

IC 6-2.5

ARTICLE 2.5. STATE GROSS RETAIL AND USE TAXES

IC 6-2.5-1

Chapter 1. Definitions

IC 6-2.5-1-1

"Unitary transaction"

Sec. 1. (a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-2

"Retail transaction" and "retail unitary transaction"

Sec. 2. (a) "Retail transaction" means a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1, that constitutes making a wholesale sale as described in IC 6-2.5-4-2, or that is described in any other section of IC 6-2.5-4.

(b) "Retail unitary transaction" means a unitary transaction that is also a retail transaction.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-3

"Person"

Sec. 3. "Person" includes an individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, national bank, bank, consignee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, limited liability company, Indiana political subdivision engaged in private or proprietary activities, estate, trust, or any group or combination acting as a unit.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.8-1993, SEC.82.

IC 6-2.5-1-4

"Department"

Sec. 4. "Department" means the Indiana department of state revenue.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-5

"Gross retail income"

Sec. 5. (a) Except as provided in subsection (b), "gross retail

income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
 - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
 - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

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

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
- (7) telecommunications nonrecurring charges.

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

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.1; P.L.81-2004, SEC.2; P.L.182-2009(ss), SEC.174; P.L.113-2010, SEC.43.

IC 6-2.5-1-6

"Like kind exchange"

Sec. 6. (a) "Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:

- (1) the property exchanged is of the same kind or character, regardless of grade or quality; and
- (2) the persons exchanging the property both own the property prior to the exchange.

(b) A "like kind exchange" may be a part of a transaction involving additional consideration other than the exchanged property.

(c) Notwithstanding subsection (a), a "like kind exchange" does not occur when:

- (1) the transaction involves more than two (2) persons; or
- (2) one (1) party to the transaction, through agreement or negotiation with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-7

Repealed

(Repealed by P.L.2-1987, SEC.53.)

IC 6-2.5-1-8

"Retail merchant"

Sec. 8. "Retail merchant" means a person who is described as a retail merchant in IC 6-2.5-4 or who is required to hold a retail merchant's certificate under IC 6-2.5-8.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-9

"Tax year" or "taxable year"

Sec. 9. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year if and when permission is obtained from the department to use the taxpayer's fiscal year in lieu of the calendar year.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-10

"Commercial printing"

Sec. 10. "Commercial printing" means a process or an activity, or

both, that is related to the production of printed materials for others, including the following:

- (1) Receiving, processing, moving, storing, and transmitting, either physically or electronically, copy elements and images to be reproduced.
- (2) Plate making or cylinder making.
- (3) Applying ink by one (1) or more processes, such as printing by letter press, lithography, gravure, screen, or digital means.
- (4) Casemaking and binding.
- (5) Assembling, packaging, and distributing printed materials.

The term does not include the business of photocopying.

As added by P.L.192-2002(ss), SEC.48.

IC 6-2.5-1-11

"Alcoholic beverages"

Sec. 11. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume.

As added by P.L.257-2003, SEC.2.

IC 6-2.5-1-11.3

"Ancillary services"

Sec. 11.3. "Ancillary services" means services that are associated with or incidental to the provision of telecommunication services, including the following:

- (1) Detailed telecommunications billing.
- (2) Directory assistance.
- (3) Vertical services.
- (4) Voice mail services.

As added by P.L.145-2007, SEC.1.

IC 6-2.5-1-11.5

"Bundled transaction"

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
 - (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.

As added by P.L.153-2006, SEC.1.

IC 6-2.5-1-12

"Candy"

Sec. 12. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The term does not include any preparation:

- (1) containing flour; or
- (2) requiring refrigeration.

As added by P.L.257-2003, SEC.3.

IC 6-2.5-1-13

"Computer"

Sec. 13. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

As added by P.L.257-2003, SEC.4.

IC 6-2.5-1-14

"Computer software"

Sec. 14. "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

As added by P.L.257-2003, SEC.5.

IC 6-2.5-1-14.5

"Computer software"

Sec. 14.5. "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades of computer software.

As added by P.L.113-2010, SEC.44.

IC 6-2.5-1-15

"Delivered electronically"

Sec. 15. "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

As added by P.L.257-2003, SEC.6.

IC 6-2.5-1-16

"Dietary supplement"

Sec. 16. "Dietary supplement" means any product, other than tobacco, that:

- (1) is intended to supplement the diet;
- (2) contains one (1) or more of the following dietary ingredients:
 - (A) a vitamin;
 - (B) a mineral;
 - (C) an herb or other botanical;
 - (D) an amino acid;
 - (E) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (F) a concentrate, a metabolite, a constituent, an extract, or a combination of any ingredient described in this subdivision;
- (3) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
- (4) is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required under 21 CFR 101.36.

As added by P.L.257-2003, SEC.7.

IC 6-2.5-1-16.2

"Digital audio works"

Sec. 16.2. (a) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(b) As used in this section, "ringtones" means digitized sound files that:

- (1) are downloaded onto a device; and
- (2) may be used to alert the customer with respect to a communication.

As added by P.L.19-2008, SEC.1.

IC 6-2.5-1-16.3

"Digital audiovisual works"

Sec. 16.3. "Digital audiovisual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

As added by P.L.19-2008, SEC.2.

IC 6-2.5-1-16.4

"Digital books"

Sec. 16.4. "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

As added by P.L.19-2008, SEC.3.

IC 6-2.5-1-16.5

"Direct mail"

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.

As added by P.L.153-2006, SEC.2.

IC 6-2.5-1-17

"Drug"

Sec. 17. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation that is:

- (1) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
- (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (3) intended to affect the structure or any function of the body.

The term does not include food and food ingredients, dietary supplements, or alcoholic beverages.

As added by P.L.257-2003, SEC.8.

IC 6-2.5-1-18

"Durable medical equipment"

Sec. 18. (a) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;

(3) generally is not useful to a person in the absence of illness or injury; and

(4) is not worn in or on the body.

The term does not include mobility enhancing equipment.

(b) As used in this section, "repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

As added by P.L.257-2003, SEC.9. Amended by P.L.19-2008, SEC.4.

IC 6-2.5-1-19

"Electronic"

Sec. 19. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

As added by P.L.257-2003, SEC.10.

IC 6-2.5-1-20

"Food and food ingredients"

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

As added by P.L.257-2003, SEC.11. Amended by P.L.153-2006, SEC.3.

IC 6-2.5-1-20.3

"Intrastate telecommunications service"

Sec. 20.3. "Intrastate telecommunications service" means a telecommunications service that originates in a particular state, territory, or possession of the United States and terminates in that same state, territory, or possession.

As added by P.L.145-2007, SEC.2.

IC 6-2.5-1-21

"Lease" or "rental"

Sec. 21. (a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. "Lease" or "rental" does not include:

(1) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(3) providing tangible personal property along with an operator

for a fixed or indeterminate period, if:

(A) the operator is necessary for the equipment to perform as designed; and

(B) the operator does more than maintain, inspect, or set up the tangible personal property.

(b) "Lease" or "rental" includes agreements covering motor vehicles and trailers in which the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(c) The definition of "lease" or "rental" set forth in this section applies throughout this article, regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code (IC 26-1), or other provisions of federal, state, or local law.

(d) This section applies only to leases or rentals entered into after June 30, 2003, and has no retroactive effect on leases or rentals entered into before July 1, 2003.

As added by P.L.257-2003, SEC.12. Amended by P.L.97-2004, SEC.25.

IC 6-2.5-1-22

"Mobility enhancing equipment"

Sec. 22. "Mobility enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(1) is primarily and customarily used to provide or increase the ability to move from one (1) place to another and is appropriate for use either in a home or a motor vehicle;

(2) is not generally used by persons with normal mobility; and

(3) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

The term does not include durable medical equipment.

As added by P.L.257-2003, SEC.13.

IC 6-2.5-1-22.3

"Prepaid calling service"

Sec. 22.3. "Prepaid calling service" has the meaning set forth in IC 6-2.5-12-11.

As added by P.L.145-2007, SEC.3.

IC 6-2.5-1-22.4

"Prepaid wireless calling service"

Sec. 22.4. "Prepaid wireless calling service" means a telecommunications service that:

(1) provides the right to use mobile wireless service as well as other nontelecommunications services, including:

(A) the download of digital products delivered electronically; and

(B) content and ancillary services;

(2) must be paid for in advance; and

(3) is sold in predetermined units or dollars of which the number declines with use in a known amount.

As added by P.L.145-2007, SEC.4.

IC 6-2.5-1-23

"Prescription"

Sec. 23. "Prescription" means an order, a formula, or a recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner authorized by Indiana law.

As added by P.L.257-2003, SEC.14.

IC 6-2.5-1-24

"Prewritten computer software"

Sec. 24. Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

(1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.

(2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.

(3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

As added by P.L.257-2003, SEC.15.

IC 6-2.5-1-25

"Prosthetic device"

Sec. 25. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(1) artificially replace a missing part of the body;

(2) prevent or correct physical deformity or malfunction; or

(3) support a weak or deformed part of the body.

As added by P.L.257-2003, SEC.16.

IC 6-2.5-1-26**"Soft drinks"**

Sec. 26. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

As added by P.L.257-2003, SEC.17.

IC 6-2.5-1-26.5**"Specified digital products"**

Sec. 26.5. "Specified digital products" means electronically transferred:

- (1) digital audio works;
- (2) digital audiovisual works; or
- (3) digital books.

As added by P.L.19-2008, SEC.5.

IC 6-2.5-1-27**"Tangible personal property"**

Sec. 27. "Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

As added by P.L.257-2003, SEC.18.

IC 6-2.5-1-27.2**"Telecommunications nonrecurring charges"**

Sec. 27.2. "Telecommunications nonrecurring charges" means an amount billed for installation, connection, change, or initiation of a telecommunications service received by a customer.

As added by P.L.113-2010, SEC.45.

IC 6-2.5-1-27.5**"Telecommunication services"**

Sec. 27.5. (a) "Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

(b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:

- (1) is referred to as voice over Internet protocol services; or
- (2) is classified by the Federal Communications Commission as enhanced or value added.

(c) The term does not include the following:

- (1) Data processing and information services that allow data to

be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.

(2) Installation or maintenance of wiring or equipment on a customer's premises.

(3) Tangible personal property.

(4) Advertising, including but not limited to directory advertising.

(5) Billing and collection services provided to third parties.

(6) Internet access service.

(7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.

(8) Ancillary services.

(9) Digital products delivered electronically, including the following:

(A) Software.

(B) Music.

(C) Video.

(D) Reading materials.

(E) Ring tones.

As added by P.L.145-2007, SEC.5.

IC 6-2.5-1-28

"Tobacco"

Sec. 28. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

As added by P.L.195-2005, SEC.1.

IC 6-2.5-1-28.5

"Transferred electronically"

Sec. 28.5. "Transferred electronically" means obtained by a purchaser by means other than tangible storage media.

As added by P.L.113-2010, SEC.46.

IC 6-2.5-1-29

"Value added nonvoice data service"

Sec. 29. "Value added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

As added by P.L.145-2007, SEC.6.

IC 6-2.5-2

Chapter 2. State Gross Retail Tax

IC 6-2.5-2-1

Imposition; liability; payment; collection

Sec. 1. (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-2-2

Tax rate

Sec. 2. (a) The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at seven percent (7%) of that gross retail income.

(b) If the tax computed under subsection (a) carried to the third decimal place results in the numeral in the third decimal place being greater than four (4), the amount of the tax shall be rounded to the next additional cent.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1982(ss), SEC.2; P.L.192-2002(ss), SEC.49; P.L.146-2008, SEC.310; P.L.113-2010, SEC.47.

IC 6-2.5-3

Chapter 3. Use Tax

IC 6-2.5-3-1

Definitions

Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property or services for use, storage, or consumption in Indiana and who:

(1) maintains an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by the retail merchant or through a representative, agent, or subsidiary;

(2) maintains a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, installs, repairs, assembles, sets up, accepts returns of, bills, invoices, or takes orders for sales of tangible personal property or services to be used, stored, or consumed in Indiana;

(3) is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or

(4) may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

(2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.70-1993, SEC.2; P.L.81-2004, SEC.3.

IC 6-2.5-3-2

Imposition

Sec. 2. (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

(c) The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if:

- (1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or
- (2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

(d) The use tax is imposed on a person who:

- (1) manufactures, fabricates, or assembles tangible personal property from materials either within or outside Indiana; and
- (2) uses, stores, distributes, or consumes tangible personal property in Indiana.

(e) Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if:

- (1) the property is delivered into Indiana by or for the purchaser of the property;
- (2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and
- (3) the property is subsequently transported out of state for use solely outside Indiana.

(f) As used in this subsection, "prepurchase evaluation" means an examination of an aircraft by a potential purchaser for the purpose of obtaining information relevant to the potential purchase of the aircraft. Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over an aircraft, if:

- (1) the aircraft is titled, registered, or based (as defined in IC 6-6-6.5-1(m)) in another state or country;
- (2) the aircraft is delivered to Indiana by or for a nonresident owner or purchaser of the aircraft;
- (3) the aircraft is delivered to Indiana for the sole purpose of

being repaired, refurbished, remanufactured, or subjected to a prepurchase evaluation; and

(4) after completion of the repair, refurbishment, remanufacture, or prepurchase evaluation, the aircraft is transported to a destination outside Indiana.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.3; P.L.335-1989(ss), SEC.2; P.L.162-2006, SEC.20; P.L.211-2007, SEC.9.

IC 6-2.5-3-3

Rates; certain transactions defined

Sec. 3. The use tax is measured by the gross retail income received in a retail unitary transaction and is imposed at the same rates as the state gross retail tax under IC 6-2.5-2-2. For purposes of this chapter, transactions described in IC 6-2.5-3-2(b) and (c) shall be treated as retail transactions within the meaning of IC 6-2.5-1-2.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.78, SEC.1.

IC 6-2.5-3-4

Exemptions

Sec. 4. (a) The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:

(1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or

(2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

(b) If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-3-5

Credit for payment of other taxes

Sec. 5. A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.4; P.L.335-1989(ss), SEC.3; P.L.81-2004, SEC.4.

IC 6-2.5-3-6

Liability; payment; collection; computation

Sec. 6. (a) For purposes of this section, "person" includes an

individual who is personally liable for use tax under IC 6-2.5-9-3.

(b) The person who uses, stores, or consumes the tangible personal property acquired in a retail transaction is personally liable for the use tax.

(c) The person liable for the use tax shall pay the tax to the retail merchant from whom the person acquired the property, and the retail merchant shall collect the tax as an agent for the state, if the retail merchant is engaged in business in Indiana or if the retail merchant has departmental permission to collect the tax. In all other cases, the person shall pay the use tax to the department.

(d) Notwithstanding subsection (c), a person liable for the use tax imposed in respect to a vehicle, watercraft, or aircraft under section 2(b) of this chapter shall pay the tax:

(1) to the titling agency when the person applies for a title for the vehicle or the watercraft;

(2) to the registering agency when the person registers the aircraft; or

(3) to the registering agency when the person registers the watercraft because it is a United States Coast Guard documented vessel;

unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the vehicle, watercraft, or aircraft or proof that the taxes are inapplicable because of an exemption under this article.

(e) At the time a person pays the use tax for the purchase of a vehicle to a titling agency pursuant to subsection (d), the titling agency shall compute the tax due based on the presumption that the sale price was the average selling price for that vehicle, as determined under a used vehicle buying guide to be chosen by the titling agency. However, the titling agency shall compute the tax due based on the actual sale price of the vehicle if the buyer, at the time the buyer pays the tax to the titling agency, presents documentation to the titling agency sufficient to rebut the presumption set forth in this subsection and to establish the actual selling price of the vehicle. *As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.79, SEC.1; P.L.26-1985, SEC.5; P.L.335-1989(ss), SEC.4; P.L.18-1994, SEC.6; P.L.28-1997, SEC.8; P.L.182-2009(ss), SEC.175.*

IC 6-2.5-3-7

Presumption of taxability; exemption certificate; verification for property used or consumed in providing public transportation

Sec. 7. (a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana. However, the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate

which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

(c) A retail merchant that sells tangible personal property to a person that purchases the tangible personal property for use or consumption in providing public transportation under IC 6-2.5-5-27 may verify the exemption by obtaining the person's:

- (1) name;
- (2) address; and
- (3) motor carrier number, United States Department of Transportation number, or any other identifying number authorized by the department.

