SENATE BILL No. 459

DIGEST OF INTRODUCED BILL

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

January 12, 2011, read first time and referred to Committee on Tax and Fiscal Policy.

C o p y

Introduced

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.

C o p y

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:

SECTION 1. IC 6-2.5-4-6, AS AMENDED BY P.L.145-2007, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A person is a retail merchant making a retail transaction when the person:

(1) furnishes or sells an intrastate telecommunication service; and

(2) receives gross retail income from billings or statements rendered to customers.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:

(1) the person furnishes or sells telecommunication services to another person described in this section or in section 5 of this chapter;

(2) the person furnishes telecommunications services to another person who is providing prepaid calling services or prepaid wireless calling services in a retail transaction to customers who access the services ~~through the use of an access or authorization number or card as~~ described in section 13 of this chapter;

(3) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15); or

(4) the person furnishes or sells value added nonvoice data services in a retail transaction to a customer.

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

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

(1) a prepaid ~~telephone~~ calling ~~card~~ **service or prepaid wireless calling service** at retail;

(2) a prepaid ~~telephone~~ **calling service authorization number or prepaid wireless calling service** authorization number at retail;

(3) the reauthorization of a prepaid ~~telephone~~ calling ~~card,~~ **service or prepaid wireless calling service;** or

(4) the reauthorization of a prepaid ~~telephone~~ **calling service authorization number or prepaid wireless calling service** authorization number.

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

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

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

C o p y

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

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

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

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

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

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

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

C o p y

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

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

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

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

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

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

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

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

C o p y