

## SENATE BILL No. 174

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5-2.5.

**Synopsis:** Reduction of state gross retail and use tax rate. Reduces the state gross retail and use tax rate from 7% to 6% effective January 1, 2011, if the joint resolution adopted by the 115th general assembly that proposes a constitutional amendment on property tax matters is not agreed to by the 116th general assembly before November 3, 2010. Makes corresponding changes.

**Effective:** July 1, 2010.

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**Delph, Walker, Yoder,  
Charbonneau, Waltz, Boots**

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January 5, 2010, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## SENATE BILL No. 174



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-2.5-2.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2010]:

4 **Chapter 2.5. Reduced State Gross Retail and Use Tax Rate**

5 **Sec. 1. (a) This chapter does not apply to the determination of**  
6 **the state gross retail and use tax rate under this article and matters**  
7 **related to the rate if the language that was proposed and agreed to**  
8 **by the one hundred fifteenth general assembly in P.L.147-2008**  
9 **(SJR 1-2008) is agreed to by the one hundred sixteenth general**  
10 **assembly before November 3, 2010. Otherwise, this chapter takes**  
11 **precedence and applies to the determination of the state gross**  
12 **retail and use tax rate under this article and matters related to the**  
13 **rate beginning January 1, 2011.**

14 **(b) The following sections do not apply if this chapter applies to**  
15 **the determination of the state gross retail and use tax rate under**  
16 **this article and matters related to the rate:**

17 **(1) IC 6-2.5-2-2.**



- 1 (2) IC 6-2.5-6-7.  
 2 (3) IC 6-2.5-6-8.  
 3 (4) IC 6-2.5-6-10.  
 4 (5) IC 6-2.5-7-3.  
 5 (6) IC 6-2.5-7-5.  
 6 (7) IC 6-2.5-10-1.

7 In addition, a cross-reference in the Indiana Code to one (1) of  
 8 these sections shall be considered a cross-reference to the section  
 9 in this chapter that covers the same subject matter as the section  
 10 being cross-referenced.

11 Sec. 2. (a) The state gross retail tax is measured by the gross  
 12 retail income received by a retail merchant in a retail unitary  
 13 transaction and is imposed at the following rates:

STATE GROSS RETAIL TAX	GROSS RETAIL INCOME FROM THE RETAIL UNITARY TRANSACTION
\$ 0	less than \$0.09
\$ 0.01	at least \$ 0.09 but less than \$0.25
\$ 0.02	at least \$ 0.25 but less than \$0.42
\$ 0.03	at least \$ 0.42 but less than \$0.59
\$ 0.04	at least \$ 0.59 but less than \$0.75
\$ 0.05	at least \$ 0.75 but less than \$0.92
\$ 0.06	at least \$ 0.92 but less than \$1.09

25 On a retail unitary transaction in which the gross retail income  
 26 received by the retail merchant is one dollar and nine cents (\$1.09)  
 27 or more, the state gross retail tax is six percent (6%) of that gross  
 28 retail income.

29 (b) If the tax computed under subsection (a) results in a fraction  
 30 of one-half cent (\$0.005) or more, the amount of the tax shall be  
 31 rounded to the next additional cent.

32 Sec. 3. Except as otherwise provided in IC 6-2.5-6 or IC 6-2.5-7,  
 33 a retail merchant shall remit to the department, for a particular  
 34 reporting period, an amount equal to the product of:

- 35 (1) six percent (6%); multiplied by  
 36 (2) the retail merchant's total gross retail income from taxable  
 37 transactions made during the reporting period.

38 The amount determined under this section is the retail merchant's  
 39 state gross retail and use tax liability regardless of the amount of  
 40 tax the retail merchant actually collects.

41 Sec. 4. (a) For purposes of determining the amount of state gross  
 42 retail and use taxes that a retail merchant must remit under section

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1 3 of this chapter, the retail merchant may exclude from the retail  
 2 merchant's gross retail income from retail transactions made  
 3 during a particular reporting period an amount equal to the  
 4 product of:

- 5 (1) the amount of that gross retail income; multiplied by  
 6 (2) the retail merchant's income exclusion ratio for the tax  
 7 year that contains the reporting period.

8 (b) A retail merchant's income exclusion ratio for a particular  
 9 tax year equals a fraction, the numerator of which is the retail  
 10 merchant's estimated total gross retail income for the tax year  
 11 from unitary retail transactions that produce gross retail income  
 12 of less than nine cents (\$0.09) each, and the denominator of which  
 13 is the retail merchant's estimated total gross retail income for the  
 14 tax year from all retail transactions.

15 (c) To minimize a retail merchant's record keeping  
 16 requirements, the department shall prescribe a procedure for  
 17 determining the retail merchant's income exclusion ratio for a tax  
 18 year based on a period, not to exceed fifteen (15) consecutive days,  
 19 during the first quarter of the retail merchant's tax year. However,  
 20 the period may be changed if the change is requested by the retail  
 21 merchant because of the retail merchant's peculiar accounting  
 22 procedures or marketing factors. In addition, if a retail merchant  
 23 has multiple sales locations or diverse types of sales, the  
 24 department shall permit the retail merchant to determine the ratio  
 25 on the basis of a representative sampling of the locations and types  
 26 of sales.

27 **Sec. 5. (a)** To compensate retail merchants for collecting and  
 28 timely remitting the state gross retail tax and the state use tax,  
 29 every retail merchant, except a retail merchant referred to in  
 30 subsection (c), is entitled to deduct and retain from the amount of  
 31 those taxes otherwise required to be remitted under this chapter,  
 32 if timely remitted, a retail merchant's collection allowance.

