

COMMISSIONER'S DIRECTIVE # 21

SEPTEMBER 2009

(Replaces Commissioner's Directive #21 dated June 2008)

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Streamlined Sales Tax Agreement Provisions

EFFECTIVE DATE: July 1, 2009, upon passage, and July 1, 2010

REFERENCE: IC 6-2.5

INTRODUCTION:

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative, the Streamlined Sales Tax Project (SSTP). The SSTP represented an effort on the part of its member states to "simplify and modernize sales and use tax collection and administration." The Streamlined Sales Tax Implementing States (SSTIS) crafted model legislation that became the foundation for the Streamlined Sales and Use Tax Agreement (Agreement). Member states were encouraged to adopt legislation conforming to this model. Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with this model legislation and the Agreement.

The Agreement was officially adopted by the SSTIS on November 12, 2002, and was last amended on May 12, 2009. Indiana is a full member of the Streamlined Sales Tax Governing Board and is in compliance with the Agreement. Indiana will continue to amend its statutes as necessary to stay in compliance with the Agreement.

This directive summarizes legislative changes that have been made to ensure Indiana's compliance with the Agreement. Many administrative changes that did not require statutory changes have also been made by the Department. For further information concerning the Streamlined Sales and Use Tax Agreement in Indiana, access the Department's web site at www.in.gov/dor/streamlined. The national streamlined sales tax web site can be accessed at www.streamlinedsalestax.org

2001 ENACTMENT

SB 269-2001, effective July 1, 2001, enacted the simplified Sales and Use Tax Administration Act. The act provided for the appointment of four delegates to enter into multistate discussions concerning the Agreement. The act gave the Department authority to enter into the Agreement with other states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The act authorized the Department to act jointly with other states that are members of the Agreement to establish standards for certification of certified service providers and certified automated systems and to establish performance standards for multistate sellers.

The act prohibited the Department from entering into the Agreement unless the Agreement required each state to have a simplified state rate and uniform standards for sourcing transactions to taxing jurisdictions, the administration of exempt sales, and sales tax returns and remittances. The Agreement also required a central registration system, a reduction in taxpayer burden for jurisdictions with local sales taxes, monetary allowances to sellers and certified service providers, continued state compliance with the Agreement, consumer privacy, a business advisory council, and a state advisory council composed of nonmember states. The Agreement was required to provide that registration through the central registration system, and the collection of sales tax in a state would not be used in determining whether the seller has nexus with a state for any taxes.

The act also provided that no provision of the Agreement invalidated or amended any provision of Indiana law.

2003 ENACTMENT

HB 1815-2003, effective January 1, 2004, is the most comprehensive act that has been enacted so far to ensure that Indiana is in compliance with the Agreement. The act amended the definition of **gross retail income** to specifically include the total gross receipts received in a retail transaction without any deduction for the seller's cost of the property sold; the cost of materials, labor, transportation, and any other expense of the seller; charges by the seller for any services necessary to complete the sale; delivery charges; installation charges; and the value of exempt property given to the purchaser where taxable and exempt property are bundled together and sold by the seller as a single product or piece of merchandise. Taxation of installation charges was amended in 2004, effective March 18, 2004.

The act added definitions for the following:

1. Alcoholic beverage;
2. Candy;
3. Computer;
4. Computer software;
5. Delivered electronically;
6. Dietary supplement;
7. Drug;
8. Durable medical equipment;
9. Electronic;
10. Food and food ingredients;
11. Lease or rental;
12. Mobility enhancing equipment;
13. Prescription;
14. Prewritten computer software;
15. Prosthetic device;
16. Soft drinks; and
17. Tangible personal property.

The act amended IC 6-2.5-4-1, which is the imposition section, to include in taxable gross income charges by the seller for preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating, and packaging.

The act expanded the exemption for medical supplies to specifically include durable medical equipment and prosthetic devices in the list of medically related equipment and supplies that are eligible for exemption from the sales tax, if prescribed by a licensed practitioner.

The act amended IC 6-2.5-5-20 concerning the sales tax exemption for food to include food ingredients. The exemption was changed to provide that food and food ingredients for human consumption include the following items if sold without eating utensils provided by the seller:

1. Food sold by a seller who is a food manufacturer, except bakeries;
2. Food sold in an unheated state by weight or volume as a single item; and
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

Items that are not exempt from the sales tax in the food category include:

1. Candy;
2. Alcoholic beverages;
3. Soft drinks;
4. Food sold through a vending machine;
5. Food sold in a heated state or heated by the seller;
6. Two or more food ingredients mixed or combined by the seller for sale as a single item; and

7. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, and straws.

