SENATE BILL No. 149

DIGEST OF SB 149 (Updated January 20, 1998 4:44 pm - DI 58)

Citations Affected: IC 6-6.

Synopsis: Removes the definition of an established place of business. Provides that a nonresident who bases an aircraft in Indiana with a registered aircraft dealer solely for repairing, remodeling, or refurbishing the aircraft, does not have to register the aircraft with the department of state revenue but requires the dealer to list the N number for the aircraft in a report to the department. Changes the due date for the seller's notice of the sale or transfer of an aircraft from 5 days to 31 days and the purchaser's notice from ten to 31 days. Requires the application for a new certificate of registration to be made within 31 days after a purchase or transfer. (Current law requires five days.) Removes a provision requiring the seller or transferor to ascertain the amount of excise tax the purchaser or transferee is required to pay. Provides that an aircraft owned by a dealer for less than five days and to be based in another state is exempt from the aircraft registration and excise tax laws. Requires the dealer to report certain information about

(Continued next page)

Effective: See text of bill.

Meeks

January 6, 1998, read first time and referred to Committee on Rules and Legislative Procedure.
January 20, 1998, amended, reported favorably; reassigned to Committee on Finance.

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Digest Continued

the transactions relating to the ownership. Provides that a dealer's certificate remains valid after December 31 if the department does not issue a renewal certificate before December 31. Provides that if the department revokes an aircraft dealer's certificate, the dealer has 180 days to sell the dealer's inventory. Provides that an inventory aircraft held for more than 18 months by a dealer is no longer considered inventory and will be treated as property of a non-dealer requiring all fees and taxes to be paid within 31 days.

C o p y

January 21, 1998

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.

C o p y

SENATE BILL No. 149

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 6-6-6.5-1, AS AMENDED BY P.L.65-1997, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 1. As used in this chapter, unless the context clearly indicates otherwise:

(a) "Aircraft" means a device which is designed to provide air transportation for one (1) or more individuals or for cargo.

(b) "State" means the state of Indiana.

(c) "Department" refers to the department of state revenue.

(d) "Person" includes an individual, a partnership, a firm, a corporation, a limited liability company, an association, a trust, or an estate, or a legal representative of such.

(e) "Owner" means a person who holds or is required to obtain a certificate of registration from the Federal Aviation Administration for a specific aircraft. In the event an aircraft is the subject of an agreement for the conditional sale or lease with the right of purchase upon the

performance of the conditions stated in the agreement and with an immediate right of possession of the aircraft vested in the conditional vendee or lessee, or in the event the mortgagor of an aircraft is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed to be the owner for purposes of this chapter.

(f) "Dealer" means a person who has an established place of business in this state, is required to obtain a certificate under IC 6-2.5-8-1 or IC 6-2.5-8-3 and is engaged in the business of manufacturing, buying, selling, or exchanging new or used aircraft.

(g) "Maximum landing weight" means the maximum weight of the aircraft, accessories, fuel, pilot, passengers, and cargo that is permitted on landing under the best conditions, as determined for an aircraft by the appropriate federal agency or the certified allowable gross weight published by the manufacturer of the aircraft.

(h) "Resident" means an individual or a fiduciary who resides or is domiciled within Indiana or any corporation or business association which maintains a fixed and established place of business within Indiana for a period of more than sixty (60) days in any one (1) year.

(i) "Taxable aircraft" means an aircraft required to be registered with the department by this chapter.

(j) "Regular annual registration date" means the last day of February of each year.

(k) "Taxing district" means a geographic area within which property is taxed by the same taxing units and at the same total rate.

(l) "Taxing unit" means an entity which has the power to impose ad valorem property taxes.

(m) "Base" means the location or place where the aircraft is normally hangared, tied down, housed, parked, or kept, when not in use.

(n) "Homebuilt aircraft" means an aircraft constructed primarily by an individual for personal use. The term homebuilt aircraft does not include an aircraft constructed primarily by a for-profit aircraft manufacturing business.

(o) "Pressurized aircraft" means an aircraft equipped with a system designed to control the atmospheric pressure in the crew or passenger cabins.

(p) "Establishing a base" means renting or leasing a hangar or tie down for a particular aircraft for at least thirty-one (31) days.

(q) "Inventory aircraft" means an aircraft held for resale by a registered Indiana dealer.

~~(r) "Established place of business" means a location with an Indiana street address, but not a post office box number, that:~~

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~~(1) is able to accommodate the display of at least one (1) aircraft;~~
~~(2) is not attached to or part of a residence; and~~
~~(3) has at least one (1) permanent, conspicuous, exterior sign identifying the dealer by the name under which the dealer is operating.~~

SECTION 2. IC 6-6-6.5-2, AS AMENDED BY P.L.65-1997, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 2. (a) Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date.

(b) Except as otherwise provided in this chapter, any nonresident who bases an aircraft in this state for more than sixty (60) days shall register the aircraft with the department under this chapter not later than sixty (60) days after establishing a base in Indiana.

