

SENATE BILL No. 384

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-4-1; IC 6-7-4.

Synopsis: Taxation of electronic cigarettes. Imposes a tax on electronic cigarettes at a rate of \$0.0083 per milligram of nicotine per one milliliter of consumable product. Deposits the revenue from the tax in the state general fund.

Effective: July 1, 2015.

Hershman

January 12, 2015, read first time and referred to Committee on Tax & Fiscal Policy.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 384



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 6-2.5-4-1, AS AMENDED BY P.L.227-2013,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2015]: Sec. 1. (a) A person is a retail merchant making a retail
- 4 transaction when the person engages in selling at retail.
- 5 (b) A person is engaged in selling at retail when, in the ordinary
- 6 course of the person's regularly conducted trade or business, the
- 7 person:
- 8 (1) acquires tangible personal property for the purpose of resale;
- 9 and
- 10 (2) transfers that property to another person for consideration.
- 11 (c) For purposes of determining what constitutes selling at retail, it
- 12 does not matter whether:
- 13 (1) the property is transferred in the same form as when it was
- 14 acquired;
- 15 (2) the property is transferred alone or in conjunction with other
- 16 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 the person is making a wholesale sale as described in section 2 of this
 4 chapter. However, in the case of sales of gasoline (as defined in
 5 IC 6-6-1.1-103), a person shall collect the gasoline use tax as provided
 6 in IC 6-2.5-3.5.

7 (e) The gross retail income received from selling at retail is only
 8 taxable under this article to the extent that the income represents:
 9 (1) the price of the property transferred, without the rendition of
 10 any service; and
 11 (2) except as provided in subsection (g), any bona fide charges
 12 which are made for preparation, fabrication, alteration,
 13 modification, finishing, completion, delivery, or other service
 14 performed in respect to the property transferred before its transfer
 15 and which are separately stated on the transferor's records.

16 For purposes of this subsection, a transfer is considered to have
 17 occurred after delivery of the property to the purchaser.

18 (f) Notwithstanding subsection (e):
 19 (1) in the case of retail sales of special fuel (as defined in
 20 IC 6-6-2.5-22), the gross retail income received from selling at
 21 retail is the total sales price of the special fuel minus the part of
 22 that price attributable to tax imposed under IC 6-6-2.5 or Section
 23 4041(a) or Section 4081 of the Internal Revenue Code; ~~and~~

24 (2) in the case of retail sales of cigarettes (as defined in
 25 IC 6-7-1-2), the gross retail income received from selling at retail
 26 is the total sales price of the cigarettes, including the tax imposed
 27 under IC 6-7-1; **and**

28 **(3) in the case of retail sales of electronic cigarettes, the gross**
 29 **retail income received from selling at retail is the total sales**
 30 **price of the electronic cigarettes, including the tax imposed**
 31 **under IC 6-7-4.**

32 (g) Gross retail income does not include income that represents
 33 charges for serving or delivering food and food ingredients furnished,
 34 prepared, or served for consumption at a location, or on equipment,
 35 provided by the retail merchant. However, the exclusion under this
 36 subsection only applies if the charges for the serving or delivery are
 37 stated separately from the price of the food and food ingredients when
 38 the purchaser pays the charges.

39 SECTION 2. IC 6-7-4 IS ADDED TO THE INDIANA CODE AS
 40 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2015]:

42 **Chapter 4. Electronic Cigarette Tax**



1 **Sec. 1.** As used in this chapter, "consumable material" means
 2 any liquid nicotine solution or other material containing nicotine
 3 that is depleted as a vapor product is used.

4 **Sec. 2.** As used in this chapter, "distributor" means a person
 5 who:

6 (1) manufactures, sells, barter, exchanges, or distributes
 7 vapor products in Indiana to retail dealers for the purpose of
 8 resale;

9 (2) purchases vapor products directly from a manufacturer of
 10 vapor products; or

11 (3) purchases for resale vapor products from a wholesaler,
 12 jobber, or distributor outside Indiana.

13 **Sec. 3.** As used in this chapter, "manufacturer" means a person
 14 within or outside Indiana that:

15 (1) produces vapor products; or

16 (2) contracts with another person to produce vapor products
 17 and is the exclusive purchaser of the products under the
 18 contract.

19 **Sec. 4.** As used in this chapter, "vapor product" means a
 20 noncombustible product containing nicotine, such as an electronic
 21 cigarette, that employs a mechanical heating element, battery, or
 22 electronic circuit, regardless of shape or size, that can be used to
 23 produce vapor from a liquid nicotine solution. The term includes
 24 any vapor cartridge or other container of nicotine in a solution or
 25 other form that is intended to be used with or in a vapor product,
 26 but does not include any product regulated by the United States
 27 Food and Drug Administration under Chapter V of the federal
 28 Food, Drug, and Cosmetic Act.

29 **Sec. 5. (a)** The electronic cigarette tax is imposed on the
 30 distribution of vapor products in Indiana. The amount of the tax
 31 is based on:

32 (1) the weight in milligrams of the nicotine in the consumable
 33 material of the vapor product; and

34 (2) the amount in milliliters of consumable material contained
 35 in the vapor product purchased;

36 at a rate of eighty-three hundredths of one cent (\$0.0083) per
 37 milligram of nicotine in the consumable material of the vapor
 38 product for each milliliter of consumable material contained in the
 39 vapor product purchased. If the tax calculated for a fractional part
 40 of a milligram or milliliter carried to the third decimal place
 41 results in the numeral in the fourth decimal place being greater
 42 than four (4), the amount of the tax shall be rounded to the next



- 1 additional cent.
- 2 (b) The distributor of the vapor products, including a person
- 3 that sells vapor products through an Internet web site, is liable for
- 4 the tax imposed under subsection (a). The tax is imposed at the
- 5 time the distributor:
- 6 (1) brings or causes vapor products to be brought into Indiana
- 7 for distribution;
- 8 (2) manufactures vapor products in Indiana for distribution;
- 9 or
- 10 (3) transports vapor products to retail dealers in Indiana for
- 11 resale by those retail dealers.
- 12 (c) All invoices for vapor products must include the actual
- 13 weight in milligrams of nicotine per milliliter of fluid and the
- 14 actual fluid ounces in milliliters of the consumable material
- 15 contained in vapor products.
- 16 (d) Copies of all invoices for the purchase or sale of any vapor
- 17 products shall be retained by each wholesaler, retailer, distributor,
- 18 jobber, and subjobber for a period of three (3) years, subject to
- 19 examination by the department.
- 20 Sec. 6. All revenue from the tax imposed by this chapter shall be
- 21 deposited in the state general fund.
- 22 Sec. 7. The department may adopt rules under IC 4-22-2
- 23 necessary to enforce this chapter.

