

HOUSE BILL No. 1434

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-1-5; IC 6-7; IC 6-8.1-1-1.

Synopsis: Cigarette tax and e-liquids tax. Imposes a tax on e-liquids that contain nicotine at a rate of \$0.08 per milliliter of consumable product. Deposits the revenue from the tax in the state general fund. Increases the cigarette tax by \$1 to \$1.995 per pack of regular size cigarettes and makes a corresponding increase for larger cigarettes.

Effective: July 1, 2021.

Olthoff, Schaibley, Ziemke

January 14, 2021, read first time and referred to Committee on Public Health.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1434

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 6-2.5-1-5, AS AMENDED BY P.L.146-2020,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 5. (a) Except as provided in subsection (b), "gross
4 retail income" means the total amount of consideration, including cash,
5 credit, property, and services, for which tangible personal property is
6 sold, leased, or rented, valued in money, whether received in money or
7 otherwise, without any deduction for:
8 (1) the seller's cost of the property sold;
9 (2) the cost of materials used, labor or service cost, interest,
10 losses, all costs of transportation to the seller, all taxes imposed
11 on the seller, and any other expense of the seller;
12 (3) charges by the seller for any services necessary to complete
13 the sale, other than delivery and installation charges;
14 (4) delivery charges; or
15 (5) consideration received by the seller from a third party if:
16 (A) the seller actually receives consideration from a party
17 other than the purchaser and the consideration is directly



related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage charges that are not separately stated on the invoice, bill of sale, or similar document, handling, crating, and packing. Delivery charges do not include postage charges that are separately stated on the invoice, bill of sale, or similar document.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

(1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;

(3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser, including an excise tax imposed under IC 6-6-15;

(6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(7) telecommunications nonrecurring charges;

(8) postage charges that are separately stated on the invoice, bill of sale, or similar document; or



(9) charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant, to the extent that the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

(c) Notwithstanding subsection (b)(5):

(1) in the case of retail sales of special fuel (as defined in IC 6-6-2.5-22), the gross retail income is the total sales price of the special fuel minus the part of that price attributable to tax imposed under IC 6-6-2.5 or Section 4041 or Section 4081 of the Internal Revenue Code; ~~and~~

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income is the total sales price of the cigarettes including the tax imposed under IC 6-7-1; ~~and~~

(3) in the case of retail sales of e-liquids, the gross retail income received from selling at retail is the total sales price of the e-liquids including the tax imposed under IC 6-7-4.

(d) Gross retail income is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any services; and

(2) except as provided in subsection (b), any bona fide changes which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records. For purposes of this subdivision, a transfer is considered to have occurred after the delivery of the property to the purchaser.

(e) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing.

SECTION 2. IC 6-7-1-0.4, AS ADDED BY P.L.220-2011, SECTION 161, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 0.4. **(a)** Notwithstanding section 14 of this chapter, revenue stamps paid for before July 1, 2007, and in the possession of a distributor may be used after June 30, 2007, only if the full amount of the tax imposed by section 12 of this chapter, as effective after June 30, 2007, and as amended by P.L.218-2007, is remitted to the department under the procedures prescribed by the department.



(b) Notwithstanding section 14 of this chapter, revenue stamps paid for before July 1, 2021, and in possession of a distributor may be used after June 30, 2021, only if the full amount of the tax imposed under section 12 of this chapter, as amended and effective after June 30, 2021, is remitted to the department under the procedures prescribed by the department.

SECTION 3. IC 6-7-1-12, AS AMENDED BY P.L.191-2016, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 12. The following taxes are imposed, and shall be collected and paid as provided in this chapter, upon the sale, exchange, bartering, furnishing, giving away, or otherwise disposing of cigarettes within the state of Indiana:

(1) On cigarettes weighing not more than three (3) pounds per thousand (1,000), a tax at the rate of ~~four and nine hundred seventy-five thousandths cents (\$0.04975)~~ **nine and nine hundred seventy-five thousandths cents (\$0.09975)** per individual cigarette.

