

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1323

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AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-1.1-2-7, AS AMENDED BY P.L.256-2017, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019]: Sec. 7. (a) As used in this section, "nonbusiness personal property" means personal property that is not:

- (1) held for sale in the ordinary course of a trade or business;
- (2) held, used, or consumed in connection with the production of income; or
- (3) held as an investment.

(b) The following property is not subject to assessment and taxation under this article:

- (1) A commercial vessel that is subject to the net tonnage tax imposed under IC 6-6-6.
- (2) A vehicle that is subject to the vehicle excise tax imposed under IC 6-6-5.
- (3) A motorized boat or sailboat that is subject to the boat excise tax imposed under IC 6-6-11.
- (4) Property used by a cemetery (as defined in IC 23-14-33-7) if the cemetery:
  - (A) does not have a board of directors, board of trustees, or other governing authority other than the state or a political subdivision; and
  - (B) has had no business transaction during the preceding



calendar year.

- (5) A commercial vehicle that is subject to the annual excise tax imposed under IC 6-6-5.5.
- (6) Inventory.
- (7) A recreational vehicle or truck camper that is subject to the annual excise tax imposed under IC 6-6-5.1.
- (8) The following types of nonbusiness personal property:
  - (A) All-terrain vehicles.
  - (B) Snowmobiles.
  - (C) Rowboats, canoes, kayaks, and other human powered boats.
  - (D) Invalid chairs.
  - (E) Yard and garden tractors.
  - (F) Trailers that are not subject to an excise tax under:
    - (i) IC 6-6-5;
    - (ii) IC 6-6-5.1; or
    - (iii) IC 6-6-5.5.

**(9) For an assessment date after December 31, 2018, heavy rental equipment (as defined in IC 6-6-15-2) that is rented or held in inventory for rental or sale, the rental of which is or would be subject to the heavy equipment rental excise tax under IC 6-6-15.**

SECTION 2. IC 6-2.5-1-5, AS AMENDED BY P.L.265-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019]: Sec. 5. (a) Except as provided in subsection (b), "gross retail income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
  - (A) the seller actually receives consideration from a party 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; or

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

(c) 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 3. IC 6-6-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019]:

**Chapter 15. Heavy Equipment Rental Excise Tax**

**Sec. 1. This chapter applies only after December 31, 2018, to the rental of taxable heavy rental equipment.**

**Sec. 2. The following definitions apply throughout this chapter:**

- (1) "Department" refers to the department of state revenue.
- (2) "Gross retail income" has the meaning set forth in IC 6-2.5-1-5, except that the term does not include taxes imposed under IC 6-2.5 or the excise tax imposed under this chapter.
- (3) "Heavy rental equipment" means personal property (including attachments used in conjunction with the personal property):

(A) that is owned by a person or business that:

- (i) is classified under 532412 of the North American Industry Classification System Manual in effect on January 1, 2018; and
- (ii) is a retail merchant in the business of renting heavy equipment, including any attachments;

(B) is not intended to be permanently affixed to any real property; and

(C) is not subject to registration under IC 9-18.1 for use on a public highway (as defined in IC 9-25-2-4).

However, the term does not include heavy rental equipment that is rented for mining purposes or heavy rental equipment that is eligible for a property tax abatement deduction under IC 6-1.1-12.1 during the calendar year.

(4) "Person" has the meaning set forth in IC 6-2.5-1-3.

(5) "Rental" means any transfer of possession or control of heavy rental equipment for consideration:

(A) for a period not to exceed three hundred sixty-five (365) days; or

(B) for a period that is open ended under the terms of the rental contract with no specified end date.

(6) "Retail merchant" has the meaning set forth in IC 6-2.5-1-8.

**Sec. 3. (a) An excise tax, known as the heavy equipment rental excise tax, is imposed upon the rental of heavy rental equipment from a retail merchant and from a location in Indiana.**



(b) The heavy equipment rental excise tax imposed under this chapter is two and twenty-five hundredths percent (2.25%) of the gross retail income received by the retail merchant for the rental.

Sec. 4. A transaction involving the rental of heavy rental equipment is exempt from the tax imposed by this chapter if any of the following apply:

(1) The rentee is:

(A) the United States government;

(B) the state;

(C) a political subdivision (as defined in IC 36-1-2-13); or

(D) an agency or instrumentality of an entity described in clauses (A) through (C).

(2) The transaction is a subrent of the heavy rental equipment from a rentee to another person, and the rentee was liable for the tax imposed under this chapter.

Sec. 5. A person that rents heavy rental equipment is liable for the heavy equipment rental excise tax on the transaction. The person shall pay the tax to the retail merchant as a separate amount added to the consideration for the transaction. The retail merchant shall collect the tax as an agent for the state.

Sec. 6. (a) Subject to subsection (b), a retail merchant shall remit the heavy equipment rental excise tax that the retail merchant collects under this chapter in the same manner as the state gross retail tax is remitted under IC 6-2.5.

(b) The heavy equipment rental excise tax imposed under this chapter shall be sourced to the business location of the retail merchant from which the heavy rental equipment is rented.

(c) The return to be filed for the payment of the heavy equipment rental excise tax may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department.

Sec. 7. (a) All revenues collected from the heavy equipment rental excise tax must be deposited in a special account of the state general fund called the heavy equipment rental excise tax account.

(b) On or before April 30 and October 30 of each year, all amounts held in the heavy equipment rental excise tax account must be distributed to counties as provided by this section.

(c) The amount to be distributed to a county treasurer under this section equals the part of the total heavy equipment rental excise taxes being distributed that were initially imposed and collected from within that county treasurer's county. The department shall notify each county auditor of the amount of taxes



to be distributed to the county treasurer. At the same time each distribution is made to a county treasurer, the department shall certify to the county auditor the taxing districts within the county where heavy equipment rental excise taxes were collected and the amount of the county distribution that was collected with respect to each taxing district.

(d) A county treasurer shall deposit heavy equipment rental excise tax distributions in a separate account for settlement at the same time as property taxes are accounted for and settled in June and December of each year.

(e) The county auditor shall apportion and the county treasurer shall distribute the heavy equipment rental excise taxes among the taxing units of the county in the same manner that property taxes are apportioned and distributed with respect to property located in the taxing district where the heavy equipment rental excise tax is sourced by the department under section 6(b) of this chapter.

(f) Before January 1, 2020, the heavy equipment rental excise taxes distributed to a taxing unit must be deposited in the taxing unit's levy excess fund under IC 6-1.1-18.5-17, or in the case of a school corporation, the school corporation's levy excess fund under IC 20-44-3.

(g) After December 31, 2019, the heavy equipment rental excise taxes distributed to a taxing unit must be allocated among the taxing unit's funds in the same proportion that the taxing unit's property tax collections are allocated among those funds.

(h) After December 31, 2019, taxing units of a county may request and receive advances of heavy equipment rental excise tax revenues in the manner provided under IC 5-13-6-3.

(i) All distributions from the heavy equipment rental excise tax account must be made by warrants issued by the auditor of state to the treasurer of state ordering those distributions to the appropriate county treasurer.

SECTION 4. IC 6-8.1-1-1, AS AMENDED BY P.L.256-2017, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions 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 excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the utility receipts and utility services use taxes (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the county



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



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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