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# HOUSE BILL No. 1461

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-9-1.

**Synopsis:** Sales tax on out-of-state deliveries. Provides that a retail merchant who: (1) makes a retail sale to a destination in another state; (2) erroneously remits sales tax on the retail sale to the department of state revenue; and (3) also remits sales tax to the other state for the retail sale; may claim a refund up to six months after remitting the sales tax to the other state. Provides for a review period to allow retail merchants to claim refunds from the department of state revenue for double payments of sales tax for retail sales fitting the above description made between January 1, 2005, and December 31, 2008.

**Effective:** Upon passage.

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## Heaton, Kersey, Battles, Bacon

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January 20, 2011, read first time and referred to Committee on Ways and Means.

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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.

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## HOUSE BILL No. 1461



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 6-8.1-9-1, AS AMENDED BY P.L.182-2009(ss),  
2 SECTION 256, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If a person has paid more  
4 tax than the person determines is legally due for a particular taxable  
5 period, the person may file a claim for a refund with the department.  
6 Except as provided in subsections (f), ~~and~~ (g), **and (h)**, in order to  
7 obtain the refund, the person must file the claim with the department  
8 within three (3) years after the latter of the following:

- 9 (1) The due date of the return.
- 10 (2) The date of payment.

11 For purposes of this section, the due date for a return filed for the state  
12 gross retail or use tax, the gasoline tax, the special fuel tax, the motor  
13 carrier fuel tax, the oil inspection fee, or the petroleum severance tax  
14 is the end of the calendar year ~~which~~ **that** contains the taxable period  
15 for which the return is filed. The claim must set forth the amount of the  
16 refund to which the person is entitled and the reasons that the person  
17 is entitled to the refund.



1 (b) When the department receives a claim for refund, the  
 2 department shall consider the claim for refund and shall, if the taxpayer  
 3 requests, hold a hearing on the claim for refund to obtain and consider  
 4 additional evidence. After considering the claim and all evidence  
 5 relevant to the claim, the department shall issue a decision on the  
 6 claim, stating the part, if any, of the refund allowed and containing a  
 7 statement of the reasons for any part of the refund that is denied. The  
 8 department shall mail a copy of the decision to the person who filed the  
 9 claim. If the department allows the full amount of the refund claim, a  
 10 warrant for the payment of the claim is sufficient notice of the decision.

11 (c) If the person disagrees with any part of the department's  
 12 decision, the person may appeal the decision, regardless of whether or  
 13 not the person protested the tax payment or whether or not the person  
 14 has accepted a refund. The person must file the appeal with the tax  
 15 court. The tax court does not have jurisdiction to hear a refund appeal  
 16 suit, if:

- 17 (1) the appeal is filed more than three (3) years after the date the
- 18 claim for refund was filed with the department;
- 19 (2) the appeal is filed more than ninety (90) days after the date the
- 20 department mails the decision of denial to the person; or
- 21 (3) the appeal is filed both before the decision is issued and
- 22 before the one hundred eighty-first day after the date the person
- 23 files the claim for refund with the department.

24 (d) The tax court shall hear the appeal de novo and without a jury,  
 25 and after the hearing may order or deny any part of the appealed  
 26 refund. The court may assess the court costs in any manner that it feels  
 27 is equitable. The court may enjoin the collection of any of the listed  
 28 taxes under IC 33-26-6-2. The court may also allow a refund of taxes,  
 29 interest, and penalties that have been paid to and collected by the  
 30 department.

31 (e) With respect to the motor vehicle excise tax, this section applies  
 32 only to penalties and interest paid on assessments of the motor vehicle  
 33 excise tax. Any other overpayment of the motor vehicle excise tax is  
 34 subject to IC 6-6-5.

35 (f) If a taxpayer's federal income tax liability for a taxable year is  
 36 modified by the Internal Revenue Service, and the modification would  
 37 result in a reduction of the tax legally due, the due date by which the  
 38 taxpayer must file a claim for refund with the department is the later of:

- 39 (1) the date determined under subsection (a); or
- 40 (2) the date that is six (6) months after the date on which the
- 41 taxpayer is notified of the modification by the Internal Revenue
- 42 Service.

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(g) If an agreement to extend the assessment time period is entered into under IC 6-8.1-5-2(h), the period during which a person may file a claim for a refund under subsection (a) is extended to the same date to which the assessment time period is extended.

**(h) If:**

**(1) a retail merchant makes a retail transaction that is properly sourced to another state under IC 6-2.5-13;**

**(2) the retail merchant erroneously remits state gross retail tax to the department for the retail transaction; and**

**(3) the retail merchant remits sales tax on the retail transaction to the state where the retail transaction is properly sourced under IC 6-2.5-13;**

**the due date by which the retail merchant must file a claim for refund with the department is the later of the date determined under subsection (a) or the date six (6) months after the date on which the retail merchant makes the remittance described in subdivision (3).**

**SECTION 2. [EFFECTIVE UPON PASSAGE] (a) The definitions in IC 6-2.5-1 apply throughout this SECTION.**

**(b) As used in this SECTION, "review period" means the period beginning January 1, 2005, and ending December 31, 2008.**

**(c) Notwithstanding IC 6-8.1-9-1, as amended by this act, if:**

**(1) a retail merchant made a retail transaction during the review period that is properly sourced to another state under IC 6-2.5-13;**

**(2) the retail merchant erroneously remitted state gross retail tax to the department for the retail transaction; and**

**(3) the retail merchant remitted sales tax on the retail transaction to the state where the retail transaction is properly sourced under IC 6-2.5-13;**

**the due date by which the retail merchant must file a claim for refund with the department is December 31, 2011.**

**(d) This SECTION expires January 1, 2012.**

**SECTION 3. An emergency is declared for this act.**

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