IC 6-3-1-3.5; IC 6-3-1-11; IC 6-3-4-6; IC 6-3.5-7-6; IC 6-5.5-1-17; IC 6-8.1; IC 6-9-29-1.5; IC 7.1-1-3; IC 7.1-4.

Synopsis: Federal update and miscellaneous tax changes. Makes the following changes concerning state and local taxation: (1) Changes a reference to the federal law defining passive investment income. (2) Changes the dates for quarterly payment of gross income tax by withholding agents. (3) Specifies that the capital gain portion (rather than the ordinary income portion) of certain lump sum distributions are added back to adjusted gross income for state tax purposes. (4) Updates the definition of "Internal Revenue Code" to reflect federal tax law changes in effect on January 1, 1998. (5) Specifies that a taxpayer (including a resident taxpayer) must notify the department of state revenue if there is a change to the taxpayer's federal tax return or

(Continued next page)

Effective: January 1, 1998 (retroactive); July 1, 1998.

Bauer

January 13, 1998, read first time and referred to Committee on Ways and Means.

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federal tax liability. (6) Specifies that if a county changes the county's economic development income tax rate, the new rate must be one of the rates that the county could initially have imposed. (7) Changes a reference to the provisions under which trust companies are established. (8) Provides that a taxpayer may round to the nearest dollar amount when filing an income tax return. (9) Provides that a county fiscal body adopting an ordinance to impose or rescind the county innkeeper's tax or to change the rate of the tax must send a certified copy of the ordinance to the department of state revenue, and provides that the ordinance must take effect on the first day of a month and at least 30 days after adoption. (10) Provides for the taxation of cider that has an alcohol content. Repeals a provision made redundant by the expiration of a notwithstanding clause. Provides that cider is an alcoholic beverage if it has at least 0.5% but not more than 7% alcohol content. Regulates cider that is an alcoholic beverage as a wine. Creates a cider excise tax at a rate of $0.115 per gallon (same rate as the beer excise tax). Deposits all the revenue from the cider excise tax into the state general fund. Makes conforming amendments.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1395

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

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

SECTION 1. IC 6-2.1-3-24.5, AS AMENDED BY P.L.18-1994, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 24.5. (a) For purposes of this section, "small business corporation" has the same definition that term has in Section 1361(b) of the Internal Revenue Code. However, a corporation is a small business corporation for the purposes of this section even if one (1) of its shareholders is a qualified trust that forms a part of an employee stock ownership plan under Section 401(a) of the Internal Revenue Code.

(b) Except as provided in subsection (c), gross income received by a small business corporation is exempt from gross income tax.

(c) A small business corporation is not exempt from gross income tax under this section for a taxable year if for that taxable year twenty-five percent (25%) or more of the small business corporation's gross income consisted of passive investment income (as defined in

Section ~~1362(d)(3)(D)~~ **1362(d)(3)(C)** of the Internal Revenue Code).

(d) Upon request of the department, a corporation that claims an exemption under this section shall provide the department with proof, on forms provided by the department, that the corporation was a small business corporation during the taxable year for which the exemption is claimed.

SECTION 2. IC 6-2.1-6-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 3.1. ~~(a) Notwithstanding section 3 of this chapter, this section applies to taxable years beginning after December 31, 1993, and ending before January 1, 1998.~~

~~(b)~~ A withholding agent who is required to withhold gross income tax under ~~section 1.1 or 2.1~~ **section 1 or 2** of this chapter shall file a return and pay the amount of tax withheld to the department on April 20, June 20, September 20, and December 20 of each calendar year. The return shall reflect the amount withheld for each taxpayer from gross income paid to the taxpayer. The withholding agent is indemnified against the claims and demands of any individual or entity for the amount of any payment made in accordance with this section.

SECTION 3. IC 6-3-1-3.5, AS AMENDED BY P.L.57-1997, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 3.5. When used in IC 6-3, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under IC 6-3 by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.

(3) Subtract one thousand dollars ($1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars ($1,000).

(4) Subtract one thousand dollars ($1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by

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the taxpayer, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract five hundred dollars ($500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996, and before January 1, 2001. This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:

(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or

(B) two thousand dollars ($2,000).

