

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 258**

Citations Affected: IC 6-2.5.

Synopsis: Streamlined sales tax provisions. Makes the following changes in the gross retail and use tax law: (1) Defines "bundled transaction" and "direct mail". (2) Excludes tobacco products from the definition of "food and food ingredients". (3) 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. (4) Exempts a person from filing a monthly state gross retail and use tax return whenever the person: (A) voluntarily registers as a seller under the streamlined sales and use tax agreement; (B) is not a model 1, model 2, or model 3 seller; and (C) has a tax collection liability for the preceding calendar year that did not exceed \$1,000. (5) Provides that whenever a florist takes a floral order and transmits the order to another florist for delivery the transaction is sourced to the location where the florist originally took the order. **(This conference committee report deletes the following provisions added by the House Ways and Means Committee: (1) Requires the governor to issue a management statement concerning the effectiveness of the accounting system and the internal controls used in the accounting system and makes related changes. (2) Validates the procedures used in issuing certain bonds, leases, and other obligations. (3) Updates internal references in Indiana law to the Internal Revenue Code and expands the class of individuals for whom a dependent deduction may be taken on a state adjusted gross income tax return.)**

Effective: Upon passage; July 1, 2006.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 258 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 taxation.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 6-2.5-1-11.5 IS ADDED TO THE INDIANA CODE
- 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2006]: **Sec. 11.5. (a) This section applies to retail**
- 8 **transactions occurring after December 31, 2007.**
- 9 **(b) "Bundled transaction" means a retail sale of two (2) or more**
- 10 **products, except real property and services to real property, that**
- 11 **are:**
- 12 **(1) distinct;**
- 13 **(2) identifiable; and**
- 14 **(3) sold for one (1) nonitemized price.**
- 15 **(c) The term does not include a retail sale in which the sales price**
- 16 **of a product varies, or is negotiable, based on other products that**
- 17 **the purchaser selects for inclusion in the transaction.**
- 18 **(d) The term does not include a retail sale that:**
- 19 **(1) is comprised of:**
- 20 **(A) a service that is the true object of the transaction; and**
- 21 **(B) tangible personal property that:**

- 1 (i) is essential to the use of the service; and
 2 (ii) is provided exclusively in connection with the service;
 3 **(2) includes both taxable and nontaxable products in which:**
 4 (A) the seller's purchase price; or
 5 (B) the sales price;
 6 **of the taxable products does not exceed ten percent (10%) of**
 7 **the total purchase price or the total sales price of the bundled**
 8 **products; or**
 9 **(3) includes both exempt tangible personal property and**
 10 **taxable tangible personal property:**
 11 (A) any of which is classified as:
 12 (i) food and food ingredients;
 13 (ii) drugs;
 14 (iii) durable medical equipment;
 15 (iv) mobility enhancing equipment;
 16 (v) over-the-counter drugs;
 17 (vi) prosthetic devices; or
 18 (vii) medical supplies; and
 19 (B) for which:
 20 (i) the seller's purchase price; or
 21 (ii) the sales price;
 22 **of the taxable tangible personal property is fifty percent**
 23 **(50%) or less of the total purchase price or the total sales**
 24 **price of the bundled tangible personal property.**
 25 **The determination under clause (B) must be made on the basis**
 26 **of either individual item purchase prices or individual item sale**
 27 **prices.**

28 SECTION 2. IC 6-2.5-1-16.5 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2006]: **Sec. 16.5. (a) "Direct mail" means printed material**
 31 **delivered by United States mail or another delivery service to:**

- 32 (1) a mass audience; or
 33 (2) addresses on a mailing list:
 34 (A) provided by a purchaser; or
 35 (B) specified at the direction of a purchaser;

36 **if the cost of the item is not billed directly to the recipient.**

37 **(b) The term includes tangible personal property that the**
 38 **purchaser supplies directly or indirectly to the direct mail seller for**
 39 **inclusion in the package containing the printed material.**

40 **(c) The term does not include multiple items of printed material**
 41 **delivered to a single address.**

42 SECTION 3. IC 6-2.5-1-20 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. "Food and food
 44 ingredients" means substances, whether in liquid, concentrated, solid,
 45 frozen, dried, or dehydrated form, that are sold for ingestion or chewing
 46 by humans and that are consumed for their taste or nutritional value.
 47 The term does not include alcoholic beverages, candy, dietary
 48 supplements, **tobacco products**, or soft drinks.