The person engaged in public transportation shall provide a signature to affirm under penalties of perjury that the information provided to the retail merchant is correct and that the tangible personal property is being purchased for an exempt purpose.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.211-2007, SEC.10.

IC 6-2.5-3-8

Receipt for payment; issuance; evidence of payment

Sec. 8. (a) When a retail merchant collects the use tax from a person, he shall, upon request, issue a receipt to that person for the use tax collected.

(b) If the department assesses the use tax against a person for the person's storage, use, or consumption of tangible personal property in Indiana, and if the person has already paid the use tax in relation to that property to a retail merchant who is registered under IC 6-2.5-6, to the department, or, in the case of a vehicle or aircraft, to the proper state agency, then the person may avoid paying the use tax to the department if he can produce a receipt or other written evidence showing that he has so made the use tax payment.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4

Chapter 4. Retail Transactions of Retail Merchant

IC 6-2.5-4-1

Selling at retail

Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

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

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

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

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

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion

under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1987, SEC.14; P.L.6-1987, SEC.5; P.L.277-1993(ss), SEC.40; P.L.257-2003, SEC.19; P.L.81-2004, SEC.5.

IC 6-2.5-4-2

Wholesale sales; nonretail transactions

Sec. 2. (a) A person is a retail merchant making a retail transaction when he is making wholesale sales.

(b) For purposes of this section, a person is making wholesale sales when he:

- (1) sells tangible personal property, other than capital assets or depreciable property, to a person who purchases the property for the purpose of reselling it without changing its form;
- (2) sells tangible personal property to a person who purchases the property for direct consumption as a material in the direct production of other tangible personal property produced by the person in his business of manufacturing, processing, refining, repairing, mining, agriculture, or horticulture;
- (3) sells tangible personal property to a person who purchases the property for incorporation as a material or integral part of tangible personal property produced by the person in his business of manufacturing, assembling, constructing, refining, or processing;
- (4) sells drugs, medical or dental preparations, or other similar materials to a person who purchases the materials for direct consumption in professional use by a physician, hospital, embalmer, funeral director, or tonsorial parlor;
- (5) sells tangible personal property to a person who purchases the property for direct consumption in his business of industrial cleaning; or
- (6) sells tangible personal property to a person who purchases the property for direct consumption in the person's business in the direct rendering of public utility service.

(c) Notwithstanding any provision of this article, a person is not making a retail transaction when he:

- (1) acquires tangible personal property owned by another person;
- (2) provides industrial processing or servicing, including enameling or plating, on the property; and
- (3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.246-1985, SEC.9.

IC 6-2.5-4-3

Water softening and conditioning business

Sec. 3. (a) A person is a retail merchant making a retail transaction when he regularly and occupationally engages in the business of softening and conditioning water.

(b) For purposes of this section, the business of softening and conditioning water includes the exchange of water softening and conditioning tanks in the ordinary course of the business, but does not include the preparatory plumbing and work necessary for the first installation of tanks.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-4

Renting or furnishing rooms, lodgings, or other accommodations

Sec. 4. (a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

(1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and

(2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

(b) Each rental or furnishing by a retail merchant under subsection (a) is a separate unitary transaction regardless of whether consideration is paid to an independent contractor or directly to the retail merchant.

(c) For purposes of this section, "consideration" includes a membership fee charged to a customer.

(d) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction if:

(1) the person is a promoter that rents a booth or display space to an exhibitor; and

(2) the booth or display space is located in a facility that:

(A) is described in subsection (a)(2); and

(B) is operated by a political subdivision (including a capital improvement board established under IC 36-10-8 or IC 36-10-9) or the state fair commission.

This subsection does not exempt from the state gross retail tax the renting of accommodations by a political subdivision or the state fair commission to a promoter or an exhibitor.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.1; P.L.85-1989, SEC.1; P.L.20-1990, SEC.7.

IC 6-2.5-4-4.5

Repealed

(Repealed by P.L.81-2004, SEC.59.)

IC 6-2.5-4-5

Power subsidiaries of public utilities

Sec. 5. (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

(1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

(i) relocates all or part of its operations to a facility; or

(ii) expands all or part of its operations in a facility;

located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-30, the part of an economic development area established under IC 36-7-14.5-12.5 that is or formerly was a military base (as defined in IC 36-7-30-1(c)), a military base recovery site designated under IC 6-3.1-11.5, or a qualified military base enhancement area established under IC 36-7-34.

(B) The business uses the services or commodities in the

facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or expanded in the facility commence.

(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(1), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business is a United States Department of Defense contractor.

(iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(2), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in IC 36-7-34-3).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person sells services or commodities that:

(A) are referred to in subsection (b); and

(B) qualify as home energy (as defined in IC 6-2.5-5-16.5); to a person who acquires the services or commodities after June 30, 2006, and before July 1, 2009, through home energy assistance (as defined in IC 6-2.5-5-16.5).

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.48-1984, SEC.1; P.L.71-1993, SEC.4; P.L.81-2004, SEC.19; P.L.190-2005, SEC.1; P.L.203-2005, SEC.3; P.L.162-2006, SEC.21; P.L.180-2006, SEC.3; P.L.1-2007, SEC.51; P.L.32-2007, SEC.1.

IC 6-2.5-4-6

Taxation of telecommunication services; aggregation of taxable

and nontaxable services on customer bills

Sec. 6. (a) A person is a retail merchant making a retail transaction when the person:

- (1) furnishes or sells an intrastate telecommunication service; and
- (2) receives gross retail income from billings or statements rendered to customers.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:

- (1) the person furnishes or sells telecommunication services to another person described in this section or in section 5 of this chapter;
- (2) the person furnishes telecommunications services to another person who is providing prepaid calling services or prepaid wireless calling services in a retail transaction to customers who access the services through the use of an access or authorization number or card as described in section 13 of this chapter;
- (3) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15); or
- (4) the person furnishes or sells value added nonvoice data services in a retail transaction to a customer.

(c) Subject to IC 6-2.5-12 and IC 6-8.1-15, and notwithstanding subsections (a) and (b), if charges for telecommunication services, ancillary services, Internet access, audio services, or video services that are not taxable under this article are aggregated with and not separately stated from charges subject to taxation under this article, the charges for nontaxable telecommunication services, ancillary services, Internet access, audio services, or video services are subject to taxation unless the service provider can reasonably identify the charges not subject to the tax from the service provider's books and records kept in the regular course of business.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.71-1993, SEC.5; P.L.8-1996, SEC.3; P.L.8-1998, SEC.1; P.L.104-2002, SEC.1; P.L.5-2004, SEC.1; P.L.145-2007, SEC.7.

IC 6-2.5-4-7

Repealed

(Repealed by P.L.71-1993, SEC.28.)

IC 6-2.5-4-8

Governmental entities; private or proprietary activities

Sec. 8. An Indiana governmental entity, agency, instrumentality, or political subdivision (including a state college or university) is a retail merchant making a retail transaction when it performs private or proprietary activities that would constitute retail transactions under this article if those activities were performed by a retail merchant. However, this section does not apply to a political subdivision that performs an activity that is related to an annual

festival, carnival, fair, or similar event.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.2.

IC 6-2.5-4-9

Sale of property to be added to structures or facilities; exemption

Sec. 9. (a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

- (1) is to be added to a structure or facility by the purchaser; and
- (2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-10

Rental or leasing of personal property; sale of property rented or leased in course of business; exclusion

Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

(c) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases motion picture film, audio tape, or video tape to another person. However, this exclusion only applies if:

- (1) the person who pays to rent or lease the film charges admission to those who view the film; or
- (2) the person who pays to rent or lease the film or tape broadcasts the film or tape for home viewing or listening.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.20.

IC 6-2.5-4-11

Cable television service; satellite television or radio service

Sec. 11. (a) A person is a retail merchant making a retail transaction when the person furnishes cable television or radio service or satellite television or radio service that terminates in Indiana.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person provides,

installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of cable television or radio service or satellite television or radio service.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-2004, SEC.6; P.L.2-2005, SEC.20.

IC 6-2.5-4-12

Auction sales; exceptions

Sec. 12. (a) A person is a retail merchant making a retail transaction when he sells tangible personal property at auction.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:

- (1) he makes isolated or occasional sales of tangible personal property at auction;
- (2) the sales occur on the premises of the owner of the tangible personal property; and
- (3) the owner of the tangible personal property did not originally acquire that property for resale.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-4-13

Definition of retail merchant making retail transaction

Sec. 13. A person is a retail merchant making a retail transaction when a person sells:

- (1) a prepaid telephone calling card at retail;
- (2) a prepaid telephone authorization number at retail;
- (3) the reauthorization of a prepaid telephone calling card; or
- (4) the reauthorization of a prepaid telephone authorization number.

As added by P.L.8-1998, SEC.2.

IC 6-2.5-4-14

Notice; proposed public vendors; identification of delinquent taxpayers

Sec. 14. The department of administration and each purchasing agent for a state educational institution shall provide the department with a list of every person who desires to enter into a contract to sell tangible personal property to an agency (as defined in IC 4-13-2-1) or a state educational institution. The department shall notify the department of administration or the purchasing agent of the state educational institution if a person on the list does not have a registered retail merchant certificate or is delinquent in remitting or paying amounts due to the department under this article.

As added by P.L.254-2003, SEC.4. Amended by P.L.2-2007, SEC.118; P.L.211-2007, SEC.11.

IC 6-2.5-4-15

Bundled transactions

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.

As added by P.L.153-2006, SEC.4.

IC 6-2.5-4-16

Repealed

(Repealed by P.L.1-2009, SEC.174.)

IC 6-2.5-4-16.2

Aircraft leasing or renting and flight instruction services

Sec. 16.2. (a) This section applies to transactions occurring after June 30, 2008.

(b) A person is a retail merchant making a retail transaction when the person:

- (1) leases or rents an aircraft to another person; and
- (2) provides flight instruction services to the lessee or renter during the term of the lease or rental.

(c) The amount of the gross retail income attributable to a retail transaction described in subsection (b) is the amount charged by the retail merchant for the lease or rental of the aircraft used in conjunction with the flight instruction services provided to the lessee or renter.

As added by P.L.1-2009, SEC.47.

IC 6-2.5-4-16.4

Specified digital products

Sec. 16.4. (a) As used in this section, "end user" does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

(b) A person is a retail merchant making a retail transaction when the person:

- (1) electronically transfers specified digital products to an end user; and
- (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser.

(c) The sale of a digital code that may be used to obtain a product transferred electronically shall be taxed in the same manner as the product transferred electronically. As used in this subsection, a digital code means a method that permits a purchaser to obtain at a later date a product transferred electronically.

As added by P.L.1-2009, SEC.48. Amended by P.L.113-2010, SEC.48.

IC 6-2.5-4-17

Computer software maintenance contracts

Sec. 17. A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software.
As added by P.L.113-2010, SEC.49.

IC 6-2.5-5

Chapter 5. Exempt Transactions of Retail Merchant

IC 6-2.5-5-1

Animals, feed, seed, and chemicals

Sec. 1. Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and
- (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.21.

IC 6-2.5-5-2

Agricultural machinery, tools, and equipment

Sec. 2. (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

- (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
- (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.80, SEC.1; P.L.257-2003, SEC.22.

IC 6-2.5-5-3

Exemption; acquisition for direct use in direct production

Sec. 3. (a) For purposes of this section:

- (1) the retreading of tires shall be treated as the processing of tangible personal property; and
- (2) commercial printing shall be treated as the production and manufacture of tangible personal property.

(b) Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it

for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

(c) The exemption provided in subsection (b) does not apply to transactions involving distribution equipment or transmission equipment acquired by a public utility engaged in generating electricity.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.76-1985, SEC.9; P.L.78-1989, SEC.4; P.L.192-2002(ss), SEC.50; P.L.211-2007, SEC.12.

IC 6-2.5-5-4

Property for use in producing machinery, tools, or equipment

Sec. 4. Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for his direct use in the direct production of the machinery, tools, or equipment described in section 2 or 3 of this chapter.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-5-5

Repealed

(Repealed by Acts 1980, P.L.61, SEC.15.)

IC 6-2.5-5-5.1

Exemption; acquisition for direct consumption in direct production

Sec. 5.1. (a) As used in this section, "tangible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam heat.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

As added by Acts 1981, P.L.63, SEC.6. Amended by P.L.23-1986, SEC.2; P.L.78-1989, SEC.5; P.L.192-2002(ss), SEC.51.

IC 6-2.5-5-6

Exemption; acquisition for incorporation into product for sale

Sec. 6. Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.78-1989,

SEC.6; P.L.192-2002(ss), SEC.52.

IC 6-2.5-5-7

Materials used in construction business, public street, or utility service

Sec. 7. Transactions involving tangible personal property are exempt from the state gross retail tax if:

- (1) the person acquiring the property is in the construction business;
- (2) the person acquiring the property acquires it for incorporation as a material or integral part of a public street or of a public water, sewage, or other utility service;
- (3) the public street or public utility service into which the property is to be incorporated is required under a subdivision plat, approved and accepted by the appropriate Indiana political subdivision; and
- (4) the public street or public utility is to be publicly maintained after its completion.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-5-8

"New motor vehicle"; property acquired for resale, rental, or leasing in course of business; aircraft

Sec. 8. (a) As used in this section, "new motor vehicle" has the meaning set forth in IC 9-13-2-111.

(b) Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

(c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:

- (1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.
- (2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter manufacturer licensed under IC 9-23 acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.
- (3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if

the rental or leasing of the property by the promoter is exempt under IC 6-2.5-4-4.

(e) This subsection applies only to aircraft acquired after June 30, 2008. Except as provided in subsection (h), a transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules, that the annual amount of the gross lease revenue derived from leasing or rental of the aircraft, which may include revenue from related party transactions, is equal to or greater than seven and five-tenths percent (7.5%) of the:

- (1) book value of the aircraft, as published in the Vref Aircraft Value Reference guide for the aircraft; or
- (2) net acquisition price for the aircraft.

If a person acquires an aircraft below the Vref Aircraft Value Reference guide book value, the person may appeal to the department for a lower lease or rental threshold equal to the actual acquisition price paid if the person demonstrates that the transaction was completed in a commercially reasonable manner based on the aircraft's age, condition, and equipment. The department may request the person to submit to the department supporting documents showing the aircraft is available for general public lease or rental, copies of business and aircraft insurance policies, and other documents that assist the department in determining if an aircraft is exempt from the state gross retail tax.

(f) A person is required to meet the requirements of subsection (e) until the earlier of the date the aircraft has generated sales tax on leases or rental income that is equal to the amount of the original sales tax exemption or the elapse of thirteen (13) years. If the aircraft is sold by the person before meeting the requirements of this section and before the sale the aircraft was exempt from gross retail tax under subsection (e), the sale of the aircraft shall not result in the assessment or collection of gross retail tax for the period from the date of acquisition to the date of sale by the person.

(g) The person is required to remit the gross retail tax on taxable lease and rental transactions no matter how long the aircraft is used for lease and rental.

(h) This subsection applies only to aircraft acquired after December 31, 2007. A transaction in which a person acquires an aircraft to rent or lease the aircraft to another person for predominant use in public transportation by the other person or by an affiliate of the other person is exempt from the state gross retail tax. The department may not require a person to meet the revenue threshold in subsection (e) with respect to the person's leasing or rental of the aircraft to receive or maintain the exemption. To maintain the exemption provided under this subsection, the department may require the person to submit only annual reports showing that the aircraft is predominantly used to provide public transportation.

