



March 15, 2013

ENGROSSED
SENATE BILL No. 608

DIGEST OF SB 608 (Updated March 13, 2013 12:44 pm - DI 92)

Citations Affected: IC 6-2.5.

Synopsis: State gross retail tax. Revises the sourcing rules under the sales and use tax for advertising and promotional direct mail and other direct mail by creating two distinct categories of direct mail in compliance with the Streamlined Sales and Use Tax Agreement. Adds corresponding definitions. Removes a sales tax exemption for blood glucose monitoring equipment and devices. Provides that the sales tax exemption for blood glucose monitoring supplies, including blood glucose meters, measuring strips, lancets, and other similar diabetic supplies, currently applicable to supplies furnished without charge will also apply to the sale of the supplies.

Effective: July 1, 2013.

Kenley, Hershman

(HOUSE SPONSORS — SMITH M, GOODIN, KLINKER)

January 17, 2013, read first time and referred to Committee on Tax and Fiscal Policy.
January 29, 2013, reported favorably — Do Pass.
January 31, 2013, read second time, ordered engrossed. Engrossed.
February 4, 2013, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Ways and Means.
March 14, 2013, amended, reported — Do Pass.

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ES 608—LS 7040/DI 58+



March 15, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 608

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 6-2.5-1-10.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2013]: **Sec. 10.7. "Advertising and**
4 **promotional direct mail"** means printed material that is direct
5 **mail, the primary purpose of which is to attract public attention to**
6 **a product, person, business, or organization, or to attempt to sell,**
7 **popularize, or secure financial support for a product, person,**
8 **business, or organization. As used in this section, "product" means**
9 **tangible personal property, a product transferred electronically, or**
10 **a service.**

11 SECTION 2. IC 6-2.5-1-22.2 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2013]: **Sec. 22.2. "Other direct mail" means**
14 **any direct mail that is not advertising and promotional direct mail,**
15 **regardless of whether advertising and promotional direct mail is**
16 **included in the same mailing. The term includes the following:**

17 (1) **Transactional direct mail that contains personal**

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1 **information specific to the addressee, including invoices, bills,**
 2 **statements of account, or payroll advices.**

3 **(2) Any legally required mailings, including privacy notices,**
 4 **tax reports, and stockholder reports.**

5 **(3) Other nonpromotional direct mail delivered to existing or**
 6 **former shareholders, customers, employees, or agents,**
 7 **including newsletters and informational pieces.**

8 **The term does not include the development of billing information**
 9 **or the provision of any data processing service that is more than**
 10 **incidental.**

11 SECTION 3. IC 6-2.5-5-18, AS AMENDED BY P.L.84-2011,
 12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2013]: Sec. 18. (a) Sales or rentals of durable medical
 14 equipment, mobility enhancing equipment, prosthetic devices, artificial
 15 limbs, orthopedic devices, dental prosthetic devices, eyeglasses,
 16 contact lenses, and other medical supplies and devices are exempt from
 17 the state gross retail tax, if the sales or rentals are prescribed by a
 18 person licensed to issue the prescription.

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

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

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

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

36 SECTION 4. IC 6-2.5-5-19.5, AS AMENDED BY
 37 P.L.182-2009(ss), SECTION 179, IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 19.5. (a) For purposes
 39 of this section, "drug sample" means a legend drug (as defined by
 40 IC 16-18-2-199) or a drug composed wholly or partly of insulin or an
 41 insulin analog that is furnished without charge.

42 (b) For purposes of this section, "blood glucose monitoring device"

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1 **supply**" means blood glucose meters and measuring strips, lancets, and
2 other similar diabetic supplies furnished **with or** without charge.

3 ~~(b)~~ (c) Transactions involving the following are exempt from the
4 state gross retail tax:

5 (1) A drug sample, the packaging and literature for a drug sample,
6 a blood glucose monitoring ~~device~~, **supply**, and the packaging
7 and literature for a blood glucose monitoring ~~device~~: **supply**.

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

11 (A) a drug sample or a blood glucose monitoring ~~device~~;
12 **supply**; or

13 (B) the packaging or literature for a drug sample or a blood
14 glucose monitoring ~~device~~: **supply**.

15 SECTION 5. IC 6-2.5-13-1, AS AMENDED BY P.L.182-2009(ss),
16 SECTION 185, IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) As used in this section, the
18 terms "receive" and "receipt" mean:

19 (1) taking possession of tangible personal property;

20 (2) making first use of services; or

21 (3) taking possession or making first use of digital goods;

22 whichever comes first. The terms "receive" and "receipt" do not include
23 possession by a shipping company on behalf of the purchaser.

24 (b) This section:

25 (1) applies regardless of the characterization of a product as
26 tangible personal property, a digital good, or a service;

27 (2) applies only to the determination of a seller's obligation to pay
28 or collect and remit a sales or use tax with respect to the seller's
29 retail sale of a product; and

30 (3) does not affect the obligation of a purchaser or lessee to remit
31 tax on the use of the product to the taxing jurisdictions of that use.