49 SECTION 4. IC 6-2.5-4-15 IS ADDED TO THE INDIANA CODE

1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2006]: **Sec. 15. (a) This section applies to retail
3 transactions occurring after December 31, 2007.**

4 **(b) A person is a retail merchant making a retail transaction**
5 **when the person sells tangible personal property as part of a**
6 **bundled transaction.**

7 SECTION 5. IC 6-2.5-6-1 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Except as**
9 **otherwise provided in this section**, each person liable for collecting
10 the state gross retail or use tax shall file a return for each calendar
11 month and pay the state gross retail and use taxes that the person
12 collects during that month. A person shall file the person's return for a
13 particular month with the department and make the person's tax
14 payment for that month to the department not more than thirty (30) days
15 after the end of that month, if that person's average monthly liability for
16 collections of state gross retail and use taxes under this section as
17 determined by the department for the preceding calendar year did not
18 exceed one thousand dollars (\$1,000). If a person's average monthly
19 liability for collections of state gross retail and use taxes under this
20 section as determined by the department for the preceding calendar year
21 exceeded one thousand dollars (\$1,000), that person shall file the
22 person's return for a particular month and make the person's tax
23 payment for that month to the department not more than twenty (20)
24 days after the end of that month.

25 (b) If a person files a combined sales and withholding tax report and
26 either this section or IC 6-3-4-8.1 requires sales or withholding tax
27 reports to be filed and remittances to be made within twenty (20) days
28 after the end of each month, then the person shall file the combined
29 report and remit the sales and withholding taxes due within twenty (20)
30 days after the end of each month.

31 (c) Instead of the twelve (12) monthly reporting periods required by
32 subsection (a), the department may permit a person to divide a year into
33 a different number of reporting periods. The return and payment for
34 each reporting period is due not more than twenty (20) days after the
35 end of the period.

36 (d) Instead of the reporting periods required under subsection (a), the
37 department may permit a retail merchant to report and pay the
38 merchant's state gross retail and use taxes for a period covering:

- 39 (1) a calendar year, if the retail merchant's average monthly state
40 gross retail and use tax liability in the previous calendar year does
41 not exceed ten dollars (\$10);
- 42 (2) a calendar half year, if the retail merchant's average monthly
43 state gross retail and use tax liability in the previous calendar year
44 does not exceed twenty-five dollars (\$25); or
- 45 (3) a calendar quarter, if the retail merchant's average monthly state
46 gross retail and use tax liability in the previous calendar year does
47 not exceed seventy-five dollars (\$75).

48 A retail merchant using a reporting period allowed under this subsection
49 must file the merchant's return and pay the merchant's tax for a

1 reporting period not later than the last day of the month immediately
2 following the close of that reporting period.

3 (e) If a retail merchant reports the merchant's adjusted gross income
4 tax, or the tax the merchant pays in place of the adjusted gross income
5 tax, over a fiscal year or fiscal quarter not corresponding to the calendar
6 year or calendar quarter, the merchant may, without prior departmental
7 approval, report and pay the merchant's state gross retail and use taxes
8 over the merchant's fiscal period that corresponds to the calendar period
9 the merchant is permitted to use under subsection (d). However, the
10 department may, at any time, require the retail merchant to stop using
11 the fiscal reporting period.

12 (f) If a retail merchant files a combined sales and withholding tax
13 report, the reporting period for the combined report is the shortest
14 period required under:

- 15 (1) this section;
- 16 (2) IC 6-3-4-8; or
- 17 (3) IC 6-3-4-8.1.

