

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 353, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Replace the effective dates in SECTIONS 1 through 3 with
2 "[EFFECTIVE JANUARY 1, 2013]".
3 Page 1, between the enacting clause and line 1, begin a new
4 paragraph and insert:
5 "SECTION 1. IC 6-2.5-4-1 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 1. (a) A person is
7 a retail merchant making a retail transaction when ~~he~~ **the person**
8 engages in selling at retail.
9 (b) A person is engaged in selling at retail when, in the ordinary
10 course of ~~his~~ **the person's** regularly conducted trade or business, ~~he~~
11 **the person:**
12 (1) acquires tangible personal property for the purpose of resale;
13 and
14 (2) transfers that property to another person for consideration.
15 (c) For purposes of determining what constitutes selling at retail, it
16 does not matter whether:
17 (1) the property is transferred in the same form as when it was
18 acquired;
19 (2) the property is transferred alone or in conjunction with other
20 property or services; or

- 1 (3) the property is transferred conditionally or otherwise.
- 2 (d) Notwithstanding subsection (b), a person is not selling at retail
3 if ~~he~~ **the person** is making a wholesale sale as described in section 2
4 of this chapter.
- 5 (e) The gross retail income received from selling at retail is only
6 taxable under this article to the extent that the income represents:
- 7 (1) the price of the property transferred, without the rendition of
8 any service; and
- 9 (2) except as provided in subsection (g), any bona fide charges
10 which are made for preparation, fabrication, alteration,
11 modification, finishing, completion, delivery, or other service
12 performed in respect to the property transferred before its transfer
13 and which are separately stated on the transferor's records.
- 14 For purposes of this subsection, a transfer is considered to have
15 occurred after delivery of the property to the purchaser.
- 16 (f) Notwithstanding subsection (e):
- 17 (1) in the case of retail sales of ~~gasoline (as defined in~~
18 ~~IC 6-6-1.1-103)~~ and special fuel (as defined in IC 6-6-2.5-22), the
19 gross retail income received from selling at retail is the total sales
20 price of the ~~gasoline or~~ special fuel minus the part of that price
21 attributable to tax imposed under ~~IC 6-6-1.1, IC 6-6-2.5 or Section~~
22 ~~4041(a) or~~ Section 4081 of the Internal Revenue Code; and
- 23 (2) in the case of retail sales of cigarettes (as defined in
24 IC 6-7-1-2), the gross retail income received from selling at retail
25 is the total sales price of the cigarettes including the tax imposed
26 under IC 6-7-1.
- 27 (g) Gross retail income does not include income that represents
28 charges for serving or delivering food and food ingredients furnished,
29 prepared, or served for consumption at a location, or on equipment,
30 provided by the retail merchant. However, the exclusion under this
31 subsection only applies if the charges for the serving or delivery are
32 stated separately from the price of the food and food ingredients when
33 the purchaser pays the charges."
- 34 Page 2, line 15, after "department" insert "**electronically**".
- 35 Page 2, line 38, after "period" insert "**through the department's**
36 **online tax filing program**".
- 37 Page 4, between lines 20 and 21, begin a new paragraph and insert:
38 "SECTION 4. IC 6-2.5-7-10, AS AMENDED BY P.L.182-2009(ss),

1 SECTION 181, IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JANUARY 1, 2013]: Sec. 10. (a) Each refiner or
3 terminal operator and each qualified distributor that has received a
4 prepayment of the state gross retail tax under this chapter shall remit
5 the tax received to the department semimonthly, through the
6 department's online tax filing system, according to the following
7 schedule:

8 (1) On or before the tenth day of each month for prepayments
9 received after the fifteenth day and before the end of the
10 preceding month.

11 (2) On or before the twenty-fifth day of each month for
12 prepayments received after the end of the preceding month and
13 before the sixteenth day of the month in which the prepayments
14 are made.

15 (b) Before the end of each month, each refiner or terminal operator
16 and each qualified distributor shall file a report **electronically** covering
17 the prepaid taxes received and the gallons of gasoline sold or shipped
18 during the preceding month. The report must include the following:

19 (1) The number of gallons of gasoline sold or shipped during the
20 preceding month, identifying each purchaser or receiver as
21 required by the department.

22 (2) The amount of tax prepaid by each purchaser or receiver.

23 (3) Any other information reasonably required by the department.

24 SECTION 5. IC 6-2.5-7-11 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JANUARY 1, 2013]: Sec. 11. Each
26 distributor that prepays the state gross retail tax under this chapter shall
27 file a monthly report with the department. The report shall be filed
28 **electronically and** no later than the last day of the month following the
29 month that the report covers. The report must include the following:

30 (1) The number of gallons of gasoline purchased or received by
31 the distributor from each refiner, terminal operator, or another
32 distributor.

33 (2) The amount of state gross retail tax prepaid to each refiner,
34 terminal operator, or distributor.

35 (3) The number of gallons of gasoline sold to each distributor,
36 retail merchant, exempt purchaser, or other person and the
37 amount of state gross retail tax collected from each distributor,
38 retail merchant, or other person identifying the location of each

- 1 distributor, retail merchant, exempt purchaser, or other person, as
- 2 required by the department.
- 3 (4) Any other information reasonably required by the
- 4 department."
- 5 Page 4, line 31, after "period." insert "**The notice shall be**
- 6 **published on the department's Internet web site, published in the**
- 7 **Indiana Register, and provided to registered distributors, refiners,**
- 8 **and terminal operators by an electronic mail message that includes**
- 9 **a direct link to the notice on the department's Internet web site."**
- 10 Page 4, line 35, strike "twenty-five percent".
- 11 Page 4, line 36, strike "(25%)" and insert "**fifteen percent (15%)**".
- 12 Page 4, line 36, after "determination." insert "**A new prepayment**
- 13 **rate may not take effect until the immediately following first or**
- 14 **fifteenth day of the month, whichever is earlier."**
- 15 Page 4, line 38, delete "attorney general" and insert "**department**".
- 16 Page 4, line 38, delete "provide to the" and insert "**determine**".
- 17 Page 4, line 39, delete "department".
- 18 Page 5, line 1, delete "provided".
- 19 Page 5, line 1, strike "to" and insert "**determined by**".
- 20 Page 5, line 1, delete "by the attorney" and insert ".".
- 21 Page 5, delete line 2.
- 22 Renumber all SECTIONS consecutively.
(Reference is to SB 353 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 10, Nays 0.

Hershman

Chairperson