

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 589 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 and local administration and to make an appropriation.
- 4 Page 7, between lines 38 and 39, begin a new paragraph and insert:
- 5 "SECTION 6. IC 6-2.5-2-1 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) An excise tax,
- 7 known as the state gross retail tax, is imposed on retail transactions
- 8 made in Indiana.
- 9 (b) The person who acquires property in a retail transaction is liable
- 10 for the tax on the transaction and, except as otherwise provided in this
- 11 chapter, shall pay the tax to the retail merchant as a separate added
- 12 amount to the consideration in the transaction. ~~The~~ Any retail merchant
- 13 **that:**
- 14 **(1) is engaged in business in Indiana as described in**
- 15 **IC 6-2.5-3-1; or**
- 16 **(2) has permission from the department to collect taxes;**
- 17 shall collect the tax as agent for the state.
- 18 SECTION 7. IC 6-2.5-3-1 IS AMENDED TO READ AS
- 19 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. For purposes of this
- 20 chapter:
- 21 (a) "Use" means the exercise of any right or power of ownership
- 22 over tangible personal property.
- 23 (b) "Storage" means the keeping or retention of tangible personal
- 24 property in Indiana for any purpose except the subsequent use of that

1 property solely outside Indiana.

2 (c) "A retail merchant engaged in business in Indiana" includes any
3 retail merchant who makes retail transactions in which a person
4 acquires personal property or services for use, storage, or consumption
5 in Indiana and who:

6 (1) maintains an office, place of distribution, sales location,
7 sample location, warehouse, storage place, or other place of
8 business which is located in Indiana and which the retail
9 merchant maintains, occupies, or uses, either permanently or
10 temporarily, either directly or indirectly, and either by the retail
11 merchant or through a representative, agent, or ~~subsidiary~~;
12 **affiliate**;

13 (2) maintains a representative, agent, salesman, canvasser, or
14 solicitor who, while operating in Indiana under the authority of
15 and on behalf of the retail merchant or ~~a subsidiary~~ **an affiliate** of
16 the retail merchant, sells, delivers, installs, repairs, assembles,
17 sets up, accepts returns of, bills, invoices, or takes orders for sales
18 of tangible personal property or services to be used, stored, or
19 consumed in Indiana;

20 **(3) enters into an arrangement with any person, other than a**
21 **common carrier, to facilitate the retail merchant's delivery of**
22 **property to customers in Indiana by allowing the retail**
23 **merchant's customers to pick up property sold by the retail**
24 **merchant at an office, distribution facility, warehouse, storage**
25 **place, or similar place of business maintained by the person**
26 **in Indiana**;

27 ~~(3)~~ **(4)** is otherwise required to register as a retail merchant under
28 IC 6-2.5-8-1; or

29 ~~(4)~~ **(5)** may be required by the state to collect tax under this article
30 to the extent allowed under the Constitution of the United States
31 and federal law.

32 **(d) Notwithstanding any provision to the contrary, a retail**
33 **merchant is not required to collect and remit sales or use tax under**
34 **this article unless:**

35 **(1) the retail merchant has a physical presence in Indiana; or**

36 **(2) the activities conducted in Indiana on behalf of the retail**
37 **merchant are significantly associated with the retail**
38 **merchant's ability to establish and maintain a market in**
39 **Indiana.**

40 ~~(d)~~ **(e)** Notwithstanding any other provision of this section, tangible
41 or intangible property that is:

42 (1) owned or leased by a person that has contracted with a
43 commercial printer for printing; and

44 (2) located at the premises of the commercial printer;

45 shall not be considered to be, or to create, an office, a place of
46 distribution, a sales location, a sample location, a warehouse, a storage

1 place, or other place of business maintained, occupied, or used in any
2 way by the person. A commercial printer with which a person has
3 contracted for printing shall not be considered to be in any way a
4 representative, an agent, a salesman, a canvasser, or a solicitor for the
5 person.

6 **(f) A retail merchant is presumed to be engaged in business in
7 Indiana if an affiliate has substantial nexus in Indiana and:**

8 **(1) the retail merchant sells a similar line of products as the
9 affiliate and does so under the same or a similar business
10 name;**

11 **(2) the affiliate uses its in-state employees or in-state facilities
12 to advertise, promote, or facilitate sales by the retail merchant
13 to customers; or**

14 **(3) the affiliate uses trademarks, service marks, or trade
15 names in Indiana that are the same as or substantially similar
16 to those used by the retail merchant.**

17 **(g) The presumption set forth in subsection (f) may be rebutted
18 by demonstrating that the affiliate's activities in Indiana are not
19 significantly associated with the retail merchant's ability to
20 establish or maintain a market in Indiana for the retail merchant's
21 sales.**

