



January 30, 2013

SENATE BILL No. 608

DIGEST OF SB 608 (Updated January 29, 2013 11:21 am - DI 58)

Citations Affected: IC 6-2.5.

Synopsis: Sales tax exemption and SSUTA compliance. Provides a sales tax exclusion for postage. 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 (SSUTA). Adds corresponding definitions. Removes the separate sales tax exemption for blood glucose monitoring equipment and devices that are otherwise covered by the durable medical equipment exemption, under which durable medical equipment is exempt only if sold or rented under a prescription to comply with SSUTA. (The exemption for blood glucose monitoring equipment will require a prescription.) Restates the sales tax exemption for blood glucose monitoring supplies, including measuring strips, lancets, and other similar diabetic supplies, to maintain the current exemption for these supplies regardless of whether they are sold under a prescription.

Effective: July 1, 2013.

Kenley

January 17, 2013, read first time and referred to Committee on Tax and Fiscal Policy.
January 29, 2013, reported favorably — Do Pass.

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SB 608—LS 7040/DI 58+



January 30, 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.

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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 6-2.5-1-5, AS AMENDED BY P.L.113-2010,
2 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 5. (a) Except as provided in subsection (b), "gross
4 retail income" means the total amount of consideration, including cash,
5 credit, property, and services, for which tangible personal property is
6 sold, leased, or rented, valued in money, whether received in money or
7 otherwise, without any deduction for:
8 (1) the seller's cost of the property sold;
9 (2) the cost of materials used, labor or service cost, interest,
10 losses, all costs of transportation to the seller, all taxes imposed
11 on the seller, and any other expense of the seller;
12 (3) charges by the seller for any services necessary to complete
13 the sale, other than delivery and installation charges;
14 (4) delivery charges; or
15 (5) consideration received by the seller from a third party if:
16 (A) the seller actually receives consideration from a party
17 other than the purchaser and the consideration is directly

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- 1 related to a price reduction or discount on the sale;
- 2 (B) the seller has an obligation to pass the price reduction or
- 3 discount through to the purchaser;
- 4 (C) the amount of the consideration attributable to the sale is
- 5 fixed and determinable by the seller at the time of the sale of
- 6 the item to the purchaser; and
- 7 (D) the price reduction or discount is identified as a third party
- 8 price reduction or discount on the invoice received by the
- 9 purchaser or on a coupon, certificate, or other documentation
- 10 presented by the purchaser.

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

15 **However, delivery charges do not include postage.**

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

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

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

42 SECTION 2. IC 6-2.5-1-10.7 IS ADDED TO THE INDIANA

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

10 SECTION 3. IC 6-2.5-1-22.2 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2013]: **Sec. 22.2. "Other direct mail" means**
 13 **any direct mail that is not advertising and promotional direct mail,**
 14 **regardless of whether advertising and promotional direct mail is**
 15 **included in the same mailing. The term includes the following:**

16 (1) **Transactional direct mail that contains personal**
 17 **information specific to the addressee, including invoices, bills,**
 18 **statements of account, or payroll advices.**

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

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

24 **The term does not include the development of billing information**
 25 **or the provision of any data processing service that is more than**
 26 **incidental.**

27 SECTION 4. IC 6-2.5-5-18, AS AMENDED BY P.L.84-2011,
 28 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2013]: **Sec. 18. (a) Sales or rentals of durable medical**
 30 **equipment, mobility enhancing equipment, prosthetic devices, artificial**
 31 **limbs, orthopedic devices, dental prosthetic devices, eyeglasses,**
 32 **contact lenses, and other medical supplies and devices are exempt from**
 33 **the state gross retail tax, if the sales or rentals are prescribed by a**
 34 **person licensed to issue the prescription.**

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

42 (c) **Sales of colostomy bags, ileostomy bags, and the medical**

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1 equipment, supplies, and devices used in conjunction with those bags
2 are exempt from the state gross retail tax.

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

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

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

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

19 (c) Transactions involving the following are exempt from the
20 state gross retail tax:

21 (1) A drug sample, the packaging and literature for a drug sample,
22 a blood glucose monitoring ~~device~~, **supply**, and the packaging
23 and literature for a blood glucose monitoring ~~device~~: **supply**.

