

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WITHDRAWN	Noes _____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 of the retail merchant has substantial nexus**  
8 **in Indiana and:**

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

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

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

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

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

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

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

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

7 Page 24, line 17, after "rate" delete "of" and insert "of:

8 **(1) for a taxable year beginning before January 1, 2012,".**

9 Page 24, line 20, delete "person." and insert "person; and

10 **(2) for taxable years beginning after December 31, 2011:**

11 **(A) three and four-tenths percent (3.4%) of adjusted gross**  
 12 **income is imposed upon the adjusted gross income of every**  
 13 **resident person that has adjusted gross income of at least**  
 14 **fifty thousand dollars (\$50,000) in the taxable year, and on**  
 15 **that part of the adjusted gross income derived from**  
 16 **sources within Indiana of every nonresident person that**  
 17 **has adjusted gross income derived from sources within**  
 18 **Indiana of at least fifty thousand dollars (\$50,000) in the**  
 19 **taxable year; and**

20 **(B) three percent (3%) of adjusted gross income is imposed**  
 21 **upon the adjusted gross income of every resident person**  
 22 **that has adjusted gross income of less than fifty thousand**  
 23 **dollars (\$50,000) in the taxable year, and on that part of**  
 24 **the adjusted gross income derived from sources within**  
 25 **Indiana of every nonresident person that has adjusted**  
 26 **gross income derived from sources within Indiana of less**  
 27 **than fifty thousand dollars (\$50,000) in the taxable year.**

28 **Adjusted gross income of taxpayers filing a joint return shall be**  
 29 **determined under this subsection on the total adjusted gross**  
 30 **income reportable on the joint return."**

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

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

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

40 (2) claimed for the taxable year;

41 under Section 32 of the Internal Revenue Code.

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

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

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

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

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

6 **"SECTION 30. [EFFECTIVE JULY 1, 2011] (a) IC 6-2.5-3-1, as**  
7 **amended by this act, applies only to retail transactions occurring**  
8 **after June 30, 2011. A retail transaction shall be considered as**  
9 **having occurred after June 30, 2011, to the extent that delivery of**  
10 **the property constituting selling at retail is made after that date to**  
11 **the purchaser or to the place of delivery designated by the**  
12 **purchaser. However, a transaction shall be considered as having**  
13 **occurred before July 1, 2011, to the extent that the agreement of**  
14 **the parties to the transaction was entered into before July 1, 2011,**  
15 **and payment for the property furnished in the transaction is made**  
16 **before July 1, 2011, notwithstanding the delivery of the property**  
17 **after June 30, 2011.**

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

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

20 **"SECTION 32. [EFFECTIVE JANUARY 1, 2011**  
21 **(RETROACTIVE)]: (a) IC 6-3.1-21-6, as amended by this act,**  
22 **applies to taxable years beginning after December 31, 2010.**

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

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

25 **"SECTION 35. [EFFECTIVE JULY 1, 2011] (a) Notwithstanding**  
26 **any other law to the contrary, the amounts set forth in the**  
27 **following table are annually appropriated for the family and social**  
28 **services administration from the state general fund for its use in**  
29 **providing C.H.O.I.C.E In-Home Services:**

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

33 **The foregoing appropriations for C.H.O.I.C.E. In-Home**  
34 **Services include intragovernmental transfers to provide the**  
35 **nonfederal share of the Medicaid aged and disabled waiver. The**  
36 **intragovernmental transfers for use in the Medicaid aged and**  
37 **disabled waiver may not exceed in the state fiscal year beginning**  
38 **July 1, 2011, and ending June 30, 2012, \$12,900,000. The**  
39 **intragovernmental transfers for use in the Medicaid aged and**  
40 **disabled waiver may not exceed in the state fiscal year beginning**  
41 **July 1, 2012, and ending June 30, 2013, \$12,900,000. After July 1,**  
42 **2011, and before August 1, 2012, the office of the secretary (as**  
43 **defined in IC 12-7-2-135) shall submit a report to the legislative**  
44 **council in an electronic format under IC 5-14-6 and the governor**  
45 **in each July, October, January, and April specifying the number**  
46 **of persons on the waiting list for C.H.O.I.C.E. In-Home Services at**  
47 **the end of the month preceding the date of the report, a schedule**

1 indicating the length of time persons have been on the waiting list,  
 2 a description of the conditions or problems that contribute to the  
 3 waiting list, the plan in the next six (6) months after the end of the  
 4 reporting period to reduce the waiting list, and any other  
 5 information that is necessary or appropriate to interpret the  
 6 information provided in the report. The division of aging shall  
 7 conduct an annual evaluation of the cost effectiveness of providing  
 8 home care. Before January of each year, the division shall submit  
 9 a report to the budget committee, the budget agency, and the  
 10 legislative council that covers all aspects of the division's  
 11 evaluation and such other information pertaining to the evaluation  
 12 as may be requested by the budget committee, the budget agency,  
 13 or the legislative council, including the following:

- 14 (1) The number and demographic characteristics of the  
 15 recipients of home care during the preceding fiscal year.
- 16 (2) The total cost and per recipient cost of providing home  
 17 care services during the preceding fiscal year.
- 18 (3) The number of recipients of home care services who would  
 19 have been placed in long term care facilities had they not  
 20 received home care services.
- 21 (4) The total cost savings during the preceding fiscal year  
 22 realized by the state due to recipients of home care services  
 23 (including Medicaid) being diverted from long term care  
 24 facilities.

25 The division shall obtain from providers of services data on their  
 26 costs and expenditures regarding implementation of the program  
 27 and report the findings to the budget committee, the budget  
 28 agency, and the legislative council. The report to the legislative  
 29 council must be in an electronic format under IC 5-14-6. The  
 30 foregoing appropriations for C.H.O.I.C.E. In-Home Services do  
 31 not revert to the state general fund or any other fund at the close  
 32 of any state fiscal year but remain available for the purposes of  
 33 C.H.O.I.C.E. In-Home Services in subsequent state fiscal years.

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

35 SECTION 36. [EFFECTIVE JULY 1, 2011] (a) Notwithstanding  
 36 any other law to the contrary, there is annually appropriated to the  
 37 family and social services administration from the state general  
 38 fund twelve million five hundred thousand dollars (\$12,500,000)  
 39 for its use in administering the Medicaid aged and disabled waiver.

40 (b) Money appropriated under this SECTION is in addition to  
 41 money that may be transferred under SECTION 35 of this act.

42 (c) Money appropriated under this SECTION does not revert to

- 1 **the state general fund at the close of any state fiscal year but**
- 2 **remains available for the purpose described in subsection (a).**
- 3 **(d) This SECTION expires July 1, 2013."**
- 4 Renumber all SECTIONS consecutively.  
(Reference is to ESB 589 as printed April 13, 2011.)

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Representative Crawford