



January 20, 2010

SENATE BILL No. 250

DIGEST OF SB 250 (Updated January 19, 2010 11:32 am - DI 58)

Citations Affected: IC 6-2.5.

Synopsis: Streamlined sales and use tax agreement. Makes changes in the gross retail and use tax laws to conform to the requirements of the Streamlined Sales and Use Tax Agreement. Provides that gross retail income does not include telecommunications nonrecurring charges. Defines telecommunications nonrecurring charges as amounts billed for installation, connection, change, or initiation of a telecommunications service. Defines a computer software maintenance contract as a contract that obligates a person to provide a customer with future updates or upgrades of computer software. Adds any electronically transferred product to the list of digital products. Defines transferred electronically as not being transferred using tangible storage media. Eliminates the tax rate brackets. Restates the rounding rule without change. Provides that the sale of a digital code that may be used to later obtain a product transferred electronically is taxed the same as the product. Exempts the sale or rental of mobility enhancing equipment from the gross retail tax if the sale or rental is prescribed by a person licensed to issue the prescription. Provides that dietary supplements are not food under the gross retail tax. Provides that a certified service provider or a seller using a certified automated system that obtains a taxability matrix from the department is not liable for sales or use tax collection errors that result from relying on the taxability matrix.

Effective: July 1, 2010.

Kenley, Hershman, Broden

January 11, 2010, read first time and referred to Committee on Tax and Fiscal Policy.
January 19, 2010, reported favorably — Do Pass.

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SB 250—LS 6641/DI 58+



January 20, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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SENATE BILL No. 250

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

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

1 SECTION 1. IC 6-2.5-1-5, AS AMENDED BY P.L.182-2009(ss),
2 SECTION 174, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) Except as provided in
4 subsection (b), "gross retail income" means the total amount of
5 consideration, including cash, credit, property, and services, for which
6 tangible personal property is sold, leased, or rented, valued in money,
7 whether received in money or otherwise, without any deduction for:
8 (1) the seller's cost of the property sold;
9 (2) the cost of materials used, labor or service cost, interest,
10 losses, all costs of transportation to the seller, all taxes imposed
11 on the seller, and any other expense of the seller;
12 (3) charges by the seller for any services necessary to complete
13 the sale, other than delivery and installation charges;
14 (4) delivery charges; or
15 (5) consideration received by the seller from a third party if:
16 (A) the seller actually receives consideration from a party
17 other than the purchaser and the consideration is directly

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- 1 related to a price reduction or discount on the sale;
- 2 (B) the seller has an obligation to pass the price reduction or
- 3 discount through to the purchaser;
- 4 (C) the amount of the consideration attributable to the sale is
- 5 fixed and determinable by the seller at the time of the sale of
- 6 the item to the purchaser; and
- 7 (D) the price reduction or discount is identified as a third party
- 8 price reduction or discount on the invoice received by the
- 9 purchaser or on a coupon, certificate, or other documentation
- 10 presented by the purchaser.

11 For purposes of subdivision (4), delivery charges are charges by the
 12 seller for preparation and delivery of the property to a location
 13 designated by the purchaser of property, including but not limited to
 14 transportation, shipping, postage, handling, crating, and packing.

15 (b) "Gross retail income" does not include that part of the gross
 16 receipts attributable to:

- 17 (1) the value of any tangible personal property received in a like
- 18 kind exchange in the retail transaction, if the value of the property
- 19 given in exchange is separately stated on the invoice, bill of sale,
- 20 or similar document given to the purchaser;
- 21 (2) the receipts received in a retail transaction which constitute
- 22 interest, finance charges, or insurance premiums on either a
- 23 promissory note or an installment sales contract;
- 24 (3) discounts, including cash, terms, or coupons that are not
- 25 reimbursed by a third party that are allowed by a seller and taken
- 26 by a purchaser on a sale;
- 27 (4) interest, financing, and carrying charges from credit extended
- 28 on the sale of personal property if the amount is separately stated
- 29 on the invoice, bill of sale, or similar document given to the
- 30 purchaser;
- 31 (5) any taxes legally imposed directly on the consumer that are
- 32 separately stated on the invoice, bill of sale, or similar document
- 33 given to the purchaser; **or**
- 34 (6) installation charges that are separately stated on the invoice,
- 35 bill of sale, or similar document given to the purchaser; **or**
- 36 **(7) telecommunications nonrecurring charges.**

37 (c) A public utility's or a power subsidiary's gross retail income
 38 includes all gross retail income received by the public utility or power
 39 subsidiary, including any minimum charge, flat charge, membership
 40 fee, or any other form of charge or billing.