(i) The exemptions allowed under subsections (e) and (h) apply

regardless of the relationship, if any, between the person or lessor and the lessee or renter of the aircraft.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.3; P.L.20-1990, SEC.8; P.L.27-2003, SEC.1; P.L.211-2007, SEC.13; P.L.224-2007, SEC.53; P.L.182-2009(ss), SEC.176.

IC 6-2.5-5-9

Returnable containers; nonreturnable packaging

Sec. 9. (a) As used in this section, "returnable containers" means containers customarily returned by the buyer of the contents for reuse as containers.

(b) Sales of returnable containers are exempt from the state gross retail tax if the transaction constitutes selling at retail as defined in IC 6-2.5-4-1 and if the returnable containers contain contents.

(c) Sales of returnable containers are exempt from the state gross retail tax if the containers are transferred empty for the purpose of refilling.

(d) Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for selling the contents that he adds.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-5-10

Electric or steam utilities; production plant or power production expenses

Sec. 10. Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is classified as production plant or power production expenses, according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission; and

(2) the person acquiring the property is:

(A) a public utility that furnishes or sells electrical energy, steam, or steam heat in a retail transaction described in IC 6-2.5-4-5; or

(B) a power subsidiary (as defined in IC 6-2.5-4-5(a)) that furnishes or sells electrical energy, steam, or steam heat to a public utility described in clause (A).

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.23-1988, SEC.8; P.L.71-1993, SEC.6.

IC 6-2.5-5-11

Gas utilities; production or storage plants and expenses

Sec. 11. Transactions involving tangible personal property are exempt from the state gross retail tax, if:

(1) the property is classified as production plant, storage plant, production expenses, or underground storage expenses according to the uniform system of accounts, which was adopted and prescribed for the utility by the Indiana utility

regulatory commission; and

(2) the person acquiring the property is a public utility that furnishes or sells natural or artificial gas in a retail transaction described in IC 6-2.5-4-5.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.23-1988, SEC.9; P.L.71-1993, SEC.7.

IC 6-2.5-5-12

Water utilities; plants and expenses

Sec. 12. Transactions involving tangible personal property are exempt from the state gross retail tax if:

(1) the property is classified as source of supply plant and expenses, the pumping plant and expenses, or water treatment plant and expenses according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission; and

(2) the person acquiring the property is a public utility that furnishes or sells water in a retail transaction described in IC 6-2.5-4-5.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.23-1988, SEC.10; P.L.71-1993, SEC.8; P.L.91-1995, SEC.1; P.L.88-2007, SEC.1.

IC 6-2.5-5-12.5

Wastewater utilities; plants and expenses

Sec. 12.5. (a) As used in this section, "collection plant and expenses" includes the following:

(1) Expenditures for collection plant, which include the following:

- (A) Land and land rights.
- (B) Structures and improvements.
- (C) Power generation equipment.
- (D) Collection sewers and special collecting structures.
- (E) Receiving wells.
- (F) Pumping equipment.
- (G) Transportation equipment.
- (H) Other collection plant expenditures.

(2) Expenditures for collection expenses, which include the following:

- (A) Operation supervision and engineering.
- (B) Purchased power or fuel for power production.
- (C) Chemicals.
- (D) Materials and supplies.
- (E) Maintenance supervision and engineering.
- (F) Rental of real property or equipment.
- (G) Maintenance of power generation equipment.
- (H) Maintenance of structures and improvements.
- (I) Maintenance of transportation equipment.
- (J) Maintenance of collection plant equipment.

(b) As used in this section, "public utility" means a public utility

(as defined in IC 8-1-2-1(a)) or any person that contracts with a municipality to operate, manage, or control any plant or equipment owned by the municipality for the collection, treatment, or processing of wastewater.

(c) As used in this section, "system pumping plant and expenses" includes the following:

(1) Expenditures for pumping plant, which include the following:

- (A) Land and land rights.
- (B) Structures and improvements.
- (C) Boiler plant equipment.
- (D) Other power production equipment.
- (E) Steam pumping equipment.
- (F) Electric pumping equipment.
- (G) Diesel pumping equipment.
- (H) Hydraulic pumping equipment.
- (I) Other pumping equipment.

(2) Expenditures for pumping expenses, which include the following:

- (A) Operation supervision and engineering.
- (B) Fuel for power production.
- (C) Power production labor and expenses.
- (D) Fuel or power purchased for pumping.
- (E) Pumping labor and expenses.
- (F) Miscellaneous expenses.
- (G) Rents.
- (H) Maintenance supervision and engineering.
- (I) Maintenance of power production equipment.
- (J) Maintenance of pumping equipment.

(d) As used in this section, "treatment and disposal plant and expenses" includes the following:

(1) Expenditures for treatment and disposal plant, which include the following:

- (A) Land and land rights.
- (B) Structures and improvements.
- (C) Power generation equipment.
- (D) Pumping equipment.
- (E) Flow measuring devices and installations.
- (F) Reuse meters and meter installations.
- (G) Reuse transmission and distribution systems.
- (H) Treatment and disposal equipment.
- (I) Sewers and sewer lines.
- (J) Transportation equipment.

(2) Expenditures for treatment and disposal expenses, which include the following:

- (A) Operation supervision and engineering.
- (B) Purchased wastewater treatment.
- (C) Sludge removal expenses.
- (D) Purchased power or fuel for power production.
- (E) Chemicals.

- (F) Materials and supplies.
- (G) Maintenance supervision and engineering.
- (H) Rental of real property or equipment.
- (I) Maintenance of power generation equipment.
- (J) Maintenance of structures and improvements.
- (K) Maintenance of transportation equipment.
- (L) Maintenance of treatment and disposal plant equipment.

(e) Transactions involving tangible personal property are exempt from the state gross retail tax if:

- (1) the property is classified as collection plant and expenses, treatment and disposal plant and expenses, or system pumping plant and expenses; and
- (2) the person acquiring the property is a public utility that collects, treats, or processes wastewater.

As added by P.L.88-2007, SEC.2.

IC 6-2.5-5-13

Intrastate telecommunication services; video, Internet access, or VOIP services; equipment

Sec. 13. Transactions involving tangible personal property are exempt from the state gross retail tax, if:

- (1) the property is:
 - (A) classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission;
 - (B) mobile telecommunications switching office equipment, radio or microwave transmitting or receiving equipment, including, without limitation, towers, antennae, and property that perform a function similar to the function performed by any of the property described in clause (A); or
 - (C) a part of a national, regional, or local headend or similar facility operated by a person furnishing video services, cable radio services, satellite television or radio services, or Internet access services; and
- (2) the person acquiring the property:
 - (A) furnishes or sells intrastate telecommunication service in a retail transaction described in IC 6-2.5-4-6; or
 - (B) uses the property to furnish:
 - (i) video services or Internet access services; or
 - (ii) VOIP services.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.23-1988, SEC.11; P.L.71-1993, SEC.9; P.L.182-2009(ss), SEC.177.

IC 6-2.5-5-14

Public utilities; acquisitions of personal property

Sec. 14. (a) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property is:

- (1) a municipally owned utility;
- (2) a utility owned or operated by a special district; or
- (3) a public utility owned or operated by a not-for-profit corporation incorporated under:

(A) the Indiana General Not for Profit Corporation Act (Acts 1935, Chapter 157, as amended), notwithstanding its repeal;

(B) the Indiana Not-for-Profit Corporation Act of 1971 (IC 23-7-1.1), notwithstanding its repeal; or

(C) IC 23-17.

(b) The term "public utility owned or operated by a not-for-profit corporation" does not include those public utilities incorporated under Acts 1935, chapter 157, as amended, and which are owned or operated by local district rural electric membership corporations.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1980, P.L.53, SEC.1; P.L.179-1991, SEC.10.

IC 6-2.5-5-15

Repealed

(Repealed by P.L.81-2004, SEC.60.)

IC 6-2.5-5-15.5

Motor vehicles; intrafamilial title transfers

Sec. 15.5. A transaction involving a motor vehicle is exempt from the state gross retail tax, if:

(1) the transaction consists of changing the motor vehicle title to add or delete an individual; and

(2) the individual being added or deleted is the spouse, child, grandparent, parent, or sibling of an owner.

As added by P.L.73-1993, SEC.1.

IC 6-2.5-5-16

State or local government acquisitions

Sec. 16. Transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service:

(1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under IC 13-21 or IC 13-9.5-2 (before its repeal); and

(2) predominantly uses the property, commodities, or service to perform its governmental functions.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.25-1991, SEC.3; P.L.1-1996, SEC.45.

IC 6-2.5-5-16.5

Home energy assistance

Sec. 16.5. (a) The following definitions apply throughout this

section:

(1) "Home energy" means electricity, oil, gas, coal, propane, or any other fuel for use as the principal source of heating or cooling in residential dwellings.

(2) "Home energy assistance" means programs administered by the state to supply home energy through the Low Income Home Energy Assistance Block Grant under 42 U.S.C. 8261 et seq.

(b) Transactions involving home energy are exempt from the state gross retail tax if the person acquiring the home energy acquires it after June 30, 2006, and before July 1, 2009, through home energy assistance.

As added by P.L.162-2006, SEC.22. Amended by P.L.32-2007, SEC.2.

IC 6-2.5-5-17

Newspapers

Sec. 17. Sales of newspapers are exempt from the state gross retail tax.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-5-18

Medical equipment, supplies, and devices

Sec. 18. (a) Sales of durable medical equipment, mobility enhancing equipment, prosthetic devices, artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

(b) Rentals of durable medical equipment, mobility enhancing equipment, and other medical supplies and devices are exempt from the state gross retail tax, if the rentals are prescribed by a person licensed to issue the prescription.

(c) Sales of hearing aids are exempt from the state gross retail tax if the hearing aids are fitted or dispensed by a person licensed or registered for that purpose. In addition, sales of hearing aid parts, attachments, or accessories are exempt from the state gross retail tax. For purposes of this subsection, a hearing aid is a device which is worn on the body and which is designed to aid, improve, or correct defective human hearing.

(d) Sales of colostomy bags, ileostomy bags, and the medical equipment, supplies, and devices used in conjunction with those bags are exempt from the state gross retail tax.

(e) Sales of equipment and devices used to administer insulin are exempt from the state gross retail tax.

(f) Sales of equipment and devices used to monitor blood glucose level, including blood glucose meters and measuring strips, lancets, and other similar diabetic supplies, are exempt from the state gross retail tax, regardless of whether the equipment and devices are prescribed.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003,

IC 6-2.5-5-19

Drugs; insulin; oxygen; blood or blood plasma

Sec. 19. (a) As used in this section, "legend drug" means a drug as defined in IC 6-2.5-1-17 that is also a legend drug for purposes of IC 16-18-2-199.

(b) As used in this section, "nonlegend drug" means a drug (as defined in IC 6-2.5-1-17) that is not a legend drug.

(c) Sales of legend drugs and sales of nonlegend drugs are exempt from the state gross retail tax if:

(1) a registered pharmacist makes the sale upon the prescription of a practitioner who is licensed to prescribe, dispense, and administer those drugs to human beings or animals in the course of his professional practice; or

(2) the licensed practitioner makes the sales.

(d) Sales of a nonlegend drug are exempt from the state gross retail tax, if:

(1) the nonlegend drug is dispensed upon an original prescription or a drug order (as defined in IC 16-42-19-3); and

(2) the ultimate user of the drug is a person confined to a hospital or health care facility.

(e) Sales of insulin, oxygen, blood, or blood plasma are exempt from the state gross retail tax, if the purchaser purchases the insulin, oxygen, blood, or plasma for medical purposes.

(f) Sales of drugs, insulin, oxygen, blood, and blood plasma are exempt from the state gross retail tax if:

(1) the purchaser is a practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals; and

(2) the purchaser buys the items for:

(A) direct consumption in his practice; or

(B) resale to a patient that the practitioner is treating, in the case of sales of legend or nonlegend drugs.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.81, SEC.1; P.L.19-1994, SEC.4; P.L.257-2003, SEC.24.

IC 6-2.5-5-19.5

Drug samples; blood glucose monitoring devices; packaging and literature

Sec. 19.5. (a) For purposes of this section, "drug sample" means a legend drug (as defined by IC 16-18-2-199) or a drug composed wholly or partly of insulin or an insulin analog that is furnished without charge. For purposes of this section, "blood glucose monitoring device" means blood glucose meters and measuring strips, lancets, and other similar diabetic supplies furnished without charge.

(b) Transactions involving the following are exempt from the state gross retail tax:

(1) A drug sample, the packaging and literature for a drug sample, a blood glucose monitoring device, and the packaging

and literature for a blood glucose monitoring device.

(2) Tangible personal property that will be used as a drug sample or a blood glucose monitoring device or that will be processed, manufactured, or incorporated into:

(A) a drug sample or a blood glucose monitoring device; or

(B) the packaging or literature for a drug sample or a blood glucose monitoring device.

As added by P.L.61-1997, SEC.1. Amended by P.L.182-2009(ss), SEC.179.

IC 6-2.5-5-20

"Food and food ingredients for human consumption"

Sec. 20. (a) Sales of food and food ingredients for human consumption are exempt from the state gross retail tax.

(b) For purposes of this section, the term "food and food ingredients for human consumption" includes the following items if sold without eating utensils provided by the seller:

(1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).

(2) Food sold in an unheated state by weight or volume as a single item.

(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not 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 (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses);

(7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food);

(8) tobacco; or

(9) dietary supplements.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.86-1989, SEC.1; P.L.257-2003, SEC.25; P.L.195-2005, SEC.2; P.L.113-2010, SEC.51.

IC 6-2.5-5-21

Exemption; sales of food and food ingredients by nonprofit entities to confined or hospitalized persons

Sec. 21. (a) For purposes of this section, "private benefit or gain" does not include reasonable compensation paid to an employee for work or services actually performed.

(b) Sales of food and food ingredients are exempt from the state gross retail tax if:

(1) the seller meets the filing requirements under subsection (d) and is any of the following:

(A) A fraternity, a sorority, or a student cooperative housing organization that is connected with and under the supervision of a postsecondary educational institution if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(B) Any:

- (i) institution;
- (ii) trust;
- (iii) group;
- (iv) united fund;
- (v) affiliated agency of a united fund;
- (vi) nonprofit corporation;
- (vii) cemetery association; or
- (viii) organization;

that is organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(C) A group, an organization, or a nonprofit corporation that is organized and operated for fraternal or social purposes, or as a business league or association, and not for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(D) A:

- (i) hospital licensed by the state department of health;
- (ii) shared hospital services organization exempt from federal income taxation by Section 501(c)(3) or 501(e) of the Internal Revenue Code;
- (iii) labor union;
- (iv) church;
- (v) monastery;
- (vi) convent;
- (vii) school that is a part of the Indiana public school system;
- (viii) parochial school regularly maintained by a recognized religious denomination; or
- (ix) trust created for the purpose of paying pensions to members of a particular profession or business who created the trust for the purpose of paying pensions to each other;

if the taxpayer is not organized or operated for private profit or gain;

(2) the purchaser is a person confined to his home because of age, sickness, or infirmity;

(3) the seller delivers the food and food ingredients to the purchaser; and

(4) the delivery is prescribed as medically necessary by a physician licensed to practice medicine in Indiana.

(c) Sales of food and food ingredients are exempt from the state gross retail tax if the seller is an organization described in subsection (b)(1), and the purchaser is a patient in a hospital operated by the seller.

(d) To obtain the exemption provided by this section, a taxpayer must file an application for exemption with the department:

(1) before January 1, 2003, under IC 6-2.1-3-19 (repealed); or

(2) not later than one hundred twenty (120) days after the taxpayer's formation.

