



January 17, 2008

## SENATE BILL No. 233

DIGEST OF SB 233 (Updated January 15, 2008 2:53 pm - DI 44)

**Citations Affected:** IC 6-2.5.

**Synopsis:** Streamlined sales tax conformity. Adds definitions of the following terms from the Streamlined Sales and Use Tax Agreement (SSUTA) to the sales and use tax statutes: (1) "digital audiovisual works"; (2) "digital audio works"; (3) "digital books"; and (4) "specified digital products". Amends the definition of "durable medical equipment" to conform with SSUTA. Extends until January 1, 2010, the date when sales of floral products will be sourced to the location of the floral business that takes a floral order from a purchaser, to conform with SSUTA. Provides that a person who transfers specified digital products to an end user with a grant of permanent use is a retail merchant making a retail transaction.

**Effective:** January 1, 2008 (retroactive); upon passage; January 1, 2009.

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**Kenley**

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January 8, 2008, read first time and referred to Committee on Tax and Fiscal Policy.  
January 16, 2008, amended, reported favorably — Do Pass.

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January 17, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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## SENATE BILL No. 233

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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

1 SECTION 1. IC 6-2.5-1-16.2 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JANUARY 1, 2009]: **Sec. 16.2. (a) "Digital audio**  
4 **works" means works that result from the fixation of a series of**  
5 **musical, spoken, or other sounds, including ringtones.**

6 (b) As used in this section, "ringtones" means digitized sound  
7 files that:  
8 (1) are downloaded onto a device; and  
9 (2) may be used to alert the customer with respect to a  
10 communication.

11 SECTION 2. IC 6-2.5-1-16.3 IS ADDED TO THE INDIANA  
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
13 [EFFECTIVE JANUARY 1, 2009]: **Sec. 16.3. "Digital audiovisual**  
14 **works" means a series of related images that, when shown in**  
15 **succession, impart an impression of motion, together with**  
16 **accompanying sounds, if any.**

17 SECTION 3. IC 6-2.5-1-16.4 IS ADDED TO THE INDIANA

SB 233—LS 6558/DI 113+



1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
2 [EFFECTIVE JANUARY 1, 2009]: **Sec. 16.4. "Digital books" means**  
3 **works that are generally recognized in the ordinary and usual**  
4 **sense as books.**

5 SECTION 4. IC 6-2.5-1-18 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) "Durable  
7 medical equipment" means equipment, including repair and  
8 replacement parts for the equipment, that:

- 9 (1) can withstand repeated use;
- 10 (2) is primarily and customarily used to serve a medical purpose;
- 11 (3) generally is not useful to a person in the absence of illness or  
12 injury; and
- 13 (4) is not worn in or on the body.

14 The term does not include mobility enhancing equipment.

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

18 SECTION 5. IC 6-2.5-1-26.5 IS ADDED TO THE INDIANA  
19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
20 [EFFECTIVE JANUARY 1, 2009]: **Sec. 26.5. "Specified digital**  
21 **products" means electronically transferred:**

- 22 (1) **digital audio works;**
- 23 (2) **digital audiovisual works; or**
- 24 (3) **digital books.**

25 SECTION 6. IC 6-2.5-4-16 IS ADDED TO THE INDIANA CODE  
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
27 JANUARY 1, 2009]: **Sec. 16. (a) As used in this section, "end user"**  
28 **does not include a person who receives by contract a product**  
29 **transferred electronically for further commercial broadcast,**  
30 **rebroadcast, transmission, retransmission, licensing, relicensing,**  
31 **distribution, redistribution, or exhibition of the product, in whole**  
32 **or in part, to another person or persons.**

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

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

40 SECTION 7. IC 6-2.5-13-1, AS AMENDED BY P.L.145-2007,  
41 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
42 JANUARY 1, 2008 (RETROACTIVE)]: Sec. 1. (a) As used in this