The act amended IC 6-2.5-6-9 concerning the bad debt deduction for uncollectible receivables to provide that the deduction does not include interest and that the amount of the deduction will be determined in accordance with Section 166 of the Internal Revenue Code adjusted to exclude finance charges, sales or use tax charged on the purchase price, uncollectible amounts on property that remains in the possession of the seller, expenses incurred in attempting to collect the debt, and repossessed property. The amendment provided that the deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible, and if the amount of the deduction exceeds the amount of the retail merchant's taxable sales for the reporting period, the seller may file a claim for refund. Any payments received on a previously claimed uncollectible receivable shall be proportionally applied to the taxable price of the property and to interest, service charges, and any other charges.

IC 6-2.5-12 was added by the act to provide **sourcing of nonmobile telecommunications service**. The sale of telecommunications services sold is sourced to the customer's place of primary use. The sourcing rule does not include telecommunications services sold on a call-by-call basis, mobile telecommunications services, or post-paid or prepaid calling service.

IC 6-2.5-13 was added to provide **general sourcing rules**. Sales tax applicable to the purchase of tangible personal property will be sourced to the location of the use of the property if it is delivered to the purchaser by the seller. If the property is delivered to the purchaser at the point of sale, the sales tax will be sourced to the location of the seller.

The general sourcing rules do not apply to the sale of watercraft, modular homes, manufactured homes, mobile homes, motor vehicles, trailers, semi trailers, or aircraft that do not qualify as transportation equipment and does not apply to telecommunications services.

Business purchasers who do not have a direct pay permit and know at the time of their purchase of a digital good, computer software delivered electronically, or service that will be concurrently available for use in more than one jurisdiction shall deliver to the seller a multiple point of use exemption form. This form will allow the purchaser to buy the items exempt from the sales tax but will require the purchaser to pay use tax to the appropriate jurisdiction where the property is actually used. (Repealed by SB 502-2007.)

A purchaser of direct mail that is going to be delivered to recipients in several jurisdictions shall provide the delivery information to the seller, and the seller will collect the tax for the appropriate jurisdictions. If a purchaser of direct mail provides the seller with a direct pay permit, the purchaser is not required to provide a direct mail form to the seller and the seller is not required to collect the tax.

2004 ENACTMENT

HB 1365-2004, effective March 18, 2004, amended IC 6-2.5-1-5 concerning the definition of gross retail income to define delivery charges as charges by the seller for preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating, and packing.

The act also provided that installation charges are not subject to sales tax if the charges are separately stated on the invoice, bill of sale, or similar document.

2005 ENACTMENT

SB 213-2005, effective July 1, 2005, defines tobacco to mean cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco and provides that tobacco is not included in the exemption for food for human consumption.

The act also amended IC 6-2.5-11-10 to provide that the Department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes.

2006 ENACTMENT

SB 258-2006, effective July 1, 2006, defines a bundled transaction to be a retail sale of two or more products that are distinct, identifiable, and sold for one nonitemized price. The term does not include a retail sale in which a service is the true object of the transaction or a transaction that includes both taxable and nontaxable products in which the sales price of the taxable product does not exceed 10 percent of the total purchase price or the total sales price of the bundled products.

IC 6-2.5-1-16.5 adds a definition of direct mail to be printed material delivered by U.S. mail or another delivery service to a mass audience or addresses on a mailing list provided by the purchaser. The term does not include multiple items of printed material delivered to a single address.

IC 6-2.5-4-15, effective for transactions occurring after December 31, 2007, provides that a person is making a retail transaction when the person sells tangible personal property as part of a bundled transaction.

IC 6-2.5-6-1 provides that a voluntary seller who has registered under the Agreement, who is not a Model 1, Model 2, or Model 3 seller as defined in the Agreement and whose liability for the preceding calendar year does not exceed \$1,000, is not required to file a monthly sales and use tax return.

IC 6-2.5-13-1 was amended to provide that when a floral business that takes a floral order from a purchaser and transmits the floral order to another florist for delivery, the sale is sourced to the location of the florist that originally takes the floral order from the purchaser. This provision is effective until December 31, 2007.

2007 ENACTMENT

SB 502-2007, effective January 1, 2008, added and amended several provisions concerning the definition and taxability of telecommunications services. The act defines ancillary services as services incidental to providing telecommunications services, including detailed telecommunications billing, directory assistance, vertical services, and voice mail services.

IC 6-2.5-1-20.3 defined intrastate telecommunications service as a telecommunications service that originates and terminates in Indiana.

The act defined prepaid wireless calling service, value-added non-voice data service, and prepaid calling service.

A definition of telecommunications service has been added to incorporate the requirements of the Agreement without changing Indiana law as to the taxability of various services.

