LEGISLATIVE SERVICES AGENCY

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FISCAL IMPACT STATEMENT

LS 6605 | **NOTE PREPARED:** Apr 15, 2013
BILL NUMBER: SB 479 | **BILL AMENDED:** Apr 10, 2013

SUBJECT: Sales and Use Taxes.

FIRST AUTHOR: Sen. Walker | **BILL STATUS:** As Passed House
FIRST SPONSOR: Rep. Dermody

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

Summary of Legislation: *Use Tax Nexus and Collection*: This bill specifies that using a location owned by a common carrier acting in its capacity as a common carrier is not considered using or maintaining a location in Indiana for purposes of determining whether a retail merchant is engaged in business in Indiana.

It provides that for purposes of the Indiana Sales and Use Tax law, a "retail merchant engaged in business in Indiana" includes any retail merchant who: (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana; and (2) enters into an arrangement with any person, other than a common carrier, to facilitate the retail merchant's delivery of property to customers in Indiana by allowing customers to pick up property sold by the retail merchant at a place of business maintained by the person in Indiana.

The bill specifies that a retail merchant may be required by the state to collect and remit Sales or Use Taxes if any person conducts activities in Indiana on behalf of the retail merchant that are significantly associated with the retail merchant's ability to establish and maintain a market in Indiana. It provides that a retail merchant is presumed to be engaged in business in Indiana if an affiliate of the retail merchant has substantial nexus in Indiana and certain additional conditions are satisfied.

It also provides that a retail merchant is presumed to be engaged in business in Indiana if the retail merchant enters into an agreement with one or more residents of Indiana under which the resident directly or indirectly refers potential customers to the retail merchant, if the cumulative gross receipts from the sales by the retail merchant to customers in Indiana who are referred to the retail merchant by all residents is greater than $10,000 during the preceding 12 months. The bill permits the presumptions to be rebutted.

It specifies that the Use Tax nexus provisions apply to transactions that occur after June 30, 2013.

Use Tax on Gasoline: The bill provides a new collection procedure for imposing and collecting state Gross Retail and Use Tax on the sale of gasoline based on gallons sold and a rolling four week average retail price per gallon. It specifies that the collection point is moved to the first purchaser of gasoline from a refiner, a terminal operator, or supplier.

The bill requires the Department of State Revenue (DOR) to monthly determine a Use Tax rate per gallon using the 7% Gross Retail and Use Tax rate. It requires all reports of gasoline Use Tax to be filed electronically and the taxes remitted using the DOR's online tax system.

It changes from 25% to 15% the amount the retail price of gasoline must change before a new Use Tax rate may be set at a time other than at the time of the monthly rate setting. The bill provides that if the DOR changes the Use Tax rate determined for a month because the statewide average retail price per gallon of gasoline has increased by more than 15%, the new rate may not take effect earlier than 10 days after publication of the new rate.

The bill requires the DOR to publish a tax notice on its Internet web site. It requires the notice to specify the source of the data used to determine the gasoline Use Tax rate and the statewide average retail price per gallon of gasoline. The bill provides that certain licensing information may be published by the DOR.

It also establishes a truck stop owner's license.

Effective Date: July 1, 2013; January 1, 2014; July 1, 2014.

Explanation of State Expenditures: *Department of State Revenue (DOR)*: This bill moves the point of collection to gasoline distributors, refiners, and terminal operators. (Under current statute, the gasoline Sales Tax collection point is at retail.) The DOR may be required to revise computer software to incorporate the bill's provisions, resulting in a one-time increase in costs. Although the bill would likely cause a decrease in the total number of tax returns, this provision would not provide significant administrative cost savings to the DOR because the tax is administered electronically.

The bill also requires the DOR to publish monthly departmental notices that include the all of the following:
1. The gasoline Use Tax rate that will be used during the following month.
2. The source of the data used to determine the gasoline Use Tax rate.
3. The statewide average retail price per gallon of gasoline.

The DOR may also publish a list of qualified distributors on its web site, including only the name, address, and telephone number of each distributor. In addition, the bill requires all truck stop owners to obtain a license, which is administered by the DOR and renewed every two years. This provision may increase administrative costs. However, these costs could be mitigated if the DOR imposes a license fee.

The bill's requirements are within the DOR's routine administrative functions and should be able to be implemented with no additional appropriations, assuming near customary agency staffing and resource levels.

Explanation of State Revenues: *Use Tax Nexus and Collection*: This bill expands the definition of who qualifies as a retail merchant. The definition would require certain electronic commerce (e-commerce) entities to collect and remit Sales Taxes. This bill would result in increased Sales Tax revenue. The amount of the increase would depend on the extent to which the definition change influences the location decision of a business entity or its affiliates.