41 SECTION 2. IC 6-2.5-1-14.5 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2010]: **Sec. 14.5. "Computer software**
2 **maintenance contract"** means a contract that obligates a person to
3 **provide a customer with future updates or upgrades of computer**
4 **software.**

5 SECTION 3. IC 6-2.5-1-26.5, AS ADDED BY P.L.19-2008,
6 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2010]: Sec. 26.5. "Specified digital products" means
8 electronically transferred:

- 9 (1) digital audio works;
- 10 (2) digital audiovisual works; or
- 11 (3) digital books; or
- 12 (4) **products.**

13 SECTION 4. IC 6-2.5-1-27.2 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2010]: **Sec. 27.2. "Telecommunication**
16 **nonrecurring charges"** means an amount billed for installation,
17 **connection, change, or initiation of a telecommunications service**
18 **received by a customer.**

19 SECTION 5. IC 6-2.5-1-28.5 IS ADDED TO THE INDIANA
20 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2010]: **Sec. 28.5. "Transferred**
22 **electronically"** means obtained by a purchaser by means other
23 **than tangible storage media.**

24 SECTION 6. IC 6-2.5-2-2, AS AMENDED BY P.L.146-2008,
25 SECTION 310, IS AMENDED TO READ AS FOLLOWS
26 [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) The state gross retail tax is
27 measured by the gross retail income received by a retail merchant in a
28 retail unitary transaction and is imposed at the following rates:

STATE GROSS RETAIL TAX	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION
\$ 0	less than \$0.08
\$ 0.01	at least \$ 0.08 but less than \$0.21
\$ 0.02	at least \$ 0.21 but less than \$0.36
\$ 0.03	at least \$ 0.36 but less than \$0.51
\$ 0.04	at least \$ 0.51 but less than \$0.64
\$ 0.05	at least \$ 0.64 but less than \$0.79
\$ 0.06	at least \$ 0.79 but less than \$0.93
\$ 0.07	at least \$ 0.93 but less than \$1.07

41 On a retail unitary transaction in which the gross retail income received
42 by the retail merchant is one dollar and seven cents (\$1.07) or more;

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1 the state gross retail tax is seven percent (7%) of that gross retail
2 income.

3 (b) If the tax computed under subsection (a) **carried to the third**
4 **decimal place** results in a fraction of one-half cent (\$0.005) or more,
5 **the numeral in the third decimal place being greater than four (4),**
6 the amount of the tax shall be rounded to the next additional cent.

7 SECTION 7. IC 6-2.5-4-16.4, AS ADDED BY P.L.1-2009,
8 SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2010]: Sec. 16.4. (a) As used in this section, "end user" does
10 not include a person who receives by contract a product transferred
11 electronically for further commercial broadcast, rebroadcast,
12 transmission, retransmission, licensing, relicensing, distribution,
13 redistribution, or exhibition of the product, in whole or in part, to
14 another person or persons.

15 (b) A person is a retail merchant making a retail transaction when
16 the person:

17 (1) electronically transfers specified digital products to an end
18 user; and

19 (2) grants to the end user the right of permanent use of the
20 specified digital products that is not conditioned upon continued
21 payment by the purchaser.

22 (c) **The sale of a digital code that may be used to obtain a**
23 **product transferred electronically shall be taxed in the same**
24 **manner as the product transferred electronically. As used in this**
25 **subsection, a digital code means a method that permits a purchaser**
26 **to obtain at a later date a product transferred electronically.**

27 SECTION 8. IC 6-2.5-4-17 IS ADDED TO THE INDIANA CODE
28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
29 1, 2010]: **Sec. 17. A person is a retail merchant making a retail**
30 **transaction when the person enters into a computer software**
31 **maintenance contract to provide future updates or upgrades to**
32 **computer software.**

33 SECTION 9. IC 6-2.5-5-18, AS AMENDED BY P.L.182-2009(ss),
34 SECTION 178, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2010]: Sec. 18. (a) Sales of durable medical
36 equipment, **mobility enhancing equipment**, prosthetic devices,
37 artificial limbs, orthopedic devices, dental prosthetic devices,
38 eyeglasses, contact lenses, and other medical supplies and devices are
39 exempt from the state gross retail tax, if the sales are prescribed by a
40 person licensed to issue the prescription.

41 (b) Rentals of durable medical equipment, **mobility enhancing**
42 **equipment**, and other medical supplies and devices are exempt from

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1 the state gross retail tax, if the rentals are prescribed by a person
2 licensed to issue the prescription.

3 (c) Sales of hearing aids are exempt from the state gross retail tax
4 if the hearing aids are fitted or dispensed by a person licensed or
5 registered for that purpose. In addition, sales of hearing aid parts,
6 attachments, or accessories are exempt from the state gross retail tax.
7 For purposes of this subsection, a hearing aid is a device which is worn
8 on the body and which is designed to aid, improve, or correct defective
9 human hearing.

10 (d) Sales of colostomy bags, ileostomy bags, and the medical
11 equipment, supplies, and devices used in conjunction with those bags
12 are exempt from the state gross retail tax.

13 (e) Sales of equipment and devices used to administer insulin are
14 exempt from the state gross retail tax.

15 (f) Sales of equipment and devices used to monitor blood glucose
16 level, including blood glucose meters and measuring strips, lancets,
17 and other similar diabetic supplies, are exempt from the state gross
18 retail tax, regardless of whether the equipment and devices are
19 prescribed.

