
HOUSE BILL No. 1119

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5.

Synopsis: Use tax nexus and collection. 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 be required to collect and remit sales or use taxes if the retail merchant conducts activities in Indiana on behalf of the retail merchant that 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 the use tax nexus provisions are effective on the earlier of January 1, 2014, or the third month after the budget agency certifies that a requirement for
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Effective: July 1, 2012.

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January 9, 2012, read first time and referred to Committee on Ways and Means.



Digest Continued

sellers to collect use tax on remote sales has been enacted into law by the United States Congress. Requires the department of state revenue to include a use tax liability lookup table for a typical person to cover items with a purchase price of not more than \$1,000. Permits a person to use the lookup table for these purchases if the table reasonably represents the amount of these purchases made by the person. Requires the department to provide a section on the income tax return for a taxpayer to affirm the amount of use tax owed.

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Introduced

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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HOUSE BILL No. 1119

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 **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 JULY 1, 2012]: Sec. 1. For purposes of this
14 chapter:

15 (a) "Use" means the exercise of any right or power of ownership



1 over tangible personal property.

2 (b) "Storage" means the keeping or retention of tangible personal
3 property in Indiana for any purpose except the subsequent use of that
4 property solely outside Indiana.

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

9 (1) maintains an office, place of distribution, sales location,
10 sample location, warehouse, storage place, or other place of
11 business which is located in Indiana and which the retail
12 merchant maintains, occupies, or uses, either permanently or
13 temporarily, either directly or indirectly, and either by the retail
14 merchant or through a representative, agent, ~~or~~ subsidiary, **or**
15 **affiliate;**

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

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

30 ~~(3)~~ **(4)** is otherwise required to register as a retail merchant under
31 IC 6-2.5-8-1; or

32 ~~(4)~~ **(5)** may be required by the state to collect tax under this article
33 to the extent allowed under the Constitution of the United States
34 and federal law.

35 **(d) Notwithstanding any other law, a person may be required to**
36 **collect and remit gross retail tax or use tax as a retail merchant**
37 **engaged in business in Indiana under subsection (c) if the activities**
38 **conducted by the person in Indiana on behalf of a retail merchant**
39 **are significantly associated with the retail merchant's ability to**
40 **establish and maintain a market in Indiana.**

41 ~~(d)~~ **(e)** Notwithstanding any other provision of this section, tangible
42 or intangible property that is:

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

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

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

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

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

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

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

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

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

40 **(i) The presumption under subsection (h) may be rebutted by**
41 **submitting proof that the residents with whom the retail merchant**
42 **has an agreement did not engage in any activity within Indiana**

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1 that was significantly associated with the retail merchant's ability
2 to establish or maintain the retail merchant's market in Indiana
3 during the preceding twelve (12) months. This proof may consist of
4 sworn written statements that:

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

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

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

19 (k) The amendments to this section made by this act in 2012 that
20 concern collecting use tax on remote sales apply on and after the
21 earlier of:

- 22 (1) January 1, 2014; or
- 23 (2) the first day of the third month that follows the month that
- 24 the budget agency certifies under IC 6-2.5-3-12 that a
- 25 requirement for sellers to collect use tax on remote sales has
- 26 been enacted into law by 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 JULY
29 1, 2012]: Sec. 11. The department shall include on the adjusted
30 gross income tax return forms the following:

- 31 (1) A table that provides by taxpayer type and adjusted gross
- 32 income category the following information:
- 33 (A) For items of tangible personal property with a
- 34 purchase price of not more than one thousand dollars
- 35 (\$1,000), an amount that indicates the value of the tangible
- 36 personal property used, stored, or consumed in Indiana
- 37 and purchased from a retail merchant in remote
- 38 purchases.
- 39 (B) The amount of remote purchases identified under
- 40 clause (A) for which sales or use tax was paid.
- 41 (C) The amount of remote purchases identified under
- 42 clause (A) for which sales or use tax was not paid.

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(D) The amount of use tax due from the typical person based on the amount of remote purchases for which sales or use tax was not paid.

For items of tangible personal property with a purchase price of not more than one thousand dollars (\$1,000), a person may use the table amount as the amount owed by the person if the amount represents a reasonable estimate of the true and accurate amount the person actually owes in use tax for items of tangible personal property with a purchase price of not more than one thousand dollars (\$1,000).

(2) A conspicuous section on the return or a separate schedule that includes the following:

(A) For items of tangible personal property with a purchase price of not more than one thousand dollars (\$1,000), the value of the tangible personal property used, stored, or consumed by a person for which use tax has not been paid and whether this amount is based on the table or the person's records.

(B) The amount of use tax owed by the person with respect to the tangible personal property covered by clause (A).

(C) For items of tangible personal property with a purchase price of at least one thousand dollars (\$1,000), the value of the tangible personal property used, stored, or consumed by a person for which use tax has not been paid and the amount of use tax owed on these purchases.

(D) The total amount of use tax owed under clauses (B) and (C).

(E) A line for the person to affirm by signature or initials, under penalties for falsifying a tax return, that the amount of use tax owed is true and accurate.

SECTION 4. IC 6-2.5-3-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 12. The budget agency shall before the fifteenth day of each month determine whether a requirement for sellers to collect use tax on remote sales has been enacted into law by the United States Congress. If such a law has been enacted, the budget agency shall certify this fact to the budget committee and the department of state revenue before the end of the month.

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