

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6606

BILL NUMBER: SB 419

NOTE PREPARED: Jan 8, 2023

BILL AMENDED:

SUBJECT: State Tax Matters.

FIRST AUTHOR: Sen. Holdman

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Net Operating Loss:* This bill makes certain changes regarding net operating losses for purposes of determining state adjusted gross income.

Successor Liability: The bill provides for successor tax liability for unpaid sales taxes following a business asset sale.

Sales Tax: It repeals an outdated provision requiring separate exemption certificates for manufacturers and wholesalers. It makes a clarifying change to the sales tax exemption that applies to power subsidiaries.

Interest Add-Back: The bill clarifies the acquisition date for purposes of adding back interest from tax exempt bonds issued by another state in determining Indiana adjusted gross income.

Patent Derived Income Exemption: The bill amends provisions regarding the exemption for certain income derived from patents. It provides that tax paid by an electing partnership is deposited in the state General Fund.

Affordable and Workforce Housing Tax Credit: It makes clarifying changes and technical corrections to the affordable and workforce housing tax credit.

Interest and Penalties: It specifies the deposit and distribution of interest and penalties associated with certain taxes.

Disclosure of Exemption Certificates: The bill authorizes the Department of State Revenue (DOR) to publish

or disclose the status of a governmental or nonprofit entity's sales tax exemption certificate.

Sales Suppression Devices: The bill provides that a person who knowingly or intentionally sells, purchases, installs, transfers, or possesses: (1) an automated sales suppression device or a zipper; or (2) phantom-ware; commits a Level 5 felony.

Electronic Cigarette Tax: It makes clarifying and technical corrections to provisions under the electronic cigarette tax.

Effective Date: Upon passage; January 1, 2023 (retroactive); July 1, 2023.

Explanation of State Expenditures: *Department of State Revenue (DOR):* The DOR will incur additional expenses to revise tax forms, instructions, and software programs to implement the provisions within the bill.

Sales Suppression Devices: The bill makes the sale or possession of an automated sales suppression device or phantom-ware a Level 5 felony. A Level 5 felony is punishable by a prison term ranging from 1 to 6 years, with an advisory sentence of 3 years. The sentence depends on mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,456 annually, or \$12.21 daily, per prisoner. However, any additional expenditures are likely to be small.

Explanation of State Revenues: *Successor Liability:* The bill provides that a person purchasing a business in a bulk asset purchase is liable for unpaid tax liability to the extent of the purchase price. This provision could allow the DOR to collect taxes, penalties, and interest due that may not have been collected otherwise. As a result, revenue from sales tax and any other listed tax (other than state income taxes, local income taxes, and financial institutions tax) could increase.

Sales Suppression Devices: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Level 5 felony is \$10,000. However, any additional revenues would likely be small.

Patent Derived Income Exemption: The bill could change the timing of when a patent derived income exemption is claimed. The bill also clarifies how the patent exemption applies to S corporations. The impact to annual General Fund revenues is indeterminable, but likely minor.

Net Operating Loss: The bill makes changes in calculation of the Indiana NOL deduction. Although most of these changes are clarifications to the NOL calculations, certain changes in the methods of calculations would change or limit a taxpayer's annual NOL that offsets taxpayer's business income or nonbusiness income. These provisions could impact the state individual income tax, corporate income tax, and financial institutions tax revenues deposited in the state General Fund beginning in FY 2024. The fiscal impact from changes in the method of calculating the NOL is indeterminable.

Disclosure of Exemption Certificates: The bill allows the DOR to publish a list of nonprofit and governmental entities that have qualified for a sales tax exemption certificate and certain information related to the status of each exemption certificate. This information would help sellers verify the validity of exemption certificates. However, any impact on sales tax revenue is indeterminable.

Electronic Cigarette Tax: The bill makes a change to the definition of "vapor product" for purposes of the

electronic cigarette tax. This provision is not expected to affect revenue. However, if certain products that are currently subject to the electronic cigarette tax become taxable as closed system cartridges under the Tobacco Products Tax, less revenue may be distributed to the General Fund, and additional revenue could be distributed to dedicated funds.

The electronic cigarette tax is equal to 15% of retail prices, and all revenue is deposited in the General Fund. Closed system cartridges are subject to a 15% tax on the wholesale price. Revenue is distributed to the General Fund and various dedicated funds.

Interest Add-Back: The bill makes clarifications and provides rules related to the add-back for state and local bond interest for bonds acquired out-of-state. These provisions will not have any fiscal impact.

Sales Tax: The bill clarifies the sales tax exemption for certain sales by power subsidiaries. However, these changes will not affect the taxability of any commodities or services. The bill also removes the provision in current law that allows the DOR to issue separate exemption certificates to manufacturers and wholesalers. This provision would not change the exemption status of these businesses, and they would still be required to obtain a registered retail merchant's certificate.

Interest and Penalties: The bill provides that in general, revenue from interest and penalties associated with a state tax is to be deposited as if it were the tax to which the interest and penalty are associated. It also provides that penalties and interest paid with regard to Local Income Tax revenue are deposited in the state General Fund. The bill does not change the distribution of state revenue.

Explanation of Local Expenditures: *Sales Suppression Devices:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Net Operating Loss:* To the extent that changes in the calculations of NOL impacts an individual income taxpayer's adjusted gross income, it will have a fiscal impact on local income taxes (LIT) received by counties imposing LIT. Counties also receive 40% of financial institutions tax that could be impacted by the changes in NOL calculations. Any fiscal impact is indeterminable.

Interest and Penalties: The bill specifies that interest and penalties associated with several local taxes, including auto rental excise taxes, innkeeper's taxes, food and beverage taxes, and admissions taxes, shall be distributed to the appropriate local unit and distributed and spent in the same manner as the underlying tax. This provision could change the distribution of local revenue to the extent that interest and penalties are currently distributed to the general funds of local units.

Sales Suppression Devices: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of State Revenue, Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

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