

Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 258

AN ACT to amend the Indiana Code concerning taxation.

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

SECTION 1. IC 6-2.5-1-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2006]: **Sec. 11.5. (a) This section applies to retail transactions occurring after December 31, 2007.**

(b) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, that are:

- (1) distinct;**
- (2) identifiable; and**
- (3) sold for one (1) nonitemized price.**

(c) The term does not include a retail sale in which the sales price of a product varies, or is negotiable, based on other products that the purchaser selects for inclusion in the transaction.

(d) The term does not include a retail sale that:

- (1) is comprised of:**
 - (A) a service that is the true object of the transaction; and**
 - (B) tangible personal property that:**
 - (i) is essential to the use of the service; and**
 - (ii) is provided exclusively in connection with the service;**
- (2) includes both taxable and nontaxable products in which:**
 - (A) the seller's purchase price; or**

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(B) the sales price; of the taxable products does not exceed ten percent (10%) of the total purchase price or the total sales price of the bundled products; or

(3) includes both exempt tangible personal property and taxable tangible personal property:

(A) any of which is classified as:

- (i) food and food ingredients;**
- (ii) drugs;**
- (iii) durable medical equipment;**
- (iv) mobility enhancing equipment;**
- (v) over-the-counter drugs;**
- (vi) prosthetic devices; or**
- (vii) medical supplies; and**

(B) for which:

- (i) the seller's purchase price; or**
- (ii) the sales price;**

of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or the total sales price of the bundled tangible personal property.

The determination under clause (B) must be made on the basis of either individual item purchase prices or individual item sale prices.

SECTION 2. IC 6-2.5-1-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16.5. (a) "Direct mail" means printed material delivered by United States mail or another delivery service to:

- (1) a mass audience; or**
- (2) addresses on a mailing list:**
 - (A) provided by a purchaser; or**
 - (B) specified at the direction of a purchaser;**

if the cost of the item is not billed directly to the recipient.

(b) The term includes tangible personal property that the purchaser supplies directly or indirectly to the direct mail seller for inclusion in the package containing the printed material.

(c) The term does not include multiple items of printed material delivered to a single address.

SECTION 3. IC 6-2.5-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value.

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The term does not include alcoholic beverages, candy, dietary supplements, **tobacco products**, or soft drinks.

SECTION 4. IC 6-2.5-4-15 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 15. (a) This section applies to retail transactions occurring after December 31, 2007.**

(b) A person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction.

SECTION 5. IC 6-2.5-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **Except as otherwise provided in this section**, each person liable for collecting the state gross retail or use tax shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month. A person shall file the person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.

(b) If a person files a combined sales and withholding tax report and either this section or IC 6-3-4-8.1 requires sales or withholding tax reports to be filed and remittances to be made within twenty (20) days after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20) days after the end of each month.

(c) Instead of the twelve (12) monthly reporting periods required by subsection (a), the department may permit a person to divide a year into a different number of reporting periods. The return and payment for each reporting period is due not more than twenty (20) days after the end of the period.

(d) Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering:

- (1) a calendar year, if the retail merchant's average monthly state

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gross retail and use tax liability in the previous calendar year does not exceed ten dollars (\$10);

(2) a calendar half year, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed twenty-five dollars (\$25); or

(3) a calendar quarter, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed seventy-five dollars (\$75).

A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.

(e) If a retail merchant reports the merchant's adjusted gross income tax, or the tax the merchant pays in place of the adjusted gross income tax, over a fiscal year or fiscal quarter not corresponding to the calendar year or calendar quarter, the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal period that corresponds to the calendar period the merchant is permitted to use under subsection (d). However, the department may, at any time, require the retail merchant to stop using the fiscal reporting period.

(f) If a retail merchant files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under:

- (1) this section;
- (2) IC 6-3-4-8; or
- (3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

- (1) estimated monthly gross retail and use tax liability for the current year; or
- (2) average monthly gross retail and use tax liability for the preceding year;

exceeds ten thousand dollars (\$10,000), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after

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the end of each calendar quarter.

(i) A person:

- (1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;**
- (2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and**
- (3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);**

is not required to file a monthly gross retail and use tax return.

SECTION 6. IC 6-2.5-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) As used in this section, the terms "receive" and "receipt" mean:

- (1) taking possession of tangible personal property;
- (2) making first use of services; or
- (3) taking possession or making first use of digital goods;

whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(b) This section:

- (1) applies regardless of the characterization of a product as tangible personal property, a digital good, or a service;
- (2) applies only to the determination of a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product; and
- (3) does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

(c) This section does not apply to sales or use taxes levied on the following:

- (1) The retail sale or transfer of watercraft, modular homes, manufactured homes, or mobile homes. These items must be sourced according to the requirements of this article.
- (2) The retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g). The retail sale of these items shall be sourced according to the requirements of this article, and the lease or rental of these items must be sourced according to subsection (f).
- (3) Telecommunications services, as set forth in IC 6-2.5-12, shall be sourced in accordance with IC 6-2.5-12.

(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

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- (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- (2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
- (3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).
- (e) The lease or rental of tangible personal property, other than property identified in subsection (f) or (g), shall be sourced as follows:
 - (1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (d). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
 - (2) For a lease or rental that does not require recurring periodic

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payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or an accelerated basis, or on the acquisition of property for lease.

(f) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (g), shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (d).

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(g) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (d), notwithstanding the exclusion of lease or rental in subsection (d). As used in this subsection, "transportation equipment" means any of the following:

(1) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of ten thousand one (10,001) pounds or greater, trailers, semitrailers, or passenger buses that are:

- (A) registered through the International Registration Plan; and
- (B) operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3).

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(h) This subsection applies to retail sales of floral products that occur before January 1, 2008. Notwithstanding subsection (d), a retail sale of floral products in which a florist or floral business:

- (1) takes a floral order from a purchaser; and**
- (2) transmits the floral order by telegraph, telephone, or other means of communication to another florist or floral business for delivery;**

is sourced to the location of the florist or floral business that originally takes the floral order from the purchaser.

SECTION 7. An emergency is declared for this act.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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