

# SENATE BILL No. 244

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1-2-7; IC 6-2.5-1-5; IC 6-6-15; IC 6-8.1-1-1.

**Synopsis:** Excise tax on heavy equipment. Excludes motorized heavy equipment vehicles from the assessment of the personal property tax. Imposes an excise tax on the rental of motorized heavy equipment vehicles (excise tax). Provides procedures for the sourcing, collection, and distribution of the excise tax. Provides that the excise tax is apportioned and distributed to local governmental units (units) in the same manner that property taxes are apportioned and distributed. Requires the units to deposit the excise taxes in the units' levy excess fund.

**Effective:** January 1, 2019.

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## Holdman

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January 10, 2018, read first time and referred to Committee on Rules and Legislative Procedure.

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Second Regular Session 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.

# SENATE BILL No. 244



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 6-1.1-2-7, AS AMENDED BY P.L.256-2017,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JANUARY 1, 2019]: Sec. 7. (a) As used in this section, "nonbusiness
- 4 personal property" means personal property that is not:
  - 5 (1) held for sale in the ordinary course of a trade or business;
  - 6 (2) held, used, or consumed in connection with the production of
  - 7 income; or
  - 8 (3) held as an investment.
- 9 (b) The following property is not subject to assessment and taxation
- 10 under this article:
  - 11 (1) A commercial vessel that is subject to the net tonnage tax
  - 12 imposed under IC 6-6-6.
  - 13 (2) A vehicle that is subject to the vehicle excise tax imposed
  - 14 under IC 6-6-5.
  - 15 (3) A motorized boat or sailboat that is subject to the boat excise
  - 16 tax imposed under IC 6-6-11.
  - 17 (4) Property used by a cemetery (as defined in IC 23-14-33-7) if



- 1 the cemetery:
- 2 (A) does not have a board of directors, board of trustees, or
- 3 other governing authority other than the state or a political
- 4 subdivision; and
- 5 (B) has had no business transaction during the preceding
- 6 calendar year.
- 7 (5) A commercial vehicle that is subject to the annual excise tax
- 8 imposed under IC 6-6-5.5.
- 9 (6) Inventory.
- 10 (7) A recreational vehicle or truck camper that is subject to the
- 11 annual excise tax imposed under IC 6-6-5.1.
- 12 (8) The following types of nonbusiness personal property:
- 13 (A) All-terrain vehicles.
- 14 (B) Snowmobiles.
- 15 (C) Rowboats, canoes, kayaks, and other human powered
- 16 boats.
- 17 (D) Invalid chairs.
- 18 (E) Yard and garden tractors.
- 19 (F) Trailers that are not subject to an excise tax under:
- 20 (i) IC 6-6-5;
- 21 (ii) IC 6-6-5.1; or
- 22 (iii) IC 6-6-5.5.
- 23 **(9) For an assessment date after December 31, 2018, a**
- 24 **motorized heavy equipment vehicle (as defined in IC 6-6-15-2)**
- 25 **that is rented or held in inventory for rental or sale, the rental**
- 26 **of which is or would be subject to the motorized heavy**
- 27 **equipment vehicle rental excise tax under IC 6-6-15.**
- 28 SECTION 2. IC 6-2.5-1-5, AS AMENDED BY P.L.265-2013,
- 29 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 30 JANUARY 1, 2019]: Sec. 5. (a) Except as provided in subsection (b),
- 31 "gross retail income" means the total amount of consideration,
- 32 including cash, credit, property, and services, for which tangible
- 33 personal property is sold, leased, or rented, valued in money, whether
- 34 received in money or otherwise, without any deduction for:
- 35 (1) the seller's cost of the property sold;
- 36 (2) the cost of materials used, labor or service cost, interest,
- 37 losses, all costs of transportation to the seller, all taxes imposed
- 38 on the seller, and any other expense of the seller;
- 39 (3) charges by the seller for any services necessary to complete
- 40 the sale, other than delivery and installation charges;
- 41 (4) delivery charges; or
- 42 (5) consideration received by the seller from a third party if:



- 1 (A) the seller actually receives consideration from a party  
 2 other than the purchaser and the consideration is directly  
 3 related to a price reduction or discount on the sale;  
 4 (B) the seller has an obligation to pass the price reduction or  
 5 discount through to the purchaser;  
 6 (C) the amount of the consideration attributable to the sale is  
 7 fixed and determinable by the seller at the time of the sale of  
 8 the item to the purchaser; and  
 9 (D) the price reduction or discount is identified as a third party  
 10 price reduction or discount on the invoice received by the  
 11 purchaser or on a coupon, certificate, or other documentation  
 12 presented by the purchaser.

