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FISCAL IMPACT STATEMENT

LS 6861

BILL NUMBER: SB 258

NOTE PREPARED: Jan 24, 2006

BILL AMENDED: Jan 23, 2006

SUBJECT: Various Sales and Use Tax changes.

FIRST AUTHOR: Sen. Kenley

FIRST SPONSOR: Rep. Espich

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill specifies that tobacco products are not food and food ingredients. It defines the terms "direct mail" and "bundled transaction". The bill also provides that a person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction.

The bill provides that a person who: (1) voluntarily registers as a seller under the Streamlined Sales and Use Tax Agreement; (2) is not a Model 1, Model 2, or Model 3 seller (as defined under the Streamlined Sales and Use Tax Agreement); and (3) had a liability for collection of State Gross Retail and Use Tax for the preceding calendar year that did not exceed \$1,000; is not required to file a monthly State Gross Retail and Use Tax return.

The bill also provides that a transaction in which a florist that takes a floral order from a purchaser and transmits the floral order to another florist for delivery is sourced to the location of the florist who originally took the floral order from the purchaser.

Effective Date: Upon passage; July 1, 2006.

Explanation of State Expenditures: This bill will increase the administrative costs of the Department of State Revenue (DOR) by requiring amendments to Sales and Use Tax (Sales Tax) forms and instructions. This impact is expected to be offset by the savings realized by allowing sellers who meet the requirements in the bill to file Sales Tax returns annually rather than monthly.

Explanation of State Revenues: This bill's impact on Sale Tax revenue is indeterminable. The provisions in

the bill are changes to conform Indiana's Sales Tax laws to the Streamlined Sales Tax Agreement (SSTA) as amended on October 1, 2005, and re-adopted on November 12, 2005.

Tobacco Products: The bill specifies that tobacco products are not food and food ingredients. Food and food ingredients for human consumption are exempt from the Sales Tax. Therefore, this provision could increase Sales Tax collections to the extent that retailers currently classify tobacco products as food or food ingredients. It is estimated that any increase in revenue would be minimal.

Direct Mail: The bill defines the term "direct mail" in conformance with the SSTA. This term was already used in IC 6-2.5-13-3, but was not defined. This provision of the bill is not expected to have a fiscal impact.

Bundled Transactions: This provision could decrease Sales Tax revenue to the extent that items that are taxable under current law become exempt under this new definition of bundled transactions. The amount of Sales Tax revenue that could be lost is indeterminable, but is anticipated to be minimal.

The bill defines a "bundled transaction" as a retail sale of two or more products, except real property and services to real property, that are:

- (1) distinct;
- (2) identifiable; and
- (3) sold for one non-itemized price.

The bill also provides that a person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction. Therefore, tangible personal property that is sold in a bundled transaction will be subject to Sales Tax.

The bill specifies that the term bundled transaction does NOT include a retail sale:

- (1) which the sales price of a product varies, or is negotiable, based on the purchasers selections;
- (2) where a service is the true object of the transactions and tangible personal property is only provided because it is essential to the use of the service;
- (3) where taxable and nontaxable products are bundled and the price of the taxable products make up less than 10% of the total purchase price;
- (4) where the transaction involves taxable products and exempt products and any of these items:
 - (A) food and food ingredients;
 - (B) drugs;
 - (C) durable medical equipment;
 - (D) mobility enhancing equipment;
 - (E) over-the-counter drugs;
 - (F) prosthetic devices; or
 - (G) medical supplies; andthe taxable products make up 50% or less of the total purchase price.

Under current law, Sales Tax would be applied to all of these sales, except item (3), which DOR has already classified as an exempt transaction in 45 IAC 2.2-4-2.

Under the bill, Sales Tax would not be applied to any of the sales transactions listed above.

Florist Sourcing Rule: This provision of the bill is not expected to have a fiscal impact. The bill does not change the way Sales Tax is currently applied to a transaction in which a florist that takes a floral order from a purchaser and transmits the floral order to another florist for delivery. Currently, this transaction would be taxed by the florist who takes the original purchase order.

The bill changes the date on which these transactions will be taxed as if the transaction took place solely in the location where the flowers were delivered. The bill says that this sourcing rule change will take place beginning in 2008, while the previous version of the SSTA stated that this change in sourcing rules would take place in 2006.

Background: Sales Tax revenue 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%).

The Streamlined Sales Tax Project addresses the problem of collecting Sales and Use Taxes on goods purchased via the internet, catalogs, and other remote sellers. The project seeks to remove the burden of collecting Sales Taxes from remote sellers through a simplification of state Sales and Use Tax structures, which would be applied in a more uniform way. As of February 21, 2005, 45 states had participated in the Streamlined Sales Tax Project through legislative enactments, executive orders, or negotiations.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue.

Local Agencies Affected:

Information Sources: Streamlined Sales Tax Agreement (10/1/05);
<http://www.streamlinedsalestax.org/agreement.htm>.

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