32 (c) This section does not apply to sales or use taxes levied on the
33 following:

34 (1) The retail sale or transfer of watercraft, modular homes,
35 manufactured homes, or mobile homes. These items must be
36 sourced according to the requirements of this article.

37 (2) The retail sale, excluding lease or rental, of motor vehicles,
38 trailers, semitrailers, or aircraft that do not qualify as
39 transportation equipment, as defined in subsection (g). The retail
40 sale of these items shall be sourced according to the requirements
41 of this article, and the lease or rental of these items must be
42 sourced according to subsection (f).

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- 1 (3) Telecommunications services, ancillary services, and Internet
- 2 access service shall be sourced in accordance with IC 6-2.5-12.
- 3 **(4) Direct mail, which shall be sourced in accordance with**
- 4 **section 3 of this chapter.**
- 5 (d) The retail sale, excluding lease or rental, of a product shall be
- 6 sourced as follows:
- 7 (1) When the product is received by the purchaser at a business
- 8 location of the seller, the sale is sourced to that business location.
- 9 (2) When the product is not received by the purchaser at a
- 10 business location of the seller, the sale is sourced to the location
- 11 where receipt by the purchaser (or the purchaser's donee,
- 12 designated as such by the purchaser) occurs, including the
- 13 location indicated by instructions for delivery to the purchaser (or
- 14 donee), known to the seller.
- 15 (3) When subdivisions (1) and (2) do not apply, the sale is
- 16 sourced to the location indicated by an address for the purchaser
- 17 that is available from the business records of the seller that are
- 18 maintained in the ordinary course of the seller's business when
- 19 use of this address does not constitute bad faith.
- 20 (4) When subdivisions (1), (2), and (3) do not apply, the sale is
- 21 sourced to the location indicated by an address for the purchaser
- 22 obtained during the consummation of the sale, including the
- 23 address of a purchaser's payment instrument, if no other address
- 24 is available, when use of this address does not constitute bad
- 25 faith.
- 26 (5) When none of the previous rules of subdivision (1), (2), (3),
- 27 or (4) apply, including the circumstance in which the seller is
- 28 without sufficient information to apply the previous rules, then the
- 29 location will be determined by the address from which tangible
- 30 personal property was shipped, from which the digital good or the
- 31 computer software delivered electronically was first available for
- 32 transmission by the seller, or from which the service was provided
- 33 (disregarding for these purposes any location that merely provided
- 34 the digital transfer of the product sold).
- 35 (e) The lease or rental of tangible personal property, other than
- 36 property identified in subsection (f) or (g), shall be sourced as follows:
- 37 (1) For a lease or rental that requires recurring periodic payments,
- 38 the first periodic payment is sourced the same as a retail sale in
- 39 accordance with the provisions of subsection (d). Periodic
- 40 payments made subsequent to the first payment are sourced to the
- 41 primary property location for each period covered by the payment.
- 42 The primary property location shall be as indicated by an address

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1 for the property provided by the lessee that is available to the
 2 lessor from its records maintained in the ordinary course of
 3 business, when use of this address does not constitute bad faith.
 4 The property location shall not be altered by intermittent use at
 5 different locations, such as use of business property that
 6 accompanies employees on business trips and service calls.

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

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

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

16 (1) For a lease or rental that requires recurring periodic payments,
 17 each periodic payment is sourced to the primary property location.
 18 The primary property location shall be as indicated by an address
 19 for the property provided by the lessee that is available to the
 20 lessor from its records maintained in the ordinary course of
 21 business, when use of this address does not constitute bad faith.
 22 This location shall not be altered by intermittent use at different
 23 locations.

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

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

30 (g) The retail sale, including lease or rental, of transportation
 31 equipment shall be sourced the same as a retail sale in accordance with
 32 the provisions of subsection (d), notwithstanding the exclusion of lease
 33 or rental in subsection (d). As used in this subsection, "transportation
 34 equipment" means any of the following:

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

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

40 (A) registered through the International Registration Plan; and

41 (B) operated under authority of a carrier authorized and
 42 certificated by the U.S. Department of Transportation or