18 (g) If the department determines that a person's:

- 19 (1) estimated monthly gross retail and use tax liability for the
20 current year; or
- 21 (2) average monthly gross retail and use tax liability for the
22 preceding year;

23 exceeds ten thousand dollars (\$10,000), the person shall pay the
24 monthly gross retail and use taxes due by electronic funds transfer (as
25 defined in IC 4-8.1-2-7) or by delivering in person or by overnight
26 courier a payment by cashier's check, certified check, or money order to
27 the department. The transfer or payment shall be made on or before the
28 date the tax is due.

29 (h) If a person's gross retail and use tax payment is made by electronic
30 funds transfer, the taxpayer is not required to file a monthly gross retail
31 and use tax return. However, the person shall file a quarterly gross retail
32 and use tax return before the twentieth day after the end of each
33 calendar quarter.

34 **(i) A person:**

- 35 **(1) who has voluntarily registered as a seller under the**
- 36 **Streamlined Sales and Use Tax Agreement;**
- 37 **(2) who is not a Model 1, Model 2, or Model 3 seller (as defined**
- 38 **in the Streamlined Sales and Use Tax Agreement); and**
- 39 **(3) whose liability for collections of state gross retail and use**
- 40 **taxes under this section for the preceding calendar year as**
- 41 **determined by the department does not exceed one thousand**
- 42 **dollars (\$1,000);**

43 **is not required to file a monthly gross retail and use tax return.**

44 SECTION 6. IC 6-2.5-13-1 IS AMENDED TO READ AS
45 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As used in
46 this section, the terms "receive" and "receipt" mean:

- 47 (1) taking possession of tangible personal property;
- 48 (2) making first use of services; or
- 49 (3) taking possession or making first use of digital goods;

1 whichever comes first. The terms "receive" and "receipt" do not include
2 possession by a shipping company on behalf of the purchaser.

3 (b) This section:

4 (1) applies regardless of the characterization of a product as
5 tangible personal property, a digital good, or a service;

6 (2) applies only to the determination of a seller's obligation to pay
7 or collect and remit a sales or use tax with respect to the seller's
8 retail sale of a product; and

9 (3) does not affect the obligation of a purchaser or lessee to remit
10 tax on the use of the product to the taxing jurisdictions of that use.

11 (c) This section does not apply to sales or use taxes levied on the
12 following:

13 (1) The retail sale or transfer of watercraft, modular homes,
14 manufactured homes, or mobile homes. These items must be
15 sourced according to the requirements of this article.

16 (2) The retail sale, excluding lease or rental, of motor vehicles,
17 trailers, semitrailers, or aircraft that do not qualify as transportation
18 equipment, as defined in subsection (g). The retail sale of these
19 items shall be sourced according to the requirements of this article,
20 and the lease or rental of these items must be sourced according to
21 subsection (f).

22 (3) Telecommunications services, as set forth in IC 6-2.5-12, shall
23 be sourced in accordance with IC 6-2.5-12.

24 (d) The retail sale, excluding lease or rental, of a product shall be
25 sourced as follows:

26 (1) When the product is received by the purchaser at a business
27 location of the seller, the sale is sourced to that business location.

28 (2) When the product is not received by the purchaser at a business
29 location of the seller, the sale is sourced to the location where
30 receipt by the purchaser (or the purchaser's donee, designated as
31 such by the purchaser) occurs, including the location indicated by
32 instructions for delivery to the purchaser (or donee), known to the
33 seller.

34 (3) When subdivisions (1) and (2) do not apply, the sale is sourced
35 to the location indicated by an address for the purchaser that is
36 available from the business records of the seller that are maintained
37 in the ordinary course of the seller's business when use of this
38 address does not constitute bad faith.

39 (4) When subdivisions (1), (2), and (3) do not apply, the sale is
40 sourced to the location indicated by an address for the purchaser
41 obtained during the consummation of the sale, including the address
42 of a purchaser's payment instrument, if no other address is
43 available, when use of this address does not constitute bad faith.

44 (5) When none of the previous rules of subdivision (1), (2), (3), or
45 (4) apply, including the circumstance in which the seller is without
46 sufficient information to apply the previous rules, then the location
47 will be determined by the address from which tangible personal
48 property was shipped, from which the digital good or the computer
49 software delivered electronically was first available for

1 transmission by the seller, or from which the service was provided
 2 (disregarding for these purposes any location that merely provided
 3 the digital transfer of the product sold).