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1 section, the terms "receive" and "receipt" mean:  
 2 (1) taking possession of tangible personal property;  
 3 (2) making first use of services; or  
 4 (3) taking possession or making first use of digital goods;  
 5 whichever comes first. The terms "receive" and "receipt" do not include  
 6 possession by a shipping company on behalf of the purchaser.  
 7 (b) This section:  
 8 (1) applies regardless of the characterization of a product as  
 9 tangible personal property, a digital good, or a service;  
 10 (2) applies only to the determination of a seller's obligation to pay  
 11 or collect and remit a sales or use tax with respect to the seller's  
 12 retail sale of a product; and  
 13 (3) does not affect the obligation of a purchaser or lessee to remit  
 14 tax on the use of the product to the taxing jurisdictions of that use.  
 15 (c) This section does not apply to sales or use taxes levied on the  
 16 following:  
 17 (1) The retail sale or transfer of watercraft, modular homes,  
 18 manufactured homes, or mobile homes. These items must be  
 19 sourced according to the requirements of this article.  
 20 (2) The retail sale, excluding lease or rental, of motor vehicles,  
 21 trailers, semitrailers, or aircraft that do not qualify as  
 22 transportation equipment, as defined in subsection (g). The retail  
 23 sale of these items shall be sourced according to the requirements  
 24 of this article, and the lease or rental of these items must be  
 25 sourced according to subsection (f).  
 26 (3) Telecommunications services, ancillary services, and Internet  
 27 access service shall be sourced in accordance with IC 6-2.5-12.  
 28 (d) The retail sale, excluding lease or rental, of a product shall be  
 29 sourced as follows:  
 30 (1) When the product is received by the purchaser at a business  
 31 location of the seller, the sale is sourced to that business location.  
 32 (2) When the product is not received by the purchaser at a  
 33 business location of the seller, the sale is sourced to the location  
 34 where receipt by the purchaser (or the purchaser's donee,  
 35 designated as such by the purchaser) occurs, including the  
 36 location indicated by instructions for delivery to the purchaser (or  
 37 donee), known to the seller.  
 38 (3) When subdivisions (1) and (2) do not apply, the sale is  
 39 sourced to the location indicated by an address for the purchaser  
 40 that is available from the business records of the seller that are  
 41 maintained in the ordinary course of the seller's business when  
 42 use of this address does not constitute bad faith.

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1 (4) When subdivisions (1), (2), and (3) do not apply, the sale is  
2 sourced to the location indicated by an address for the purchaser  
3 obtained during the consummation of the sale, including the  
4 address of a purchaser's payment instrument, if no other address  
5 is available, when use of this address does not constitute bad  
6 faith.

7 (5) When none of the previous rules of subdivision (1), (2), (3),  
8 or (4) apply, including the circumstance in which the seller is  
9 without sufficient information to apply the previous rules, then the  
10 location will be determined by the address from which tangible  
11 personal property was shipped, from which the digital good or the  
12 computer software delivered electronically was first available for  
13 transmission by the seller, or from which the service was provided  
14 (disregarding for these purposes any location that merely provided  
15 the digital transfer of the product sold).

16 (e) The lease or rental of tangible personal property, other than  
17 property identified in subsection (f) or (g), shall be sourced as follows:

18 (1) For a lease or rental that requires recurring periodic payments,  
19 the first periodic payment is sourced the same as a retail sale in  
20 accordance with the provisions of subsection (d). Periodic  
21 payments made subsequent to the first payment are sourced to the  
22 primary property location for each period covered by the payment.  
23 The primary property location shall be as indicated by an address  
24 for the property provided by the lessee that is available to the  
25 lessor from its records maintained in the ordinary course of  
26 business, when use of this address does not constitute bad faith.  
27 The property location shall not be altered by intermittent use at  
28 different locations, such as use of business property that  
29 accompanies employees on business trips and service calls.

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

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

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

39 (1) For a lease or rental that requires recurring periodic payments,  
40 each periodic payment is sourced to the primary property location.  
41 The primary property location shall be as indicated by an address  
42 for the property provided by the lessee that is available to the

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1 lessor from its records maintained in the ordinary course of  
2 business, when use of this address does not constitute bad faith.  
3 This location shall not be altered by intermittent use at different  
4 locations.

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

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

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

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

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

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

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

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

32 (h) This subsection applies to retail sales of floral products that  
33 occur before January 1, ~~2008~~ **2010**. Notwithstanding subsection (d),  
34 a retail sale of floral products in which a florist or floral business:

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

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

41 **SECTION 8. An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 233, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 27, after "16." insert "**(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)".**

and when so amended that said bill do pass.

(Reference is to SB 233 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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