(7) Add an amount equal to the total ~~ordinary income~~ **capital gain** portion of a lump sum distribution (as defined in Section ~~402(e)(4)(A)~~ **402(e)(4)(D)** of the Internal Revenue Code), if the lump sum distribution is received by the individual during the taxable year and if the ~~ordinary income~~ **capital gain** portion of the distribution is taxed in the manner provided in Section ~~402(e)~~ **402** of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross income under Internal Revenue Code Section 111 as a recovery of items previously deducted as an itemized deduction from adjusted gross income.

(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint returns if the taxable year began before January 1, 1987.

(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code, if the taxable year began before January 1, 1985.

(12) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer

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residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2, IC 12-10-6-3, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under IC 6-3 by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(c) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) reduced by income that is exempt from taxation under IC 6-3 by the Constitution and statutes of the United States.

SECTION 4. IC 6-3-1-11, AS AMENDED BY P.L.60-1997, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 11. (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States as amended and in effect on January 1, ~~1997.~~ **1998.**

(b) Whenever the Internal Revenue Code is mentioned in this article, the particular provisions that are referred to, together with all the other provisions of the Internal Revenue Code in effect on January 1, ~~1997,~~ **1998,** that pertain to the provisions specifically mentioned shall be regarded as incorporated in this article by reference and have the same force and effect as though fully set forth in this article. To the

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extent the provisions apply to this article, regulations adopted under Section 7805(a) of the Internal Revenue Code and in effect on January 1, ~~1997,~~ **1998,** shall be regarded as rules adopted by the department under this article, unless the department adopts specific rules that supersede the regulation.

(c) An amendment to the Internal Revenue Code made by an act passed by Congress before January 1, ~~1997,~~ **1998,** that is effective for any taxable year that began before January 1, ~~1997,~~ **1998,** and that affects:

(1) individual adjusted gross income (as defined in Section 62 of the Internal Revenue Code);

(2) corporate taxable income (as defined in Section 63 of the Internal Revenue Code);

(3) trust and estate taxable income (as defined in Section 641(b) of the Internal Revenue Code);

(4) life insurance company taxable income (as defined in Section 801(b) of the Internal Revenue Code);

(5) mutual insurance company taxable income (as defined in Section 821(b) of the Internal Revenue Code); or

(6) taxable income (as defined in Section 832 of the Internal Revenue Code);

is also effective for that same taxable year for purposes of determining adjusted gross income under IC 6-3-1-3.5 and net income under IC 6-3-8-2(b).

SECTION 5. IC 6-3-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 6. (a) Any taxpayer, upon request by the department, shall furnish to the department a true and correct copy of any tax return which he has filed with the United States Internal Revenue Service which copy shall be certified to by the taxpayer under penalties of perjury.

(b) Each taxpayer ~~except a resident individual,~~ shall notify the department of any modification of:

(1) a federal income tax ~~returned~~ **return** filed by the taxpayer after January 1, 1978; or

(2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice, on the form prescribed by the department, within one hundred twenty (120) days after the modification is made.

SECTION 6. IC 6-3.5-7-6, AS AMENDED BY P.L.99-1995, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 6. (a) The body imposing

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the tax may decrease or increase the county economic development income tax rate imposed upon the county taxpayers as long as the resulting rate does not exceed the rates specified in section 5(b) and 5(c) or 5(g) of this chapter. **The rate imposed under this section must be adopted at one (1) of the rates specified in section 5(b) of this chapter.** To decrease or increase the rate, the appropriate body must, after January 1 but before April 1 of a year, adopt an ordinance. The ordinance must substantially state the following:

"The _____ County _____ increases (decreases) the county economic development income tax rate imposed upon the county taxpayers of the county from _____ percent (___%) to _____ percent (___%). This tax rate increase (decrease) takes effect July 1 of this year.".

(b) Any ordinance adopted under this section takes effect July 1 of the year the ordinance is adopted.

(c) The auditor of a county shall record all votes taken on ordinances presented for a vote under the authority of this section and immediately send a certified copy of the results to the department by certified mail.

SECTION 7. IC 6-5.5-1-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 17. (a) "Taxpayer" means a corporation that is transacting the business of a financial institution in Indiana, including any of the following:

(1) A holding company.

(2) A regulated financial corporation.

(3) A subsidiary of a holding company or regulated financial corporation.

