

SENATE MOTION

MADAM PRESIDENT:

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

- 1 Page 134, between lines 7 and 8, begin a new paragraph and insert:
2 "SECTION 77. IC 6-2.5-2-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) An excise tax,
4 known as the state gross retail tax, is imposed on retail transactions
5 made in Indiana.
6 (b) The person who acquires property in a retail transaction is liable
7 for the tax on the transaction and, except as otherwise provided in this
8 chapter, shall pay the tax to the retail merchant as a separate added
9 amount to the consideration in the transaction. ~~The~~ **A retail merchant**
10 **engaged in business in Indiana (as defined in IC 6-2.5-3-1(c)) or**
11 **that has permission from the department to collect the tax** shall
12 collect the tax as agent for the state.
13 SECTION 78. IC 6-2.5-3-1 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. For purposes of this
15 chapter:
16 (a) "Use" means the exercise of any right or power of ownership
17 over tangible personal property.
18 (b) "Storage" means the keeping or retention of tangible personal
19 property in Indiana for any purpose except the subsequent use of that
20 property solely outside Indiana.
21 (c) "A retail merchant engaged in business in Indiana" includes any
22 retail merchant who makes retail transactions in which a person
23 acquires personal property or services for use, storage, or consumption
24 in Indiana and who:
25 (1) maintains an office, place of distribution, sales location,
26 sample location, warehouse, storage place, or other place of
27 business which is located in Indiana and which the retail
28 merchant maintains, occupies, or uses, either permanently or
29 temporarily, either directly or indirectly, and either by the retail
30 merchant or through a representative, agent, or ~~subsidiary~~;

- 1 **affiliate;**
 2 (2) maintains a representative, agent, salesman, canvasser, or
 3 solicitor who, while operating in Indiana under the authority of
 4 and on behalf of the retail merchant or ~~a subsidiary~~ **an affiliate** of
 5 the retail merchant, sells, delivers, installs, repairs, assembles,
 6 sets up, accepts returns of, bills, invoices, or takes orders for sales
 7 of tangible personal property or services to be used, stored, or
 8 consumed in Indiana;
 9 **(3) enters into an arrangement with any person, other than a**
 10 **common carrier, to facilitate the retail merchant's delivery of**
 11 **property to customers in Indiana by allowing the retail**
 12 **merchant's customers to pick up property sold by the retail**
 13 **merchant at an office, distribution facility, warehouse, storage**
 14 **place, or similar place of business maintained by the person**
 15 **in Indiana;**
 16 ~~(3)~~ **(4)** is otherwise required to register as a retail merchant under
 17 IC 6-2.5-8-1; or
 18 ~~(4)~~ **(5)** may be required by the state to collect tax under this article
 19 to the extent allowed under the Constitution of the United States
 20 and federal law.
 21 **(d) Notwithstanding any other law, a retail merchant may not**
 22 **be required to collect and remit gross retail tax or use tax as a**
 23 **retail merchant engaged in business in Indiana under subsection**
 24 **(c) unless:**
 25 **(1) the retail merchant has a physical presence in Indiana; or**
 26 **(2) the activities conducted in Indiana on behalf of the retail**
 27 **merchant are significantly associated with the retail**
 28 **merchant's ability to establish and maintain a market in**
 29 **Indiana.**
 30 ~~(d)~~ **(e)** Notwithstanding any other provision of this section, tangible
 31 or intangible property that is:
 32 (1) owned or leased by a person that has contracted with a
 33 commercial printer for printing; and
 34 (2) located at the premises of the commercial printer;
 35 shall not be considered to be, or to create, an office, a place of
 36 distribution, a sales location, a sample location, a warehouse, a storage
 37 place, or other place of business maintained, occupied, or used in any
 38 way by the person. A commercial printer with which a person has
 39 contracted for printing shall not be considered to be in any way a
 40 representative, an agent, a salesman, a canvasser, or a solicitor for the
 41 person.
 42 **(f) A retail merchant is presumed to be engaged in business in**
 43 **Indiana if an affiliate of the retail merchant has substantial nexus**
 44 **in Indiana and:**
 45 **(1) the retail merchant sells a line of products similar to a line**
 46 **of products sold by the affiliate, and the retail merchant does**

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

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

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

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

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

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

32 (1) that are from all of the Indiana residents with whom the
33 retail merchant has an agreement described in subsection (h);
34 (2) that are provided and obtained in good faith; and
35 (3) that state that the Indiana residents did not engage in any
36 solicitation in Indiana on behalf of the retail merchant during
37 the preceding twelve (12) months.

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

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

42 (2) any other entity that, notwithstanding its form of
43 organization, bears the same ownership relationship to the
44 retail merchant as a corporation that is a member of the same
45 controlled group of corporations (as defined in 26 U.S.C.
46 1563(a))."

47 Page 134, delete lines 13 through 20, begin a new paragraph and

1 insert:
2 **"(c) If the budget agency certifies to the budget committee that**
3 **there is an excess in use tax collections on remote sales, the excess**
4 **amount is appropriated from the state general fund to the**
5 **department of education for the state fiscal year in which the**
6 **certification is made. The budget agency shall allot the excess**
7 **amount to the department of education to be distributed to school**
8 **corporations as an equal grant for each ADM, as defined in**
9 **IC 20-43-1-6."**
10 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1001 as printed April 19, 2011.)

Senator BRODEN