In addition, the taxpayer must file an annual report with the department on or before the fifteenth day of the fifth month following the close of each taxable year. If a taxpayer fails to file the report, the department shall notify the taxpayer of the failure. If within sixty (60) days after receiving such notice the taxpayer does not provide the report, the taxpayer's exemption shall be canceled. However, the department may reinstate the taxpayer's exemption if the taxpayer shows by petition that the failure was due to excusable neglect.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.77, SEC.2; P.L.192-2002(ss), SEC.53; P.L.257-2003, SEC.26; P.L.2-2007, SEC.119.

IC 6-2.5-5-21.5

Medically necessary food

Sec. 21.5. Sales of food and food ingredients prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the state gross retail tax if:

(1) a registered pharmacist makes the sale upon the prescription of a practitioner who is licensed to practice medicine in Indiana;

or

(2) the licensed practitioner makes the sale of the food and food ingredients described in this section.

As added by P.L.19-1994, SEC.5. Amended by P.L.257-2003, SEC.27.

IC 6-2.5-5-22

Exemption; sales of meals; schools; fraternities; sororities; student cooperatives

Sec. 22. (a) Sales of school meals are exempt from the state gross retail tax if:

(1) the seller is a school containing students in any grade, one

(1) through twelve (12);

(2) the purchaser is one (1) of those students or a school employee; and

(3) the school furnishes the food and food ingredients on its premises.

(b) Sales of food and food ingredients by not-for-profit colleges or universities are exempt from the state gross retail tax, if the purchaser is a student at the college or university.

(c) Sales of meals after December 31, 1976, by a fraternity, sorority, or student cooperative housing organization described in section 21(b)(1)(A) of this chapter are exempt from the state gross retail tax, if the purchaser:

(1) is a member of the fraternity, sorority, or student cooperative housing organization; and

(2) is enrolled in the college, university, or educational institution with which the fraternity, sorority, or student cooperative housing organization is connected and by which it is supervised.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1980, P.L.49, SEC.2; Acts 1981, P.L.77, SEC.3; P.L.192-2002(ss), SEC.54; P.L.257-2003, SEC.28.

IC 6-2.5-5-23

School building materials

Sec. 23. Transactions involving tangible personal property are exempt from the state gross retail tax, if the person acquiring the property acquires it for incorporation into a school building which is being constructed by a lessor corporation in accordance with a lease executed under IC 20-47-2 or IC 20-47-3.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-2006, SEC.67.

IC 6-2.5-5-24

Exemption; sales to United States government; commercial printing; receipt or collection of taxes; earnings on United States bonds; transactions with another state or foreign country

Sec. 24. (a) Transactions are exempt from the state gross retail tax to the extent that the gross retail income from those transactions is derived from gross receipts that are:

(1) derived from sales to the United States government, to the extent the state is prohibited by the Constitution of the United States from taxing that gross income;

(2) derived from commercial printing that results in printed materials, excluding the business of photocopying, that are shipped, mailed, or delivered outside Indiana;

(3) United States or Indiana taxes received or collected as a collecting agent explicitly designated as a collecting agent for a tax by statute for the state or the United States;

(4) collections by a retail merchant of a retailer's excise tax imposed by the United States if:

(A) the tax is imposed solely on the sale at retail of tangible

- personal property;
 - (B) the tax is remitted to the appropriate taxing authority;
 - and
 - (C) the retail merchant collects the tax separately as an addition to the price of the property sold;
 - (5) collections of a manufacturer's excise tax imposed by the United States on motor vehicles, motor vehicle bodies and chassis, parts and accessories for motor vehicles, tires, tubes for tires, or tread rubber and laminated tires, if the excise tax is separately stated by the collecting taxpayer as either an addition to or an inclusion in the price of the property sold; or
 - (6) amounts represented by an encumbrance of any kind on tangible personal property received by a retail merchant in reciprocal exchange for tangible personal property of like kind.
- (b) Transactions are exempt from the state gross retail tax to the extent that the gross retail income from those transactions is derived from gross receipts that are:
- (1) interest or other earnings paid on bonds or other securities issued by the United States, to the extent the Constitution of the United States prohibits the taxation of that gross income; or
 - (2) derived from business conducted in commerce between the state and either another state or a foreign country, to the extent the state is prohibited from taxing that gross income by the Constitution of the United States.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.77, SEC.4; P.L.78-1989, SEC.7; P.L.192-2002(ss), SEC.55.

IC 6-2.5-5-25

Exemption; acquisition for fund raising by nonprofit entity

Sec. 25. (a) Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose; and
- (3) is not an organization operated predominantly for social purposes.

(b) Transactions occurring after December 31, 1976, and involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is a fraternity, sorority, or student cooperative housing organization described in section 21(b)(1)(A) of this chapter; and
- (2) uses the property or service to carry on its ordinary and usual activities and operations as a fraternity, sorority, or student cooperative housing organization.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1980, P.L.49, SEC.3; Acts 1981, P.L.77, SEC.5; P.L.192-2002(ss), SEC.56.

IC 6-2.5-5-26

Exemption; nonprofit entities; sales for less than 30 days each year; sale for educational, cultural, or religious purpose; sale for professional or workforce education improvement purposes

Sec. 26. (a) Sales of tangible personal property are exempt from the state gross retail tax, if:

- (1) the seller is an organization that is described in section 21(b)(1) of this chapter;
- (2) the organization makes the sale to make money to carry on a not-for-profit purpose; and
- (3) the organization does not make those sales during more than thirty (30) days in a calendar year.

(b) Sales of tangible personal property are exempt from the state gross retail tax, if:

- (1) the seller is an organization described in section 21(b)(1) of this chapter;
- (2) the seller is not operated predominantly for social purposes;
- (3) the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members; and
- (4) the property sold is not designed or intended primarily for use in carrying on a private or proprietary business.

(c) The exemption provided by this section does not apply to an accredited college or university's sales of books, stationery, haberdashery, supplies, or other property.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.77, SEC.6; P.L.192-2002(ss), SEC.57.

IC 6-2.5-5-27

Public transportation; acquisitions

Sec. 27. Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-5-27.5

Rolling stock

Sec. 27.5. (a) For purposes of this section, "rolling stock" means rail transportation equipment, including locomotives, box cars, flatbed cars, hopper cars, tank cars, and freight cars of any type or class.

(b) Transactions involving the following tangible personal property are exempt from the gross retail tax:

- (1) Rolling stock that is purchased or leased by a person.
- (2) All spare, replacement, and rebuilding parts or accessories, components, materials, or supplies, including lubricants and fuels, for rolling stock described in subdivision (1).

As added by P.L.61-1997, SEC.2.

IC 6-2.5-5-28

Repealed

(Repealed by P.L.11-1984, SEC.4.)

IC 6-2.5-5-29

Manufactured homes; industrialized residential structures

Sec. 29. (a) As used in this section:

"Manufactured home" means a manufactured home as that term is defined in 42 U.S.C. 5402(6) as that statute was adopted and in effect on January 1, 1988.

"Industrialized residential structure" means a structure that is both an industrialized building system (as defined in IC 22-12-1-14) and a one (1) or two (2) family private residence.

(b) Sales of manufactured homes or industrialized residential structures are exempt from the state gross retail tax to the extent that the gross retail income from the sales is not attributable to the cost of materials used in manufacturing the manufactured home or industrialized residential structure.

(c) For purposes of this section, the part of the gross retail income not attributable to the cost of materials used in manufacturing a manufactured home or an industrialized residential structure is thirty-five percent (35%) of the gross retail income derived from the sale of the manufactured home or industrialized residential structure.

(d) The gross retail income derived from the sale of a preowned manufactured home is exempt from the state gross retail tax.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.245-1987, SEC.7; P.L.86-1989, SEC.2.

IC 6-2.5-5-30

Environmental quality compliance; manufacturing, mining, or agriculture

Sec. 30. Sales of tangible personal property are exempt from the state gross retail tax if:

(1) the property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and

(2) the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

The portion of the sales price of tangible personal property which is exempt from state gross retail and use taxes under this section equals the product of: (A) the total sales price; multiplied by (B) one hundred percent (100%).

As added by Acts 1980, P.L.53, SEC.2. Amended by P.L.28-1997, SEC.9.

IC 6-2.5-5-31

Free distribution newspaper; related transactions

Sec. 31. (a) As used in this section, "free distribution newspaper"

means any community newspaper, shopping paper, shoppers' consumer paper, pennysaver, shopping guide, town crier, dollar stretcher, or other similar publication which:

- (1) is distributed to the public on a community-wide basis, free of charge;
- (2) is published at stated intervals of at least once a month;
- (3) has continuity as to title and general nature of content from issue to issue;
- (4) does not constitute a book, either singly or when successive issues are put together;
- (5) contains advertisements from numerous unrelated advertisers in each issue;
- (6) contains news of general or community interest, community notices, or editorial commentary by different authors, in each issue; and
- (7) is not owned by, or under the control of, the owners or lessees of a shopping center, a merchant's association, or a business that sells property or services (other than advertising) whose advertisements for their sales of property or services constitute the predominant advertising in the publication.

(b) The term "free distribution newspaper" does not include mail order catalogs or other catalogs, advertising fliers, travel brochures, house organs, theater programs, telephone directories, restaurant guides, shopping center advertising sheets, and similar publications.

(c) Transactions involving manufacturing machinery, tools and equipment, and other tangible personal property are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use, or for his direct consumption as a material to be consumed, in the direct production or publication of a free distribution newspaper, or for incorporation as a material part of a free distribution newspaper published by that person.

(d) Transactions involving a sale of a free distribution newspaper, or of printing services performed in publishing a free distribution newspaper, are exempt from the state gross retail tax if the purchaser is the publisher of the free distribution newspaper.

As added by Acts 1981, P.L.80, SEC.2.

IC 6-2.5-5-32

Reserved

IC 6-2.5-5-33

Tangible personal property purchased with food stamps

Sec. 33. Sales of tangible personal property purchased with food stamps are exempt from the state gross retail tax.

As added by P.L.69-1986, SEC.1.

IC 6-2.5-5-34

Sale of lottery tickets; gross retail tax

Sec. 34. Sales of lottery tickets authorized by IC 4-30 are exempt from the state gross retail tax.

As added by P.L.341-1989(ss), SEC.8.

IC 6-2.5-5-35

Tangible personal property transactions

Sec. 35. (a) Except as provided in subsection (b), transactions involving tangible personal property are exempt from the state gross retail tax if:

(1) the:

(A) person acquires the property to facilitate the service or consumption of food and food ingredients that is not exempted from the state gross retail tax under section 20 of this chapter; and

(B) property is:

(i) used, consumed, or removed in the service or consumption of the food and food ingredients; and

(ii) made unusable for further service or consumption of food and food ingredients after the property's first use for service or consumption of food and food ingredients; or

(2) the:

(A) person acquiring the property is engaged in the business of renting or furnishing rooms, lodgings, or accommodations in a commercial hotel, motel, inn, tourist camp, or tourist cabin; and

(B) property acquired is:

(i) used up, removed, or otherwise consumed during the occupation of the rooms, lodgings, or accommodations by a guest; or

(ii) rendered nonreusable by the property's first use by a guest during the occupation of the rooms, lodgings, or accommodations.

(b) The exemption provided by subsection (a) does not apply to transactions involving electricity, water, gas, or steam.

As added by P.L.43-1992, SEC.8. Amended by P.L.257-2003, SEC.29; P.L.211-2007, SEC.14.

IC 6-2.5-5-36

Commercial printing contracts

Sec. 36. Transactions involving tangible personal property acquired by a person that has contracted with a commercial printer for printing are exempt from the state gross retail tax, if the property is acquired for use at the commercial printer's premises and the commercial printer could have acquired the property exempt from the state gross retail tax and use tax.

As added by P.L.70-1993, SEC.3.

IC 6-2.5-5-37

Professional motor racing vehicle parts; tires and accessories excluded

Sec. 37. Transactions involving tangible personal property are exempt from the state gross retail tax, if the tangible personal

property:

- (1) is leased, owned, or operated by a professional racing team; and
- (2) comprises any part of a professional motor racing vehicle, excluding tires and accessories.

As added by P.L.19-1994, SEC.6. Amended by P.L.193-2005, SEC.9.

IC 6-2.5-5-38

Repealed

(Repealed by P.L.253-1997(ss), SEC.36.)

IC 6-2.5-5-38.1

Qualified computer equipment sales

Sec. 38.1. (a) As used in this section, "service center" has the meaning set forth in IC 6-3.1-15-3.

(b) As used in this section, "school" means a public or private elementary or secondary school containing students in any grade from grade 1 through grade 12.

(c) As used in this chapter, "qualified computer equipment" has the meaning set forth in IC 6-3.1-15-2.

(d) Sales of qualified computer equipment are exempt from the state gross retail tax, if:

- (1) the seller is a service center or school;
- (2) the purchaser is a parent or guardian of a student who is enrolled in a school; and
- (3) the qualified computer equipment is sold to the parent or guardian under IC 6-3.1-15-12.

As added by P.L.253-1997(ss), SEC.37.

IC 6-2.5-5-38.2

Vehicle lease transactions

Sec. 38.2. The value of an owned vehicle is exempt from the Indiana gross retail tax in a vehicle lease transaction if the owned vehicle is exchanged for a like kind vehicle.

As added by P.L.253-1997(ss), SEC.38.

IC 6-2.5-5-39

Cargo trailers and recreational vehicles registered for use outside Indiana

Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:

- (1) without motive power;
- (2) designed for carrying property;
- (3) designed for being drawn by a motor vehicle; and
- (4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.

(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and

facilities enabling it to be used as a dwelling, and a fifth wheel trailer.

(c) A transaction involving a cargo trailer or a recreational vehicle is exempt from the state gross retail tax if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
- (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.

(d) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

- (1) transport the cargo trailer or recreational vehicle to a destination outside Indiana within thirty (30) days after delivery; and
- (2) title or register the cargo trailer or recreational vehicle for use in another state or country.

The department shall prescribe the form of the affidavit, which must include an affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true. The affidavit must identify the state or country in which the cargo trailer or recreational vehicle will be titled or registered.

(e) The department shall provide the information necessary to determine a purchaser's eligibility for an exemption claimed under this section to retail merchants in the business of selling cargo trailers or recreational vehicles.

As added by P.L.195-2005, SEC.3. Amended by P.L.92-2006, SEC.1; P.L.211-2007, SEC.15.

IC 6-2.5-5-40

Research and development equipment

Sec. 40. (a) As used in this chapter, "research and development activities" does not include any of the following:

- (1) Efficiency surveys.
- (2) Management studies.
- (3) Consumer surveys.
- (4) Economic surveys.
- (5) Advertising or promotions.
- (6) Research in connection with literary, historical, or similar

projects.

(7) Testing for purposes of quality control.

(b) As used in this section, "research and development equipment" means tangible personal property that:

(1) consists of or is a combination of:

(A) laboratory equipment;

(B) computers;

(C) computer software;

(D) telecommunications equipment; or

(E) testing equipment;

(2) has not previously been used in Indiana for any purpose; and

(3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:

(A) new products;

(B) new uses of existing products; or

(C) improving or testing existing products.

(c) A retail transaction:

(1) involving research and development equipment; and

(2) occurring after June 30, 2007;

is exempt from the state gross retail tax.

As added by P.L.193-2005, SEC.10.

IC 6-2.5-5-41

Repealed

(Repealed by P.L.182-2009(ss), SEC.462.)

IC 6-2.5-5-42

Aircraft titled, registered, or based outside Indiana

Sec. 42. (a) A transaction involving an aircraft is exempt from the state gross retail tax if:

(1) the purchaser is a nonresident;

(2) the purchaser transports the aircraft to a destination outside Indiana within thirty (30) days after:

(A) accepting delivery of the aircraft; or

(B) a repair, refurbishment, or remanufacture of the aircraft is completed, if the aircraft remains in Indiana after the purchaser accepts delivery for the purpose of accomplishing the repair, refurbishment, or remanufacture of the aircraft;

(3) the aircraft will be:

(A) titled or registered in another state or country; or

(B) based (as defined in IC 6-6-6.5-1(m)) in that state or country, if a state or country does not require a title or registration for aircraft; and

(4) the aircraft will not be titled or registered in Indiana.

