

# SENATE BILL No. 269

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## DIGEST OF INTRODUCED BILL

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

**Synopsis:** Use tax nexus and collection. Adds to the definition of a retail merchant engaged in business in Indiana to include arrangements with any person, other than a common carrier, to facilitate the retail merchant's delivery of property to customers in Indiana. Specifies that a person may be required to collect and remit sales or use taxes if the person conducts activities in Indiana on behalf of a retail merchant that are significantly associated with the retail merchant's ability to establish and maintain a market in Indiana. Provides for certain presumptions with regard to what constitutes a retail merchant engaged in business in Indiana. Permits the presumptions to be rebutted. Specifies that the use tax nexus provisions apply to transactions that occur after June 30, 2014.

**Effective:** July 1, 2014.

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January 13, 2014, read first time and referred to Committee on Tax and Fiscal Policy.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 269

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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 6-2.5-2-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) An excise tax,  
3 known as the state gross retail tax, is imposed on retail transactions  
4 made in Indiana.

5 (b) The person who acquires property in a retail transaction is liable  
6 for the tax on the transaction and, except as otherwise provided in this  
7 chapter, shall pay the tax to the retail merchant as a separate added  
8 amount to the consideration in the transaction. ~~The~~ **A retail merchant**  
9 **engaged in business in Indiana (as defined in IC 6-2.5-3-1(c)) or**  
10 **who has permission from the department to collect the tax shall**  
11 **collect the tax as agent for the state.**

12 SECTION 2. IC 6-2.5-3-1 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. For purposes of this  
14 chapter:

15 (a) "Use" means the exercise of any right or power of ownership  
16 over tangible personal property.



1 (b) "Storage" means the keeping or retention of tangible personal  
 2 property in Indiana for any purpose except the subsequent use of that  
 3 property solely outside Indiana.

4 (c) "A retail merchant engaged in business in Indiana" includes any  
 5 retail merchant who makes retail transactions in which a person  
 6 acquires personal property or services for use, storage, or consumption  
 7 in Indiana and who:

8 (1) maintains an office, place of distribution, sales location,  
 9 sample location, warehouse, storage place, or other place of  
 10 business which is located in Indiana and which the retail  
 11 merchant maintains, occupies, or uses, either permanently or  
 12 temporarily, either directly or indirectly, and either by the retail  
 13 merchant or through a representative, agent, ~~or~~ subsidiary, **or**  
 14 **affiliate;**

15 (2) maintains a representative, agent, salesman, canvasser, or  
 16 solicitor who, while operating in Indiana under the authority of  
 17 and on behalf of the retail merchant or a subsidiary **or an affiliate**  
 18 of the retail merchant, sells, delivers, installs, repairs, assembles,  
 19 sets up, accepts returns of, bills, invoices, or takes orders for sales  
 20 of tangible personal property or services to be used, stored, or  
 21 consumed in Indiana;

22 **(3) enters into an arrangement with any person, other than a**  
 23 **common carrier, to facilitate the retail merchant's delivery of**  
 24 **property to customers in Indiana by allowing the retail**  
 25 **merchant's customers to pick up property sold by the retail**  
 26 **merchant at an office, distribution facility, warehouse, storage**  
 27 **place, or similar place of business maintained by the person**  
 28 **in Indiana;**

29 ~~(3)~~ **(4)** is otherwise required to register as a retail merchant under  
 30 IC 6-2.5-8-1; or

31 ~~(4)~~ **(5)** may be required by the state to collect tax under this article  
 32 to the extent allowed under the Constitution of the United States  
 33 and federal law.

34 **(d) Notwithstanding any other law, a person may be required to**  
 35 **collect and remit gross retail tax or use tax as a retail merchant**  
 36 **engaged in business in Indiana under subsection (c) if the activities**  
 37 **conducted by the person in Indiana on behalf of a retail merchant**  
 38 **are significantly associated with the retail merchant's ability to**  
 39 **establish and maintain a market in Indiana.**

40 ~~(d)~~ **(e)** Notwithstanding any other provision of this section, tangible  
 41 or intangible property that is:

42 (1) owned or leased by a person that has contracted with a



1 commercial printer for printing; and  
 2 (2) located at the premises of the commercial printer;  
 3 shall not be considered to be, or to create, an office, a place of  
 4 distribution, a sales location, a sample location, a warehouse, a storage  
 5 place, or other place of business maintained, occupied, or used in any  
 6 way by the person. A commercial printer with which a person has  
 7 contracted for printing shall not be considered to be in any way a  
 8 representative, an agent, a salesman, a canvasser, or a solicitor for the  
 9 person.

