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FISCAL IMPACT STATEMENT

LS 7151 | **NOTE PREPARED:** Apr 9, 2013
BILL NUMBER: HB 1546 | **BILL AMENDED:** Apr 9, 2013

SUBJECT: Tax Administration.

FIRST AUTHOR: Rep. Turner | **BILL STATUS:** 2nd Reading - 2nd House
FIRST SPONSOR: Sen. Hershman

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) This bill makes numerous changes concerning the administration of the State Gross Retail Tax, the Adjusted Gross Income Tax, the Inheritance Tax, the Commercial Vehicle Excise Tax, tax collection, penalties, and the registering and plating of certain commercial vehicles.

The bill restores provisions repealed in 2012 concerning the deduction and credits provided to retail merchants with respect to prepaid sales taxes on gasoline and special fuel.

It 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.

The bill repeals obsolete provisions in the Commercial Vehicle Excise Tax law, and it repeals the Indiana Estate Tax and the Indiana Generation Skipping Transfer Tax.

The bill provides that the Office of Management and Budget may enter into an offset agreement with the Secretary of the Treasury of the United States to participate in a reciprocal Treasury Offset Program under federal law.

The bill provides certain exemptions for an out-of-state business that performs disaster emergency related work in Indiana.

The bill specifies that a deceased veteran's surviving spouse is eligible for a veteran's property tax deduction if the deceased veteran satisfied the requirements for the deduction at the time of death and the surviving spouse

owns the property at the time the deduction statement is filed. It specifies that the surviving spouse may provide the documentation necessary to establish that the deceased veteran qualified for the deduction at the time of death. It provides that the surviving spouse is entitled to the deduction regardless of whether the property for which the deduction is claimed was owned by the deceased veteran or the surviving spouse before the deceased veteran's death. The bill provides that a surviving spouse who was denied the deduction for the March 1, 2012, or March 1, 2013, assessment date is entitled to a refund of the property taxes paid with respect to the denied amount if the qualifying surviving spouse files a statement for the deduction before September 1, 2013.

The bill extends the period during which Jackson County may impose an additional 0.1% County Adjusted Gross Income Tax (CAGIT) rate to operate and maintain a jail and a juvenile detention center until 2024. It legalizes and validates taxes collected at the additional rate after June 30, 2011, and before July 1, 2013.

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

Explanation of State Expenditures: *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.

Office of Management and Budget (OMB): The OMB would incur additional expenses to administer and participate in the State Reciprocal Program of the Treasury Offset Program. The revenue collected from payment offsets and fees should cover the cost to participate in the program.

State Budget Agency (SBA): The SBA's current level of staff and resources should be sufficient to implement the provisions of the bill.

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.

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.

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.

Treasury Offset Program - State Reciprocal Program: This bill allows the OMB to enter into an agreement with the United States Department of the Treasury to participate in the State Reciprocal Program of the Treasury Offset Program (TOP). TOP is a centralized offset process that intercepts federal and state payments to payees who owe delinquent debts to federal agencies and states participating in the reciprocal program. This bill allows the state to submit both tax and non-tax debts to the U.S. Treasury and have those debts offset certain federal non-tax payments. In return, the U.S. Treasury will submit non-tax debts to Indiana to offset state payments. The bill defines state payments as tax refunds, payments to vendors or contractors, and expense reimbursements to state employees. It does not include salary, wages, pension payments, or any other payment the OMB determines will have an impact on the health or welfare of Indiana residents.

The bill also allows the OMB to impose a reasonable fee on persons who have debts offset by this program. The fee revenue is to be used to offset the costs of administering the program and for the costs of other revenue generation and cost savings initiatives.

Participation in this program will increase state revenue by an indeterminable amount.

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.

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.

Likely Decrease State Revenue -
Disaster Recovery Exemptions: This bill provides that out-of-state businesses and employees would be exempt from certain state 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.

A qualifying out-of-state business would be exempt from state income taxes, state fees, licensing requirements, worker's compensation insurance payments, and employer contribution to unemployment compensation. In addition, business purchases of equipment used and consumed during the disaster period would be exempt from sales tax. A qualified employee would be exempt from the state income tax, withholding tax, and any state fee.

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.

Explanation of Local Expenditures: *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: *Jackson County LOIT:* This bill allows Jackson County to continue to impose a CAGIT rate of 0.1% through December 31, 2023, for the operation and maintenance of correctional facilities. It is estimated that the additional 0.1% CAGIT rate in Jackson county could potentially generate about $750,000 in CY 2014 and $770,000 in CY 2015.

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

Fiscal Year Impact	Estimated Replacement Payments Under Current Law	Estimated Replacement Payments Provided by this Bill	Net Increase
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 2013	FY 2014	91%
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).

Disaster Recovery Exemptions: This bill exempts out-of-state businesses and employees from local income taxes, licensing requirements, and local fees while 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.

(Revised) *Veterans' Property Tax Deductions*: *Summary:* This bill could result in an increase in the number of disabled veteran property tax deductions claimed by surviving spouses. The number and value of the additional deductions is not known. In general, the additional deductions would reduce the assessed value (AV) tax base which would lead to increased tax rates. The higher tax rates would cause a tax shift from the taxpayers receiving the deductions to all other taxpayers. In addition, the increased tax rates would cause circuit breaker credits in some areas to rise. Property tax collections for local civil taxing units and school corporations would decline.

In addition, CY 2013 property tax collections could decline because of any refunds allowed under this bill. Property tax refunds reduce current year tax collections.

(Revised) *Veterans' Property Tax Deductions*: *Background*: Under current law, certain disabled veterans or their surviving spouses are eligible for a property tax deduction against any real or personal property that they may own. There are two disabled veteran deductions.

(1) Veterans with wartime service and a service-connected disability of at least 10% are entitled to a property tax deduction of $24,960 on their real or personal property. There are no qualifications on AV.

(2) Veterans are entitled to a property tax deduction of $12,480 on their real or personal property if the veteran is either totally disabled or is at least age 62 with a disability of 10% or more. The disability need not be service-connected nor does the service need to be wartime service. In order to qualify, the AV of the property must be less than $143,160.

Veterans who qualify may receive both disabled veteran deductions. Properties that are co-owned by more than one disabled veteran are subject to multiple deductions.

In both cases, a surviving spouse is eligible for the deduction if the veteran "would qualify for the deduction if the individual were alive."

According to the Department of Local Government Finance, the surviving spouse is not entitled to the deduction if the disabled veteran's name was not on the deed to the property.

Beginning with the March 1, 2012, assessment date, this bill would permit the surviving spouse to claim the deduction if the veteran met all qualifications other than ownership of the property. The deduction would apply to a property that the surviving spouse owns or purchases at any time.

If a deduction was denied for the 2012 or 2013 assessment date, a qualifying surviving spouse may apply for the deduction by August 31, 2013. The county auditor would be required to issue a refund for taxes paid on the deducted AV within 30 days after the statement is filed.

State Agencies Affected: Department of State Revenue; State Budget Agency Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies; Counties; County auditors; Local civil taxing units and school corporations.

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; LSA, *LOIT Distributions Amounts at a 1% Rate,* November 1, 2012; Department of the Treasury, *Treasury Offset Program - State Reciprocal Program Overview;* IDVA Annual Conference Presentation, Department of Local Government Finance (DLGF), www.in.gov/dlgf/files/Veterans_Presentation.pdf.

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