# LEGISLATIVE SERVICES AGENCY
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## FISCAL IMPACT STATEMENT

**LS 7151**
**BILL NUMBER:** HB 1546

**NOTE PREPARED:** Feb 25, 2013
**BILL AMENDED:** Feb 18, 2013

**SUBJECT:** Tax Administration.

**FIRST AUTHOR:** Rep. Turner
**FIRST SPONSOR:** Sen. Hershman

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:** X **GENERAL**
X **DEDICATED**
**FEDERAL**

**IMPACT:** State & Local

__Summary of Legislation:__ (Amended) The bill repeals the Indiana Estate Tax and the Indiana Generation Skipping Transfer Fee.

The bill provides exemptions to income taxes for out-of-state businesses and out-of-state employees performing disaster recovery work in Indiana.

This bill authorizes the disclosure of taxpayer information to a member of the General Assembly or an employee of the House of Representatives or the Senate if the member or employee is acting on behalf of the taxpayer and certain conditions are met.

This bill makes numerous changes concerning the administration of the state gross retail tax, the adjusted gross income tax, the inheritance tax, CVET, tax collection, penalties, refunds, and the registering and plating of certain commercial vehicles. The specific provisions of the bill are the following:

- Includes accommodations to the list of sales tax-exempt items that can acquired by state and local governments or purchased by a nonprofit entity for fund-raising purposes.
- Shortens the expiration date of registered retail merchant certificates (RRMC) under certain circumstances.
- Increases the penalty for conducting retail transactions without a valid RRMC from a Class B misdemeanor to a Class A misdemeanor.
- Makes the sale, purchase, installation, or use of an automated sales suppression device or phantom-ware a Class C felony.
- Requires vendors to be current or less than 30 days delinquent in remitting sales tax and withholding

tax in order to receive, transfer, or renew any type of alcohol or tobacco permit.

- Commercial plates issued by the Department of State Revenue (DOR) will never expire if a person owns at least 25 commercial vehicles.
- Waives the late penalties for corporations or partnerships that either have paid 80% of the tax due for the current year or 100% of the tax due for the preceding year before the 15th day of the 4th month after the end of the entity's taxable year.
- Requires taxpayers to remit withholding tax collected monthly if they withheld more than $1,000 in the previous calendar year.
- Filing a tax return without the proper amount of remittance identified on the return will not negate an active tax warrant.
- Reduces the penalty for taxpayers who fail to respond to a not sufficient funds (NSF) notice within 10 days. [An NSF occurs when a taxpayer makes a payment with a check, credit card, debit card, or electronic payment, and the DOR is unable obtain the full face value of the payment.]
- Authorizes the DOR to provide taxpayers certain documents electronically via secure electronic delivery service if the taxpayer is required to report and remit Sales Tax or Withholding Tax and the taxpayer provides written consent.
- Restores the provisions repealed in 2012 concerning the deduction and credits provided to retail merchants with respect to prepaid sales taxes on gasoline and special fuel.
- Repeals obsolete provisions in the commercial vehicle excise tax (CVET) law.

**Effective Date:** July 1, 2012 (retroactive); January 1, 2013 (retroactive); July 1, 2013; January 1, 2014.

**Explanation of State Expenditures:** (Revised) *Department of State Revenue (DOR):* The DOR will incur additional expenses to implement some provisions of the bill. However, the savings from using a secure electronic delivery service to deliver certain documents to specific taxpayers may offset some of the additional expenses. The bill's requirements are within the agency's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

*Department of Corrections:* A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately $3,234 annually, or $8.86 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately two years.

*County Inheritance Tax Replacement Payments*: This bill changes the calculation of Inheritance Tax replacement payments to counties which would result in an increase in expenditures from the state General Fund beginning in FY 2014 and ending in FY 2024. (See *Explanation of Local Revenues* for more information.)

**Explanation of State Revenues:** The following provisions of the bill will likely have an impact on state tax revenue. They are categorized by whether the provision will likely increase state revenue, likely have no net revenue impact, or decrease state revenue. The net impact of the entire bill is indeterminable.

*Likely Increase State Revenue* -
*Automated Sales Suppression Devices and Phantom-ware:* This bill makes the sale, purchase, installation,

use or possession of an automated sales suppression device or phantom-ware a Class C felony. These devices are used to eliminate or produce false sales receipts, transaction reports, and documentation. If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class C felony is $10,000. However, any additional revenues would likely be small.

(Revised) *Compliance Requirements for Alcohol & Tobacco Licenses* - The bill requires that a merchant must be current or less than 30 days delinquent on sales tax and withholding obligations before any type of permit or license will be issued, renewed, or transferred. An applicant is not considered delinquent if they file a proper protest. If a protest is filed, the taxpayer will be considered delinquent after the taxpayer's appeal period expires or upon final ruling by the tax court. This will likely increase state collections by an indeterminable amount as taxpayers become compliant in order to receive a permit or license. This provision goes into effect on July 1, 2013.

