
SENATE BILL No. 397

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-2-1; IC 6-2.5-3.

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 retail merchant who: (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana; and (2) 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 customers to pick up property sold by the retail merchant at a place of business maintained by the person in Indiana. Specifies that a retail merchant may not be required to collect and remit sales or use taxes 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. Provides that 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 certain additional conditions are satisfied. Provides that a retail merchant is presumed to be engaged in business in Indiana if the retail merchant 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 by all residents is greater than \$10,000 during the preceding 12 months. Specifies that the presumptions may be rebutted. Provides that these changes regarding remote sellers take effect January 1, 2013. Provides that a person's unpaid use tax liability that was due and payable for tangible personal property acquired before January 1, 2012, is forgiven.

C
O
P
Y

Effective: Upon passage; January 1, 2013.

Mishler

January 9, 2012, read first time and referred to Committee on Tax and Fiscal Policy.



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.

C
O
P
Y

SENATE BILL No. 397



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 JANUARY 1, 2013]: Sec. 1. (a) An excise
3 tax, 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 **engaged in business in Indiana (as defined in IC 6-2.5-3-1(c)) or**
10 **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 JANUARY 1, 2013]: Sec. 1. For purposes
14 of this 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) maintains an office, place of distribution, sales location,
8 sample location, warehouse, storage place, or other place of
9 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, **or**
13 **affiliate;**

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

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

28 ~~(4)~~ (4) is otherwise required to register as a retail merchant under
29 IC 6-2.5-8-1; or

30 ~~(5)~~ (5) may be required by the state to collect tax under this article
31 to the extent allowed under the Constitution of the United States
32 and federal law.

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

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

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

42 ~~(e)~~ (e) Notwithstanding any other provision of this section, tangible

C
O
P
Y



1 or intangible property that is:

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

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

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

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

15 (1) the retail merchant sells a line of products similar to a line
16 of products sold by the affiliate, and the retail merchant does
17 so under a business name that is the same as or is similar to
18 the affiliate's business name;

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

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

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

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

41 (i) The presumption under subsection (h) may be rebutted by
42 submitting proof that the residents with whom the retail merchant

C
o
p
y



1 has an agreement did not engage in any activity within Indiana
 2 that was significantly associated with the retail merchant's ability
 3 to establish or maintain the retail merchant's market in Indiana
 4 during the preceding twelve (12) months. This proof may consist of
 5 sworn written statements that:

- 6 (1) are from all of the Indiana residents with whom the retail
 7 merchant has an agreement described in subsection (h);
 8 (2) are provided and obtained in good faith; and
 9 (3) state that the Indiana residents did not engage in any
 10 solicitation in Indiana on behalf of the retail merchant during
 11 the preceding twelve (12) months.

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

- 13 (1) person that is a member of the same controlled group of
 14 corporations (as defined in 26 U.S.C. 1563(a)) as the retail
 15 merchant; or
 16 (2) other entity that, notwithstanding its form of organization,
 17 bears the same ownership relationship to the retail merchant
 18 as a corporation that is a member of the same controlled
 19 group of corporations (as defined in 26 U.S.C. 1563(a)).

20 (k) The amendments to this section made by this act in 2012 that
 21 concern collecting use tax on sales of tangible personal property do
 22 not apply as of the first day of the month that follows the month
 23 that the budget agency certifies under IC 6-2.5-3-12 that the state
 24 is requiring sellers not located in Indiana to collect use tax on
 25 remote sales of tangible personal property under a law enacted by
 26 the United States Congress.

27 SECTION 3. IC 6-2.5-3-11 IS ADDED TO THE INDIANA CODE
 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 29 UPON PASSAGE]: **Sec. 11. A person's unpaid use tax liability that
 30 was due and payable for tangible personal property acquired
 31 before January 1, 2012, from a seller that did not collect use tax is
 32 forgiven if, before January 1, 2012:**

- 33 (1) the department has not issued to the person:
 34 (A) a use tax assessment and demand for payment under
 35 IC 6-8.1-5-3; or
 36 (B) a demand notice for payment of use tax under
 37 IC 6-8.1-8-2; or
 38 (2) the person has not filed a return or an amended return
 39 reporting a liability for the use tax.

40 SECTION 4. IC 6-2.5-3-12 IS ADDED TO THE INDIANA CODE
 41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 42 JANUARY 1, 2013]: **Sec. 12. The budget agency shall before the**

C
O
P
Y



1 **fifteenth day of each month determine whether the state is**
2 **requiring sellers not located in Indiana to collect use tax on remote**
3 **sales of tangible personal property under a law enacted by the**
4 **United States Congress. If there is such a requirement, the budget**
5 **agency shall certify this fact to the budget committee.**
6 **SECTION 5. An emergency is declared for this act.**

C
o
p
y

