LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 7382 | **NOTE PREPARED:** Feb 19, 2004
BILL NUMBER: HB 1365 | **BILL AMENDED:** Feb 19, 2004

SUBJECT: Various State Tax Matters.

FIRST AUTHOR: Rep. Cochran | **BILL STATUS:** CR Adopted - 2nd House
FIRST SPONSOR: Sen. Borst

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

Summary of Legislation: (Amended) This bill provides that the Indiana horse racing commission's base year revenue for purposes of riverboat admissions taxes is $44,000,000 beginning with fiscal years that begin after June 30, 2003. It specifies the amounts allocated to purses, breed development, horsemen's associations, and the racetracks.

The bill makes the following changes to the Sales and Use Tax: (1) Grants a credit against Indiana use tax for Sales tax paid in another state for a vehicle, a watercraft, or an aircraft; (2) Makes the furnishing of satellite television service, cable radio service, and satellite radio service a retail transaction; (3) Indicates that a deduction for Sales Tax paid on a purchase price that becomes uncollectible is assignable only if the retail merchant that paid the tax assigned the right to the deduction in writing; (4) Requires certain out-of-state entities to Collect Sales Tax in Indiana; (5) Provides that gross retail income does not include receipts attributable to delivery charges or installation charges if those charges are separately stated on the invoice.

This bill also revises the manner in which net operating losses are computed.

The bill also requires the Department of State Revenue to compile, make public, and publish on the Internet the names and addresses of delinquent taxpayers who have owed more than $1,000 in taxes and penalties for more than twelve months. It confers immunity on the department for publishing the information.

The bill prohibits the recognition of certain adoptions for purposes of the Inheritance Tax.

The bill repeals the Sales Tax credit for sales of motor vehicles, trailers, watercraft, and aircraft that are sold in Indiana and titled or registered in another state.

The bill eliminates the $2 annual fee to renew a permanent registration of a semitrailer and repeals the registration fee for a converter dolly.

Effective Date: (Amended) Upon Passage; January 1, 2004 (retroactive); March 1, 2004 (retroactive); July 1, 2004.

Explanation of State Expenditures: (Revised) The Department of State Revenue will incur additional expenses to revise tax forms, instructions, and computer programs to reflect the changes. The Department's current resources should be sufficient to absorb additional costs associated with the implementation of the changes.

Tax Warrants: The bill requires the DOR to compile a list of taxpayers subject to tax warrants in excess of $1,000 in taxes and penalties that have been outstanding for at least 12 months. The list must include the taxpayer's name, address, and the amount of tax owed. Each month, the Department is required to publish the list on AccessIndiana and make the list available for public inspection. However, prior to including a name on the published list, the Department is required to notify the delinquent taxpayer at least two weeks prior to the list's publication. DOR currently is required to prepare a list of outstanding tax warrants monthly and certify the list to the Bureau of Motor Vehicles. DOR estimates that there are approximately 54,400 warrants that would meet the 12-month specifications of this bill. They estimate that it would cost approximately $43,000 in development costs to generate this list for the Internet with search capabilities. Standard postage costs for the initial monthly notice would be about $20,125. There will be some ongoing costs to replace the report monthly.

Explanation of State Revenues: (Revised) *Horse Racing Subsidy:* The bill increases the subsidy to horse racing from $27.2 M to $44.0 M annually beginning in FY 2004. This change will result in an additional transfer of $16.8 M annually from the Property Tax Replacement Fund (PTRF) to horse racing beginning in FY 2005. The bill requires the $44.0 M subsidy to be distributed to: (1) purses and horsemen's associations (40%); (2) the two horse racetracks divided equally (40%) and breed development funds (20%).

Under current statute, $0.65 of each $3.00 Admission Tax collected by a riverboat casino is paid to the Indiana Horse Racing Commission (IHRC) to be distributed in amounts determined by the IHRC for the promotion and operation of horse racing in Indiana. Current statue both guarantees and limits this distribution to $27.2 M annually (the FY 2002 distribution level to horse racing). Current statute requires that any shortage (below the $27.2 M guarantee level) is to be paid from the PTRF. A supplemental distribution to eliminate the shortage that occurs in a fiscal year must be made prior to September 15th of the following fiscal year. The supplemental distribution to eliminate the shortage that occurred in FY 2003 was completed on August 4, 2003. In FY 2003, Admission Tax collections to the IHRC totaled about $20.5 M. As a result, the supplemental distribution to eliminate this shortage totaled about $6.7 M. The bill increases the guarantee by $16.8 M (to $44.0 M) beginning in FY 2004. This means the supplemental distribution for the FY 2004 shortage will increase by $16.8 M. However, the distribution will not occur until FY 2005 pursuant to current statute. This will occur in each subsequent year.