*Increase Penalty for Conducting Retail Sales without a RRMC* - The bill changes the penalty for conducting retail transactions without a RRMC from a Class B misdemeanor to a Class A misdemeanor. Revenue to the Common School Fund may increase if a person is sentenced for a Class A misdemeanor rather than for a Class B misdemeanor. The maximum fine for a Class B misdemeanor is $1,000, while the maximum fine for a Class A misdemeanor is $5,000. However, any additional revenue is likely to be small. Court fees would remain unchanged. This provision goes into effect on July 1, 2013.

(Revised) *Negate Tax Warrants* - The bill states that filing a return without the proper remittance amount identified on the return does not fulfill the conditions of a tax warrant if the warrant was already issued. This change will likely increase tax collections by an indeterminable amount beginning in July 1, 2013.

*Renewal of RRMCs* - The DOR is required to notify a registered retail merchant within 60 days before their RRMC renewal date if they have outstanding withholding or sales tax liabilities. The DOR will not renew the RRMC unless the merchant pays the liabilities. Under the current law, once the merchant fulfills their obligation, their RRMC will be renewed for two years. This bill reduces the renewal time to one year, so the taxpayer will undergo a compliance check again the following year. The shortened time between compliance checks may aid in the collection of back taxes and increase state revenue. This change is effective beginning January 1, 2014.

*No Fiscal Impact Likely* -
*Include Accommodations in Sales Tax-Exempt Items*: The bill adds accommodations to the list of Sales Tax-exempt items that can be purchased by state and local governments or purchased by nonprofit entities for fund-raising purposes. This addition is a clarification of the current statutory interpretation by the DOR. The DOR states in an Information Bulletin that, "[t]he State of Indiana and its local governments are not subject to sales or use tax on purchases to be used primarily to carry out a governmental function." DOR makes a similar interpretation in another Information Bulletin for the purchase of accommodations by a nonprofit entity for fund-raising purposes. This change will likely have no fiscal impact.

(Revised) *Repeal of the Indiana Estate Tax and Indiana Generation Skipping Transfer Tax*: The bill provides that the Indiana Estate Tax and the Indiana Generation Skipping Transfer Tax do not apply after June 30, 2013. The Indiana Estate Tax is permanently inoperative and will not generate any revenue due to provisions of the American Taxpayer Relief Act of 2012 (P.L. 112-240), signed into law on January 2, 2013. This Act permanently repealed the state death tax credit under the Federal Estate Tax which was the basis for the

Indiana Estate Tax.

Any potential future revenue loss from the elimination of the Generation Skipping Transfer Tax would be minimal. The tax has generated revenue in only two years since FY 1993: FY 2004 ($31,254) and FY 2005 ($3,637).

*Sales Tax on Gasoline:* The bill restores provisions inadvertently repealed in 2012 regarding Sales Tax deductions and credits offered to retail merchants for prepayments of Sales Tax on gasoline and special fuel. This provision will not have a fiscal impact on the state. Since DOR continued to administer the Sales Tax deductions and credits relating to gasoline and special fuel as under the repealed provisions, this change will have no fiscal impact.

*Withholding Remittance Due Dates:* The bill requires employers to report and remit income taxes withheld every month if the employer withheld over $1,000 in the previous calendar year. The DOR may exempt employers from reporting and remitting withholding on a monthly basis if the employer withheld $1,000 or less in the previous calendar year. The current threshold for mandatory monthly withholding filing is if the average monthly tax withheld in the previous year is greater than $1,000. This will increase the frequency of withholding taxes received by the state, but it is likely to have no net fiscal impact. The provision goes into effect on January 1, 2013.

<u>*Likely Decrease State Revenue*</u> -
(Revised) *Disaster Recovery Exemptions*: This bill provides that out-of-state businesses and employees would be exempt from state income taxes as long as their activities are directly contributing to the recovery of a declared disaster. The revenue loss is indeterminable and would depend on the frequency of natural disasters, duration of the disaster recovery period, and the amount of assistance provided by out-of-state response teams. The exemption goes into effect on July 1, 2013.

This bill exempts both out-of-state businesses and employees from state income taxes if they are in Indiana performing disaster emergency related work. The exemptions are in effect from 10 days prior to the disaster declaration to 60 days after the disaster emergency ends. The bill defines disaster emergency related work as repairing, renovating, installing, building, or rendering services related to the infrastructure that is damaged by an event that caused the disaster to be declared.

*Reduce NSF Penalty:* Under current law, the DOR will issue a 10% penalty fee for a NSF payment and request the taxpayer provide the necessary funds. The taxpayer is given 10 days to provide the necessary funds. If the taxpayer fails to comply within the 10-day period, the penalty is increased to 100% of the value of the payment. This bill reduces this fee from 100% to 30% of the value of the payment. This will likely reduce state revenue by an indeterminable amount beginning after January 1, 2014.

