



April 13, 2011

ENGROSSED
SENATE BILL No. 459

DIGEST OF SB 459 (Updated April 13, 2011 11:52 am - DI 92)

Citations Affected: IC 6-2.5.

Synopsis: Streamlined sales and use tax conformity. Makes changes concerning calling services, durable medical equipment, and reliance on the department of state revenue's taxability matrix under the state gross retail and use taxes to bring the state into compliance with the Streamlined Sale and Use Tax Agreement.

Effective: Upon passage.

Kenley, Broden

(HOUSE SPONSORS — ESPICH, WELCH)

January 12, 2011, read first time and referred to Committee on Tax and Fiscal Policy.
January 25, 2011, reported favorably — Do Pass.
January 27, 2011, read second time, ordered engrossed. Engrossed.
January 31, 2011, read third time, passed. Yeas 40, nays 9.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Ways and Means.
April 13, 2011, reported — Do Pass.

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ES 459—LS 6508/DI 58+



April 13, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 459



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 6-2.5-4-6, AS AMENDED BY P.L.145-2007,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6. (a) A person is a retail merchant making a
4 retail transaction when the person:
5 (1) furnishes or sells an intrastate telecommunication service; and
6 (2) receives gross retail income from billings or statements
7 rendered to customers.
8 (b) Notwithstanding subsection (a), a person is not a retail merchant
9 making a retail transaction when:
10 (1) the person furnishes or sells telecommunication services to
11 another person described in this section or in section 5 of this
12 chapter;
13 (2) the person furnishes telecommunications services to another
14 person who is providing prepaid calling services or prepaid
15 wireless calling services in a retail transaction to customers who
16 access the services ~~through the use of an access or authorization~~
17 ~~number or card~~ as described in section 13 of this chapter;

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- 1 (3) the person furnishes intrastate mobile telecommunications
- 2 service (as defined in IC 6-8.1-15-7) to a customer with a place of
- 3 primary use that is not located in Indiana (as determined under
- 4 IC 6-8.1-15); or
- 5 (4) the person furnishes or sells value added nonvoice data
- 6 services in a retail transaction to a customer.

7 (c) Subject to IC 6-2.5-12 and IC 6-8.1-15, and notwithstanding
 8 subsections (a) and (b), if charges for telecommunication services,
 9 ancillary services, Internet access, audio services, or video services that
 10 are not taxable under this article are aggregated with and not separately
 11 stated from charges subject to taxation under this article, the charges
 12 for nontaxable telecommunication services, ancillary services, Internet
 13 access, audio services, or video services are subject to taxation unless
 14 the service provider can reasonably identify the charges not subject to
 15 the tax from the service provider's books and records kept in the regular
 16 course of business.

17 SECTION 2. IC 6-2.5-4-13 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. A person is a
 19 retail merchant making a retail transaction when a person sells:

- 20 (1) a prepaid ~~telephone calling card~~ **service or prepaid wireless**
- 21 **calling service** at retail;
- 22 (2) a prepaid ~~telephone calling service authorization number or~~
- 23 **prepaid wireless calling service** authorization number at retail;
- 24 (3) the reauthorization of a prepaid ~~telephone calling card;~~
- 25 **service or prepaid wireless calling service;** or
- 26 (4) the reauthorization of a prepaid ~~telephone calling service~~
- 27 **authorization number or prepaid wireless calling service**
- 28 authorization number.

29 SECTION 3. IC 6-2.5-5-18, AS AMENDED BY P.L.113-2010,
 30 SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 UPON PASSAGE]: Sec. 18. (a) Sales **or rentals** of durable medical
 32 equipment, mobility enhancing equipment, prosthetic devices, artificial
 33 limbs, orthopedic devices, dental prosthetic devices, eyeglasses,
 34 contact lenses, and other medical supplies and devices are exempt from
 35 the state gross retail tax, if the sales **or rentals** are prescribed by a
 36 person licensed to issue the prescription.

37 ~~(b) Rentals of durable medical equipment, mobility enhancing~~
 38 ~~equipment, and other medical supplies and devices are exempt from the~~
 39 ~~state gross retail tax, if the rentals are prescribed by a person licensed~~
 40 ~~to issue the prescription.~~

41 ~~(c)~~ **(b)** Sales of hearing aids are exempt from the state gross retail
 42 tax if the hearing aids are fitted or dispensed by a person licensed or

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1 registered for that purpose. In addition, sales of hearing aid parts,
2 attachments, or accessories are exempt from the state gross retail tax.
3 For purposes of this subsection, a hearing aid is a device which is worn
4 on the body and which is designed to aid, improve, or correct defective
5 human hearing.

6 ~~(d)~~ (c) Sales of colostomy bags, ileostomy bags, and the medical
7 equipment, supplies, and devices used in conjunction with those bags
8 are exempt from the state gross retail tax.

9 ~~(e)~~ (d) Sales of equipment and devices used to administer insulin
10 are exempt from the state gross retail tax.

11 ~~(f)~~ (e) Sales of equipment and devices used to monitor blood
12 glucose level, including blood glucose meters and measuring strips,
13 lancets, and other similar diabetic supplies, are exempt from the state
14 gross retail tax, regardless of whether the equipment and devices are
15 prescribed.

16 SECTION 4. IC 6-2.5-11-10, AS AMENDED BY P.L.113-2010,
17 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 UPON PASSAGE]: Sec. 10. (a) A certified service provider is the
19 agent of a seller, with whom the certified service provider has
20 contracted, for the collection and remittance of sales and use taxes. As
21 the seller's agent, the certified service provider is liable for sales and
22 use tax due each member state on all sales transactions it processes for
23 the seller except as set out in this section. A seller that contracts with
24 a certified service provider is not liable to the state for sales or use tax
25 due on transactions processed by the certified service provider unless
26 the seller misrepresented the type of items it sells or committed fraud.
27 In the absence of probable cause to believe that the seller has
28 committed fraud or made a material misrepresentation, the seller is not
29 subject to audit on the transactions processed by the certified service
30 provider. A seller is subject to audit for transactions not processed by
31 the certified service provider. The member states acting jointly may
32 perform a system check of the seller and review the seller's procedures
33 to determine if the certified service provider's system is functioning
34 properly and the extent to which the seller's transactions are being
35 processed by the certified service provider.

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

42 (c) A seller that has a proprietary system for determining the amount

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1 of tax due on transactions and has signed an agreement establishing a
2 performance standard for that system is liable for the failure of the
3 system to meet the performance standard.

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

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

23 (1) the seller collected the tax at the immediately preceding
24 effective rate; and

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

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

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

34 SECTION 5. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 459, 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 459 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 459, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ESPICH, Chair

Committee Vote: yeas 22, nays 0.

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