DEPARTMENT OF STATE REVENUE

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NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Property Purchased or Used in Indiana.

Authority: IC 6-2.5-2-1(a); IC 6-2.5-3-1(b); IC 6-2.5-3-2(a); IC 6-2.5-3-5; 45 IAC 2.2-3-17; *Rhoade v. Ind. State Revenue*, Ind. Tax Court (2002)

IC 6-2.5-2-1. Sales tax imposed.
(a) [T]he state gross retail tax, is imposed on retail transactions made in Indiana.
[1980]

IC 6-2.5-3-2. Use tax imposed.
(a) [T]he 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.
[1980]

IC 6-2.5-3-5. Credit against use tax.
(a) A person is entitled to a credit against the use tax… equal to the amount… of sales tax… paid to another state… for the acquisition of that property.
[1980]

I. GENERAL STATEMENT

A. Property acquired or rented in Indiana is subject to the Indiana Sales Tax to be collected by the Indiana vendor.

B. Property acquired or rented outside Indiana for storage, use, or consumption in Indiana is subject to the Indiana Use Tax to be paid by the purchaser either directly to the Department or to a vendor holding an Indiana Registered Retail Merchants Certificate.

II. EXEMPTION FROM SALES TAX OR USE TAX [FN 1]

A. Property acquired or rented in Indiana is not subject to Indiana Sales Tax if the purchaser is allowed an exemption contained in IC 6-2.5 Chapters 4 and 5.

B. Property acquired or rented outside Indiana is not subject to Indiana Use Tax if the property:

1. is not stored, used, or consumed in Indiana, or
2. is stored in Indiana, including no more than incidental handling, and is subsequently transported and used solely outside Indiana, [FN 2] or
3. is processed, printed, fabricated, or manufactured into, attached to, or incorporated into tangible personal property in Indiana, and is subsequently transported out of Indiana for use solely outside Indiana. [FN 3]

III. PROPERTY USED "SOLELY OUTSIDE INDIANA" [FN 4]

If property upon which no Indiana Sales Tax has been paid is shipped from a point in Indiana to an out-of-state location for storage and that property is subsequently shipped back to Indiana for use, the property is then subject to the Indiana Use Tax.

IV. CREDIT FOR TAX PAID OUTSIDE INDIANA

A. A purchaser who has acquired or rented property in Indiana upon which Indiana Sales Tax was required to be paid is not allowed a credit for Use Tax paid to another state. A state which imposes a Use Tax upon property used in that state should allow a credit for Sales Tax required to be paid to an Indiana vendor.

B. A purchaser who has acquired or rented property in a transaction occurring outside Indiana upon which the sales tax was required to be paid to a state other than Indiana is allowed a credit in the amount of such tax paid against any Indiana Use Tax due. [FN 5] Such credit shall not exceed the Indiana Use Tax.

[FN1] The use of a Direct Payment Certificate (IC 6-2.5-8-9) does not constitute an exemption from Sales Tax but only the certificate holder's agreement to pay any tax due directly to the Department.
[FN 2] IC 6-2.5-3-1(b)
[FN 3] IC 6-2.5-3-2(d)
[FN 4] As contained in footnote 2 and 3 above.
[FN 5] Note: IC 6-2.5-3-5(b) [45 IAC 2.2-3-17] which excludes motor vehicles from this credit was found by the Ind. Tax Court in *Rhoade v. Dept*, Sept. 6, 2002 to violate the Commerce Clause of the U.S. Constitution.