INFORMATION BULLETIN #4

SALES TAX

MAY, 2002

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: Sales to and by Indiana State and Local Governments and the United States Government and its Agencies

REFERENCES: IC 6-2.5-5-16, IC 6-2.5-5-24, IC 6-2.5-7-4, 45 IAC 2.2-5-24, 45 IAC 2.2-5-25, 45 IAC 2.2-5-49

INTRODUCTION.

Generally, purchases by the State of Indiana or any Indiana local government are exempt from sales tax. Sales by State and local agencies are also exempt unless the sale involves a "proprietary" (non-traditional) activity.

I. DEFINITIONS.

State Agency - means an authority, board, branch, commission, committee, department, division, or other instrumentality of the executive, legislative, and judicial departments of Indiana State government.

Local Government - refers to any of the following:

A city of any class (IC 36-1-2-3)

Municipal corporation (county, municipality, township, special taxing districts, etc.; IC 36-1-2-10)

Municipality (city or town; IC 36-1-2-11)

Political subdivision (IC 36-1-2-13)

School corporation (IC 36-1-2-17)

Special taxing district (IC 36-1-2-18)

Taxing district (IC 36-1-2-20)

Unit (county, municipality, township; IC 36-1-2-23), or

Any agency of any of the foregoing.

II. PURCHASES BY STATE AND LOCAL GOVERNMENTS.

The State of Indiana and its local governments are not subject to sales or use tax on any purchase to be used primarily to carry out a governmental function. Any purchase used primarily in connection with a proprietary function of the State or a local government would be taxable unless some other specific exemption applies.

Traditional governmental activities, such as police and fire protection, street construction and maintenance, the operation of hospitals, public libraries, cemeteries, and similar activities are considered to be governmental functions.

A purchase is used "primarily" for a governmental function if the purchase is used more than fifty percent (50%) of the time in the performance of that function. To qualify for the exemption, the purchase must be invoiced directly to the State or to the local government making the purchase.

NOTE: If a State or local employee purchases an item, and even if the employee is to be reimbursed by the governmental entity, the purchase is not exempt, and the employee must pay sales tax at the time of purchase.

To purchase property exempt from tax, State and local governments must register with the Department and issue an exemption certificate to the seller. To recover taxes paid on exempt purchases, including the purchase of gasoline or special fuel through a metered pump, the State or local government must file a claim for refund with the Department.

III. SALES BY THE STATE OF INDIANA OR ITS LOCAL GOVERNMENTS.

Sales of tangible personal property to the general public in the ordinary course of operations by the State of Indiana or its local governments are generally subject to sales tax. For example, the sale of key chains or license cases by a license branch is taxable. The State may purchase any property to be resold exempt from tax, but must collect the tax from the purchaser at the point of sale. The following are other examples of proprietary activities which would require the State or local government to collect tax from the purchaser:

(1) Sales of tangible personal property from college book stores, sales and rentals in state parks, food services, concessions, and similar activities;

(2) Rental of tangible personal property to the public;

(3) Sale of by-products of sewage disposal plants; or

(4) Any other activity customarily considered as being competitive with private enterprise.

Some sales may qualify as related to the performance of a governmental function if the sales do not compete with private enterprise. For example, if a city in Indiana were to charge a fee for providing copies of its ordinances, the city would not need to collect tax on the sale of the copies, since providing the copies of its ordinances could be considered a governmental function of the city.

IV. PURCHASES BY THE UNITED STATES GOVERNMENT AND ITS AGENCIES.

The United States Constitution prohibits any State from imposing any tax directly on the U.S. Government or any of its agencies, unless the Congress consents to being taxed. Thus, much Federal purchasing, leasing or renting of tangible personal property, use of utilities, meals consumed in restaurants, or other normally taxable goods or services (including accommodations for less than 30 days), is exempt from Indiana sales and other transaction-based taxes.