20 SECTION 10. IC 6-2.5-5-20, AS AMENDED BY P.L.195-2005,
21 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2010]: Sec. 20. (a) Sales of food and food ingredients for
23 human consumption are exempt from the state gross retail tax.

24 (b) For purposes of this section, the term "food and food ingredients
25 for human consumption" includes the following items if sold without
26 eating utensils provided by the seller:

27 (1) Food sold by a seller whose proper primary NAICS
28 classification is manufacturing in sector 311, except subsector
29 3118 (bakeries).

30 (2) Food sold in an unheated state by weight or volume as a single
31 item.

32 (3) Bakery items, including bread, rolls, buns, biscuits, bagels,
33 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
34 muffins, bars, cookies, and tortillas.

35 (c) Except as otherwise provided by subsection (b), for purposes of
36 this section, the term "food and food ingredients for human
37 consumption" does not include:

38 (1) candy;

39 (2) alcoholic beverages;

40 (3) soft drinks;

41 (4) food sold through a vending machine;

42 (5) food sold in a heated state or heated by the seller;

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- 1 (6) two (2) or more food ingredients mixed or combined by the
- 2 seller for sale as a single item (other than food that is only cut,
- 3 repackaged, or pasteurized by the seller, and eggs, fish, meat,
- 4 poultry, and foods containing these raw animal foods requiring
- 5 cooking by the consumer as recommended by the federal Food
- 6 and Drug Administration in chapter 3, subpart 3-401.11 of its
- 7 Food Code so as to prevent food borne illnesses);
- 8 (7) food sold with eating utensils provided by the seller, including
- 9 plates, knives, forks, spoons, glasses, cups, napkins, or straws (for
- 10 purposes of this subdivision, a plate does not include a container
- 11 or packaging used to transport the food); or
- 12 (8) tobacco; or
- 13 **(9) dietary supplements.**

14 SECTION 11. IC 6-2.5-11-10, AS AMENDED BY
 15 P.L.182-2009(ss), SECTION 183, IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 10. (a) A certified
 17 service provider is the agent of a seller, with whom the certified service
 18 provider has contracted, for the collection and remittance of sales and
 19 use taxes. As the seller's agent, the certified service provider is liable
 20 for sales and use tax due each member state on all sales transactions it
 21 processes for the seller except as set out in this section. A seller that
 22 contracts with a certified service provider is not liable to the state for
 23 sales or use tax due on transactions processed by the certified service
 24 provider unless the seller misrepresented the type of items it sells or
 25 committed fraud. In the absence of probable cause to believe that the
 26 seller has committed fraud or made a material misrepresentation, the
 27 seller is not subject to audit on the transactions processed by the
 28 certified service provider. A seller is subject to audit for transactions
 29 not processed by the certified service provider. The member states
 30 acting jointly may perform a system check of the seller and review the
 31 seller's procedures to determine if the certified service provider's
 32 system is functioning properly and the extent to which the seller's
 33 transactions are being processed by the certified service provider.

34 (b) A person that provides a certified automated system is
 35 responsible for the proper functioning of that system and is liable to the
 36 state for underpayments of tax attributable to errors in the functioning
 37 of the certified automated system. A seller that uses a certified
 38 automated system remains responsible and is liable to the state for
 39 reporting and remitting tax.

40 (c) A seller that has a proprietary system for determining the amount
 41 of tax due on transactions and has signed an agreement establishing a
 42 performance standard for that system is liable for the failure of the

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1 system to meet the performance standard.

2 (d) A certified service provider or a seller using a certified
 3 automated system that obtains a certification **or taxability matrix** from
 4 the department is not liable for sales or use tax collection errors that
 5 result from reliance on the department's certification **or taxability**
 6 **matrix**. If the department determines that an item or transaction is
 7 incorrectly classified as to the taxability of the item or transaction, the
 8 department shall notify the certified service provider or the seller using
 9 a certified automated system of the incorrect classification. The
 10 certified service provider or the seller using a certified automated
 11 system must revise the incorrect classification within ten (10) days
 12 after receiving notice of the determination from the department. If the
 13 classification error is not corrected within ten (10) days after receiving
 14 the department's notice, the certified service provider or the seller using
 15 a certified automated system is liable for failure to collect the correct
 16 amount of sales or use tax due and owing.

17 (e) If at least thirty (30) days are not provided between the
 18 enactment of a statute changing the rate set forth in IC 6-2.5-2-2 and
 19 the effective date of the rate change, the department shall relieve the
 20 seller of liability for failing to collect tax at the new rate if:

21 (1) the seller collected the tax at the immediately preceding
 22 effective rate; and

23 (2) the seller's failure to collect at the current rate does not extend
 24 beyond thirty (30) days after the effective date of the rate change.

25 A seller is not eligible for the relief provided for in this subsection if
 26 the seller fraudulently fails to collect at the current rate or solicits
 27 purchases based on the immediately preceding effective rate.

28 (f) The department shall allow any monetary allowances that are
 29 provided by the member states to sellers or certified service providers
 30 in exchange for collecting the sales and use taxes as provided in article
 31 VI of the agreement.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 250, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 250 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 1.

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