Current statute specifies that distributions are to be made to one or more breed development funds; and for purses, promotions, and routine operations of the horse racetracks in Indiana. Under current rules of the IHRC, the horse racing subsidy is to be distributed to: (1) purses (40%); (2) the two horse racetracks divided equally (40%) and breed development funds (20%).

This bill makes several changes to the Sales and Use Tax. The net impact of these provision on state revenue is expected to be positive.

Sales and Use Tax: The bill contains changes to the state's Sales and Use Tax law that would impact state Sales Tax revenue.

Sales and Use Tax Credits: This bill contains two provisions that impact the Sales and Use Tax exemptions and credits associated with the motor vehicle, trailer, watercraft, and aircraft sales. Under current law, sales of motor vehicles, trailers, watercraft, and aircraft that are immediately shipped out of state, delivered for title and used out of state, or those that are not registered for use in Indiana are exempt from the state Sales Tax. This bill removes this exemption and makes the sale of these vehicles subject to the state Sales Tax.

The bill also makes an accompanying change in current law to allow persons who purchase vehicles, watercraft, and aircraft in other states to receive a credit against Indiana's Use Tax for sales taxes paid in another state on the same item. For example, if an Indiana resident purchases a boat in Wisconsin for use in Indiana and the purchaser pays Wisconsin's 5% Sales Tax, this bill would allow the purchaser to receive a credit against Indiana's 6% Use Tax on the taxes paid in Wisconsin. In this example, the purchaser's Indiana Use Tax liability would be limited to the 1% difference between Indiana's and Wisconsin's tax rates.

The changes above are expected to have, on net, a positive impact on state Sales and Use Tax revenue. The full impact of these changes are currently unspecifiable. However, given the large volume of currently exempt vehicle sales in Indiana, the impact of this bill on state Sales Tax revenue is expected to be significant.

Sales Tax on Satellite Television Providers: This provision changes current law to specify that satellite broadcasts of radio or television signals that terminate in Indiana are subject to the state's Sales Tax. (Cable television service is subject to the state's Sales Tax.) Prior to a June 16, 2003, ruling by the state's Tax Court, sales of satellite television service were subject to the state's Sales Tax. The DOR estimates that, absent the language proposed in the bill, the state would lose approximately $12 M each year in Sales Tax revenue.

Assignability of Sales Tax Deductions: This provision specifies that Sales Tax deductions for bad debt are only assignable if the retail merchant that paid the tax liability assigns the right to the deduction in writing. The impact on this provision on state Sales Tax revenue is expected to be negligible.

Retail Merchants: This bill requires certain entities that are closely related to out-of-state business entities that engage in taxable activities in Indiana to register as retail merchant in Indiana and, when applicable, to collect Indiana's Sales and Use Tax. This provision is expected to have a unspecifiable positive impact on state Sales Tax revenue.

Sales Tax on Delivery and Installation Charges: Upon passage, delivery and installation charges which are separately stated on a retail merchant's invoice are not subject to the state's Sales Tax. The provision is expected to cause a slight reduction in state Sales Tax revenue. (Beginning January 1, 2004, certain delivery and installation charges became subject to the state's Sales Tax insofar as they are included in a retail merchant's gross income from the sale of a taxable good.)

Revenue from the state's 6% Sales Tax is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.192%), the Public Mass Transportation Fund (0.635%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%). (Prior to making a retail transaction in Indiana, retailers are required to register with the Department of State Revenue. The fee associated with registration is $25. Fee revenue is deposited in the state General Fund.)

Net Operating Loss: The bill simplifies the calculation of Indiana net operating loss. Under the bill, Indiana net operating loss is equal to the taxpayer's federal net operating loss adjusted for a variety of modifications for the same taxable year that the net operating loss was incurred. These modifications include adding back state income taxes, property taxes, and charitable contributions and deducting interest on U.S. Government obligations and other modification. Then, the apportionment percentage is applied to determine the Indiana portion of the net operating loss. The number of years that a firm is allowed to take an Indiana net operating loss carryover and/or carryback is the same as the number of years allowed in the IRS Code: a carryforward for up to a 20 years following the loss year and a carryback for up to 2 years preceding the loss year.

The impetus behind this provision of the bill is a court ruling which found that the method used on the tax forms to calculate Indiana net operating loss is different from the method described in the current law. The method of calculating Indiana net operating loss that is prescribed on Indiana tax forms and used by the vast majority of businesses claiming the net operating loss deduction is very similar to the method that is presented in the bill. As a result, the bill should cause little disruption in the way that firms calculate net operating loss and any corresponding carryback or carryforward. The statutory change proposed in the bill should have little effect on Adjusted Gross Income Tax revenues.