(4) Any other corporation organized under the laws of the United States, this state, another taxing jurisdiction, or a foreign government that is carrying on the business of a financial institution.

(b) As used in this section, "holding company" means a corporation registered under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 through 1849), as in effect on December 31, 1990, or registered as a savings and loan holding company other than a diversified savings and loan holding company (as defined in Section 10(a)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(1)(F)), as in effect on December 31, 1990).

(c) As used in this section, "regulated financial corporation" means:

(1) an institution, the deposits, shares, or accounts of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811

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through 1833e), as in effect on December 31, 1990;

(2) an institution that is a member of a Federal Home Loan Bank;

(3) any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

(4) a credit union incorporated and organized under the laws of this state;

(5) a production credit association organized under 12 U.S.C. 2071, as in effect on December 31, 1990;

(6) a corporation organized under 12 U.S.C. 611 through 631 (an Edge Act corporation), as in effect on December 31, 1990;

(7) a federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101, as in effect on December 31, 1990); or

(8) a trust company formed under ~~IC 28-1-4~~ **IC 28-12.**

(d) For purposes of this section and when used in this article, "business of a financial institution" means the following:

(1) For a holding company, a regulated financial corporation, or a subsidiary of either, the activities that each is authorized to perform under federal or state law, including the activities authorized by regulation or order of the Federal Reserve Board for such a subsidiary under Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)), as in effect on December 31, 1990.

(2) For any other corporation described in subsection (a)(4), all of the corporation's business activities if eighty percent (80%) or more of the corporation's gross income, excluding extraordinary income, is derived from one (1) or more of the following activities:

(A) Making, acquiring, selling, or servicing loans or extensions of credit. For the purpose of this subdivision, loans and extensions of credit include:

(i) secured or unsecured consumer loans;

(ii) installment obligations;

(iii) mortgage or other secured loans on real estate or tangible personal property;

(iv) credit card loans;

(v) secured and unsecured commercial loans of any type;

(vi) letters of credit and acceptance of drafts;

(vii) loans arising in factoring; and

(viii) any other transactions with a comparable economic effect.

(B) Leasing or acting as an agent, broker, or advisor in

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connection with leasing real and personal property that is the economic equivalent of the extension of credit if the transaction is not treated as a lease for federal income tax purposes.

(C) Operating a credit card, debit card, charge card, or similar business.

As used in this subdivision, "gross income" includes income from interest, fees, penalties, a market discount or other type of discount, rental income, the gain on a sale of intangible or other property evidencing a loan or extension of credit, and dividends or other income received as a means of furthering the activities set out in this subdivision.

SECTION 8. IC 6-8.1-1-1, AS AMENDED BY P.L.61-1996, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the gross income tax (IC 6-2.1); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8); the county adjusted gross income tax (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county economic development income tax (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the bank tax (IC 6-5-10); the savings and loan association tax (IC 6-5-11); the production credit association tax (IC 6-5-12); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); **the cider excise tax (IC 7.1-4-4.5);** the malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various county food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is required to collect or administer.

SECTION 9. IC 6-8.1-6-4.5 IS ADDED TO THE INDIANA CODE

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AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: **Sec. 4.5. A taxpayer that is required under IC 6-3-4-1 to file a return may round to the nearest whole dollar an amount or item reported on the return. The following apply if an amount or item is rounded:**

(1) An amount or item of at least fifty cents ($0.50) must be rounded up to the nearest whole dollar.

(2) An amount or item of less than fifty cents ($0.50) must be rounded down to the nearest whole dollar.

SECTION 10. IC 6-8.1-7-1, AS AMENDED BY P.L.67-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

(1) members and employees of the department;

(2) the governor;

(3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or

(4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

(1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and

(2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family and children, and to any county director of family and children located in Indiana, upon receipt of a written request from either director for the

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information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to an institution of higher education may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved institutions of higher learning (as defined by IC 20-12-21-3(2)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor, and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

(1) the state agency shows an official need for the information; and

(2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The name and address of retail merchants, including township, as specified in IC 6-2.5-8-1(h) may be released solely for tax collection purposes to township assessors.

