



February 4, 2021

HOUSE BILL No. 1434

DIGEST OF HB 1434 (Updated February 4, 2021 10:22 am - DI 77)

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

Synopsis: Cigarette and tobacco products tax. Increases the cigarette tax by \$1 to \$1.995 per pack of regular size cigarettes and makes a corresponding increase for larger cigarettes. Provides that revenue received from the increase in cigarette tax is deposited in the state general fund for the purpose of paying appropriations for Medicaid-Current Obligations, for provider reimbursements. Makes corresponding adjustments to the percentage of taxes deposited into other funds. Amends the definition of "tobacco product" to include e-liquid and an electronic cigarette. Amends the definition of "wholesale price" concerning tobacco products manufactured and sold in Indiana. Increases the tax on tobacco products (other than moist snuff) to 39% of the wholesale price of tobacco products.

Effective: July 1, 2021.

Olthoff, Schaibley, Ziemke

January 14, 2021, read first time and referred to Committee on Public Health.
February 4, 2021, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

HB 1434—LS 6788/DI 138



February 4, 2021

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

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- 1 related to a price reduction or discount on the sale;
 2 (B) the seller has an obligation to pass the price reduction or
 3 discount through to the purchaser;
 4 (C) the amount of the consideration attributable to the sale is
 5 fixed and determinable by the seller at the time of the sale of
 6 the item to the purchaser; and
 7 (D) the price reduction or discount is identified as a third party
 8 price reduction or discount on the invoice received by the
 9 purchaser or on a coupon, certificate, or other documentation
 10 presented by the purchaser.
- 11 For purposes of subdivision (4), delivery charges are charges by the
 12 seller for preparation and delivery of the property to a location
 13 designated by the purchaser of property, including but not limited to
 14 transportation, shipping, postage charges that are not separately stated
 15 on the invoice, bill of sale, or similar document, handling, crating, and
 16 packing. Delivery charges do not include postage charges that are
 17 separately stated on the invoice, bill of sale, or similar document.
- 18 (b) "Gross retail income" does not include that part of the gross
 19 receipts attributable to:
- 20 (1) the value of any tangible personal property received in a like
 21 kind exchange in the retail transaction, if the value of the property
 22 given in exchange is separately stated on the invoice, bill of sale,
 23 or similar document given to the purchaser;
 - 24 (2) the receipts received in a retail transaction which constitute
 25 interest, finance charges, or insurance premiums on either a
 26 promissory note or an installment sales contract;
 - 27 (3) discounts, including cash, terms, or coupons that are not
 28 reimbursed by a third party that are allowed by a seller and taken
 29 by a purchaser on a sale;
 - 30 (4) interest, financing, and carrying charges from credit extended
 31 on the sale of personal property if the amount is separately stated
 32 on the invoice, bill of sale, or similar document given to the
 33 purchaser;
 - 34 (5) any taxes legally imposed directly on the consumer that are
 35 separately stated on the invoice, bill of sale, or similar document
 36 given to the purchaser, including an excise tax imposed under
 37 IC 6-6-15;
 - 38 (6) installation charges that are separately stated on the invoice,
 39 bill of sale, or similar document given to the purchaser;
 - 40 (7) telecommunications nonrecurring charges;
 - 41 (8) postage charges that are separately stated on the invoice, bill
 42 of sale, or similar document; or



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

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

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

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

16 **(3) in the case of retail sales of e-liquids, the gross retail**
 17 **income received from selling at retail is the total sales price of**
 18 **the e-liquids including the tax imposed under IC 6-7-2.**

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

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

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

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

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



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

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

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

18 (2) On cigarettes weighing more than three (3) pounds per
 19 thousand (1,000), a tax at the rate of ~~six and six hundred twelve~~
 20 ~~thousandths cents (\$0.06612)~~ **thirteen and two hundred**
 21 **fifty-seven thousandths cents (\$0.13257)** per individual
 22 cigarette, except that if any cigarettes weighing more than three
 23 (3) pounds per thousand (1,000) shall be more than six and
 24 one-half (6 1/2) inches in length, they shall be taxable at the rate
 25 provided in subdivision (1), counting each two and three-fourths
 26 (2 3/4) inches (or fraction thereof) as a separate cigarette.

27 SECTION 4. IC 6-7-1-28.1, AS AMENDED BY P.L.213-2015,
 28 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2021]: Sec. 28.1. The taxes, registration fees, fines, or
 30 penalties collected under this chapter shall be deposited in the
 31 following manner:

32 (1) ~~Four and twenty-two hundredths percent (4.22%)~~ **Two and**
 33 **fifty-nine hundredths percent (2.59%)** of the money shall be
 34 deposited in a fund to be known as the cigarette tax fund.

35 (2) ~~Six-tenths percent (0.6%)~~ **Thirty-seven hundredths percent**
 36 **(0.37%)** of the money shall be deposited in a fund to be known as
 37 the mental health centers fund.

