

SENATE MOTION

MADAM PRESIDENT:

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

- 1 Page 134, delete lines 13 through 20, begin a new paragraph and
2 insert:
3 "**(c) If the budget agency certifies to the budget committee that**
4 **there is an excess in use tax collections on remote sales, the excess**
5 **amount is appropriated from the state general fund to the**
6 **department of education for the state fiscal year in which the**
7 **certification is made. The budget agency shall allot the excess**
8 **amount to the department of education to be distributed to school**
9 **corporations as an equal grant for each ADM (as defined in**
10 **IC 20-43-1-6).**
11 SECTION 78. IC 6-2.5-8-13 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2011]: **Sec. 13. (a) A person that:**
14 **(1) makes retail transactions from outside Indiana to a**
15 **destination in Indiana;**
16 **(2) does not maintain a place of business in Indiana; and**
17 **(3) either:**
18 **(A) engages in the regular or systematic soliciting of retail**
19 **transactions from potential customers in Indiana;**
20 **(B) enters into a contract to provide property or services**
21 **to an agency (as defined in IC 4-13-2-1) or a state**
22 **educational institution;**
23 **(C) agrees to sell property or services to an agency (as**
24 **defined in IC 4-13-2-1) or a state educational institution; or**
25 **(D) is closely related to another person that maintains a**
26 **place of business in Indiana or is described in clause (A),**
27 **(B), or (C);**
28 **shall file an application for a retail merchant's certificate under**
29 **this chapter and collect and remit tax as provided in this article.**
30 **Conduct described in subdivision (3)(B) and (3)(C) occurring after**

1 **June 30, 2011, constitutes consent to be treated under this article**
2 **as if the person has a place of business in Indiana or is engaging in**
3 **conduct described in subdivision (3)(A), including the provisions of**
4 **this article that require a person to collect and remit tax under this**
5 **article.**

6 **(b) A person is rebuttably presumed to be engaging in the**
7 **regular or systematic soliciting of retail transactions from potential**
8 **customers in Indiana if the person does any of the following:**

9 **(1) Distributes catalogs, periodicals, advertising flyers, or**
10 **other written solicitations of business to potential customers**
11 **in Indiana, regardless of whether the distribution is by mail**
12 **or otherwise and without regard to the place from which the**
13 **distribution originated or in which the materials were**
14 **prepared.**

15 **(2) Displays advertisements on billboards or displays other**
16 **outdoor advertisements in Indiana.**

17 **(3) Advertises in newspapers published in Indiana.**

18 **(4) Advertises in trade journals or other periodicals that**
19 **circulate primarily in Indiana.**

20 **(5) Advertises in Indiana editions of a national or regional**
21 **publication or a limited regional edition in which Indiana is**
22 **included as part of a broader regional or national publication**
23 **if the advertisements are not placed in other geographically**
24 **defined editions of the same issue of the same publication.**

25 **(6) Advertises in editions of regional or national publications**
26 **that are not by the contents of the editions geographically**
27 **targeted to Indiana but that are sold over the counter in**
28 **Indiana or by subscription to Indiana residents.**

29 **(7) Broadcasts on a radio or television station located in**
30 **Indiana.**

31 **(8) Makes any other solicitation by telegraphy, telephone,**
32 **computer data base, cable, optic, microwave, or other**
33 **communication system.**

34 **(c) A person not maintaining a place of business in Indiana is**
35 **considered to be engaged in the regular or systematic soliciting of**
36 **retail transactions from potential customers in Indiana if the**
37 **person engages in any of the activities described in subsection (b)**
38 **and:**

39 **(1) makes at least one hundred (100) retail transactions from**
40 **outside Indiana to destinations in Indiana during a period of**
41 **twelve (12) consecutive months; or**

42 **(2) makes at least ten (10) retail transactions totaling more**
43 **than one hundred thousand dollars (\$100,000) from outside**
44 **Indiana to destinations in Indiana during a period of twelve**
45 **(12) consecutive months.**

46 **(d) Subject to subsection (e), the location in or outside Indiana**
47 **of vendors that:**

- 1 **(1) are independent of a person that is soliciting customers in**
2 **Indiana; and**
- 3 **(2) provide products or services to the person in connection**
4 **with the person's solicitation of customers in Indiana:**
- 5 **(A) including products and services such as creation of**
6 **copy, printing, distribution, and recording; but**
7 **(B) excluding:**
- 8 **(i) delivery of goods;**
9 **(ii) billing or invoicing for the sale of goods;**
10 **(iii) providing repairs of goods;**
11 **(iv) assembling or setting up goods for use by the**
12 **purchaser; or**
13 **(v) accepting returns of unwanted or damaged goods;**
- 14 **is not to be taken into account in the determination of whether the**
15 **person is required to collect use tax under this section.**
- 16 **(e) Subsection (d) does not apply if the person soliciting orders**
17 **is closely related to the vendor.**
- 18 **(f) For purposes of subsections (a) and (e), a person is closely**
19 **related to another person if:**
- 20 **(1) the two (2) persons:**
- 21 **(A) use an identical or a substantially similar name,**
22 **trademark, or good will to develop, promote, or maintain**
23 **sales;**
24 **(B) pay for each other's services in whole or in part**
25 **contingent on the volume or value of sales; or**
26 **(C) share a common business plan or substantially**
27 **coordinate their business plans; and**
- 28 **(2) either:**
- 29 **(A) one (1) or both of the persons are corporations and:**
30 **(i) one (1) person; and**
31 **(ii) any other person related to the person in a manner**
32 **that would require an attribution of stock from the**
33 **corporation to the person or from the person to the**
34 **corporation under the attribution rules of Section 318 of**
35 **the Internal Revenue Code;**
36 **own directly, indirectly, beneficially, or constructively at**
37 **least fifty percent (50%) of the value of the corporation's**
38 **outstanding stock;**
39 **(B) both entities are corporations and an individual**
40 **stockholder and the members of the stockholder's family**
41 **(as defined in Section 318 of the Internal Revenue Code)**
42 **own directly, indirectly, beneficially, or constructively a**
43 **total of at least fifty percent (50%) of the value of both**
44 **entities' outstanding stock; or**
45 **(C) one (1) or both persons are limited liability companies,**
46 **partnerships, limited liability partnerships, estates, or**
47 **trusts, and their members, partners, or beneficiaries own**

1 **directly, indirectly, beneficially, or constructively a total of**
2 **at least fifty percent (50%) of the profits, capital, stock, or**
3 **value of one (1) or both persons."**

4 Renumber all SECTIONS consecutively.

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

Senator BRODEN