4 (e) The lease or rental of tangible personal property, other than
 5 property identified in subsection (f) or (g), shall be sourced as follows:

6 (1) For a lease or rental that requires recurring periodic payments,
 7 the first periodic payment is sourced the same as a retail sale in
 8 accordance with the provisions of subsection (d). Periodic payments
 9 made subsequent to the first payment are sourced to the primary
 10 property location for each period covered by the payment. The
 11 primary property location shall be as indicated by an address for the
 12 property provided by the lessee that is available to the lessor from
 13 its records maintained in the ordinary course of business, when use
 14 of this address does not constitute bad faith. The property location
 15 shall not be altered by intermittent use at different locations, such
 16 as use of business property that accompanies employees on
 17 business trips and service calls.

18 (2) For a lease or rental that does not require recurring periodic
 19 payments, the payment is sourced the same as a retail sale in
 20 accordance with the provisions of subsection (d).

21 This subsection does not affect the imposition or computation of sales
 22 or use tax on leases or rentals based on a lump sum or an accelerated
 23 basis, or on the acquisition of property for lease.

24 (f) The lease or rental of motor vehicles, trailers, semitrailers, or
 25 aircraft that do not qualify as transportation equipment, as defined in
 26 subsection (g), shall be sourced as follows:

27 (1) For a lease or rental that requires recurring periodic payments,
 28 each periodic payment is sourced to the primary property location.
 29 The primary property location shall be as indicated by an address
 30 for the property provided by the lessee that is available to the lessor
 31 from its records maintained in the ordinary course of business,
 32 when use of this address does not constitute bad faith. This location
 33 shall not be altered by intermittent use at different locations.

34 (2) For a lease or rental that does not require recurring periodic
 35 payments, the payment is sourced the same as a retail sale in
 36 accordance with the provisions of subsection (d).

37 This subsection does not affect the imposition or computation of sales
 38 or use tax on leases or rentals based on a lump sum or accelerated basis,
 39 or on the acquisition of property for lease.

40 (g) The retail sale, including lease or rental, of transportation
 41 equipment shall be sourced the same as a retail sale in accordance with
 42 the provisions of subsection (d), notwithstanding the exclusion of lease
 43 or rental in subsection (d). As used in this subsection, "transportation
 44 equipment" means any of the following:

45 (1) Locomotives and railcars that are used for the carriage of
 46 persons or property in interstate commerce.

47 (2) Trucks and truck-tractors with a gross vehicle weight rating
 48 (GVWR) of ten thousand one (10,001) pounds or greater, trailers,
 49 semitrailers, or passenger buses that are:

- 1 (A) registered through the International Registration Plan; and
2 (B) operated under authority of a carrier authorized and
3 certificated by the U.S. Department of Transportation or another
4 federal authority to engage in the carriage of persons or property
5 in interstate commerce.
- 6 (3) Aircraft that are operated by air carriers authorized and
7 certificated by the U.S. Department of Transportation or another
8 federal or a foreign authority to engage in the carriage of persons or
9 property in interstate or foreign commerce.
- 10 (4) Containers designed for use on and component parts attached
11 or secured on the items set forth in subdivisions (1) through (3).
- 12 **(h) This subsection applies to retail sales of floral products that**
13 **occur before January 1, 2008. Notwithstanding subsection (d), a**
14 **retail sale of floral products in which a florist or floral business:**
15 **(1) takes a floral order from a purchaser; and**
16 **(2) transmits the floral order by telegraph, telephone, or other**
17 **means of communication to another florist or floral business**
18 **for delivery;**
19 **is sourced to the location of the florist or floral business that**
20 **originally takes the floral order from the purchaser.**
21 **SECTION 7. An emergency is declared for this act.**
(Reference is to ESB 258 as printed February 17, 2006.)

Conference Committee Report
on
Engrossed Senate Bill 258

Signed by:

Senator Kenley
Chairperson

Representative Espich

Senator Hume

Representative Kuzman

Senate Conferees

House Conferees