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FISCAL IMPACT STATEMENT

LS 6842
BILL NUMBER: SB 228

NOTE PREPARED: Feb 6, 2024
BILL AMENDED:

SUBJECT: Various Tax Matters.

FIRST AUTHOR: Sen. Holdman
FIRST SPONSOR: Rep. Thompson

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Sales Tax Nexus:* This bill amends the economic threshold for sales tax nexus to remove the number of sales transactions in the state as one of the two current triggers that require retail merchants to collect and remit sales tax.

Utility Sales Tax Exemptions: It allows a retail merchant that receives 75% or more of its receipts from the sale of prepared food to elect to claim a sales tax exemption on transactions involving electricity equal to 50% of the tax imposed on the transactions.

Statute of Limitations: It makes certain changes to statutes of limitations provisions.

Sheriff Payments and Processing Fees: The bill requires sheriffs to transfer funds collected through executions of tax warrants twice a month electronically through the Department of State Revenue (DOR) payment portal. It also specifies that the service of process fee for postjudgment service can only be assessed one time per case.

System Breach of Tax Preparer: The bill authorizes the DOR to disclose a taxpayer's name and other personal identification information with a tax preparer or tax preparation software provider in cases where the DOR suspects that a fraudulent return has been filed on behalf of a taxpayer and that the system of a taxpayer's previous year tax preparer or tax preparation software provider has been breached.

Pass Through Entity Tax: The bill specifies the pass through entity tax liability for pass through entities in certain circumstances.

Truck Stop Owners: It repeals an outdated provision that requires an owner of a truck stop to obtain a license from the DOR.

Retail Merchant Certificates: It reorganizes certain retail merchant certificate provisions.

The bill makes clarifying and technical changes.

Effective Date: Upon passage; January 1, 2022 (retroactive); January 1, 2024 (retroactive); July 1, 2024; January 1, 2025.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR's workload and costs could increase to implement the bill's provisions. However, some provisions could reduce the DOR's workload and costs in the long run. The bill's requirements are within the agency'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: *Sales Tax Nexus:* Under current law, retail merchants that do not have a physical presence in Indiana are required to collect Sales Tax if they have economic nexus. A retail merchant has economic nexus if it meets either of the following conditions:

- (1) The retail merchant's gross revenue from sales into Indiana exceeds \$100,000.
- (2) The retail merchant makes sales into Indiana in 200 or more separate transactions.

The bill eliminates the second condition. As a result, retail merchants that make 200 or more sales transactions into Indiana that total \$100,000 or less would no longer be required to collect Sales Tax. Current law unchanged by the bill would still require a marketplace facilitator to collect Sales Tax for each retail transaction made on its marketplace, regardless of whether a seller has economic nexus.

The bill would reduce Sales Tax revenue by an indeterminable but potentially significant amount beginning in the second half of FY 2024. The fiscal impact will depend on the number of sellers that currently meet the transaction threshold but not the sales amount threshold and make sales independently of a marketplace facilitator. The number of affected sellers is not known, but it is possible to establish a benchmark. Assuming each seller affected by the bill makes \$100,000 of annual sales into Indiana, the revenue loss associated with each seller would be \$7,000. If there are 1,000 such sellers, Sales Tax revenue could decrease by \$7 M.

Sales Tax revenue is deposited in the General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%). Additional state taxes and fees that apply the economic nexus thresholds, including the Tobacco Products Tax and the Electronic Cigarette Tax, could also be impacted, which would further reduce revenue to the General Fund and various dedicated funds.

Utility Sales Tax Exemptions: The bill allows restaurants (retail merchants that receive at least 75% of receipts from the sale of prepared food) to claim an exemption equal to 50% of Sales Tax imposed on purchases of electricity. This provision would decrease Sales Tax revenue by an indeterminable amount beginning in FY 2025.

Under current law, restaurants' utility purchases are exempt to the extent the utilities are used in the direct production of food. If 50% or less of utilities are used in the direct production of food, restaurants are required to pay Sales Tax on utility purchases, then submit a refund claim to the DOR for the exempt portion.

The bill would allow restaurants to receive a 50% exemption regardless of the share of utilities that are purchased for an exempt use. The fiscal impact would depend on the extent to which restaurants' exempt use of utilities is less than 50%.

Statute of Limitations: The bill defines a "periodic tax" as a listed tax for which a return or report is required to be filed and the tax is required to be remitted four times or more in a calendar year. It also provides a uniform due date of January 31 of the year after the calendar year for which the return is filed for all periodic taxes. These provisions could affect assessments issued by the DOR for several state taxes but are not expected to have a significant fiscal impact.

Sheriff Payments and Processing Fees: The bill's provision requiring sheriffs to make semi-monthly electronic transfers of tax warrants could accelerate the time in which the DOR receives payments. However, this provision is not expected to have an impact on net revenue collections.

System Breach of Tax Preparer: The provision allowing the DOR to disclose certain information to tax preparers or software providers when the DOR suspects a system breach could potentially reduce the number of fraudulent tax returns. However, any impact on revenue is indeterminable.

Pass Through Entity Tax: The bill clarifies the provision in current law as it relates to the treatment of Pass Through Entity Tax paid by a pass through entity and determined to be more than its Pass Through Entity Tax liability for the period. Depending on taxpayers' actions, this provision could have offsetting impact on Pass Through Entity Tax and Individual Adjusted Gross Income Tax. Since Pass Through Entity Tax and Individual Adjusted Gross Income Tax are both deposited in the state General Fund, the provision will not have any fiscal impact.

Alcoholic Beverage Taxes: The bill specifies that Alcoholic Beverage Taxes on liquor, wine, and hard cider that are received from an out-of-state seller that does not have an Indiana permit are to be paid by the permittee that first receives the liquor, wine, or hard cider in Indiana. (Current law requires wholesalers to pay the tax on beer and flavored malt beverages from brewers located outside of Indiana.) This provision is not expected to have a significant impact on Alcoholic Beverage Tax revenue.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Sheriff Payments and Processing Fees:* The bill specifies that counties can only collect one service of process fee per case for the entire duration of postjudgment services. This provision could reduce revenue to the extent that counties currently charge more than one fee per case. [The clerk of the county that maintains jurisdiction over a case collects a \$28 fee from a party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff.]

Statute of Limitations: The bill's provisions regarding periodic taxes could affect assessments issued by the DOR for some local taxes. These provisions are not expected to have a significant fiscal impact.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Counties; local units that impose periodic taxes.

Information Sources: DOR Sales Tax Information Bulletin #11, April 2023, <https://www.in.gov/dor/files/sib11.pdf>.

DOR Sales Tax Information Bulletin #55, April 2023,
<https://www.in.gov/dor/files/reference/sib55.pdf>.

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