SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

Page 134, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 77. IC 6-2.5-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. ~~The~~ **A** retail merchant **that is engaged in business in Indiana (as defined in IC 6-2.5-3-1(c)) or that has permission from the department to collect the tax** shall collect the tax as agent for the state.

SECTION 78. IC 6-2.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

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

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

affiliate;

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

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

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

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

(d) Notwithstanding any other law, a retail merchant may not be required to collect and remit gross retail tax or use tax as a retail merchant engaged in business in Indiana under subsection (c) unless:

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

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

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

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

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

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

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

(1) the retail merchant sells a line of products similar to a line of products sold by the affiliate, and the retail merchant does

so under a business name that is the same as or is similar to the affiliate's business name;

(2) the affiliate uses its Indiana employees or its Indiana facilities to advertise, promote, or facilitate sales by the retail merchant to customers; or

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

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

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

(i) The presumption under subsection (h) may be rebutted by submitting proof that the residents with whom the retail merchant has an agreement did not engage in any activity within Indiana that was significantly associated with the retail merchant's ability to establish or maintain the retail merchant's market in Indiana during the preceding twelve (12) months. This proof may consist of sworn written statements:

(1) that are from all of the Indiana residents with whom the retail merchant has an agreement described in subsection (h);

(2) that are provided and obtained in good faith; and

(3) that state that the Indiana residents did not engage in any solicitation in Indiana on behalf of the retail merchant during the preceding twelve (12) months.

(j) For purposes of this section, "affiliate" means:

(1) any person that is a member of the same controlled group of corporations (as defined in 26 U.S.C. 1563(a)) as the retail merchant; or

(2) any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retail merchant as a corporation that is a member of the same controlled group of corporations (as defined in 26 U.S.C. 1563(a)).".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1001 as printed April 19, 2011.)

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Senator BRODEN