22 **(h) A retail merchant is presumed to be engaged in business in
23 Indiana if the retail merchant enters into an agreement with one
24 (1) or more residents of Indiana under which the resident, for a
25 commission or other consideration, directly or indirectly refers
26 potential customers, whether by link on an Internet web site, an
27 in-person oral presentation, or otherwise, to the retail merchant,
28 if the cumulative amount of gross receipts from sales by the retail
29 merchant to customers in Indiana who are referred to the retail
30 merchant by all residents of this type of an agreement with the
31 retail merchant exceeds ten thousand dollars (\$10,000) for the
32 preceding twelve (12) months.**

33 **(i) The presumption set forth in subsection (h) may be rebutted
34 by submitting proof that the residents with whom the retail
35 merchant has an agreement did not engage in any activity within
36 Indiana that was significantly associated with the retail merchant's
37 ability to establish or maintain the retail merchant's market in
38 Indiana during the preceding twelve (12) months. The proof
39 required by this subsection may consist of sworn written
40 statements from all the residents with whom the retail merchant
41 has an agreement stating that they did not engage in any
42 solicitation in Indiana on behalf of the retail merchant during the
43 preceding year as long as the statements are provided and obtained
44 in good faith.**

45 **(j) As used in this section, "affiliate" means any person that is
46 a member of the same controlled group of corporations as defined
47 in Section 1563(a) of the Internal Revenue Code as the retail**

1 **merchant or any other entity that, notwithstanding its form of**
 2 **organization, bears the same ownership relationship to the retail**
 3 **merchant as a corporation that is a member of the same controlled**
 4 **group of corporations as defined in Section 1563(a) of the Internal**
 5 **Revenue Code."**

6 Page 8, between lines 12 and 13, begin a new paragraph and insert:

7 "SECTION 9. IC 6-2.5-5-16.5, AS AMENDED BY P.L.32-2007,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2011]: Sec. 16.5. (a) The following definitions apply
 10 throughout this section:

11 (1) "Home energy" means electricity, oil, gas, coal, propane, or
 12 any other fuel for use as the principal source of heating or cooling
 13 in residential dwellings.

14 (2) "Home energy assistance" means programs administered by
 15 the state to supply home energy through the Low Income Home
 16 Energy Assistance Block Grant under 42 U.S.C. ~~8261~~ **8621** et seq.

17 (b) Transactions involving home energy are exempt from the state
 18 gross retail tax if ~~the a person acquiring~~ **acquires** the home energy
 19 **acquires it through home energy assistance** after June 30, ~~2006,~~ **2011,**
 20 and before July 1, ~~2009,~~ **2013. through home energy assistance."**

21 Page 35, between lines 36 and 37, begin a new paragraph and insert:

22 "SECTION 6. IC 6-3.1-21-6, AS AMENDED BY P.L.1-2009,
 23 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JANUARY 1, 2011 (RETROACTIVE)]: Sec. 6. (a) Except as provided
 25 by subsection (b), an individual who is eligible for an earned income
 26 tax credit under Section 32 of the Internal Revenue Code is eligible for
 27 a credit under this chapter equal to ~~nine~~ **fifteen** percent (~~9%~~) (**15%**) of
 28 the amount of the federal earned income tax credit that the individual:

29 (1) is eligible to receive in the taxable year; and

30 (2) claimed for the taxable year;

31 under Section 32 of the Internal Revenue Code.

32 (b) In the case of a nonresident taxpayer or a resident taxpayer
 33 residing in Indiana for a period of less than the taxpayer's entire taxable
 34 year, the amount of the credit is equal to the product of:

35 (1) the amount determined under subsection (a); multiplied by

36 (2) the quotient of the taxpayer's income taxable in Indiana
 37 divided by the taxpayer's total income.

38 (c) If the credit amount exceeds the taxpayer's adjusted gross
 39 income tax liability for the taxable year, the excess, less any advance
 40 payments of the credit made by the taxpayer's employer under
 41 IC 6-3-4-8 that reduce the excess, shall be refunded to the taxpayer."

42 Page 51, between lines 32 and 33, begin a new paragraph and insert:

43 "SECTION 31. [EFFECTIVE JULY 1, 2011] **(a) IC 6-2.5-3-1, as**
 44 **amended by this act, applies only to retail transactions occurring**
 45 **after June 30, 2011. A retail transaction shall be considered as**
 46 **having occurred after June 30, 2011, to the extent that delivery of**

1 the property constituting selling at retail is made after that date to
 2 the purchaser or to the place of delivery designated by the
 3 purchaser. However, a transaction shall be considered as having
 4 occurred before July 1, 2011, to the extent that the agreement of
 5 the parties to the transaction was entered into before July 1, 2011,
 6 and payment for the property furnished in the transaction is made
 7 before July 1, 2011, notwithstanding the delivery of the property
 8 after June 30, 2011.

