

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1072 be amended to read as follows:

- 1 Page 32, between lines 28 and 29, begin a new paragraph and insert:
2 "SECTION 38. IC 6-2.5-2-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) An excise tax,
4 known as the state gross retail tax, is imposed on retail transactions
5 made in Indiana.
6 (b) The person who acquires property in a retail transaction is liable
7 for the tax on the transaction and, except as otherwise provided in this
8 chapter, shall pay the tax to the retail merchant as a separate added
9 amount to the consideration in the transaction. ~~The A~~ retail merchant
10 **engaged in business in Indiana (as defined in IC 6-2.5-3-1(c)) or**
11 **that has permission from the department to collect the tax** shall
12 collect the tax as agent for the state.
13 SECTION 39. IC 6-2.5-3-1 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. For purposes of this
15 chapter:
16 (a) "Use" means the exercise of any right or power of ownership
17 over tangible personal property.
18 (b) "Storage" means the keeping or retention of tangible personal
19 property in Indiana for any purpose except the subsequent use of that
20 property solely outside Indiana.
21 (c) "A retail merchant engaged in business in Indiana" includes any
22 retail merchant who makes retail transactions in which a person
23 acquires personal property or services for use, storage, or consumption
24 in Indiana and who:
25 (1) maintains an office, place of distribution, sales location,
26 sample location, warehouse, storage place, or other place of
27 business which is located in Indiana and which the retail
28 merchant maintains, occupies, or uses, either permanently or
29 temporarily, either directly or indirectly, and either by the retail
30 merchant or through a representative, agent, ~~or~~ subsidiary, **or**

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

1 facilities to advertise, promote, or facilitate sales by the retail
2 merchant to customers; or

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

6 (g) The presumption under subsection (f) may be rebutted by
7 demonstrating that the affiliate'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 (h) A retail merchant is presumed to be engaged in business in
12 Indiana if the retail merchant enters into an agreement with one
13 (1) or more residents of Indiana under which the resident, for a
14 commission or other consideration, directly or indirectly refers
15 potential customers, whether by a link on an Internet web site, an
16 in-person oral presentation, or otherwise, to the retail merchant,
17 if the cumulative gross receipts from the sales by the retail
18 merchant to customers in Indiana who are referred to the retail
19 merchant by all residents with this type of an agreement with the
20 retail merchant are greater than ten thousand dollars (\$10,000)
21 during the preceding twelve (12) months.

22 (i) The presumption under subsection (h) may be rebutted by
23 submitting proof that the residents with whom the retail merchant
24 has an agreement did not engage in any activity within Indiana
25 that was significantly associated with the retail merchant's ability
26 to establish or maintain the retail merchant's market in Indiana
27 during the preceding twelve (12) months. This proof may consist of
28 sworn written statements that:

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

31 (2) are provided and obtained in good faith; and

32 (3) state that the Indiana residents did not engage in any
33 solicitation in Indiana on behalf of the retail merchant during
34 the preceding twelve (12) months.

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

36 (1) person that is a member of the same controlled group of
37 corporations (as defined in 26 U.S.C. 1563(a)) as the retail
38 merchant; or

39 (2) other entity that, notwithstanding its form of organization,
40 bears the same ownership relationship to the retail merchant
41 as a corporation that is a member of the same controlled
42 group of corporations (as defined in 26 U.S.C. 1563(a)).

43 (k) The amendments to this section made by an act enacted by
44 the general assembly in 2012 that concern collecting use tax on
45 remote sales apply on and after the earlier of:

46 (1) January 1, 2013; or

47 (2) the first day of the third month that follows the month that

1 **the budget agency certifies under section 12 of this chapter**
2 **that a requirement for sellers to collect use tax on remote**
3 **sales has been enacted into law by the United States Congress.**
4 SECTION 40. IC 6-2.5-3-12 IS ADDED TO THE INDIANA CODE
5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2012]: **Sec. 12. The budget agency shall before the fifteenth day**
7 **of each month determine whether a requirement for sellers to**
8 **collect use tax on remote sales has been enacted into law by the**
9 **United States Congress. If such a law has been enacted, the budget**
10 **agency shall certify this fact to the budget committee and the**
11 **department of state revenue before the end of the month."**
12 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1072 as printed February 24, 2012.)

Senator BRODEN