(b) A purchaser must claim an exemption under subsection (a) by submitting to the seller an affidavit affirming the elements required by subsection (a). In addition, the affidavit must identify the state or country in which the aircraft will be titled, registered, or based.

(c) Within sixty (60) days after:

(1) a purchaser who claims an exemption under this section accepts delivery of the aircraft; or

(2) a repair, refurbishment, or remanufacture of the aircraft subject to an exemption under this section is completed, if the aircraft remains in Indiana after the purchaser accepts delivery for the purpose of accomplishing the repair, refurbishment, or remanufacture of the aircraft;

the purchaser shall provide the seller with a copy of the purchaser's title or registration of the aircraft outside Indiana. If the state or country in which the aircraft is based does not require the aircraft to be titled or registered, the purchaser shall provide the seller with a copy of the aircraft registration application for the aircraft as filed with the Federal Aviation Administration.

(d) The department shall prescribe the form of the affidavit required by subsection (b).

As added by P.L.211-2007, SEC.16.

IC 6-2.5-5-43

Type II gambling games

Sec. 43. Sales of type II gambling games authorized by IC 4-36 are exempt from the state gross retail tax.

As added by P.L.95-2008, SEC.14.

IC 6-2.5-5-44

Sales to city or town for municipal golf course

Sec. 44. Transactions involving tangible personal property are exempt from the state gross retail tax if the property is acquired by a city or town for use in the operation of a municipal golf course.

As added by P.L.113-2010, SEC.52.

IC 6-2.5-6

Chapter 6. Returns, Remittances, and Refunds

IC 6-2.5-6-1

Returns; reporting period; electronic funds transfer

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 a calendar year, if the retail merchant's state gross retail and use tax liability in the previous calendar year does not exceed one thousand dollars (\$1,000). 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 not corresponding to the calendar year, the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal year that corresponds to the calendar year 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 five thousand dollars (\$5,000), 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) A person that registers as a retail merchant after December 31, 2009, shall report and remit state gross retail and use taxes through the department's online tax filing program. This subsection does not apply to a retail merchant that was a registered retail merchant before January 1, 2010, but adds an additional place of business in accordance with IC 6-2.5-8-1(e) after December 31, 2009.

(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.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.49, SEC.1; P.L.70-1986, SEC.1; P.L.92-1987, SEC.2; P.L.63-1988, SEC.3; P.L.28-1997, SEC.11; P.L.185-2001, SEC.2; P.L.177-2002, SEC.10; P.L.192-2002(ss), SEC.58; P.L.153-2006, SEC.5; P.L.211-2007, SEC.17; P.L.131-2008, SEC.10; P.L.182-2009(ss), SEC.180.

IC 6-2.5-6-2

Accounting for tax receipts; option to use accrual basis

Sec. 2. A retail merchant may, without prior departmental approval, report and pay his state gross retail and use taxes on an accrual basis, if he uses the accrual basis to pay and report the adjusted gross income tax or the tax imposed on him in place of the adjusted gross income tax. The department may, at any time, require the retail merchant to stop using the accrual basis.

As added by Acts 1980, P.L.52, SEC.1. Amended by

IC 6-2.5-6-3

Consolidated filing

Sec. 3. If a retail merchant, wholesaler, or manufacturer holds multiple certificates under IC 6-2.5-8 in order to make retail transactions at more than one (1) store or location, the retail merchant may apply for departmental permission to file a consolidated state gross retail and use tax return for all those stores and locations. If the department allows the consolidated filing, the retail merchant, wholesaler, or manufacturer must keep sufficient records to allow the department to determine the separate state gross retail and use tax liability for each store or location and to show any information that the department requires on the consolidated return.
As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-6-4

Periodic deposits of collections during reporting period

Sec. 4. If the department feels that a retail merchant is not properly collecting, reporting, or paying the state gross retail and use taxes, the department may require him to make periodic deposits of his collections during his reporting period and to file an informational return with those deposits.
As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-6-5

Final return and payment

Sec. 5. When a retail merchant stops doing a kind of business for which he must file returns under this chapter, he shall file a final state gross retail and use tax return with the department for that part of his business and pay the state gross retail and use taxes collected. The final return and payment are due no later than one (1) month after the date the business stops.
As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-6-6

Coordination with gross income tax

Sec. 6. When possible, the department shall coordinate the reporting and payment of the state gross retail and use taxes with the reporting and payment of the gross income tax.
As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-6-7

Retail merchant; calculation of tax liability

Sec. 7. Except as otherwise provided in IC 6-2.5-7 or in this chapter, a retail merchant shall pay to the department, for a particular reporting period, an amount equal to the product of:

- (1) seven percent (7%); multiplied by
- (2) the retail merchant's total gross retail income from taxable transactions made during the reporting period.

The amount determined under this section is the retail merchant's state gross retail and use tax liability regardless of the amount of tax the retail merchant actually collects.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1982(ss), SEC.3; P.L.192-2002(ss), SEC.60; P.L.146-2008, SEC.311.

IC 6-2.5-6-8

Tax liability; income exclusion ratio

Sec. 8. (a) For purposes of determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant may exclude from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the product of:

- (1) the amount of that gross retail income; multiplied by
- (2) the retail merchant's "income exclusion ratio" for the tax year which contains the reporting period.

(b) A retail merchant's "income exclusion ratio" for a particular tax year equals a fraction, the numerator of which is the retail merchant's estimated total gross retail income for the tax year from unitary retail transactions which produce gross retail income of less than eight cents (\$0.08) each, and the denominator of which is the retail merchant's estimated total gross retail income for the tax year from all retail transactions.

(c) In order to minimize a retail merchant's recordkeeping requirements, the department shall prescribe a procedure for determining the retail merchant's income exclusion ratio for a tax year, based on a period of time, not to exceed fifteen (15) consecutive days, during the first quarter of the retail merchant's tax year. However, the period of time may be changed if the change is requested by the retail merchant because of the retail merchant's peculiar accounting procedures or marketing factors. In addition, if a retail merchant has multiple sales locations or diverse types of sales, the department shall permit the retail merchant to determine the ratio on the basis of a representative sampling of the locations and types of sales.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1982(ss), SEC.4; P.L.192-2002(ss), SEC.61; P.L.146-2008, SEC.312.

IC 6-2.5-6-9 Version a

Uncollectible receivables; deduction

Note: This version of section amended by P.L.162-2006, SEC.23. See also following version of this section amended by P.L.184-2006, SEC.2.

Sec. 9. (a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:

- (1) resulted from retail transactions in which the retail merchant

did not collect the state gross retail or use tax from the purchaser;

(2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and

(3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection (d)(6), include the amount collected as part of the retail merchant's gross retail income from retail transactions for the particular reporting period in which the retail merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after December 31, 2006. As used in this subsection, "affiliated group" means any combination of the following:

(1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

(1) The deduction does not include interest.

(2) The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

(A) financing charges or interest;

(B) sales or use taxes charged on the purchase price;

(C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;

(D) expenses incurred in attempting to collect any debt; and

(E) repossessed property.

(3) The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad

debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

(4) If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for the refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

(5) If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

(6) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

(7) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.30; P.L.81-2004, SEC.7; P.L.162-2006, SEC.23.

IC 6-2.5-6-9 Version b

Uncollectible receivables; deduction

Note: This version of section amended by P.L.184-2006, SEC.2. See also preceding version of this section amended by P.L.162-2006, SEC.23.

Sec. 9. (a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:

(1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;

(2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and

(3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection (d)(6), include the amount collected as part of the retail merchant's gross retail income from retail transactions for the particular reporting period in which the retail merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after June 30, 2007. As used in this subsection, "affiliated group" means any combination of the following:

(1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%)) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

(1) The deduction does not include interest.

(2) The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

(A) financing charges or interest;

(B) sales or use taxes charged on the purchase price;

(C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;

(D) expenses incurred in attempting to collect any debt; and

(E) repossessed property.

(3) The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

(4) If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for the refund

claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

(5) If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

(6) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

(7) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.30; P.L.81-2004, SEC.7; P.L.184-2006, SEC.2.

IC 6-2.5-6-10

Tax liability; merchant's collection allowance

Sec. 10. (a) In order to compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax, every retail merchant, except a retail merchant referred to in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under IC 6-2.5-7-5 or under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax liability accrued during a calendar year, specified as follows:

(1) Seventy-three hundredths percent (0.73%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars (\$60,000).

(2) Fifty-three hundredths percent (0.53%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:

(A) was greater than sixty thousand dollars (\$60,000); and

(B) did not exceed six hundred thousand dollars (\$600,000).

(3) Twenty-six hundredths percent (0.26%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than six hundred thousand

dollars (\$600,000).

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.71-1993, SEC.10; P.L.28-1997, SEC.12; P.L.192-2002(ss), SEC.62; P.L.211-2007, SEC.18; P.L.146-2008, SEC.313.

IC 6-2.5-6-11

Heating assistance program; deduction

Sec. 11. A retail merchant who extends assistance to a heating assistance program administered under IC 4-4-33 may deduct from the retail merchant's state gross retail and use tax payment an amount equal to all or part of the aggregate assistance extended by the retail merchant to a heating assistance program administered under IC 4-4-33 during the reporting period for which the state gross retail and use tax payment is made.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.43-1983, SEC.2; P.L.41-1987, SEC.5; P.L.2-1992, SEC.67; P.L.181-2006, SEC.43.

IC 6-2.5-6-12

Security for payment of tax collected

Sec. 12. (a) Whenever the department feels it necessary to insure the payment of the state gross retail or use taxes, the department may require a retail merchant to post security for that payment in any amount not to exceed twice the department's estimate of the retail merchant's quarterly state gross retail and use tax liability.

(b) If necessary to recover any tax, interest, or penalty which the retail merchant owes under this article, the department may sell the security. If the security is in the form of a bearer bond which is issued by a governmental unit and which has a prevailing market price, the department may sell the security at a private sale for not less than that market price. If the security is in any other form, the department shall sell it at a public auction.

(c) Before the department may sell a retail merchant's security, the department shall give the retail merchant notice of the time, place, and date of the sale. The department shall send the notice by certified mail to the retail merchant's most recent address according to the department's records.

(d) If the proceeds of the security sale exceed the tax, interest, and penalties owing, the department shall refund the remainder to the retail merchant.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-6-13

Refund; grounds

Sec. 13. A person is entitled to a refund from the department if:

- (1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person;
- (2) the retail merchant remits the taxes to the department;

(3) the retail merchant does not refund the taxes to the person;
and

(4) the person properly applies for the refund under the refund provisions contained in IC 6-8.1-9.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.19-1986, SEC.11; P.L.269-2003, SEC.3; P.L.1-2003, SEC.32; P.L.97-2004, SEC.26.

IC 6-2.5-6-14

Repealed

(Repealed by P.L.97-2004, SEC.133.)

IC 6-2.5-6-14.1

Retail merchant's refund of gross retail or use taxes

Sec. 14.1. Notwithstanding the refund provisions of this article as incorporated from the gross income tax law (IC 6-2.1, repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

As added by P.L.97-2004, SEC.27.

IC 6-2.5-6-14.2

List of retail merchants selling tobacco products

Sec. 14.2. (a) The department shall annually compile a list of retail merchants that sell tobacco products. The list must include the following information:

(1) On a county by county basis:

(A) the name of each retail merchant that sells tobacco products in the county; and

(B) the business address of each location in the county at which a retail merchant sells tobacco products.

(2) The name and business address of each retail merchant that has begun to sell tobacco products since the previous report was compiled.

(3) The name and business address of each retail merchant that has ceased to sell tobacco products since the previous report was compiled.

(b) The department shall deliver each list prepared under this section to:

(1) the division of mental health and addiction; and

(2) the alcohol and tobacco commission.

(c) A retail merchant that sells tobacco products shall provide the department with the information required for the preparation of the list under this section.

(d) The department shall prescribe a form to be used in collecting information under this section from retail merchants that sell tobacco products. A form prescribed under this subsection may be a modified version of an existing form.

As added by P.L.97-2004, SEC.28.

IC 6-2.5-6-15

Repealed

(Repealed by P.L.81-2004, SEC.59.)

IC 6-2.5-6-16

Refund for research and development equipment

Sec. 16. (a) As used in this section, "research and development equipment" has the meaning set forth in IC 6-2.5-5-40.

(b) A person is entitled to a refund equal to fifty percent (50%) of the gross retail tax paid by the person under this article in a retail transaction occurring after June 30, 2005, and before July 1, 2007, to acquire research and development equipment.

(c) To receive the refund provided by this section, a person must claim the refund under IC 6-8.1-9 in the manner prescribed by the department.

As added by P.L.193-2005, SEC.11.

IC 6-2.5-6-17

Payment of gross retail tax for consignment sales

Sec. 17. (a) A retail merchant that is a consignee in a retail transaction shall collect and remit the state gross retail tax on the gross retail income received in a consignment sale.

(b) The retail merchant shall provide the consignor purchaser an invoice that shows that the state gross retail tax was paid to the retail merchant with a clear notation on the invoice that the item was a consignment sale by the retail merchant on behalf of (insert the name of the seller) to (insert the name of the purchaser).

As added by P.L.85-2009, SEC.1.

IC 6-2.5-7

Chapter 7. Collection and Remittance of State Gross Retail Tax on Motor Fuel

IC 6-2.5-7-1

Definitions

Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Gasoline" has the same meaning as the definition contained in IC 6-6-1.1-103.

(d) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(e) "E85" has the meaning set forth in IC 6-6-1.1-103.

(f) "Unit" means the unit of measure, such as a gallon or a liter, by which gasoline or special fuel is sold.

(g) "Metered pump" means a stationary pump which is capable of metering the amount of gasoline or special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the gasoline or special fuel dispensed.

(h) "Indiana gasoline tax" means the tax imposed under IC 6-6-1.1.

(i) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(j) "Federal gasoline tax" means the excise tax imposed under Section 4081 of the Internal Revenue Code.

(k) "Federal special fuel tax" means the excise tax imposed under Section 4041 of the Internal Revenue Code.

(l) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(1) the total price per unit; minus

(2) the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the total price per unit.

(m) "Total price per unit" means the price per unit at which gasoline or special fuel is actually sold, including the state gross retail, Indiana gasoline or special fuel, and federal gasoline or special fuel taxes which are part of the sales price.

(n) "Distributor" means a person who is the first purchaser of gasoline from a refiner, a terminal operator, or supplier, regardless of the location of the purchase.

(o) "Prepayment rate" means a rate per gallon of gasoline determined by the department under section 14 of this chapter for use in calculating prepayment amounts of gross retail tax under section 9 of this chapter.

(p) "Purchase or shipment" means a sale or delivery of gasoline, but does not include:

(1) an exchange transaction between refiners, terminal operators, or a refiner and terminal operator; or

(2) a delivery by pipeline, ship, or barge to a refiner or terminal operator.

(q) "Qualified distributor" means a distributor who:

(1) is a licensed distributor under IC 6-6-1.1; and

(2) holds an unrevoked permit issued under section 7 of this chapter.

(r) "Refiner" means a person who manufactures or produces gasoline by any process involving substantially more than the blending of gasoline.

(s) "Terminal operator" means a person that:

(1) stores gasoline in tanks and equipment used in receiving and storing gasoline from interstate or intrastate pipelines pending wholesale bulk reshipment; or

(2) stores gasoline at a boat terminal transfer that is a dock or tank, or equipment contiguous to a dock or tank, including equipment used in the unloading of gasoline from a ship or barge and used in transferring the gasoline to a tank pending wholesale bulk reshipment.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.1; P.L.94-1987, SEC.1; P.L.277-1993(ss), SEC.41; P.L.222-1999, SEC.1; P.L.122-2006, SEC.2; P.L.176-2006, SEC.1; P.L.1-2007, SEC.52.