(c) Except as otherwise provided in this chapter, an Indiana resident who owns a homebuilt aircraft shall register the aircraft with the department not later than thirty-one (31) days after the date the Federal Aviation Administration has issued the certificate of registration and air worthiness certificate for the aircraft.

(d) Notwithstanding subsection (b), if a nonresident bases an aircraft in Indiana with a dealer, solely for repairing, remodeling, or refurbishing the aircraft, neither the nonresident nor the dealer is required to register the aircraft with the department under this chapter. However, the dealer shall file a report with the department the month after the end of each calendar quarter. The report must list only the dealer's name, address, and certification number and the N number of each aircraft that was based in this state for more than sixty (60) days during the preceding quarter.

SECTION 3. IC 6-6-6.5-8, AS AMENDED BY P.L.65-1997, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 8.(a) In the event of the sale or transfer of ownership of an aircraft for which a certificate of registration has been issued by the department, the owner in whose name the aircraft is registered shall endorse on the back of the certificate of registration and deliver such certificate to the purchaser or transferee at the time of the sale or delivery to him of such aircraft and shall within ~~five (5)~~ **thirty-one (31)** days notify the department in the manner prescribed by the department of such sale or transfer.

(b) The purchaser or transferee of such aircraft, within ~~ten (10)~~ **thirty-one (31)** days of such sale or transfer, shall apply to the department for the transfer of the registration of such aircraft to his

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name and the issuance of a new certificate of registration. The department shall file such application and, upon determining that the registration of such aircraft should be transferred, shall transfer the registration and issue a new certificate of registration. A fee of ten dollars ($10) shall be charged for such transfer of registration.

(c) When the sale or transfer of ownership occurs, the ~~seller~~ **buyer** or ~~transferor~~ **transferee** shall ascertain from the department the amount of excise tax which the purchaser or transferee will be required to pay under section 15 of this chapter. ~~The seller or transferor shall disclose the amount of that tax to the purchaser or transferee. Failure to make this disclosure will subject the seller or transferor to the penalties provided under section 11 of this chapter.~~

(d) A person shall pay the gross retail tax or use tax to the department on the earlier of:

(1) the time the aircraft is registered; or

(2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

SECTION 4. IC 6-6-6.5-9, AS AMENDED BY P.L.65-1997, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 9. (a) The provisions of this chapter pertaining to registration and taxation shall not apply to **any of the following:**

(1) An aircraft owned by and used exclusively in the service of:

(i) the United States government;

(ii) a state (except Indiana), territory, or possession of the United States;

(iii) the District of Columbia; or

(iv) a political subdivision of an entity listed in clause (i), (ii), or (iii).

(2) An aircraft owned by a resident of another state and registered in accordance with the laws of that state. However, the aircraft shall not be exempt under this subdivision if a nonresident establishes a base for the aircraft inside this state and the base is used for a period of sixty (60) days or more.

(3) An aircraft which this state is prohibited from taxing under this chapter by the Constitution or the laws of the United States.

(4) An aircraft owned or operated by a person who is either an air carrier certificated under Federal Air Regulation Part 121 or a scheduled air taxi operator certified under Federal Air Regulation

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Part 135, unless such person is a corporation incorporated under the laws of the state of Indiana or an individual who is a resident of Indiana.

(5) An aircraft which has been scrapped, dismantled, or destroyed, and for which the airworthiness certificate and federal certificate of registration have been surrendered to the Federal Aviation Administration by the owner.

(6) An aircraft owned by a resident of this state **that is not a dealer and** that is not based in this state at any time**.** if the owner files the required form not later than thirty-one (31) days after the date of purchase; and furnishes the department with evidence, satisfactory to the department, verifying where the aircraft is based during the year. ~~or~~

(7) An aircraft owned by a dealer for not more than five (5) days if the ownership is part of an ultimate sale or transfer of an aircraft that will not be based in this state at any time. However, the dealer described in this subdivision is required to file a report of the transaction within thirty-one (31) days after the ultimate sale or transfer of ownership of the aircraft.

~~(7)~~ **(8)** An aircraft owned by a registered nonprofit museum, if the owner furnishes the department with evidence satisfactory to the department not later than thirty-one (31) days after the purchase date. The aircraft must be reported for registration, but the department shall issue the registration without charge.

(b) The provisions of this chapter pertaining to taxation shall not apply to an aircraft owned by and used exclusively in the service of Indiana or a political subdivision of Indiana or any university or college supported in part by state funds. That aircraft must be reported for registration, but the department will issue the registration without charge.

SECTION 5. IC 6-6-6.5-10.1, AS ADDED BY P.L.65-1997, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 10.1. (a) An applicant must do all of the following before an aircraft dealer's certificate may be issued by the department:

(1) Be registered as a retail merchant with the department and submit proof of that registration to the department.

(2) Complete and submit the annual aircraft dealer application form provided by the department.