Current statute requires that an individual pay Use Tax on out-of-state (including Internet) transactions on the individual's income tax return. In FY 2012, approximately $1.8 M in Use Taxes on out-of-state purchases was collected on individual income tax returns.

Use Tax on Gasoline: This bill would have an indeterminate impact on Sales and Use Tax collected on gasoline each fiscal year. The bill changes the method of calculating the Sales and Use Tax on gasoline. Currently, the Sales Tax is calculated based on the actual price of gasoline sold. This bill would instead levy a Use Tax based on the average price of gasoline and the number of gallons sold starting in FY 2015.

Sales Tax on Gasoline under Current Statute: Retailers are required to prepay Sales Tax on gasoline. The prepayment rate is determined by the following formula: the average retail price (as determined by the DOR), multiplied by the Sales Tax rate, multiplied by 80%. The prepayment rate is determined semiannually (in June and December) by the DOR and is limited to 125% of the previous prepayment rate. Retail merchants are required to file their returns monthly to reconcile the amount of Sales Tax collected at the pump to the amount of Sales Tax prepaid. Retailers remit the difference between the prepaid Sales Tax and the total Sales Tax collected at the pump to the DOR. After reconciliation, the total Sales Tax on gasoline that is remitted each month is based on actual pump prices for that month.

(Revised) *Use Tax on Gasoline under this Bill*: This bill provides a new collection procedure for remitting Use Tax on gasoline. Under this bill, the gasoline Use Tax owed is the number of gallons sold multiplied by the gasoline Use Tax rate. This rate is equal to 7% of the statewide average retail price per gallon. The DOR would update the tax rate monthly. Under this bill, the amount of Use Tax remitted in a given month would be based on the retail price of gasoline during the previous month and will not be reconciled with the actual pump price as in current statute. The bill allows the DOR to determine a new gasoline Use Tax rate if the average retail price per gallon of gasoline, excluding taxes, has changed by at least 15% since the last determination.

Distributor Licensing: This bill requires that distributors, refiners, and terminal operators that receive gasoline in Indiana or that import gasoline into Indiana must obtain a permit from the DOR to collect Use Tax payments. The license fee for this permit is $100. The bill also provides that the DOR may require a distributor to file, concurrently with the filing of an application for a permit, a bond in an amount of at least $2,000 and not more than a three-month gasoline Use Tax liability in cash or with a surety company approved by the DOR.

Reconciliation Provision: The bill provides that retail merchants reconcile the amount of Gross Retail Taxes owed on sales of gasoline through June 30, 2014, to allow for the collection of Sales Tax that was due under the original formula that had not been remitted before the effective date of the new formula.

Background - Use Tax Nexus and Collection: A study conducted by the Indiana Fiscal Policy Institute and the Ball State University Center for Business and Economic Research examined how much revenue Indiana would lose in 2012 as a result of the absence of a Sales Tax on e-commerce transactions. The estimated revenue loss ranged from $39.6 M to $114.3 M. A University of Tennessee study estimated Indiana's e-commerce-related Sales and Use Tax revenue losses to be $195.3 M to $216.9 M in 2012.

It's important to note that the Revenue Technical Committee's Sales Tax forecast (December 17, 2012) is adjusted to include an estimated $22.3 M in FY 2014 and $57.4 M in FY 2015 of additional Sales Tax revenue to be collected under the Amazon Sales Tax Collection Agreement which commences on January 1, 2014.

Additionally, the Indiana Fiscal Policy Institute and Ball State University study examined the effect of taxing sales of out-of-state e-commerce entities on the entities' location decisions and found no statistically significant relationship.

In FY 2012, state Sales Tax revenue was approximately $6.6 B. Sales Tax revenue is deposited in the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Background - Use Tax on Gasoline: Sales and Use Tax revenue is distributed to the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%). Total Sales Tax revenue was about $6.6 B in FY 2012. Sales Tax collected on the sales of 2.6 billion gallons of gasoline was about $572 M in FY 2012. The estimated average price of gasoline in FY 2014 is $3.27 per gallon, including taxes.

Explanation of Local Expenditures:

Explanation of Local Revenues: Local revenues will be impacted to the extent that a local unit receives funds from the Commuter Rail Service Fund or the Industrial Rail Service Fund.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected:

Information Sources: Shane Corbin, Department of State Revenue. Global Insight forecast data. *Indiana Handbook of Taxes, Revenues, and Appropriations, FY 2012*. *State and Local Government Sales Tax Revenue Losses from Electronic Commerce*, University of Tennessee, April 2009. *To Collect Sales Tax or Not: Indiana's E-Commerce Conundrum*, Indiana Fiscal Policy Institute, November 2011.

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