33 (b) The allowance equals a percentage of the retail merchant's  
 34 state gross retail and use tax liability accrued during a calendar  
 35 year, specified as follows:

- 36 (1) Eighty-three hundredths percent (0.83%), if the retail  
 37 merchant's state gross retail and use tax liability accrued  
 38 during the state fiscal year ending on June 30 of the  
 39 immediately preceding calendar year did not exceed sixty  
 40 thousand dollars (\$60,000).  
 41 (2) Six-tenths percent (0.6%), if the retail merchant's state  
 42 gross retail and use tax liability accrued during the state fiscal

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1 year ending on June 30 of the immediately preceding calendar  
2 year:

- 3 (A) was greater than sixty thousand dollars (\$60,000); and
- 4 (B) did not exceed six hundred thousand dollars (\$600,000).
- 5 (3) Three-tenths percent (0.3%), if the retail merchant's state
- 6 gross retail and use tax liability accrued during the state fiscal
- 7 year ending on June 30 of the immediately preceding calendar
- 8 year was greater than six hundred thousand dollars
- 9 (\$600,000).

10 (c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6  
11 is not entitled to the allowance provided by this section.

12 Sec. 6. (a) The definitions set forth in IC 6-2.5-7-1 apply  
13 throughout this section and section 7 of this chapter.

14 (b) With respect to the sale of gasoline that is dispensed from a  
15 metered pump, a retail merchant shall collect, for each unit of  
16 gasoline sold, state gross retail tax in an amount equal to the  
17 product, rounded to the nearest one-tenth of one cent (\$0.001), of:

- 18 (1) the price per unit before the addition of state and federal
- 19 taxes; multiplied by
- 20 (2) six percent (6%).

21 The retail merchant shall collect the state gross retail tax  
22 prescribed in this section even if the transaction is exempt from  
23 taxation under IC 6-2.5-5.

24 (c) With respect to the sale of special fuel or kerosene that is  
25 dispensed from a metered pump, unless the purchaser provides an  
26 exemption certificate in accordance with IC 6-2.5-8-8, a retail  
27 merchant shall collect, for each unit of special fuel or kerosene  
28 sold, state gross retail tax in an amount equal to the product,  
29 rounded to the nearest one-tenth of one cent (\$0.001), of:

- 30 (1) the price per unit before the addition of state and federal
- 31 taxes; multiplied by
- 32 (2) six percent (6%).

33 Unless an exemption certificate is provided, the retail merchant  
34 shall collect the state gross retail tax prescribed in this section even  
35 if the transaction is exempt from taxation under IC 6-2.5-5.

36 Sec. 7. (a) Each retail merchant who dispenses gasoline or  
37 special fuel from a metered pump shall, in the manner prescribed  
38 in IC 6-2.5-6, report to the department the following information:

- 39 (1) The total number of gallons of gasoline sold from the
- 40 metered pump during the period covered by the report.
- 41 (2) The total amount of money received by the retail merchant
- 42 from the sale of gasoline described in subdivision (1) during

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- the period covered by the report.
- (3) The part of the amount described in subdivision (2) that represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- (4) The total number of gallons of special fuel sold by the retail merchant from a metered pump during the period covered by the report.
- (5) The total amount of money received by the retail merchant from the sale of special fuel during the period covered by the report.
- (6) The part of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.
- (7) The total number of gallons of E85 sold by the retail merchant from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount that equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax that the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), section 5 of this chapter, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

**STEP ONE: Determine:**

- (A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus
- (B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

**STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, 2020, determine the product of:**

- (A) eighteen cents (\$0.18); multiplied by

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**(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.**

**STEP THREE: Add the amounts determined under STEPS ONE and TWO.**

**For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.**

**(d) The total amount of deductions allowed under subsection (c) may not exceed one million dollars (\$1,000,000) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c). If the department determines that the sum of:**

- (1) the deductions that would otherwise be reported under subsection (c) for a reporting period; plus**
- (2) the total amount of deductions granted under subsection (c) in all preceding reporting periods;**

**will exceed one million dollars (\$1,000,000), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.**

**Sec. 8. (a) The department shall account for all state gross retail and use taxes that it collects.**

**(b) The department shall deposit those collections in the following manner:**

- (1) Ninety-nine and sixty-seven thousandths percent (99.067%) of the collections shall be paid into the state general fund.**
- (2) Seventy-six hundredths of one percent (0.76%) of the collections shall be paid into the public mass transportation fund established by IC 8-23-3-8.**
- (3) Thirty-three thousandths of one percent (0.033%) of the collections shall be deposited into the industrial rail service fund established by IC 8-3-1.7-2.**
- (4) Fourteen-hundredths of one percent (0.14%) of the collections shall be deposited into the commuter rail service fund established by IC 8-3-1.5-20.5.**

**Sec. 9. (a) For purposes of this chapter, all transactions, except the furnishing of public utility, telephone, or cable television services and commodities by retail merchants described in IC 6-2.5-4-5, IC 6-2.5-4-6, and IC 6-2.5-4-11, shall be considered as having occurred after December 31, 2010, to the extent that**

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1 delivery of the property or services constituting selling at retail is  
2 made after that date to the purchaser or to the place of delivery  
3 designated by the purchaser. However, a transaction shall be  
4 considered as having occurred before January 1, 2011, to the  
5 extent that the agreement of the parties to the transaction is  
6 entered into before January 1, 2011, and payment for the property  
7 or services furnished in the transaction is made before January 1,  
8 2011, notwithstanding the delivery of the property or services after  
9 December 31, 2010.

10 (b) With respect to a transaction constituting the furnishing of  
11 public utility, telephone, or cable television services and  
12 commodities, only transactions for which the charges are collected  
13 on original statements and billings dated after December 31, 2010,  
14 shall be considered as having occurred after December 31, 2010.

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