(2) On cigarettes weighing more than three (3) pounds per thousand (1,000), a tax at the rate of ~~six and six hundred twelve thousandths cents (\$0.06612)~~ **thirteen and two hundred fifty-seven thousandths cents (\$0.13257)** per individual cigarette, except that if any cigarettes weighing more than three (3) pounds per thousand (1,000) shall be more than six and one-half (6 1/2) inches in length, they shall be taxable at the rate provided in subdivision (1), counting each two and three-fourths (2 3/4) inches (or fraction thereof) as a separate cigarette.

SECTION 4. IC 6-7-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 4. E-liquids Tax

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

Sec. 2. As used in this chapter, "distributor" means a person that:

- (1) manufactures, sells, barter, exchanges, or distributes vapor products in Indiana to retail dealers for the purpose of resale;**
- (2) purchases vapor products directly from a manufacturer of vapor products; or**
- (3) purchases for resale vapor products from a wholesaler, jobber, or distributor outside Indiana.**



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

- (1) produces vapor products; or**
- (2) contracts with another person to produce vapor products and is the exclusive purchaser of the products under the contract.**

Sec. 4. As used in this chapter, "vapor product" means a noncombustible product containing nicotine, such as an electronic cigarette, that employs a mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to produce vapor from a liquid nicotine solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in a vapor product.

Sec. 5. (a) An e-liquids tax is imposed on the distribution of vapor products in Indiana at the rate of eight cents (\$0.08) per fluid milliliter of consumable product.

(b) The distributor of the vapor products, including a person that sells vapor products through an Internet web site, is liable for the tax imposed under subsection (a). After June 30, 2021, the tax is imposed at the time the distributor:

- (1) brings or causes vapor products to be brought into Indiana for distribution;**
- (2) manufactures vapor products in Indiana for distribution;**
- or**
- (3) transports vapor products to retail dealers in Indiana for resale by those retail dealers.**

(c) All invoices for vapor products must state the amount of consumable product in milliliters.

(d) Copies of all invoices for the purchase or sale of any vapor products must be retained by each wholesaler, retailer, distributor, jobber, and subjobber for a period of three (3) years, subject to examination by the department.

Sec. 6. All revenue from the tax imposed by this chapter must be deposited in the state general fund.

Sec. 7. The department may adopt rules under IC 4-22-2 necessary to enforce this chapter.

SECTION 5. IC 6-8.1-1-1, AS AMENDED BY P.L.156-2020, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the supplemental wagering tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the slot machine wagering tax (IC 4-35-8); the type II gambling game



1 excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the
 2 utility receipts and utility services use taxes (IC 6-2.3); the state gross
 3 retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3);
 4 the supplemental net income tax (IC 6-3-8) (repealed); the county
 5 adjusted gross income tax (IC 6-3.5-1.1) (repealed); the county option
 6 income tax (IC 6-3.5-6) (repealed); the county economic development
 7 income tax (IC 6-3.5-7) (repealed); the local income tax (IC 6-3.6); the
 8 auto rental excise tax (IC 6-6-9); the financial institutions tax (IC
 9 6-5.5); the gasoline tax (IC 6-6-1.1); the special fuel tax (IC 6-6-2.5);
 10 the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under
 11 a reciprocal agreement under IC 6-8.1-3; the vehicle excise tax (IC
 12 6-6-5); the aviation fuel excise tax (IC 6-6-13); the commercial vehicle
 13 excise tax (IC 6-6-5.5); the excise tax imposed on recreational vehicles
 14 and truck campers (IC 6-6-5.1); the hazardous waste disposal tax (IC
 15 6-6-6.6) (repealed); the heavy equipment rental excise tax (IC 6-6-15);
 16 the vehicle sharing excise tax (IC 6-6-16); the cigarette tax (IC 6-7-1);
 17 **the e-liquids tax (IC 6-7-4)**; the beer excise tax (IC 7.1-4-2); the liquor
 18 excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider
 19 excise tax (IC 7.1-4-4.5); the petroleum severance tax (IC 6-8-1); the
 20 various innkeeper's taxes (IC 6-9); the various food and beverage taxes
 21 (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil
 22 inspection fee (IC 16-44-2); the penalties assessed for oversize vehicles
 23 (IC 9-20-3 and IC 9-20-18); the fees and penalties assessed for
 24 overweight vehicles (IC 9-20-4 and IC 9-20-18); and any other tax or
 25 fee that the department is required to collect or administer.

