

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1325 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 6-2.5-2-1 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) An excise tax,
- 5 known as the state gross retail tax, is imposed on retail transactions
- 6 made in Indiana.
- 7 (b) The person who acquires property in a retail transaction is liable
- 8 for the tax on the transaction and, except as otherwise provided in this
- 9 chapter, shall pay the tax to the retail merchant as a separate added
- 10 amount to the consideration in the transaction. ~~The A~~ retail merchant
- 11 **engaged in business in Indiana (as defined in IC 6-2.5-3-1(c)) or**
- 12 **that has permission from the department to collect the tax** shall
- 13 collect the tax as agent for the state.
- 14 SECTION 2. IC 6-2.5-3-1 IS AMENDED TO READ AS
- 15 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. For purposes of this
- 16 chapter:
- 17 (a) "Use" means the exercise of any right or power of ownership
- 18 over tangible personal property.
- 19 (b) "Storage" means the keeping or retention of tangible personal
- 20 property in Indiana for any purpose except the subsequent use of that
- 21 property solely outside Indiana.
- 22 (c) "A retail merchant engaged in business in Indiana" includes any
- 23 retail merchant who makes retail transactions in which a person
- 24 acquires personal property or services for use, storage, or consumption

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

1 **Indiana if an affiliate of the retail merchant has substantial nexus**
 2 **in Indiana and:**

3 **(1) the retail merchant sells a line of products similar to a line**
 4 **of products sold by the affiliate, and the retail merchant does**
 5 **so under a business name that is the same as or is similar to**
 6 **the affiliate's business name;**

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

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

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

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

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

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

38 **(2) are provided and obtained in good faith; and**

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

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

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

46 **(2) other entity that, notwithstanding its form of organization,**
 47 **bears the same ownership relationship to the retail merchant**

1 as a corporation that is a member of the same controlled
2 group of corporations (as defined in 26 U.S.C. 1563(a)).
3 (k) The amendments to this section made by the act enacted in
4 2012 that concern collecting use tax on remote sales apply on and
5 after the earlier of:
6 (1) January 1, 2013; or
7 (2) the first day of the third month that follows the month that
8 the budget agency certifies under IC 6-2.5-3-12 that a
9 requirement for sellers to collect use tax on remote sales has
10 been enacted into law by the United States Congress."
11 Page 3, between lines 13 and 14, begin a new paragraph and insert:
12 SECTION 4. IC 6-2.5-3-12 IS ADDED TO THE INDIANA CODE
13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2012]: **Sec. 12. The budget agency shall before the fifteenth day**
15 **of each month determine whether a requirement for sellers to**
16 **collect use tax on remote sales has been enacted into law by the**
17 **United States Congress. If such a law has been enacted, the budget**
18 **agency shall certify this fact to the budget committee and the**
19 **department of state revenue before the end of the month."**
20 Re-number all SECTIONS consecutively.
 (Reference is to HB 1325 as printed January 25, 2012.)

Representative Crawford