(3) Submit ~~proof of a permanent established place of business to the department, including:~~

~~(A) an executed lease or rental agreement for a period of at~~

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~~least one (1) year or proof of ownership of the real property for the location of the established place of business;~~

~~(B) photographs, at least three (3) inches by five (5) inches in size, showing the established place of business, including the display area, exterior advertising, and office area; and~~

~~(C) the other items that the department may determine are needed to satisfactorily~~ **normal business records to** prove that the applicant is a bona fide dealer.

(4) Submit a twenty-five dollar ($25) fee for the certificate. The fee may not be refunded if the certificate is denied.

~~(b) If the established place of business is located at a private use airport, a commercial operation waiver must be issued in conformity with 105 IAC 3-3-23.~~

~~(c)~~ **(b)** The initial certificate is valid for the calendar year of issuance or any remaining portion of the calendar year. However, an applicant applying in December may specifically indicate in the application that dealership status begins in the next calendar year.

SECTION 6. IC 6-6-6.5-10.2, AS ADDED BY P.L.65-1997, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1998 (RETROACTIVE)]: Sec. 10.2. (a) In order to ensure continuous dealer status, a dealer must annually submit its application form and fee not later than December 15 of the preceding year.

(b) ~~The certificate may be renewed by submitting only the application form and fee. However, if:~~

~~(1) the address of the established place of business changes its location or its physical facilities are substantially modified;~~

~~(2) the department determines that other information is needed to determine whether the applicant is a bona fide dealer; or~~

~~(3) the department determines that proof of good standing with the department must be submitted;~~

~~the department may request additional information or may prescribe that additional information must accompany the application or be submitted during the year. If the established place of business changes location or is substantially modified, a dealer must submit photographs acceptable under section 10.1 of this chapter as soon as possible.~~ **Upon receipt of a dealer's application form and fee, the department shall determine if the dealer is in good standing and then issue a renewal of the dealer's certificate before December 31 of the immediately preceding year. If the renewal is not issued before December 31, the dealer's certificate for the preceding year remains valid until renewed or revoked by the department.**

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(c) Dealers shall comply with all applicable gross retail and use tax statutes, rules, requirements, and procedures of the department.

(d) Failure to comply or failure to provide proof of compliance to the department may constitute cause for immediate revocation of the aircraft dealer's certificate. **However, the dealer has one hundred eighty (180) days after the date of the order to sell the dealer's inventory.**

SECTION 7. IC 6-6-6.5-10.4, AS ADDED BY P.L.65-1997, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 10.4. (a) Not later than ~~five (5)~~ **thirty-one (31)** days after a sale or transfer of ownership of a taxable aircraft, the transferring owner shall notify the department of the sale or transfer.

(b) If the transferring owner is a dealer, the transferring owner shall notify the department by submitting to the department one (1) of the following:

(1) A copy of the applicable department form (ST108AC or, if an out-of-state exemption is claimed, ST-137).

(2) A written list containing all the information contained on form ST108AC, including the complete name and address of seller and purchaser, date of sale, make, model, year, and Federal Aviation Administration N number of the new aircraft, a description of any trade-in allowed, and delivery information. If an exemption is claimed, the purchaser's certificate of exemption, whether by submission of the ST-137 or by certified statement, shall also be submitted.

(c) The trade-in, if any, shall be described by the Federal Aviation Administration N number, serial number, make, model, year, and dollar value allowed.

(d) With regard to sales and transfers, dealers shall comply with all applicable gross retail and use tax statutes, rules, and procedures of the department, including the calculation of selling price and limitations on like-kind exchanges and requirements for proof of exemption. Failure to comply or failure to provide proof of compliance to the department may be cause for immediate revocation of the dealer's certificate. **However, the dealer has one hundred eighty (180) days to sell the dealer's inventory.**

(e) In addition to the other disclosures required by this chapter, a dealer shall provide a transferee with an "Indiana application for aircraft registration or exemption" form.

SECTION 8. IC 6-6-6.5-10.6, AS ADDED BY P.L.65-1997, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 10.6. (a) A dealer may not use inventory

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aircraft for any purpose other than for resale and demonstration flights unless the dealer charges the fair market rental or lease value and complies with all applicable statutes, rules, and procedures of the department.

(b) Failure to comply or failure to provide proof of compliance to the department may be cause for immediate revocation of the dealer's certificate. **However, the dealer has one hundred eighty (180) days after the date of the order to sell the dealer's inventory.**

(c) An aircraft used for other purposes shall no longer be considered aircraft inventory and shall be treated as property of a nondealer. The registration fee and all applicable taxes become due ~~as of~~ **thirty-one (31) days after** the date the improper use begins.

(d) An inventory aircraft held for more than eighteen (18) months is no longer considered aircraft inventory and is treated as property of a nondealer. The registration fee and all applicable taxes are due thirty-one (31) days after the date the eighteen (18) month period ends.

SECTION 9. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 149, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Finance.

(Reference is to Senate Bill 149 as introduced.)

GARTON, Chairperson

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