

HOUSE BILL No. 1444

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5-4-1; IC 6-7-5; IC 6-8.1-1-1.

Synopsis: Taxation of e-liquids. 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.

Effective: July 1, 2019.

Brown T, Huston

January 15, 2019, read first time and referred to Committee on Ways and Means.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1444

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, 2019]: 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
17 (3) the property is transferred conditionally or otherwise.



1 (d) Notwithstanding subsection (b), a person is not selling at retail
 2 if the person is making a wholesale sale as described in section 2 of this
 3 chapter. However, in the case of sales of gasoline (as defined in
 4 IC 6-6-1.1-103), a person shall collect the gasoline use tax as provided
 5 in IC 6-2.5-3.5.

6 (e) The gross retail income received from selling at retail is only
 7 taxable under this article to the extent that the income represents:

8 (1) the price of the property transferred, without the rendition of
 9 any service; and

10 (2) except as provided in subsection (g), any bona fide charges
 11 which are made for preparation, fabrication, alteration,
 12 modification, finishing, completion, delivery, or other service
 13 performed in respect to the property transferred before its transfer
 14 and which are separately stated on the transferor's records.

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

17 (f) Notwithstanding subsection (e):

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

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

27 **(3) in the case of retail sales of e-liquids, the gross retail**
 28 **income received from selling at retail is the total sales price of**
 29 **the e-liquids, including the tax imposed under IC 6-7-5.**

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

37 SECTION 2. IC 6-7-5 IS ADDED TO THE INDIANA CODE AS
 38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2019]:

40 **Chapter 5. E-liquids Tax**

41 **Sec. 1. As used in this chapter, "consumable product" means**
 42 **any liquid nicotine solution or other material containing nicotine**



1 that is depleted as a vapor product is used.

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

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

7 (2) purchases vapor products directly from a manufacturer of
 8 vapor products; or

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

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

13 (1) produces vapor products; or

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

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

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

27 **(b) The distributor of the vapor products, including a person**
 28 **that sells vapor products through an Internet web site, is liable for**
 29 **the tax imposed under subsection (a). After June 30, 2019, the tax**
 30 **is imposed at the time the distributor:**

31 (1) brings or causes vapor products to be brought into Indiana
 32 for distribution;

33 (2) manufactures vapor products in Indiana for distribution;
 34 or

35 (3) transports vapor products to retail dealers in Indiana for
 36 resale by those retail dealers.

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

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



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

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

5 SECTION 3. IC 6-8.1-1-1, AS AMENDED BY P.L.212-2018(ss),
 6 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2019]: Sec. 1. "Listed taxes" or "taxes" includes only the
 8 pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the supplemental
 9 wagering tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the
 10 slot machine wagering tax (IC 4-35-8); the type II gambling game
 11 excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the
 12 utility receipts and utility services use taxes (IC 6-2.3); the state gross
 13 retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3);
 14 the supplemental net income tax (IC 6-3-8) (repealed); the county
 15 adjusted gross income tax (IC 6-3.5-1.1) (repealed); the county option
 16 income tax (IC 6-3.5-6) (repealed); the county economic development
 17 income tax (IC 6-3.5-7) (repealed); the local income tax (IC 6-3.6); the
 18 auto rental excise tax (IC 6-6-9); the financial institutions tax
 19 (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the special fuel tax
 20 (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax
 21 collected under a reciprocal agreement under IC 6-8.1-3; the vehicle
 22 excise tax (IC 6-6-5); the aviation fuel excise tax (IC 6-6-13); the
 23 commercial vehicle excise tax (IC 6-6-5.5); the excise tax imposed on
 24 recreational vehicles and truck campers (IC 6-6-5.1); the hazardous
 25 waste disposal tax (IC 6-6-6.6) (repealed); the heavy equipment rental
 26 excise tax (IC 6-6-15); the cigarette tax (IC 6-7-1); **the e-liquids tax**
 27 **(IC 6-7-5)**; the beer excise tax (IC 7.1-4-2); the liquor excise tax
 28 (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax
 29 (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum
 30 severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the
 31 various food and beverage taxes (IC 6-9); the county admissions tax
 32 (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the
 33 penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-20-18); the
 34 fees and penalties assessed for overweight vehicles (IC 9-20-4 and
 35 IC 9-20-18); and any other tax or fee that the department is required to
 36 collect or administer.