9 (b) This SECTION expires January 1, 2013."

10 Page 51, between lines 36 and 37, begin a new paragraph and insert:

11 "SECTION 33. [EFFECTIVE JANUARY 1, 2011
 12 (RETROACTIVE)] (a) IC 6-3.1-21-6, as amended by this act,
 13 applies to taxable years beginning after December 31, 2010.

14 (b) This SECTION expires January 1, 2013."

15 Page 52, between lines 17 and 18, begin a new paragraph and insert:

16 "SECTION 36. [EFFECTIVE JULY 1, 2011] (a) Notwithstanding
 17 any other law to the contrary, the amounts set forth in the
 18 following table are annually appropriated for the family and social
 19 services administration from the state general fund for its use in
 20 providing C.H.O.I.C.E in-home services:

C.H.O.I.C.E. IN-HOME SERVICES	Total Operating Expense
FY 2011-2012	48,765,643
FY 2012-2013	48,765,643

21 The foregoing appropriations for C.H.O.I.C.E. in-home services
 22 include intragovernmental transfers to provide the nonfederal
 23 share of the Medicaid aged and disabled waiver. The
 24 intragovernmental transfers for use in the Medicaid aged and
 25 disabled waiver may not exceed, in the state fiscal year beginning
 26 July 1, 2011, and ending June 30, 2012, \$12,900,000. The
 27 intragovernmental transfers for use in the Medicaid aged and
 28 disabled waiver may not exceed, in the state fiscal year beginning
 29 July 1, 2012, and ending June 30, 2013, \$12,900,000. After July 1,
 30 2011, and before August 1, 2012, the office of the secretary (as
 31 defined in IC 12-7-2-135) shall submit a report to the legislative
 32 council in an electronic format under IC 5-14-6 and the governor
 33 in each July, October, January, and April specifying the number
 34 of persons on the waiting list for C.H.O.I.C.E. in-home services at
 35 the end of the month preceding the date of the report, a schedule
 36 indicating the length of time persons have been on the waiting list,
 37 a description of the conditions or problems that contribute to the
 38 waiting list, the plan in the next six (6) months after the end of the
 39 reporting period to reduce the waiting list, and any other
 40 information that is necessary or appropriate to interpret the
 41 information provided in the report. The division of aging shall
 42 conduct an annual evaluation of the cost effectiveness of providing
 43 home care. Before January of each year, the division shall submit
 44 a report to the budget committee, the budget agency, and the
 45
 46
 47

1 legislative council that covers all aspects of the division's
 2 evaluation and such other information pertaining to the evaluation
 3 as may be requested by the budget committee, the budget agency,
 4 or the legislative council, including the following:

5 (1) The number and demographic characteristics of the
 6 recipients of home care during the preceding fiscal year.

7 (2) The total cost and per recipient cost of providing home
 8 care services during the preceding fiscal year.

9 (3) The number of recipients of home care services who would
 10 have been placed in long term care facilities had they not
 11 received home care services.

12 (4) The total cost savings during the preceding fiscal year
 13 realized by the state due to recipients of home care services
 14 (including Medicaid) being diverted from long term care
 15 facilities.

16 The division shall obtain from providers of services data on their
 17 costs and expenditures regarding implementation of the program
 18 and report the findings to the budget committee, the budget
 19 agency, and the legislative council. The report to the legislative
 20 council must be in an electronic format under IC 5-14-6. The
 21 foregoing appropriations for C.H.O.I.C.E. in-home services do not
 22 revert to the state general fund or any other fund at the close of
 23 any state fiscal year but remain available for the purposes of
 24 C.H.O.I.C.E. in-home services in subsequent state fiscal years.

25 (b) This SECTION expires July 1, 2013.

26 SECTION 37. [EFFECTIVE JULY 1, 2011] (a) Notwithstanding
 27 any other law to the contrary, there is annually appropriated to the
 28 family and social services administration from the state general
 29 fund twelve million five hundred thousand dollars (\$12,500,000)
 30 for its use in administering the Medicaid aged and disabled waiver.

31 (b) Money appropriated under this SECTION is in addition to
 32 money that may be transferred under SECTION 36 of this act.

33 (c) Money appropriated under this SECTION does not revert to
 34 the state general fund at the close of any state fiscal year but
 35 remains available for the purpose described in subsection (a).

36 (d) This SECTION expires July 1, 2013."

37 Renumber all SECTIONS consecutively.

(Reference is to ESB 589 as printed April 13, 2011.)

Representative Crawford