
SENATE BILL No. 240

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5.

Synopsis: Use tax collection on remote sales. Provides that for purposes of the Indiana sales and use tax law, a "retail merchant engaged in business in Indiana" includes any person that uses an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business located in Indiana. Voids any ruling or agreement between a person and the state if it permits the person to not collect sales or use tax even if a warehouse, distribution center, or fulfillment center that is located in Indiana is owned or operated by the person or an affiliated person unless the general assembly ratifies the ruling or agreement in the next legislative session. Provides that a person is presumed to be a retail merchant engaged in business in Indiana if the person: (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana or is affiliated with a person that has substantial nexus in Indiana and certain conditions are met; or (2) enters into an agreement with one or more residents of Indiana under which the resident directly or indirectly refers potential customers 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 is greater than \$10,000 during the preceding 12 months. Specifies that these presumptions may be rebutted.

Effective: July 1, 2012.

Walker

January 4, 2012, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 240



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 6-2.5-2-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) An excise tax,
3 known as the state gross retail tax, is imposed on retail transactions
4 made in Indiana.

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

12 SECTION 2. IC 6-2.5-3-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. For purposes of this
14 chapter:

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

17 (b) "Storage" means the keeping or retention of tangible personal



1 property in Indiana for any purpose except the subsequent use of that
 2 property solely outside Indiana.

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

7 (1) **uses or** maintains an office, place of distribution, sales
 8 location, sample location, warehouse, storage place, or other place
 9 of business which is located in Indiana, ~~and which the retail~~
 10 ~~merchant maintains, occupies, or uses, either permanently or~~
 11 ~~temporarily, either directly or indirectly, and either by the retail~~
 12 ~~merchant or through a representative, agent, or subsidiary, if the~~
 13 **place of business is not owned by a common carrier and used**
 14 **in the common carrier's regular course of business;**

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

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

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

27 **(d) A retail merchant is presumed to be engaged in business in**
 28 **Indiana if any person, other than a common carrier acting in its**
 29 **capacity as a common carrier, has substantial nexus in Indiana**
 30 **and:**

31 **(1) sells a similar line of products as the retail merchant and**
 32 **does so under the same or a similar business name;**

33 **(2) uses trademarks, service marks, or trade names in Indiana**
 34 **that are the same or substantially similar to those used by the**
 35 **retail merchant;**

36 **(3) delivers, installs, assembles, or performs maintenance**
 37 **services for the retail merchant's customers within Indiana;**

38 **(4) facilitates the retail merchant's delivery of property to**
 39 **customers in Indiana by allowing the retail merchant's**
 40 **customers to pick up property sold by the retail merchant at**
 41 **an office, distribution facility, warehouse, storage place, or**
 42 **similar place of business maintained by the retail merchant in**

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1 **Indiana; or**

2 **(5) conducts any other activities in Indiana that are**
 3 **significantly associated with the retail merchant's ability to**
 4 **establish and maintain a market in this state for the retail**
 5 **merchant's sales.**

6 **(e) The presumption in subsection (d) may be rebutted by**
 7 **demonstrating that the person's activities in Indiana are not**
 8 **significantly associated with the retail merchant's ability to**
 9 **establish or maintain a market in Indiana for the retail merchant's**
 10 **sales.**

11 **(f) This subsection applies to sales made, uses occurring, and**
 12 **services rendered after September 30, 2012, regardless of the date**
 13 **the person and the resident entered into the agreement described**
 14 **in this subsection. However, as used in this subsection and**
 15 **subsection (g), the term "the preceding twelve (12) months"**
 16 **includes the period September 1, 2011, through August 31, 2012. A**
 17 **retail merchant is presumed to be engaged in business in Indiana**
 18 **if the retail merchant enters into an agreement with one (1) or**
 19 **more residents of Indiana under which the resident, for a**
 20 **commission or other consideration, directly or indirectly refers**
 21 **potential customers, whether by a link on an Internet web site, an**
 22 **in-person oral presentation, telemarketing, or otherwise, to the**
 23 **retail merchant, if the cumulative gross receipts from sales by the**
 24 **retail merchant to customers in Indiana who are referred to the**
 25 **retail merchant by all residents with this type of an agreement with**
 26 **the retail merchant exceed ten thousand dollars (\$10,000) during**
 27 **the preceding twelve (12) months.**

28 **(g) The presumption in subsection (f) may be rebutted by**
 29 **submitting proof that the residents with whom the retail merchant**
 30 **has an agreement did not engage in any activity within Indiana**
 31 **that was significantly associated with the retail merchant's ability**
 32 **to establish or maintain the retail merchant's market in Indiana**
 33 **during the preceding twelve (12) months. The proof may consist of**
 34 **sworn written statements from all of the residents with whom the**
 35 **retail merchant has an agreement stating that they did not engage**
 36 **in any solicitation in Indiana on behalf of the retail merchant**
 37 **during the preceding twelve (12) months if these statements were**
 38 **provided and obtained in good faith.**

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

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

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1 (2) located at the premises of the commercial printer;
2 shall not be considered to be, or to create, an office, a place of
3 distribution, a sales location, a sample location, a warehouse, a storage
4 place, or other place of business maintained, occupied, or used in any
5 way by the person. A commercial printer with which a person has
6 contracted for printing shall not be considered to be in any way a
7 representative, an agent, a salesman, a canvasser, or a solicitor for the
8 person.

9 (i) A ruling by or agreement, whether written or oral, express
10 or implied, with a retail merchant or a person and the state,
11 including any state agency or department, is void, if it states or
12 rules, or the state agrees that the retail merchant or person is not
13 a retail merchant engaged in business in Indiana required to collect
14 sales and use tax in Indiana despite the presence of a warehouse,
15 distribution center, or fulfillment center in Indiana that is owned
16 or operated by the person or an affiliated person, unless the ruling
17 or agreement is:

18 (1) made a public record; and

19 (2) ratified specifically by an act of the general assembly in
20 the session immediately following the date of the ruling or
21 agreement.

22 (j) If a person sells or leases tangible personal property or
23 services to a state agency (as defined in IC 4-13-2-1(b)) that person
24 and any affiliated person shall, as a prerequisite for the sale or
25 lease, register with the department as a retail merchant and
26 comply with all legal requirements imposed on a retail merchant,
27 including the requirement to collect and remit sales or use tax on
28 all taxable sales of tangible personal property and services to
29 customers in Indiana.

30 (k) For purposes of subsections (i) and (j), "affiliated person"
31 means any person that is a member of the same "controlled group
32 of corporations", as defined in Section 1563(a) of the Internal
33 Revenue Code, as the retail merchant or any other entity that,
34 notwithstanding its form of organization, bears the same
35 ownership relationship to the retail merchant as a corporation that
36 is a member of the same controlled group of corporations (as
37 defined in 26 U.S.C. 1563(a)).

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