Tax Warrants- Secondary Impact: If the publication of these lists increases the collection of existing tax warrants, additional revenue will be generated. It is unknown how much of the delinquent taxes would be collected sooner due to the publications of these lists. However, it is estimated that after eliminating those warrants which are deemed "exhausted, uncollectible, or under protest, the *minimum* amount of tax liabilities from these warrants, due to the $1,000 threshold, could be at least $200 M.

(Revised) *Inheritance Tax:* The bill specifies that for Inheritance Tax Purposes adoptions must take place before the adopted child is totally emancipated. A relationship between the adopting parent and child must exist for at least 10 years and have begun before the child's fifteenth birthday. This statute prohibits adult adoptions for the purpose of reducing Inheritance Tax liability. According to the Department of State Revenue, there have been a few cases of adult adoption for purposes to reducing Inheritance Tax liability in the past few years one of which resulted in a $61,000 reduction in Inheritance Tax revenue.

Registration of Semitrailers: The total revenue loss from this provision is estimated to be approximately **$482,000** annually.

Semitrailer Renewal Fee and other BMV fees: The elimination of the $2 annual fee to renew a permanent registration of a semitrailer will cause a revenue loss of approximately $416,700 annually. This is based on 40,655 registrations in CY 2003. In addition to the elimination of the $2 statutory fee, BMV will not be able to assess $8.25 of other service charges and fees which are tied to the registration fee. The total revenue loss is equal to $10.25 per registration. The fees and funds affected are listed in the following table. Actual revenue loss over time will depend upon the number of such registrations.

Fee	Amount	Fund Affected
Semitrailer Renewal Registration	$2	Motor Vehicle Highway Fund License Branch Fund (BMVC)
Service Charges	$3.25	License Branch Fund (BMVC)
Administrative Service Charge- Insurance Enforcement	$0.50	License Branch Fund (BMVC)
Crossroads 2000 Fee	$3.00	Crossroad 2000 Fund
Public Service Fee	$.025	State Police Building Account
Service Charges	$1.25	Integrated Public Safety Communication Fund
Total	**$10.25**	

Farm Semitrailer Renewal Fee and other BMV Fees: Elimination of the $2 annual fee to renew a permanent registration for a semitrailer also will eliminate the $1 fee for the permanent farm semitrailer renewal due to the provision under IC 9-29-5-13 which states that this fee is 50% of the semitrailer fee. This will result in a revenue loss of $27,500 annually. This is based on 2,976 registrations of these vehicles in CY 2003. Along with the $1 statutory fee, BMV will not be able to collect $8.25 of other service charges and fees discussed above for a total revenue loss of $9.25 per registration.

IRP Registration Fee: The Department of State Revenue currently collects the $2 semitrailer registration fee on approximately 18,876 semitrailers filing under the International Registration Plan (IRP). The elimination of the $2 fee would result in a revenue loss of approximately $37,800 annually.

The funds affected for the various fees listed above are the Motor Vehicle Highway Fund, the License Branch Fund (BMVC), State Police Building Account, Crossroads 2000 Fund, and the Integrated Public Safety Communications Fund.

Additional Information: Currently, county wheel tax (in adopting counties) and the Commercial Vehicle Excise Tax (CVET) are collected at the time of registration and upon annual renewal of permanent semitrailer registrations. These annual taxes would remain in force even if the annual renewal of permanent semitrailer registrations is repealed by this bill. The method of collection could be similar to current practice in that the BMV could continue to send a statement for these taxes in lieu of the current renewal notice. The bill does not change the liability of semitrailer owners for these two taxes, but it may affect collection and compliance.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Department of Commerce; EDGE Board; Bureau of Motor Vehicles.

Local Agencies Affected:

Information Sources: Tom Conley and Mike Ralston, Department of State Revenue; Bob Lain, State Budget Agency; Multistate Tax Commission, "Corporate Tax Sheltering and the Impact on State Corporate Income Tax Revenue Collections, 15 July 2003; Mazerov, Michael. "Closing Three Common Corporate Income Tax Loopholes Could Raise Additional Revenue for Many States, Center on Budget and Policy Priortities, 23 May 2003; Chris Hall of the Ohio Department of Taxation. BMV Cash Audit, Draft Copy for CY 2003. Bob Lain, State Budget Agency, 317-232-3471.

Fiscal Analyst: Dagney Faulk, (317) 232-9592; John Parkey (317) 232-9854; Jim Landers, (317)232-9869; Jim Sperlik, (317)- 232-9866.