38 (3) The following amount of the money shall be deposited in the
 39 state general fund:

40 (A) After June 30, 2011, and before July 1, 2013, sixty and
 41 twenty-four hundredths percent (60.24%).

42 (B) After June 30, 2013, **and before July 1, 2021**, fifty-six



1 and twenty-four hundredths percent (56.24%).

2 **(C) After June 30, 2021, thirty-four and fifty-one**
 3 **hundredths percent (34.51%).**

4 ~~(4) Five and forty-three hundredths percent (5.43%)~~ **Three and**
 5 **thirty-three hundredths percent (3.33%)** of the money shall be
 6 deposited into the pension relief fund established in IC 5-10.3-11.

7 ~~(5) Twenty-seven and five hundredths percent (27.05%)~~ **Sixteen**
 8 **and six-tenths percent (16.6%)** of the money shall be deposited
 9 in the healthy Indiana plan trust fund established by
 10 IC 12-15-44.2-17.

11 ~~(6) Two and forty-six hundredths percent (2.46%)~~ **Forty and**
 12 **fifteen hundredths percent (40.15%)** of the money shall be
 13 deposited in the state general fund for the purpose of paying
 14 appropriations for Medicaid—Current Obligations, for provider
 15 reimbursements.

16 (7) The following amount of the money shall be deposited in the
 17 state retiree health benefit trust fund established by IC 5-10-8-8.5
 18 as follows:

19 (A) Before July 1, 2011, five and seventy-four hundredths
 20 percent (5.74%).

21 (B) After June 30, 2011, and before July 1, 2013, zero percent
 22 (0%).

23 (C) After June 30, 2013, **and before July 1, 2021**, four
 24 percent (4%).

25 **(D) After June 30, 2021, two and forty-five hundredths**
 26 **percent (2.45%).**

27 The money in the cigarette tax fund, the mental health centers fund, the
 28 healthy Indiana plan trust fund, or the pension relief fund at the end of
 29 a fiscal year does not revert to the state general fund. However, if in
 30 any fiscal year, the amount allocated to a fund under subdivision (1) or
 31 (2) is less than the amount received in fiscal year 1977, then that fund
 32 shall be credited with the difference between the amount allocated and
 33 the amount received in fiscal year 1977, and the allocation for the fiscal
 34 year to the fund under subdivision (3) shall be reduced by the amount
 35 of that difference. Money deposited under subdivisions (6) through (7)
 36 may not be used for any purpose other than the purpose stated in the
 37 subdivision.

38 SECTION 5. IC 6-7-2-5, AS AMENDED BY P.L.172-2011,
 39 SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2021]: Sec. 5. As used in this chapter, "tobacco product"
 41 means:

42 (1) any product made from tobacco, other than a cigarette (as



- 1 defined in IC 6-7-1-2), that is made for smoking, chewing, or
 2 both; ~~or~~
 3 (2) snuff, including moist snuff;
 4 **(3) e-liquid (as defined in IC 7.1-7-2-10); or**
 5 **(4) electronic cigarettes (as defined in IC 35-46-1-1.5).**
 6 SECTION 6. IC 6-7-2-6, AS AMENDED BY P.L.155-2012,
 7 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2021]: Sec. 6. As used in this chapter, "wholesale price"
 9 means:
 10 **(1) Except as provided in subdivision (2),** the net price shown
 11 on an invoice and at which the manufacturer of the tobacco
 12 products sells tobacco products to distributors, excluding any
 13 discount or other reduction that is not shown on the invoice.
 14 **(2) For tobacco products manufactured and sold in Indiana**
 15 **directly from the manufacturer to the ultimate consumer, the**
 16 **net price paid by the ultimate consumer, excluding any**
 17 **discount or other price reduction.**
 18 SECTION 7. IC 6-7-2-7, AS AMENDED BY P.L.205-2013,
 19 SECTION 129, IS AMENDED TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) A tax is imposed on the
 21 distribution of tobacco products in Indiana at the rate of:
 22 (1) ~~twenty-four~~ **thirty-nine** percent (~~24%~~) (**39%**) of the
 23 wholesale price of tobacco products other than moist snuff; or
 24 (2) for moist snuff, forty cents (\$0.40) per ounce, and a
 25 proportionate tax at the same rate on all fractional parts of an
 26 ounce. If the tax calculated for a fractional part of an ounce
 27 carried to the third decimal place results in the numeral in the
 28 third decimal place being greater than four (4), the amount of the
 29 tax shall be rounded to the next additional cent.
 30 (b) The distributor of the tobacco products, including a person that
 31 sells tobacco products through an Internet web site, is liable for the tax
 32 imposed under subsection (a). The tax is imposed at the time the
 33 distributor:
 34 (1) brings or causes tobacco products to be brought into Indiana
 35 for distribution;
 36 (2) manufactures tobacco products in Indiana for distribution; or
 37 (3) transports tobacco products to retail dealers in Indiana for
 38 resale by those retail dealers.
 39 (c) The Indiana general assembly finds that the tax rate on
 40 smokeless tobacco should reflect the relative risk between such
 41 products and cigarettes.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1434, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 18, delete "IC 6-7-4." and insert "**IC 6-7-2.**".