(h) The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

(i) All information relating to the delinquency or evasion of the motor vehicle excise tax shall be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the

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information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

(j) This section does not apply to:

(1) the beer excise tax (IC 7.1-4-2);

(2) the liquor excise tax (IC 7.1-4-3);

(3) the wine excise tax (IC 7.1-4-4);

(4) **the cider excise tax (IC 7.1-4-4.5);**

(5) the malt excise tax (IC 7.1-4-5);

~~(5)~~ **(6)** the motor vehicle excise tax (IC 6-6-5); and

~~(6)~~ **(7)** the fees under IC 13-23.

SECTION 11. IC 6-9-29-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 1.5. (a) Unless otherwise provided in this article, a county fiscal body that adopts an ordinance to impose, rescind, or increase or decrease the rate of a county innkeeper's tax must specify the effective date of the ordinance to provide that the ordinance takes effect:**

(1) at least thirty (30) days after the adoption of the ordinance; and

(2) on the first day of a month.

(b) If a county fiscal body adopts an ordinance described in subsection (a), it must immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

SECTION 12. IC 7.1-1-3-9.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 9.5. The term "hard cider" means an alcoholic beverage that:**

(1) is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears; and

(2) contains at least one-half of one percent (0.5%) of alcohol by volume and not more than seven percent (7%) of alcohol by volume.

The term includes flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

SECTION 13. IC 7.1-1-3-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 49. ~~Wine.~~ The term "wine" means an alcoholic beverage obtained by the fermentation of the natural sugar content of fruit, fruit juice, or other agricultural products containing sugar, including necessary additions to correct defects due to climatic, saccharine, and seasonal conditions, and also the alcoholic fortification of the beverage. **The term includes cider, except for alcoholic beverage tax purposes.** The term does not mean

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an alcoholic beverage that contains twenty-one percent (21%), or more, of absolute alcohol reckoned by volume.

SECTION 14. IC 7.1-4-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 1. An excise tax at the rate of forty-seven cents ($0.47) a gallon is imposed upon the manufacture and sale or gift, or withdrawal for sale or gift, of wine, **except cider,** within this state.

SECTION 15. IC 7.1-4-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]:

Chapter 4.5. Cider Excise Tax

Sec. 1. An excise tax at the rate of eleven and one-half cents ($0.115) a gallon is imposed upon the manufacture and sale or gift, or withdrawal for sale or gift, of cider within Indiana.

Sec. 2. The cider excise tax applies only to cider. An alcoholic beverage that is subject to the cider excise tax is not subject to the liquor excise tax or the wine excise tax.

Sec. 3. The cider excise tax shall be paid by the holder of a vintner's permit, a small winery permit, a wine wholesaler's permit, a dining car wine permit, or a boat wine permit on the cider to which the tax is applicable and that is manufactured or imported by the person into this state. However, an item may only be taxed once for cider excise tax purposes.

Sec. 4. The commission and the department may adopt rules and maintain gauges in a winery, small winery, or a wholesaler's premises for the proper gauging of the alcoholic beverages to which the cider excise tax is applicable and the assessment of that tax.

Sec. 5. (a) All sales of cider made by a primary source of supply to a wine wholesaler must at the time of the sale be accompanied by an invoice that shows the following:

(1) The name and address of seller and purchaser.

(2) The date of disposition.

(3) The name or names of each brand sold.

(4) The number of packages, if any.

(5) The number of cases by size of bottle.

(6) The quantity of each kind of alcoholic beverage sold.

(b) The primary source of supply shall send a copy of the invoice to the department of revenue and the commission at the time of the sale.

SECTION 16. IC 7.1-4-7-5, AS AMENDED BY P.L.72-1996, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 1998]: Sec. 5. The department shall deposit:

(1) four cents ($0.04) of the beer excise tax rate collected on each gallon of beer or flavored malt beverage;

(2) one dollar ($1) of the liquor excise tax rate collected on each gallon of liquor;

(3) twenty cents ($0.20) of the wine excise tax rate collected on each gallon of wine; ~~and~~

(4) the entire amount of malt excise tax collected; **and**

(5) the entire amount of cider excise tax collected;

daily with the treasurer of state and not later than the fifth day of the following month shall cover them into the general fund of the state for distribution as provided in this chapter.

SECTION 17. IC 6-2.1-6-3 IS REPEALED [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)].

SECTION 18. **An emergency is declared for this act.**

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