However, the fact that the U.S. Government may ultimately reimburse an employee who paid the tax does not exempt such a purchase from tax. For example, if an employee of the Internal Revenue Service pays for lodging cost from his own funds, there should be tax collected at the time of payment. But if the same employee pays for the lodging with a credit card in the name of and billed directly to the Internal Revenue Service, this would be a direct expenditure by the U.S. Government, which would be exempt from the sales tax. A vendor will not be required to collect sales tax on sales made directly to the U.S Government if the exemption can be verified by documenting the facts and circumstances of the transaction. PLEASE SEE THE ATTACHMENT FOR A DETAILED DESCRIPTION OF FEDERAL ACTIVITY INVOLVING USE OF CREDIT CARDS.

V. SALES BY THE UNITED STATES GOVERNMENT OR ITS AGENCIES.

Under Federal law (4 U.S.C. 107), State and local governments may not levy or collect any type of sales or use tax on transactions in which the U.S. government sells personal property to others. Therefore, Federal agencies are not required to register as retail merchants with the Department, and would not have a Retail Merchants Certificate number or use an Exemption Certificate (Form ST-105).

Kenneth L. Miller
Commissioner

ATTACHMENT

NOTE: The following information is taken from the Federation of Tax Administrators Bulletin B-07/02, dated February 26, 2002. This attachment has been revised and updated for the purposes of Indiana Information Bulletin #4.

Federation of Tax Administrators, 444 North Capitol St., NW., Washington, D.C. 20001

FEDERAL GOVERNMENT ISSUANCE OF NEW CREDIT CARDS TO EMPLOYEES

SUMMARY

The Federal government has issued new credit cards for its employee purchases. The majority of the new cards are direct-billed to the Federal government and thus represent tax-exempt purchases for State purposes. However, there are both a SmartPay Travel card and a SmartPay Integrated (Combined) Card that are billed to the employee (for later reimbursement). These transactions are taxable in Indiana. The only way to distinguish the direct billed/tax-exempt cards from the employee-billed/taxable cards is to look at the sixth digit of the card. Digits 1, 2, 3 and 4 represent taxable transactions.

Background. Before 1998, the Federal government issued credit cards to employees to purchase various goods and services, including office supplies, fuel, transportation, accommodations, and food. Three primary cards were used: a Visa I.M.P.A.C. card, a Discover card, and an American Express card. (A fleet card named Wright Express was also used.) **NONE OF THESE CARDS IS IN USE ANY LONGER.**

Several Indiana taxes are involved in the use of Federal credit/debit cards, including sales tax and other transaction-based taxes. Generally speaking, Indiana law applies appropriate taxes to purchases made by Federal employees **when the card is billed to the employee.** When a card is billed directly to the Federal government, any tax would be treated as being levied directly on the Federal government and therefore prohibited by the U.S. Constitution.

New Cards. On November 30, 1999, the Federal government began a new credit card program. The Federal General Services Administration (GSA) entered into contracts with a variety of banks. Each Federal agency may choose among these options. The new program has been named GSA Smart Pay. The contracts extend through November 29, 2003, and there are five one-year options to renew.

NOTE: The SmartPay Travel Card can be used by any federal agency. The SmartPay Integrated (combined) card is in use only by the Department of Interior. Generally, purchases using SmartPay Cards are directly billed to the U.S. government and are not taxed.

The **exceptions** are:

Federal employee credit card purchases that are billed to the employee and thus may be taxed will:

- Use a SmartPay Travel card which says "For Official Government Travel Only" **and** start with 4486, 4716, or 5568 and have a sixth digit that is either 1, 2, 3, or 4; or

- Use a SmartPay Integrated (Combined) card which says "For Official Government Use Only: **and** has an account number that begins with 5568-16 from the Department of the Interior, **and** the traveler does not carry an I.D. from the Bureau of Reclamation, **and** the purchase is for lodging or food.

All SmartPay cards with other numbers are centrally billed and cannot be taxed.

The General Services Administration maintains a Website for more detailed program information: **http://pub.fss.gsa.gov/services/gsa-smartpay**