10 **(f) A retail merchant is presumed to be engaged in business in**  
 11 **Indiana if an affiliate of the retail merchant has substantial nexus**  
 12 **in Indiana, and:**

13 **(1) the retail merchant sells a line of products similar to a line**  
 14 **of products sold by the affiliate and the retail merchant does**  
 15 **so under a business name that is the same as or is similar to**  
 16 **the affiliate's business name;**

17 **(2) the affiliate uses its Indiana employees or its Indiana**  
 18 **facilities to advertise, promote, or facilitate sales by the retail**  
 19 **merchant to customers; or**

20 **(3) the affiliate uses trademarks, service marks, or trade**  
 21 **names in Indiana that are the same as or substantially similar**  
 22 **to those used by the retail merchant.**

23 **(g) The presumption under subsection (f) may be rebutted by**  
 24 **demonstrating that the affiliate's activities in Indiana are not**  
 25 **significantly associated with the retail merchant's ability to**  
 26 **establish or maintain a market in Indiana for the retail merchant's**  
 27 **sales.**

28 **(h) A retail merchant is presumed to be engaged in business in**  
 29 **Indiana if the retail merchant enters into an agreement with one**  
 30 **(1) or more residents of Indiana under which the resident, for a**  
 31 **commission or other consideration, directly or indirectly refers**  
 32 **potential customers, whether by a link on an Internet web site, an**  
 33 **in person oral presentation, or otherwise, to the retail merchant, if**  
 34 **the cumulative gross receipts from the sales by the retail merchant**  
 35 **to customers in Indiana who are referred to the retail merchant by**  
 36 **all residents with this type of an agreement with the retail**  
 37 **merchant are greater than ten thousand dollars (\$10,000) during**  
 38 **the preceding twelve (12) months.**

39 **(i) The presumption under subsection (h) may be rebutted by**  
 40 **submitting proof that the residents of Indiana with whom the retail**  
 41 **merchant has an agreement did not engage in any activity within**  
 42 **Indiana that was significantly associated with the retail merchant's**



1 ability to establish or maintain the retail merchant's market in  
 2 Indiana during the preceding twelve (12) months. This proof may  
 3 consist of sworn written statements that:

- 4 (1) are from all the Indiana residents with whom the retail  
 5 merchant has an agreement described in subsection (h);  
 6 (2) are provided and obtained in good faith; and  
 7 (3) state that the Indiana residents did not engage in any  
 8 solicitation in Indiana on behalf of the retail merchant during  
 9 the preceding twelve (12) months.

10 (j) For purposes of this section, "affiliate" means any:

- 11 (1) person that is a member of the same controlled group of  
 12 corporations (as defined in 26 U.S.C. 1563(a)) as the retail  
 13 merchant; or  
 14 (2) other entity that, notwithstanding its form of organization,  
 15 bears the same ownership relationship to the retail merchant  
 16 as a corporation that is a member of the same controlled  
 17 group of corporations (as defined in 26 U.S.C. 1563(a)).

18 SECTION 3. [EFFECTIVE JULY 1, 2014] (a) IC 6-2.5-3-1, as  
 19 amended by this act, applies only to the collection of use tax on  
 20 remote sales occurring after June 30, 2014. A remote sale is  
 21 considered as having occurred after June 30, 2014, to the extent  
 22 that:

- 23 (1) the agreement of the parties to the transaction was entered  
 24 into after June 30, 2014;  
 25 (2) payment for the property furnished in the transaction is  
 26 made after June 30, 2014; or  
 27 (3) delivery to the purchaser of the property furnished in the  
 28 transaction occurs after June 30, 2014.

29 However, a transaction is considered as having occurred before  
 30 July 1, 2014, to the extent that the agreement of the parties to the  
 31 transaction was entered into before July 1, 2014, and payment for  
 32 the property furnished in the transaction is made before July 1,  
 33 2014, notwithstanding the delivery of the property after June 30,  
 34 2014.

35 (b) This SECTION expires January 1, 2016.