*Waive Late Penalties for Partnerships and Corporations:* This bill would eliminate the late filing and remittance penalties for the Corporate Adjusted Gross Income Tax under certain conditions. The late penalty would be waived if the entity paid at least 80% of the withholding tax for the current year or 100% of the withholding tax for the prior year before the 15th day of the 4th month after the end of the entity's taxable year. In tax year 2011, the state collected nearly $6 M in late filing penalties from the Corporate AGI Tax. This bill will likely reduce that revenue by an indeterminable amount. This provision goes into effect after July 1, 2013.

**<u>Explanation of Local Expenditures:</u>** *Increase Penalty for Conducting Retail Sales without a RRMC:* The maximum term of imprisonment for a Class B misdemeanor is up to 180 days, while the maximum term for a Class A misdemeanor is up to one year. In the case of a Class C felony, if more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

**Explanation of Local Revenues:** *County Inheritance Tax Replacement Payments*: This bill would increase the amount of replacement payments made to counties from the state General Fund beginning in FY 2014. Estimates are provided in the following table.

| Fiscal Year Impact | Estimated Replacement Payments Under Current Law | Estimated Replacement Payments Provided by this Bill | Net Increase |
|---|---|---|---|
| FY 2014 | $37,000 | $58,000 | $21,000 |
| FY 2015 | $33,000 | $194,000 | $161,000 |
| FY 2016 | $30,000 | $326,000 | $296,000 |
| FY 2017 | $26,000 | $482,000 | $456,000 |
| FY 2018 | $22,000 | $654,000 | $632,000 |
| FY 2019 | $18,000 | $818,000 | $800,000 |
| FY 2020 | $15,000 | $949,000 | $934,000 |
| FY 2021 | $11,000 | $970,000 | $959,000 |
| FY 2022 | $7,000 | $832,000 | $825,000 |
| FY 2023 | $4,000 | $513,000 | $509,000 |
| FY 2024 | $0 | $0 | $0 |

This bill changes the calculation of Inheritance Tax replacement payments made to counties beginning in FY 2014 to the calculation method that was in statute prior to SEA 293-2012, multiplied by percentages that phase out the payments by FY 2024. The calculation will be based upon the difference between the Inheritance Taxes retained by a county in a state fiscal year and the average amount collected between 1990 and 1997, excluding the highest year and lowest year, multiplied by the appropriate percentage specified in the table below. The current calculation is the Inheritance Tax replacement payment distributed to the county for FY 2012 multiplied by the appropriate percentage specified in the table below. The table below provides the schedule for the phaseout of county replacement payments with the annual phaseout percentages.

| Fiscal Year Shortage | Fiscal Year Distributed | County Replacement Payment Phaseout |
|---|---|---|
| FY 2014 | FY 2015 | 82% |
| FY 2015 | FY 2016 | 73% |

| | | |
|---|---|---|
| FY 2016 | FY 2017 | 64% |
| FY 2017 | FY 2018 | 55% |
| FY 2018 | FY 2019 | 45% |
| FY 2019 | FY 2020 | 36% |
| FY 2020 | FY 2021 | 27% |
| FY 2021 | FY 2022 | 18% |
| FY 2022 | FY 2023 | 9% |
| FY 2023 | FY 2024 | 0% |

SEA 293-12 provided for a phaseout of the Inheritance Tax beginning with decedents whose deaths occur during CY 2013. The Inheritance Tax will no longer apply to property interests transferred by decedents whose deaths occur after December 31, 2021. The Inheritance Tax must be paid within 12 months after the decedent's death (within 9 months to receive the 5% early discount).

(Revised) *Disaster Recovery Exemptions:* This bill exempts out-of-state businesses and employees from locally imposed income taxes, licensing requirements and fees will performing disaster recovery related work during a disaster period. The local revenue implications are indeterminable.

*Increase Penalty for Conducting Retail Sales without a RRMC:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

**State Agencies Affected:** Department of State Revenue; Department of Correction.

**Local Agencies Affected:** Trial courts; local law enforcement agencies; Counties.

**Information Sources:** OFMA Inheritance Tax Database; Revenue Technical Committee, *State Revenue Forecast, Fiscal Year 2015,* December 17, 2012; Quarterly Inheritance Tax Reports, FY 1997- FY 2012; U.S. Census Bureau, 2007 Economic Census; Bureau of Economic Analysis; LSA Income Tax Database; DOR, *Information Bulletin #4: Sales to and by Indiana State and Local Governments, the United States Government, it Agencies, and Federal Instrumentalities,* September 2011; DOR, *Information Bulletin #10: Application of Sales Tax to Nonprofit Organizations*, April 2012.

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