Page 4, delete lines 27 through 42, begin a new paragraph and insert:

"SECTION 4. IC 6-7-1-28.1, AS AMENDED BY P.L.213-2015, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 28.1. The taxes, registration fees, fines, or penalties collected under this chapter shall be deposited in the following manner:

- (1) ~~Four and twenty-two hundredths percent (4.22%)~~ **Two and fifty-nine hundredths percent (2.59%)** of the money shall be deposited in a fund to be known as the cigarette tax fund.
- (2) ~~Six-tenths percent (0.6%)~~ **Thirty-seven hundredths percent (0.37%)** of the money shall be deposited in a fund to be known as the mental health centers fund.
- (3) The following amount of the money shall be deposited in the state general fund:
 - (A) After June 30, 2011, and before July 1, 2013, sixty and twenty-four hundredths percent (60.24%).
 - (B) After June 30, 2013, **and before July 1, 2021**, fifty-six and twenty-four hundredths percent (56.24%).
 - (C) **After June 30, 2021, thirty-four and fifty-one hundredths percent (34.51%).**
- (4) ~~Five and forty-three hundredths percent (5.43%)~~ **Three and thirty-three hundredths percent (3.33%)** of the money shall be deposited into the pension relief fund established in IC 5-10.3-11.
- (5) ~~Twenty-seven and five hundredths percent (27.05%)~~ **Sixteen and six-tenths percent (16.6%)** of the money shall be deposited in the healthy Indiana plan trust fund established by IC 12-15-44.2-17.
- (6) ~~Two and forty-six hundredths percent (2.46%)~~ **Forty and fifteen hundredths percent (40.15%)** of the money shall be deposited in the state general fund for the purpose of paying appropriations for Medicaid—Current Obligations, for provider reimbursements.
- (7) The following amount of the money shall be deposited in the state retiree health benefit trust fund established by IC 5-10-8-8.5



as follows:

- (A) Before July 1, 2011, five and seventy-four hundredths percent (5.74%).
- (B) After June 30, 2011, and before July 1, 2013, zero percent (0%).
- (C) After June 30, 2013, **and before July 1, 2021**, four percent (4%).
- (D) After June 30, 2021, two and forty-five hundredths percent (2.45%).**

The money in the cigarette tax fund, the mental health centers fund, the healthy Indiana plan trust fund, or the pension relief fund at the end of a fiscal year does not revert to the state general fund. However, if in any fiscal year, the amount allocated to a fund under subdivision (1) or (2) is less than the amount received in fiscal year 1977, then that fund shall be credited with the difference between the amount allocated and the amount received in fiscal year 1977, and the allocation for the fiscal year to the fund under subdivision (3) shall be reduced by the amount of that difference. Money deposited under subdivisions (6) through (7) may not be used for any purpose other than the purpose stated in the subdivision.

SECTION 5. IC 6-7-2-5, AS AMENDED BY P.L.172-2011, SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. As used in this chapter, "tobacco product" means:

- (1) any product made from tobacco, other than a cigarette (as defined in IC 6-7-1-2), that is made for smoking, chewing, or both; ~~or~~
- (2) snuff, including moist snuff;
- (3) e-liquid (as defined in IC 7.1-7-2-10); or**
- (4) electronic cigarettes (as defined in IC 35-46-1-1.5).**

SECTION 6. IC 6-7-2-6, AS AMENDED BY P.L.155-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 6. As used in this chapter, "wholesale price" means:

- (1) Except as provided in subdivision (2),** the net price shown on an invoice and at which the manufacturer of the tobacco products sells tobacco products to distributors, excluding any discount or other reduction that is not shown on the invoice.
- (2) For tobacco products manufactured and sold in Indiana directly from the manufacturer to the ultimate consumer, the net price paid by the ultimate consumer, excluding any discount or other price reduction.**



SECTION 7. IC 6-7-2-7, AS AMENDED BY P.L.205-2013, SECTION 129, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 7. (a) A tax is imposed on the distribution of tobacco products in Indiana at the rate of:

- (1) ~~twenty-four~~ **thirty-nine** percent (~~24%~~) (**39%**) of the wholesale price of tobacco products other than moist snuff; or
- (2) for moist snuff, forty cents (\$0.40) per ounce, and a proportionate tax at the same rate on all fractional parts of an ounce. If the tax calculated for a fractional part of an ounce carried to the third decimal place results in the numeral in the third decimal place being greater than four (4), the amount of the tax shall be rounded to the next additional cent.

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

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

(c) The Indiana general assembly finds that the tax rate on smokeless tobacco should reflect the relative risk between such products and cigarettes."

Delete pages 5 through 6.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1434 as introduced.)

BARRETT

Committee Vote: yeas 8, nays 3.