IC 6-2.5-7-2

Display of price

Sec. 2. Except as provided in section 2.5 of this chapter, a retail merchant who uses a metered pump to dispense gasoline or special fuel shall display on the pump the total price per unit of the gasoline or special fuel. Subject to the provisions of section 2.5 of this chapter, a retail merchant may not advertise the gasoline or special fuel at a price that is different than the price that he is required to display on the metered pump.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.2.

IC 6-2.5-7-2.5

Pumps designated for trucks only; requirements

Sec. 2.5. (a) A retail merchant may designate any metered pumps at a business location that dispense special fuel as being "for trucks only". To do this, a retail merchant must place on the pump a sign that states that fuel dispensed from the metered pump may only be placed in the fuel supply tanks of a truck. A sign that reads "TRUCKS ONLY" is sufficient to meet the requirements of this subsection.

(b) A retail merchant may not dispense special fuel from a metered pump that is designated for trucks only into the supply tank of a vehicle that is not a truck.

(c) A retail merchant is not required to display the total price per unit of the special fuel on a metered pump if that particular metered pump is designated for trucks only.

(d) A retail merchant may advertise special fuel at a price that does not include gross retail taxes that may be due on the sale of the special fuel only if he maintains a metered pump that is designated for trucks only. If a retail merchant advertises special fuel at a price that does not include any gross retail taxes that may be due on the sale of the special fuel, the retail merchant must display in easily read lettering above or below the advertised price the words "EXEMPT TRUCKS ONLY".

As added by P.L.81-1983, SEC.3.

IC 6-2.5-7-3

Retail merchant; calculation of tax liability; metered pump sales; gasoline; kerosene; special fuels

Sec. 3. (a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene which is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of:

- (1) the price per unit before the addition of state and federal taxes; multiplied by
- (2) seven percent (7%).

Unless the exemption certificate is provided, the retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1982(ss), SEC.5; P.L.81-1983, SEC.4; P.L.80-1983, SEC.2; P.L.11-1984, SEC.2; P.L.222-1999, SEC.2; P.L.192-2002(ss), SEC.63; P.L.146-2008, SEC.314.

IC 6-2.5-7-4

Exempt transactions; refunds; procedures

Sec. 4. (a) If a sale of gasoline or special fuel is exempt from the state gross retail tax, the person who pays the tax to the retail merchant may file a claim for refund with the department. The person must file the claim on the form, in the manner, and with the supporting documentation, prescribed by the department. If a person properly files a claim for refund, the department shall refund to him the state gross retail tax collected with respect to the exempt transaction.

(b) Notwithstanding the other provisions of this section, the department may prescribe simplified procedures to make adjustments for exempt transactions.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.5.

IC 6-2.5-7-5

Reports by gasoline or special fuel retail merchants; remitted tax amount; deduction of prepayment amounts; deduction of E85 retail sales credit; limitation on deductions; suspension

Sec. 5. (a) Each retail merchant who dispenses gasoline or special fuel from a metered pump shall, in the manner prescribed in IC 6-2.5-6, report to the department the following information:

(1) The total number of gallons of gasoline sold from a metered pump during the period covered by the report.

(2) The total amount of money received from the sale of gasoline described in subdivision (1) during the period covered by the report.

(3) That portion of the amount described in subdivision (2) which represents state and federal taxes imposed under this article, IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

(4) The total number of gallons of special fuel sold from a metered pump during the period covered by the report.

(5) The total amount of money received from the sale of special fuel during the period covered by the report.

(6) That portion of the amount described in subdivision (5) that represents state and federal taxes imposed under this article, IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals six and fifty-four hundredths percent (6.54%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which the merchant has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail

merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsections (d) and (f), for qualified reporting periods beginning after June 30, 2009, and ending before July 1, 2020, determine the product of:

(A) eighteen cents (\$0.18); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed the amount of money that the budget agency determines is available in the retail merchant E85 deduction reimbursement fund established under IC 15-15-12-30.5 for the deductions for all retail merchants in a particular qualified reporting period. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. Before August 1 of each year, the budget agency shall estimate whether the amount of deductions from the immediately preceding qualified reporting period that are subject to reimbursement under IC 15-15-12-30.5(f) and the deductions expected to be reported under subsection (c) STEP TWO for the qualified reporting periods beginning after December 31 and ending before April 1 of the following year will exceed the amount of money available in the retail merchant E85 deduction reimbursement fund for the deductions. If the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund is insufficient to cover the amount of the deductions expected to be reported, the budget agency shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is suspended with respect to the qualified reporting periods occurring in the following calendar year and that no deductions will be granted for retail transactions occurring in the qualified reporting periods occurring in the following calendar year.

(e) As used in this section, "qualified reporting period" refers to a reporting period beginning after December 31 and ending before April 1 of each year.

(f) The budget agency may suspend the deduction program under subsection (c) STEP TWO for a particular year at any time during a qualified reporting period if the budget agency determines that the amount of money in the retail merchant E85 deduction reimbursement fund and the amount of money that will be transferred to the fund on July 1 will not be sufficient to reimburse the deductions expected to occur before the deduction program for the year ends on March 31. The budget agency shall immediately provide notice to the participating retail merchants of the decision to

suspend the deduction program for that year.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1980, P.L.10, SEC.2; P.L.2-1982(ss), SEC.6; P.L.81-1983, SEC.6; P.L.80-1983, SEC.3; P.L.11-1984, SEC.3; P.L.94-1987, SEC.2; P.L.277-1993(ss), SEC.42; P.L.192-2002(ss), SEC.64; P.L.122-2006, SEC.3; P.L.182-2007, SEC.1; P.L.146-2008, SEC.315; P.L.148-2009, SEC.2.

IC 6-2.5-7-5.5

Repealed

(Repealed by P.L.148-2009, SEC.11.)

IC 6-2.5-7-6

Prepayment credit; claim for refund; transfers from general fund

Sec. 6. (a) If the deduction under section 5(c) of this chapter exceeds the amount of gross retail tax required to be remitted under section 5(b) of this chapter, the retail merchant is entitled to a credit. The credit shall be used as follows:

- (1) First, the credit shall be applied against gross retail and use tax liability of the retail merchant that is required to be remitted under IC 6-2.5-6.
- (2) Second, any amount remaining shall be applied against the gasoline tax liability of the retail merchant, as determined under IC 6-6-1.1, excluding any liability for gasoline delivered to a taxable marine facility.

A retail merchant may file a claim for a refund instead of taking a credit or for a refund of any excess tax payment remaining after the credits allowed by this section. In addition, a retail merchant may file a claim for a refund under section 12 of this chapter.

(b) A retail merchant that is entitled to a refund under this section must file a claim for the refund on the form approved by the department and must include any supporting documentation reasonably required by the department. If a retail merchant files a completed refund claim form that includes all supporting documentation, the excess tax payment that is not refunded within ninety (90) days accrues interest as provided in IC 6-8.1-9-2.

(c) Before the fifth day of each month, the department shall determine and notify the treasurer of state of the amount of credits applied during the preceding month against the gasoline tax under this section. The treasurer of state shall transfer from the general fund:

- (1) to the highway, road, and street fund, twenty-five percent (25%) of the amount set forth in the department's notice; and
- (2) to the motor fuel tax fund of the motor vehicle highway account, seventy-five percent (75%) of the amount set forth in the department's notice.

As added by P.L.94-1987, SEC.3.

IC 6-2.5-7-7

Distributor permit to collect prepayment from retail merchants

Sec. 7. (a) A distributor desiring to receive gasoline within Indiana without prepaying gross retail tax must hold an uncanceled permit issued by the department to collect prepayments of gross retail tax from retail merchants.

(b) To obtain a permit, a distributor must file with the department a sworn application containing information that the department reasonably requires.

(c) The department may refuse to issue a permit to a distributor if:

- (1) the application is filed by a distributor whose permit has previously been cancelled for cause;
- (2) the application is not filed in good faith, as determined by the department; or
- (3) the application is filed by some person as a subterfuge for the real person in interest whose permit has previously been cancelled for cause.

(d) A permit may not be issued unless the application is accompanied by an audited and current financial statement and a license fee of one hundred dollars (\$100).

(e) A permit issued under this section is not assignable and is valid only for the distributor in whose name it is issued. If there is a change in name or ownership, the distributor must apply for a new permit.

(f) The department may revoke a distributor's permit for good cause.

(g) Before being denied a permit under subsection (c) or before having a permit revoked under subsection (f), a distributor is entitled to a hearing after five (5) days written notice. At the hearing the distributor may appear in person or by counsel and present testimony.

(h) The department shall keep a record of all qualified distributors.

As added by P.L.94-1987, SEC.4.

IC 6-2.5-7-8

Distributor permittees; bond; financial statements

Sec. 8. (a) The department may require a distributor to file, concurrently with the filing of an application for a permit, a bond:

- (1) in an amount of not less than two thousand dollars (\$2,000) nor more than a three (3) month prepayment tax liability for the distributor, as estimated by the department;
- (2) in cash or with a surety company approved by the department;
- (3) upon which the distributor is the principal obligor and the state is the obligee; and
- (4) conditioned upon the prompt filing of true reports and payment of all prepayment of gross retail taxes collected by the distributor, together with any penalties and interest, and upon faithful compliance with this chapter.

The department shall determine the amount of the distributor's bond, if any.

(b) If after a hearing (after at least five (5) days written notice) the department determines that the amount of a distributor's bond is insufficient, the distributor shall upon written demand of the department file a new bond.

(c) The department may require a distributor to file a new bond with a satisfactory surety in the same form and amount if:

(1) liability upon the old bond is discharged or reduced by judgment rendered, payment made, or otherwise; or

(2) in the opinion of the department any surety on the old bond becomes unsatisfactory.

(d) If a new bond obtained under subsection (b) or (c) is unsatisfactory, the department shall cancel the permit of the distributor. If the new bond is satisfactorily furnished, the department shall release in writing the surety on the old bond from any liability accruing after the effective date of the new bond.

(e) Sixty (60) days after making a written request for release to the department, the surety of a bond furnished by a distributor is released from any liability to the state accruing on the bond. The release does not affect any liability accruing before expiration of the sixty (60) day period. The department shall promptly notify the distributor furnishing the bond that the surety has requested release. Unless the distributor obtains a new bond that meets the requirements of this section and files the new bond with the department within the sixty (60) day period, the department shall cancel the distributor's permit.

(f) The department may require a distributor to furnish audited annual financial statements to determine if any change is required in the amount of the distributor's bond.

As added by P.L.94-1987, SEC.5. Amended by P.L.71-1993, SEC.11.

IC 6-2.5-7-9

Amount of prepayment

Sec. 9. (a) Except as provided in section 13 of this chapter, at the time of purchase or shipment of gasoline from a refiner or terminal operator, a distributor who is not a qualified distributor shall prepay to the refiner or terminal operator the state gross retail tax in an amount determined under subsection (d).

(b) At the time of purchase or shipment of gasoline from a qualified distributor, a retail merchant shall prepay to the qualified distributor the state gross retail tax in an amount determined under subsection (d).

(c) If gasoline is delivered to a retail outlet for resale and the gross retail tax in the amount determined under subsection (d) has not been prepaid on the gasoline, the refiner, terminal operator, or qualified distributor making the delivery shall prepay to the department the gross retail tax in an amount determined under subsection (d). A bulk plant is not considered to be a retail outlet.

(d) The amount of tax that must be prepaid under this section equals:

(1) the prepayment rate per gallon of gasoline; multiplied by

(2) the number of invoiced gallons purchased or shipped.

(e) A purchaser or receiver of gasoline that makes a prepayment under this chapter is not subject to any liability to the state for the amount of the prepayment.

As added by P.L.94-1987, SEC.6.

IC 6-2.5-7-10

Remitting tax receipts; reports

Sec. 10. (a) Each refiner or terminal operator and each qualified distributor that has received a prepayment of the state gross retail tax under this chapter shall remit the tax received to the department semimonthly, through the department's online tax filing system, according to the following schedule:

(1) On or before the tenth day of each month for prepayments received after the fifteenth day and before the end of the preceding month.

(2) On or before the twenty-fifth day of each month for prepayments received after the end of the preceding month and before the sixteenth day of the month in which the prepayments are made.

(b) Before the end of each month, each refiner or terminal operator and each qualified distributor shall file a report covering the prepaid taxes received and the gallons of gasoline sold or shipped during the preceding month. The report must include the following:

(1) The number of gallons of gasoline sold or shipped during the preceding month, identifying each purchaser or receiver as required by the department.

(2) The amount of tax prepaid by each purchaser or receiver.

(3) Any other information reasonably required by the department.

As added by P.L.94-1987, SEC.7. Amended by P.L.182-2009(ss), SEC.181.

IC 6-2.5-7-11

Reports of distributors

Sec. 11. Each distributor that prepays the state gross retail tax under this chapter shall file a monthly report with the department. The report shall be filed no later than the last day of the month following the month that the report covers. The report must include the following:

(1) The number of gallons of gasoline purchased or received by the distributor from each refiner, terminal operator, or another distributor.

(2) The amount of state gross retail tax prepaid to each refiner, terminal operator, or distributor.

(3) The number of gallons of gasoline sold to each distributor, retail merchant, exempt purchaser, or other person and the amount of state gross retail tax collected from each distributor, retail merchant, or other person identifying the location of each distributor, retail merchant, exempt purchaser, or other person,

as required by the department.

(4) Any other information reasonably required by the department.

As added by P.L.94-1987, SEC.8.

IC 6-2.5-7-12

Exempt purchasers from distributor; report; refund

Sec. 12. (a) Except as provided in subsection (b), a distributor that prepays the state gross retail tax under this chapter shall separately state the amount of tax prepaid on the invoice the distributor issues to its purchaser or recipient. The purchaser or recipient shall pay to the distributor an amount equal to the prepaid tax.

(b) A distributor that:

- (1) prepays the state gross retail tax under this chapter;
- (2) is a retail merchant; and
- (3) sells gasoline that is exempt from the gross retail tax, as evidenced by a purchaser's exemption certificate issued by the department;

may not require the exempt purchaser to pay the gross retail taxes prepaid in the gasoline sold to the exempt purchaser. A distributor that has prepaid gross retail taxes and has not been reimbursed because the gasoline is sold to an exempt purchaser may file a claim for a refund (in addition to any claim for a refund under section 6 of this chapter), if the amount of unreimbursed prepaid gross retail taxes exceeds five hundred dollars (\$500). A claim for a refund must be on the form approved by the department and include all supporting documentation reasonably required by the department. If a distributor files a completed refund claim form that includes all supporting documentation, the department shall authorize the auditor of state to issue a warrant for the refund.

As added by P.L.94-1987, SEC.9.

IC 6-2.5-7-13

Foreign distributor or distribution; reports and payments

Sec. 13. (a) If a purchase or shipment of gasoline is made to a distributor (other than a qualified distributor) outside Indiana for shipment into and subsequent sale or use by the distributor within Indiana, the distributor shall make the prepayment required by section 9 of this chapter directly to the department. The distributor shall pay the tax and submit the report according to the schedule set forth in section 10 of this chapter.

(b) If a purchase or shipment is made within Indiana for shipment and subsequent sale outside Indiana, the purchase or shipment is exempt from the prepayment requirements of section 9 of this chapter.

As added by P.L.94-1987, SEC.10.

IC 6-2.5-7-14

Prepayment rate schedule

Sec. 14. (a) Before June 10 and December 10 of each year, the

department shall determine and provide to:

- (1) each refiner and terminal operator and each qualified distributor known to the department to be required to collect prepayments of the state gross retail tax under this chapter; and
- (2) any other person that makes a request;

a notice of the prepayment rate to be used during the following six (6) month period. The department, after approval by the office of management and budget, may determine a new prepayment rate if the department finds that the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax, has changed by at least twenty-five percent (25%) since the most recent determination.