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

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

- 22 (1) the value of any tangible personal property received in a like  
 23 kind exchange in the retail transaction, if the value of the property  
 24 given in exchange is separately stated on the invoice, bill of sale,  
 25 or similar document given to the purchaser;  
 26 (2) the receipts received in a retail transaction which constitute  
 27 interest, finance charges, or insurance premiums on either a  
 28 promissory note or an installment sales contract;  
 29 (3) discounts, including cash, terms, or coupons that are not  
 30 reimbursed by a third party that are allowed by a seller and taken  
 31 by a purchaser on a sale;  
 32 (4) interest, financing, and carrying charges from credit extended  
 33 on the sale of personal property if the amount is separately stated  
 34 on the invoice, bill of sale, or similar document given to the  
 35 purchaser;  
 36 (5) any taxes legally imposed directly on the consumer that are  
 37 separately stated on the invoice, bill of sale, or similar document  
 38 given to the purchaser, **including an excise tax imposed under**  
 39 **IC 6-6-15;**  
 40 (6) installation charges that are separately stated on the invoice,  
 41 bill of sale, or similar document given to the purchaser;  
 42 (7) telecommunications nonrecurring charges; or



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

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

7 SECTION 3. IC 6-6-15 IS ADDED TO THE INDIANA CODE AS  
8 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
9 JANUARY 1, 2019]:

10 **Chapter 15. Motorized Heavy Equipment Vehicle Rental Excise**  
11 **Tax**

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

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

15 (1) "Department" refers to the department of state revenue.

16 (2) "Gross retail income" has the meaning set forth in  
17 IC 6-2.5-1-5, except that the term does not include taxes  
18 imposed under IC 6-2.5 or the excise tax imposed under this  
19 chapter.

20 (3) "Motorized heavy equipment vehicle" means a  
21 self-propelled motorized vehicle, including any attachment,  
22 with a declared gross weight of at least one thousand five  
23 hundred (1,500) pounds that:

24 (A) is not intended to be permanently affixed to any real  
25 property; and

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

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

29 (5) "Rental" means any transfer of possession or control of a  
30 motorized heavy equipment vehicle for consideration:

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

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

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

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

41 (b) The motorized heavy equipment vehicle rental excise tax  
42 imposed under this chapter is two and twenty-five hundredths



1 percent (2.25%) of the gross retail income received by the retail  
2 merchant for the rental.

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

6 (1) The rentee is:

7 (A) the United States government;

8 (B) the state;

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

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

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

15 **Sec. 5. A person that rents a motorized heavy equipment vehicle**  
16 **is liable for the motorized heavy equipment vehicle rental excise**  
17 **tax on the transaction. The person shall pay the tax to the retail**  
18 **merchant as a separate amount added to the consideration for the**  
19 **transaction. The retail merchant shall collect the tax as an agent**  
20 **for the state.**

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

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

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

33 **Sec. 7. (a) All revenues collected from the motorized heavy**  
34 **equipment vehicle rental excise tax must be deposited in a special**  
35 **account of the state general fund called the motorized heavy**  
36 **equipment vehicle rental excise tax account.**

37 (b) On or before May 20 and November 20 of each year, all  
38 amounts held in the motorized heavy equipment vehicle rental  
39 excise tax account must be distributed to counties as provided by  
40 this section.

41 (c) The amount to be distributed to a county treasurer under  
42 this section equals the part of the total motorized heavy equipment



1 vehicle rental excise taxes being distributed that were initially  
 2 imposed and collected from within that county treasurer's county.  
 3 The department shall notify each county auditor of the amount of  
 4 taxes to be distributed to the county treasurer. At the same time  
 5 each distribution is made to a county treasurer, the department  
 6 shall certify to the county auditor the taxing districts within the  
 7 county where motorized heavy equipment vehicle rental excise  
 8 taxes were collected and the amount of the county distribution that  
 9 was collected with respect to each taxing district.

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

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

21 (f) The motorized heavy equipment vehicle rental excise taxes  
 22 distributed to a taxing unit must be deposited in the taxing unit's  
 23 levy excess fund under IC 6-1.1-18.5-17, or in the case of a school  
 24 corporation, the school corporation's levy excess fund under  
 25 IC 20-44-3.

26 (g) All distributions from the motorized heavy equipment  
 27 vehicle rental excise tax account must be made by warrants issued  
 28 by the auditor of state to the treasurer of state ordering those  
 29 distributions to the appropriate county treasurer.

30 SECTION 4. IC 6-8.1-1-1, AS AMENDED BY P.L.256-2017,  
 31 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32 JANUARY 1, 2019]: Sec. 1. "Listed taxes" or "taxes" includes only the  
 33 pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat  
 34 admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13);  
 35 the slot machine wagering tax (IC 4-35-8); the type II gambling game  
 36 excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the  
 37 utility receipts and utility services use taxes (IC 6-2.3); the state gross  
 38 retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3);  
 39 the supplemental net income tax (IC 6-3-8) (repealed); the county  
 40 adjusted gross income tax (IC 6-3.5-1.1) (repealed); the county option  
 41 income tax (IC 6-3.5-6) (repealed); the county economic development  
 42 income tax (IC 6-3.5-7) (repealed); the local income tax (IC 6-3.6); the



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