The act amended IC 6-2.5-8-8 concerning exemption certificates to provide that a seller who accepts an incomplete exemption certificate is not relieved of the duty to collect sales tax unless the seller obtains a fully completed exemption certificate within 90 days after the sale. If a seller accepts an incomplete exemption certificate and the Department requests that the seller substantiate the exemption, the seller has 120 days to obtain a fully completed exemption certificate.

The act amended IC 6-2.5-11-10 to provide that a certified service provider or a seller using a certified automated system that obtains a certification from the Department is not liable for sales tax collection errors that result from reliance on the Department's certification. If the Department notifies the seller of the error, the seller has 10 days to correct the seller's data base.

IC 6-2.5-11-11 was added effective January 1, 2008, to provide that a purchaser is relieved of liability for penalties for failure to pay the amount of tax due if the seller relied on erroneous data provided by the Department regarding the tax rate, boundaries, taxing jurisdiction assignments, or the taxability matrix. The same relief is available for a purchaser using a direct pay permit. The provision also requires the Department to provide relief from tax and interest if the purchaser relied on an erroneous classification in the taxability matrix of terms included as taxable or exempt, included in the sales price, excluded from the sales price, included in a definition, or excluded from a definition.

IC 6-2.5-11-12 was added effective January 1, 2008, to require the Department to review the software submitted to the governing board for certification as a certified automated system. The review is to determine that the program adequately classifies product based exemptions.

IC 6-2.5-13-2 was repealed effective upon passage. The section concerned the multiple point of use exemption for software that may be used concurrently in more than one jurisdiction. This provision was repealed because the Agreement eliminated this provision.

2008 ENACTMENT

SB 233-2008, with various effective dates, adds definitions related to digital products and imposes the sales tax on those products. The legislation also amends the definition of durable medical equipment and extends origin sourcing for floral orders transmitted to another florist for delivery.

IC 6-2.5-1-16.2, effective January 1, 2009, defines digital audio works as the fixation of a series of musical, spoken, or other sounds, including ring tones.

IC 6-2.5-1-16.3, effective January 1, 2009, defines digital audio visual works as a series of related images that, when shown in succession, impart an impression of motion.

IC 6-2.5-1-16.4, effective January 1, 2009, defines digital books as works that are generally recognized as books.

IC 6-2.5-1-18, effective upon passage, is amended to add repair and replacement parts as components used in conjunction with other durable medical equipment.

IC 6-2.5-1-26.5, effective January 1, 2009, defines specified digital products as electronically transferred digital audio works, digital audio visual works, and digital books.

IC 6-2.5-4-16, effective January 1, 2009, provides that when a person transfers specified digital products to an end user, the person is a retail merchant making a retail transaction that is subject to sales tax. An end user does not include a person who receives a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, distribution, or exhibition of a product to another person.

IC 6-2.5-13-1, effective retroactive to January 1, 2008, provides that until December 31, 2009, sourcing of floral orders transmitted to another florist for delivery is sourced to the location of the florist that originally takes the floral order from the purchaser.

2009 ENACTMENT

House Enrolled Act 1001 – 2009(ss), with various effective dates, changes the definition of sales price and provides relief to the seller if the seller is not given 30 days notice between enactment of a statutory change and the effective date of a rate change. It provides that a sale of Internet access service or an ancillary service is sourced to the customer's place of primary use. It also provides that sourcing of floral orders will be sourced to the location of the business that takes the floral order from the purchaser.

IC 6-2.5-1-5, effective upon passage, amends the definition of sales price (gross retail income) to include consideration received by the seller from a third party if: (1) the seller actually receives consideration from a third party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale; (2) the seller has an obligation to pass the price reduction or discount through to the purchaser; (3) the amount of consideration is fixed and determinable by the seller at the time of the sale to the purchaser; and (4) the price reduction is identified as a third party price reduction on the invoice received by the purchaser or on a coupon, a certificate, or another documentation presented by the purchaser. The amendment removes the provision concerning exempt personal property included in a bundled transaction sold for a single price from the definition of sales price.

IC 6-2.5-11-10, effective July 1, 2010, provides that if 30 days are not provided between the enactment of a statute changing the rate and the effective date of the rate change, the Department shall relieve the seller of liability for failing to collect tax at the new rate.

IC 6-2.5-12-15, effective July 1, 2009, amends the telecommunications sourcing statute to provide that a sale of Internet access service or an ancillary service is sourced to the customer's place of primary use.

IC 6-2.5-13-1, effective January 1, 2010, amends the general sourcing statute so that the sales of floral products will be sourced to the location of the floral business that takes the order from a purchaser and transmits the floral order by telegraph, telephone, or other means of communication to another florist.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive, flowing style with a large initial "J".

John Eckart
Commissioner