(b) In determining the prepayment rate under this section, the department shall use the most recent retail price of gasoline available to the department.

(c) The prepayment rate per gallon of gasoline determined by the department under this section is the amount per gallon of gasoline determined under STEP FOUR of the following formula:

STEP ONE: Determine the statewide average retail price per gallon of gasoline, excluding the Indiana and federal gasoline taxes and the Indiana gross retail tax.

STEP TWO: Determine the product of the following:

- (A) The STEP ONE amount.
- (B) The Indiana gross retail tax rate.
- (C) Eighty percent (80%).

STEP THREE: Determine the lesser of:

- (A) the STEP TWO result; or
- (B) the product of:
 - (i) the prepayment rate in effect on the day immediately preceding the day on which the prepayment rate is redetermined under this section; multiplied by
 - (ii) one hundred twenty-five percent (125%).

STEP FOUR: Round the STEP THREE result to the nearest one-tenth of one cent (\$0.001).

As added by P.L.94-1987, SEC.11. Amended by P.L.176-2006, SEC.2; P.L.182-2009(ss), SEC.182.

IC 6-2.5-7-15

Penalties

Sec. 15. (a) A refiner, terminal operator, or distributor (including a qualified distributor) that fails to remit the tax or file the returns or reports required by this chapter is subject to the penalties set forth in IC 6-8.1-10.

(b) A distributor that fails to file the reports required by section 11 of this chapter is subject to the penalties set forth in IC 6-8.1-10.
As added by P.L.94-1987, SEC.12.

IC 6-2.5-8

Chapter 8. Registration

IC 6-2.5-8-1

Registered retail merchant's certificate

Sec. 1. (a) A retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate.

(b) A retail merchant may obtain a registered retail merchant's certificate by filing an application with the department and paying a registration fee of twenty-five dollars (\$25) for each place of business listed on the application. The retail merchant shall also provide such security for payment of the tax as the department may require under IC 6-2.5-6-12.

(c) The retail merchant shall list on the application the location (including the township) of each place of business where the retail merchant makes retail transactions. However, if the retail merchant does not have a fixed place of business, the retail merchant shall list the retail merchant's residence as the retail merchant's place of business. In addition, a public utility may list only its principal Indiana office as its place of business for sales of public utility commodities or service, but the utility must also list on the application the places of business where it makes retail transactions other than sales of public utility commodities or service.

(d) Upon receiving a proper application, the correct fee, and the security for payment, if required, the department shall issue to the retail merchant a separate registered retail merchant's certificate for each place of business listed on the application. Each certificate shall bear a serial number and the location of the place of business for which it is issued.

(e) If a retail merchant intends to make retail transactions during a calendar year at a new Indiana place of business, the retail merchant must file a supplemental application and pay the fee for that place of business.

(f) A registered retail merchant's certificate is valid for two (2) years after the date the registered retail merchant's certificate is originally issued or renewed. If the retail merchant has filed all returns and remitted all taxes the retail merchant is currently obligated to file or remit, the department shall renew the registered retail merchant's certificate within thirty (30) days after the expiration date, at no cost to the retail merchant.

(g) The department may not renew a registered retail merchant certificate of a retail merchant who is delinquent in remitting sales or use tax. The department, at least sixty (60) days before the date on which a retail merchant's registered retail merchant's certificate expires, shall notify a retail merchant who is delinquent in remitting sales or use tax that the department will not renew the retail merchant's registered retail merchant's certificate.

(h) A retail merchant engaged in business in Indiana as defined in IC 6-2.5-3-1(c) who makes retail transactions that are only subject to

the use tax must obtain a registered retail merchant's certificate before making those transactions. The retail merchant may obtain the certificate by following the same procedure as a retail merchant under subsections (b) and (c), except that the retail merchant must also include on the application:

- (1) the names and addresses of the retail merchant's principal employees, agents, or representatives who engage in Indiana in the solicitation or negotiation of the retail transactions;
- (2) the location of all of the retail merchant's places of business in Indiana, including offices and distribution houses; and
- (3) any other information that the department requests.

(i) The department may permit an out-of-state retail merchant to collect the use tax. However, before the out-of-state retail merchant may collect the tax, the out-of-state retail merchant must obtain a registered retail merchant's certificate in the manner provided by this section. Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that the out-of-state retail merchant knows is intended for use in Indiana.

(j) Except as provided in subsection (k), the department shall submit to the township assessor, or the county assessor if there is no township assessor for the township, before July 15 of each year:

- (1) the name of each retail merchant that has newly obtained a registered retail merchant's certificate between March 2 of the preceding year and March 1 of the current year for a place of business located in the township or county; and
- (2) the address of each place of business of the taxpayer in the township or county.

(k) If the duties of the township assessor have been transferred to the county assessor as described in IC 6-1.1-1-24, the department shall submit the information listed in subsection (j) to the county assessor.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.50, SEC.1; P.L.42-1984, SEC.4; P.L.57-1985, SEC.2; P.L.2-1997, SEC.23; P.L.111-2006, SEC.1; P.L.219-2007, SEC.91; P.L.146-2008, SEC.316.

IC 6-2.5-8-2

Repealed

(Repealed by P.L.158-1986, SEC.8.)

IC 6-2.5-8-3

Manufacturer's or wholesaler's certificate

Sec. 3. (a) A manufacturer or wholesaler may register with the department as a purchaser of property in exempt transactions. A manufacturer or wholesaler wishing to register must apply in the same manner and pay the same fee as a retail merchant under section 1 of this chapter.

(b) Upon receiving the application and fee, the department may

issue a manufacturer's or wholesaler's certificate for each place of business listed on the application. Each certificate shall contain a serial number and the location of the place of business for which it is issued.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-8-4

Exempt organizations; certificate

Sec. 4. (a) An organization, exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26, may register with the department as a purchaser of property in exempt transactions. An exempt organization wishing to register must file an application listing its principal location, but the organization is not required to pay the fee.

(b) Upon receiving the application, the department may issue an exempt organization certificate containing a serial number and the principal location of the exempt organization.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-8-5

Duration of certificate

Sec. 5. A certificate issued under section 3 or 4 of this chapter is valid so long as the business or exempt organization is in existence.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.50, SEC.2; P.L.111-2006, SEC.2.

IC 6-2.5-8-6

Outstanding tax warrants; prohibition

Sec. 6. The department may not issue a certificate under this chapter, if that issuance is prohibited under IC 6-8.1-3-16.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.332-1989(ss), SEC.15.

IC 6-2.5-8-7

Revocation of certificate; notice; reinstatement

Sec. 7. (a) The department may, for good cause, revoke a certificate issued under section 1, 3, or 4 of this chapter. However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate under this subsection.

(b) The department shall revoke a certificate issued under section 1, 3, or 4 of this chapter if, for a period of three (3) years, the certificate holder fails to:

- (1) file the returns required by IC 6-2.5-6-1; or
- (2) report the collection of any state gross retail or use tax on the returns filed under IC 6-2.5-6-1.

However, the department must give the certificate holder at least five (5) days notice before it revokes the certificate.

(c) The department may, for good cause, revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:

- (1) the certificate holder is subject to an innkeeper's tax under IC 6-9; and
 - (2) a board, bureau, or commission established under IC 6-9 files a written statement with the department.
- (d) The statement filed under subsection (c) must state that:
- (1) information obtained by the board, bureau, or commission under IC 6-8.1-7-1 indicates that the certificate holder has not complied with IC 6-9; and
 - (2) the board, bureau, or commission has determined that significant harm will result to the county from the certificate holder's failure to comply with IC 6-9.
- (e) The department shall revoke or suspend a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if:
- (1) the certificate holder owes taxes, penalties, fines, interest, or costs due under IC 6-1.1 that remain unpaid at least sixty (60) days after the due date under IC 6-1.1; and
 - (2) the treasurer of the county to which the taxes are due requests the department to revoke or suspend the certificate.
- (f) The department shall reinstate a certificate suspended under subsection (e) if the taxes and any penalties due under IC 6-1.1 are paid or the county treasurer requests the department to reinstate the certificate because an agreement for the payment of taxes and any penalties due under IC 6-1.1 has been reached to the satisfaction of the county treasurer.
- (g) The department shall revoke a certificate issued under section 1 of this chapter after at least five (5) days notice to the certificate holder if the department finds in a public hearing by a preponderance of the evidence that the certificate holder has violated IC 35-45-5-3, IC 35-45-5-3.5, or IC 35-45-5-4.
- As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1982, P.L.50, SEC.3; P.L.65-1988, SEC.1; P.L.46-1991, SEC.7; P.L.88-1995, SEC.10; P.L.227-2007, SEC.58.*

IC 6-2.5-8-8

Exemption certificates

Sec. 8. (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

- (1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;
- (2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and

(3) other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(c) The department may also allow a person to issue a blanket exemption certificate to cover exempt purchases over a stated period of time. The department may impose conditions on the use of the blanket exemption certificate and restrictions on the kind or category of purchases that are exempt.

(d) A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:

(1) a fully completed exemption certificate; or

(2) the relevant data to complete the exemption certificate; within ninety (90) days after the sale.

(e) If a seller has accepted an incomplete exemption certificate under subsection (a) and the department requests that the seller substantiate the exemption, within one hundred twenty (120) days after the department makes the request the seller shall:

(1) obtain a fully completed exemption certificate; or

(2) prove by other means that the transaction was not subject to state gross retail or use tax.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.145-2007, SEC.8.

IC 6-2.5-8-8.5

Commercial printing sales

Sec. 8.5. A commercial printer is not required to collect or remit the state gross retail or use tax from a customer that has no duty to register as a retail merchant under this article, if the customer furnishes the commercial printer with a statement declaring that the tangible personal property sold by the commercial printer to the customer will be resold in the ordinary course of the customer's business without changing the form of the property.

As added by P.L.70-1993, SEC.4.

IC 6-2.5-8-9

Direct payment permit

Sec. 9. (a) A retail merchant, manufacturer, or wholesaler who is registered under this chapter may apply for a direct payment permit. The department may issue the permit subject to such conditions as it deems reasonable. A permit issued under this subsection does not expire and is valid unless revoked under subsection (c).

(b) A person who possesses a direct payment permit may, at the time of a retail transaction, issue a direct payment certificate to a retail merchant instead of paying the state gross retail or use tax to that merchant. If the person issues a direct payment certificate, the person must then pay the tax on that purchase directly to the department. A retail merchant who receives a direct payment certificate has no duty to collect or remit the state gross retail or use tax on that transaction.

(c) The department may revoke a direct payment certificate,

without cause, at any time.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.87-1989, SEC.1.

IC 6-2.5-8-10

Repealed

(Repealed by P.L.211-2007, SEC.49.)

IC 6-2.5-8-11

Commercial printing contracts

Sec. 11. Notwithstanding any other provision of this article, the following shall not cause a person that has contracted with a commercial printer for printing to have a duty to register as a retail merchant or to collect or remit the state gross retail or use tax imposed by this article:

(1) The ownership or leasing by that person of tangible or intangible property located at the Indiana premises of the commercial printer.

(2) The sale by that person of property of any kind produced at and shipped or distributed from the Indiana premises of the commercial printer.

(3) The activities of any kind performed by or on behalf of that person at the Indiana premises of the commercial printer.

(4) The activities of any kind performed by the commercial printer in Indiana for or on behalf of that person.

As added by P.L.70-1993, SEC.5.

IC 6-2.5-8-12

Contract with call center operator; effect on duty to collect tax

Sec. 12. (a) Notwithstanding any other provision of this article, the following do not cause a person that has contracted with a call center operator for a telephone service to have a duty to register as a retail merchant or to collect or remit the state gross retail or use tax imposed by this article:

(1) The ownership or leasing by the person of tangible or intangible property that is:

(A) located at the Indiana premises of the call center operator;

(B) used to provide or assist directly with the provision of a telephone service as described in subsection (c); and

(C) not held for sale, shipment, or distribution in response to orders received as a result of a telephone service provided by the call center operator.

(2) The activities of any kind performed by or on behalf of the person at the Indiana premises of the call center operator.

(3) The activities of any kind performed by the call center operator in Indiana for or on behalf of the person.

(b) Tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a call center operator for a telephone service;

- (2) located at the premises of the call center operator;
- (3) used to provide or assist directly with the provision of a telephone service as described in subsection (c); and
- (4) not held for sale, shipment, or distribution in response to orders received as a result of a telephone service provided by the call center operator;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. For purposes of this section, a call center operator with which a person has contracted for a telephone service shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

(c) For purposes of this section, a telephone service includes soliciting orders by telephone, accepting orders by telephone, and making and receiving any other telephone calls.

As added by P.L.65-2003, SEC.1.

IC 6-2.5-9

Chapter 9. Enforcement and Penalties

IC 6-2.5-9-1

Exemption certificates; unlawful issuance or acceptance; offenses

Sec. 1. (a) A person who issues an exemption certificate, with the intention of unlawfully avoiding the payment of the state gross retail or use tax, commits a Class B misdemeanor.

(b) A person who accepts an exemption certificate with the intention of helping the issuer unlawfully avoid paying the state gross retail or use tax, commits a Class B misdemeanor.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-9-2

Failure to register or renew registration; transaction after revocation or suspension of certificate; offense

Sec. 2. A retail merchant who makes a retail transaction without having applied for or obtained a registered retail merchant's certificate or a renewal of a registered retail merchant's certificate or after the retail merchant's certificate has been revoked or suspended by the department commits a Class B misdemeanor.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.6.

IC 6-2.5-9-3

Personal liability of holder of taxes in trust; failure to collect or remit; offense

Sec. 3. An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.7; P.L.6-1987, SEC.6; P.L.18-1994, SEC.7.

IC 6-2.5-9-4

Inclusion of tax in displayed prices; offer to assume or absorb tax; unlawful price advertising; offenses

Sec. 4. (a) Except as provided in IC 6-2.5-7, a person who:

- (1) displays an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes;
- (2) offers to assume or absorb part of a customer's state gross retail or use tax on a sale; or
- (3) offers to refund part of a customer's state gross retail or use tax as a part of a sale;

commits a Class B infraction.

(b) A retail merchant who:

- (1) uses a metered pump to dispense gasoline or special fuel;
- (2) is required to display on the pump the total price per unit of the gasoline or special fuel under IC 6-2.5-7-2; and
- (3) advertises the gasoline or special fuel at a price other than that required by IC 6-2.5-7-2;

commits a Class B infraction.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-1983, SEC.7.

IC 6-2.5-9-5

Repealed

(Repealed by Acts 1981, P.L.63, SEC.7.)

IC 6-2.5-9-6

Vehicle and watercraft title or aircraft registration; payment of taxes requisite; offenses

Sec. 6. (a) The state may not title a vehicle or a watercraft or register an aircraft unless the person obtaining the title or registration:

- (1) presents proper evidence, prescribed by the department, showing that the state gross retail and use taxes imposed in respect to the vehicle, watercraft, or aircraft have been paid or that the state gross retail and use taxes are inapplicable because of an exemption; or
- (2) files the proper form and pays the state gross retail and use taxes imposed in respect to the vehicle, watercraft, or aircraft.

(b) A person who:

- (1) is a purchaser of a vehicle, aircraft, or watercraft;
- (2) is required to pay the state gross retail or use tax to the department, through the bureau of motor vehicles, Indiana department of transportation, department of natural resources, or a county treasurer; and
- (3) knowingly fails to remit all or part of the state gross retail or use tax that is due;

commits a Class A misdemeanor.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.8; P.L.6-1987, SEC.7; P.L.335-1989(ss), SEC.6; P.L.18-1990, SEC.20.

IC 6-2.5-9-7

Removing or altering sign posted by department; failure to notify department; offense

Sec. 7. (a) Any person who:

- (1) removes;
- (2) alters;
- (3) defaces; or
- (4) covers;

a sign posted by the department that states that no retail transactions or sales can be made at a retail merchant's location commits a Class

B misdemeanor.