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- 1 another federal authority to engage in the carriage of persons
 2 or property in interstate commerce.
- 3 (3) Aircraft that are operated by air carriers authorized and
 4 certificated by the U.S. Department of Transportation or another
 5 federal or a foreign authority to engage in the carriage of persons
 6 or property in interstate or foreign commerce.
- 7 (4) Containers designed for use on and component parts attached
 8 or secured on the items set forth in subdivisions (1) through (3).
- 9 (h) Notwithstanding subsection (d), a retail sale of floral products
 10 in which a florist or floral business:
- 11 (1) takes a floral order from a purchaser; and
 12 (2) transmits the floral order by telegraph, telephone, or other
 13 means of communication to another florist or floral business for
 14 delivery;
- 15 is sourced to the location of the florist or floral business that originally
 16 takes the floral order from the purchaser.
- 17 SECTION 6. IC 6-2.5-13-3 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) Notwithstanding
 19 section 1 of this chapter, a purchaser of **advertising and promotional**
 20 direct mail that is not a holder of a direct pay permit ~~shall~~ **may** provide
 21 to the seller in conjunction with the purchase: ~~either:~~
- 22 (1) a direct mail form;
 23 (2) **a certificate of exemption claiming "direct mail" (or**
 24 **another written statement approved, authorized, or accepted**
 25 **by the department);** or
 26 (3) information to show the jurisdictions to which the **advertising**
 27 **and promotional** direct mail is delivered to recipients.
- 28 (b) ~~Upon receipt of~~ **If the purchaser provides** the direct mail form
 29 **referred to in subsection (a)(1), or a certificate or statement**
 30 **referred to in subsection (a)(2), in the absence of bad faith,** the
 31 seller is relieved of all obligations to collect, pay, or remit the
 32 applicable tax ~~and on any transaction involving advertising and~~
 33 **promotional direct mail to which the direct mail form, certificate,**
 34 **or statement applies.** The purchaser **shall source the sale to the**
 35 **jurisdictions to which the advertising and promotional direct mail**
 36 **is to be delivered to the recipients and** is obligated to pay or remit the
 37 applicable tax on a direct pay basis. ~~A direct mail form remains in~~
 38 ~~effect for all future sales of direct mail by the seller to the purchaser~~
 39 ~~until it is revoked in writing.~~
- 40 (c) ~~Upon receipt of information from~~ **If the purchaser provides the**
 41 **information referred to in subsection (a)(3) showing the jurisdictions**
 42 **to which the advertising and promotional** direct mail is delivered to

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1 recipients, the seller shall **source the sale to the jurisdictions to**
 2 **which the advertising and promotional direct mail is to be**
 3 **delivered and** collect the tax according to the delivery information
 4 provided by the purchaser. In the absence of bad faith, the seller is
 5 relieved of any further obligation to collect tax on any transaction
 6 where the seller has **sourced the sale and** collected tax under the
 7 delivery information provided by the purchaser.

8 (d) If the purchaser of **advertising and promotional** direct mail
 9 does not have a direct pay permit and does not provide the seller with
 10 either a direct mail form **referred to in subsection (a)(1), a certificate**
 11 **or statement referred to in subsection (a)(2),** or delivery information
 12 **as required by referred to in subsection (a); (a)(3), the sale shall be**
 13 **sourced and the** seller shall collect the tax according to section 1(d)(5)
 14 of this chapter. Nothing in this subsection limits a purchaser's
 15 obligation for sales or use tax to any state to which the **advertising and**
 16 **promotional** direct mail is delivered. **The state to which the**
 17 **advertising and promotional direct mail is delivered may disallow**
 18 **a credit for tax paid to this state on sales sourced under this**
 19 **subsection.**

20 (e) Except as provided in this section, sales of other direct mail
 21 are sourced in accordance with section 1(d)(3) of this chapter. A
 22 purchaser of other direct mail may provide the seller with either:

23 (1) a direct mail form; or

24 (2) a certificate of exemption claiming "direct mail" (or
 25 another written statement approved, authorized, or accepted
 26 by the department).

27 (f) If the purchaser provides the direct mail form referred to in
 28 subsection (e)(1) or a certificate or statement referred to in
 29 subsection (e)(2), the seller, in the absence of bad faith, is relieved
 30 of all obligations to collect, pay, or remit any tax on any
 31 transaction involving other direct mail to which the direct mail
 32 form, certificate, or statement applies. Notwithstanding subsection
 33 (e), such a sale shall be sourced to the jurisdictions to which the
 34 other direct mail is to be delivered to the recipients and the
 35 purchaser shall report and pay the applicable tax due.

36 (g) If a purchaser of direct mail provides the seller with
 37 documentation of direct pay authority, the purchaser shall not be
 38 required to provide a direct mail form, a **certificate or statement,** or
 39 delivery information to the seller.

40 (h) A direct mail form remains in effect for all future sales of
 41 direct mail by the seller to the purchaser until it is revoked in
 42 writing.



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- 1 **(i) This section applies to a transaction characterized as the sale**
- 2 **of services only if the service is an integral part of the production**
- 3 **and distribution of printed material that is direct mail.**
- 4 **(j) This section does not apply to any transaction that includes**
- 5 **the development of billing information or the provision of any data**
- 6 **processing service that is more than incidental, regardless of**
- 7 **whether advertising and promotional direct mail is included in the**
- 8 **same mailing.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 608, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 608 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 10, Nays 1.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 608, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 41.

Page 3, line 3, after "is direct mail" insert ",".

Page 4, delete lines 10 through 30, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-5-19.5, AS AMENDED BY P.L.182-2009(ss), SECTION 179, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: 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.

(b) For purposes of this section, "blood glucose monitoring ~~device~~ **supply**" means blood glucose meters and measuring strips, lancets, and other similar diabetic supplies furnished **with or** without charge.

~~(b)~~ **(c)** 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~~, **supply**, and the packaging and literature for a blood glucose monitoring ~~device~~: **supply**.

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

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

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supply; or

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 608 as printed January 30, 2013.)

BROWN T, Chair

Committee Vote: yeas 20, nays 0.

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