(b) A retail merchant shall notify the department of any violation of subsection (a) that occurs on the retail merchant's premises.

(c) A retail merchant who fails to give the notice required by subsection (b) within two (2) business days after the violation of subsection (a) occurs commits a Class B misdemeanor.

As added by P.L.26-1985, SEC.9.

IC 6-2.5-9-8

Records; inspection; falsification; offenses

Sec. 8. (a) All records of a person that have collected or that should have collected gross retail taxes shall be kept open for examination at any reasonable time by the department or the department's authorized agents. A person that violates this subsection commits a Class D felony.

(b) A person that:

(1) makes false entries in a tax record; or

(2) keeps more than one (1) set of tax records;

with the intent to defraud the state or evade remittance of the tax imposed by this article commits a Class D felony.

As added by P.L.71-1993, SEC.12.

IC 6-2.5-10

Chapter 10. Miscellaneous

IC 6-2.5-10-1

Collected revenue; distribution and use

Sec. 1. (a) The department shall account for all state gross retail and use taxes that it collects.

(b) The department shall deposit those collections in the following manner:

(1) Ninety-nine and one hundred seventy-eight thousandths percent (99.178%) of the collections shall be paid into the state general fund.

(2) Sixty-seven hundredths of one percent (0.67%) of the collections shall be paid into the public mass transportation fund established by IC 8-23-3-8.

(3) Twenty-nine thousandths of one percent (0.029%) of the collections shall be deposited into the industrial rail service fund established under IC 8-3-1.7-2.

(4) One hundred twenty-three thousandths of one percent (0.123%) of the collections shall be deposited into the commuter rail service fund established under IC 8-3-1.5-20.5.

As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1980, P.L.10, SEC.3; Acts 1982, P.L.51, SEC.1; P.L.2-1982(ss), SEC.7; P.L.16-1984, SEC.3; P.L.95-1987, SEC.1; P.L.1-1993, SEC.38; P.L.253-1999, SEC.3; P.L.192-2002(ss), SEC.65; P.L.234-2007, SEC.40; P.L.146-2008, SEC.317.

IC 6-2.5-10-2

Application of adjusted gross income tax procedures

Sec. 2. The provisions of the adjusted gross income tax law (IC 6-3), which do not conflict with the provisions of this article and which deal with any of the following subjects, apply for the purposes of imposing, collecting, and administering the state gross retail and use taxes under this article:

- (1) Filing of returns.
- (2) Auditing of returns.
- (3) Investigation of tax liability.
- (4) Determination of tax liability.
- (5) Notification of tax liability.
- (6) Assessment of tax liability.
- (7) Collection of tax liability.
- (8) Examination of taxpayer's books and records.
- (9) Legal proceedings.
- (10) Court actions.
- (11) Remedies.
- (12) Privileges.
- (13) Taxpayer and departmental relief.
- (14) Statutes of limitations.
- (15) Hearings.
- (16) Refunds.

- (17) Remittances.
- (18) Imposition of penalties and interest.
- (19) Maintenance of departmental records.
- (20) Confidentiality of taxpayer's returns.
- (21) Duties of the secretary of state and the treasurer of state.
- (22) Administration.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.19-1986, SEC.13; P.L.192-2002(ss), SEC.66.

IC 6-2.5-10-3

Repealed

(Repealed by P.L.28-1997, SEC.31.)

IC 6-2.5-10-4

Repealed

(Repealed by P.L.28-1997, SEC.31.)

IC 6-2.5-10-5

Collection of NAICS codes

Sec. 5. (a) As used in this section, "NAICS code" refers to the code used to classify a particular industry in the current edition of the North American Industry Classification System Manual - United States, published by the National Technical Information Service of the United States Department of Commerce.

(b) The department shall collect and maintain for all retail merchants information concerning the NAICS codes of the merchants.

As added by P.L.19-2004, SEC.1.

IC 6-2.5-11

Chapter 11. Simplified Sales and Use Tax Administration Act

IC 6-2.5-11-1

Short title

Sec. 1. This chapter shall be known as and referred to as the "simplified sales and use tax administration act".

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-2

Definitions

Sec. 2. As used in this chapter:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(4) "Person" means an individual, a trust, an estate, a fiduciary, a partnership, a limited liability company, a limited liability partnership, a corporation, or any other legal entity.

(5) "Sales tax" means the state gross retail tax levied under IC 6-2.5.

(6) "Seller" means any person making sales, leases, or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the use tax levied under IC 6-2.5.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-3

Findings of general assembly

Sec. 3. The general assembly finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all vendors to collect this state's sales and use tax. The general assembly further finds that this state should participate in multistate discussions to review, amend, or review and amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and all types of commerce.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-4

Delegates to review or amend agreement

Sec. 4. (a) For the purposes of reviewing, amending, or reviewing and amending the agreement embodying the simplification

requirements set forth in section 7 of this chapter, the state shall enter into multistate discussions. For purposes of those discussions, the state shall be represented by four (4) delegates, appointed as follows:

- (1) One (1) member of the house of representatives, appointed by the speaker of the house of representatives.
- (2) One (1) member of the senate, appointed by the president pro tempore of the senate.
- (3) One (1) individual appointed by the governor.
- (4) The commissioner of the department of state revenue, who is an ex officio member.

A delegate appointed under subdivisions (1) through (3) serves at the pleasure of the officer who appointed that delegate.

(b) Each delegate who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The delegate is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the delegate's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency. Expenses incurred under this subsection shall be paid out of the funds appropriated to the department of state revenue.

(c) Each delegate who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the delegate's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(d) Each delegate who is a member of the general assembly is entitled to receive the per diem, mileage, and travel allowances paid to members of the general assembly under travel policies established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-5

Powers of department

Sec. 5. The department may enter into the agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may 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 department may take other actions reasonably required to implement this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in

furtherance of the cooperative agreement. The department or the department's designee shall represent the state of Indiana before the other states that are signatories to the agreement.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-6

Effect on Indiana law

Sec. 6. No provision of the agreement authorized by this chapter in whole or in part invalidates or amends any provision of the law of Indiana. Adoption of the agreement by the state of Indiana does not amend or modify any Indiana law. Implementation of any condition of the agreement in Indiana, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-7

Requirements in agreement

Sec. 7. The department shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

- (1) Simplified State Rate. The agreement must set restrictions to limit over time the number of state rates.
- (2) Uniform Standards. The agreement must establish uniform standards for the following:
 - (A) The sourcing of transactions to taxing jurisdictions.
 - (B) The administration of exempt sales.
 - (C) Sales and use tax returns and remittances.
- (3) Central Registration. The agreement must provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- (4) No Nexus Attribution. The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (5) Local Sales and Use Taxes. The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:
 - (A) Restricting variances between the state and local tax bases.
 - (B) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
 - (C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

(D) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) Monetary Allowances. The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed on or before July 1, 2002.

(7) State Compliance. The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while the state is a member.

(8) Consumer Privacy. The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) Advisory Councils. The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult in the administration of the agreement.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-8

Provisions in agreement

Sec. 8. The agreement authorized by this chapter is an accord among individual cooperating sovereign states in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-9

State is only intended beneficiary of agreement; no individual causes of action

Sec. 9. (a) The agreement authorized by this chapter binds and inures only to the benefit of the state of Indiana and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of the state of Indiana and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a), no person shall have any cause of action or defense under the agreement or by virtue of the state of Indiana's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the state of

Indiana, or any political subdivision of the state of Indiana on the grounds that the action or inaction is inconsistent with the agreement.

(c) No law of Indiana, or the application thereof, may be declared invalid as to any person or circumstance on the grounds that the provision or application is inconsistent with the agreement.

As added by P.L.107-2001, SEC.1.

IC 6-2.5-11-10

Certified services providers; allowances for sellers and certified service providers under the agreement; relief for failure to collect tax

Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

(d) A certified service provider or a seller using a certified automated system that obtains a certification or taxability matrix from the department is not liable for sales or use tax collection errors that result from reliance on the department's certification or taxability matrix. If the department determines that an item or transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or the seller using a certified automated system of the incorrect classification. The certified service provider or the seller using a certified automated system must revise the incorrect classification within ten (10) days after receiving notice of the determination from the department. If

the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or the seller using a certified automated system is liable for failure to collect the correct amount of sales or use tax due and owing.

(e) If at least thirty (30) days are not provided between the enactment of a statute changing the rate set forth in IC 6-2.5-2-2 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 if:

- (1) the seller collected the tax at the immediately preceding effective rate; and
- (2) the seller's failure to collect at the current rate does not extend beyond thirty (30) days after the effective date of the rate change.

A seller is not eligible for the relief provided for in this subsection if the seller fraudulently fails to collect at the current rate or solicits purchases based on the immediately preceding effective rate.

(f) 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 as provided in article VI of the agreement.

As added by P.L.107-2001, SEC.1. Amended by P.L.195-2005, SEC.4; P.L.145-2007, SEC.9; P.L.182-2009(ss), SEC.183; P.L.113-2010, SEC.53.

IC 6-2.5-11-11

Relief from penalties, tax, and interest in certain transactions involving reliance on data provided by the department

Sec. 11. (a) This section applies only to transactions occurring after December 31, 2008.

(b) A purchaser is relieved from liability for penalties imposed under IC 6-8.1-10-2.1 for failure to pay the amount of tax due if any of the following occurs:

- (1) A purchaser's seller or certified service provider relied on erroneous data provided by the department regarding any of the following:
 - (A) Tax rates.
 - (B) Boundaries.
 - (C) Taxing jurisdiction assignments.
 - (D) The taxability matrix.
- (2) A purchaser with a direct pay permit relied on erroneous data provided by the department regarding any of the following:
 - (A) Tax rates.
 - (B) Boundaries.
 - (C) Taxing jurisdiction assignments.
 - (D) The taxability matrix.
- (3) A purchaser relied on erroneous data in the taxability matrix provided by the department.

(c) The department shall relieve a purchaser from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (b); however,

the relief is limited to tax and interest attributable to the department's erroneous classification in the taxability matrix of terms:

- (1) included as taxable or exempt;
- (2) included in the sales price;
- (3) excluded from the sales price;
- (4) included in a definition; or
- (5) excluded from a definition.

As added by P.L.145-2007, SEC.10.

IC 6-2.5-11-12

Review of software; limited relief from liability

Sec. 12. (a) The department shall review 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 granted under IC 6-2.5-5. Upon satisfactory completion of the review, the department shall certify to the governing board the department's acceptance of the classifications made by the system.

(b) The governing board and the member states are not responsible for classification of an item or a transaction within the product based exemptions certified by the department. The relief from liability provided in this section is not available to a certified service provider or Model 2 seller that has incorrectly classified an item or a transaction into a product based exemption certified by the department. This subsection does not apply to the individual listing of items or transactions within a product definition approved by the governing board or the member states.

(c) If the department determines that an item or a transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or Model 2 seller of the incorrect classification. The certified service provider or Model 2 seller must revise the classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider or Model 2 seller is liable for failure to collect the correct amount of sales or use tax due and owing.

As added by P.L.145-2007, SEC.11.

IC 6-2.5-12

Chapter 12. Taxing Situs of Nonmobile Telecommunications Service

IC 6-2.5-12-1

"Air to ground radio telephone service"

Sec. 1. As used in this chapter, "air to ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-2

"Call by call basis"

Sec. 2. As used in this chapter, "call by call basis" means any method of charging for telecommunications services by which the price is measured by individual calls.
As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-3

"Communications channel"

Sec. 3. As used in this chapter, "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-4

"Customer"

Sec. 4. As used in this chapter, "customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under this chapter. The term does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-5

"Customer channel termination point"

Sec. 5. As used in this chapter, "customer channel termination point" means the location where the customer either inputs or receives the communications.
As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-6

"End user"

Sec. 6. As used in this chapter, "end user" means the person who

uses the telecommunications service. In the case of an entity, "end user" means the individual who uses the service on behalf of the entity.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-7

"Home service provider"

Sec. 7. As used in this chapter, "home service provider" means the facilities based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-8

"Mobile telecommunications service"

Sec. 8. As used in this chapter, "mobile telecommunications service" means commercial mobile radio service, as defined in 47 CFR 20.3 as in effect on June 1, 1999.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-9

"Place of primary use"

Sec. 9. As used in this chapter, "place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-10

"Post paid calling service"

Sec. 10. As used in this chapter, "post paid calling service" means the telecommunications service obtained by making a payment on a call by call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A post paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

As added by P.L.257-2003, SEC.31. Amended by P.L.145-2007, SEC.12.

IC 6-2.5-12-11

"Prepaid calling service"

Sec. 11. As used in this chapter, "prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of

calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-11.5

"Prepaid wireless calling service"

Sec. 11.5. As used in this chapter, "prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of content, digital products delivered electronically, and ancillary services, which:

- (1) must be paid for in advance; and
- (2) are sold in predetermined units or dollars, the balance of which declines with use in a known amount.

As added by P.L.145-2007, SEC.13.

IC 6-2.5-12-12

"Private communications service"

Sec. 12. As used in this chapter, "private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-13

"Service address"

Sec. 13. As used in this chapter, "service address" means the following:

- (1) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- (2) If the location described in subdivision (1) is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
- (3) If neither of the locations described in subdivision (1) or (2) is known, the location of the customer's place of primary use.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-14

Sourcing of telecommunications service sold call by call

Sec. 14. Except for the telecommunications services listed in section 16 of this chapter, the sale of telecommunications service sold on a call by call basis shall be sourced to:

- (1) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or
- (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

As added by P.L.257-2003, SEC.31.

IC 6-2.5-12-15

Sourcing of telecommunications service sold on other basis; sourcing of Internet access service or ancillary services

Sec. 15. Except for the telecommunications services listed in section 16 of this chapter, a sale of:

- (1) telecommunications services sold on a basis other than a call by call basis;
- (2) Internet access service; or
- (3) an ancillary service;

is sourced to the customer's place of primary use.

As added by P.L.257-2003, SEC.31. Amended by P.L.182-2009(ss), SEC.184.

IC 6-2.5-12-16

Sourcing of particular types of telecommunications services

Sec. 16. The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

- (1) A sale of mobile telecommunications services, other than air to ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act and IC 6-8.1-15.
- (2) A sale of post paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

- (A) the seller's telecommunications system; or
- (B) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

- (3) A sale of prepaid calling service or a sale of prepaid wireless calling service is sourced in the following manner:

- (A) When the service is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- (B) When the service 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.
- (C) When clauses (A) and (B) 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.

(D) When clauses (A) through (C) 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.

(E) When clauses (A) through (D) do not apply, including the circumstance in which the seller is without sufficient information to apply the previous clauses, the location will be determined by either:

(i) the address from which tangible personal property was shipped, from which any digital good or 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);
or

(ii) in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location associated with the mobile telephone number.

(4) A sale of a private communications service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one (1) jurisdiction or level of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

As added by P.L.257-2003, SEC.31. Amended by P.L.145-2007, SEC.14.

IC 6-2.5-13

Chapter 13. General Sourcing Rules

IC 6-2.5-13-1

Sourcing of retail sales, leases, and rentals

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, ancillary services, and Internet access service 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:

- (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 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).

(h) 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.

As added by P.L.257-2003, SEC.32. Amended by P.L.153-2006, SEC.6; P.L.145-2007, SEC.15; P.L.19-2008, SEC.7; P.L.182-2009(ss), SEC.185.

IC 6-2.5-13-2

Repealed

(Repealed by P.L.145-2007, SEC.16.)

IC 6-2.5-13-3

Sourcing of purchases of direct mail

Sec. 3. (a) Notwithstanding section 1 of this chapter, a purchaser of direct mail that is not a holder of a direct pay permit shall provide

to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(b) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(c) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax under the delivery information provided by the purchaser.

(d) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a), the seller shall collect the tax according to section 1(d)(5) of this chapter. Nothing in this subsection limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(e) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

As added by P.L.257-2003, SEC.32.