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

27 (A) a drug sample or a blood glucose monitoring ~~device~~;
28 **supply**; or

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

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

35 (1) taking possession of tangible personal property;

36 (2) making first use of services; or

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

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

40 (b) This section:

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

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- 1 (2) applies only to the determination of a seller's obligation to pay
- 2 or collect and remit a sales or use tax with respect to the seller's
- 3 retail sale of a product; and
- 4 (3) does not affect the obligation of a purchaser or lessee to remit
- 5 tax on the use of the product to the taxing jurisdictions of that use.
- 6 (c) This section does not apply to sales or use taxes levied on the
- 7 following:
- 8 (1) The retail sale or transfer of watercraft, modular homes,
- 9 manufactured homes, or mobile homes. These items must be
- 10 sourced according to the requirements of this article.
- 11 (2) The retail sale, excluding lease or rental, of motor vehicles,
- 12 trailers, semitrailers, or aircraft that do not qualify as
- 13 transportation equipment, as defined in subsection (g). The retail
- 14 sale of these items shall be sourced according to the requirements
- 15 of this article, and the lease or rental of these items must be
- 16 sourced according to subsection (f).
- 17 (3) Telecommunications services, ancillary services, and Internet
- 18 access service shall be sourced in accordance with IC 6-2.5-12.
- 19 **(4) Direct mail, which shall be sourced in accordance with**
- 20 **section 3 of this chapter.**
- 21 (d) The retail sale, excluding lease or rental, of a product shall be
- 22 sourced as follows:
- 23 (1) When the product is received by the purchaser at a business
- 24 location of the seller, the sale is sourced to that business location.
- 25 (2) When the product is not received by the purchaser at a
- 26 business location of the seller, the sale is sourced to the location
- 27 where receipt by the purchaser (or the purchaser's donee,
- 28 designated as such by the purchaser) occurs, including the
- 29 location indicated by instructions for delivery to the purchaser (or
- 30 donee), known to the seller.
- 31 (3) When subdivisions (1) and (2) do not apply, the sale is
- 32 sourced to the location indicated by an address for the purchaser
- 33 that is available from the business records of the seller that are
- 34 maintained in the ordinary course of the seller's business when
- 35 use of this address does not constitute bad faith.
- 36 (4) When subdivisions (1), (2), and (3) do not apply, the sale is
- 37 sourced to the location indicated by an address for the purchaser
- 38 obtained during the consummation of the sale, including the
- 39 address of a purchaser's payment instrument, if no other address
- 40 is available, when use of this address does not constitute bad
- 41 faith.
- 42 (5) When none of the previous rules of subdivision (1), (2), (3),

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1 or (4) apply, including the circumstance in which the seller is
 2 without sufficient information to apply the previous rules, then the
 3 location will be determined by the address from which tangible
 4 personal property was shipped, from which the digital good or the
 5 computer software delivered electronically was first available for
 6 transmission by the seller, or from which the service was provided
 7 (disregarding for these purposes any location that merely provided
 8 the digital transfer of the product sold).

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

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

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

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

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

32 (1) For a lease or rental that requires recurring periodic payments,
 33 each periodic payment is sourced to the primary property location.
 34 The primary property location shall be as indicated by an address
 35 for the property provided by the lessee that is available to the
 36 lessor from its records maintained in the ordinary course of
 37 business, when use of this address does not constitute bad faith.
 38 This location shall not be altered by intermittent use at different
 39 locations.

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

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

4 (g) The retail sale, including lease or rental, of transportation
5 equipment shall be sourced the same as a retail sale in accordance with
6 the provisions of subsection (d), notwithstanding the exclusion of lease
7 or rental in subsection (d). As used in this subsection, "transportation
8 equipment" means any of the following:

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

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

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

15 (B) operated under authority of a carrier authorized and
16 certificated by the U.S. Department of Transportation or
17 another federal authority to engage in the carriage of persons
18 or property in interstate commerce.

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

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

25 (h) Notwithstanding subsection (d), a retail sale of floral products
26 in which a florist or floral business:

27 (1) takes a floral order from a purchaser; and

28 (2) transmits the floral order by telegraph, telephone, or other
29 means of communication to another florist or floral business for
30 delivery;

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

33 SECTION 7. IC 6-2.5-13-3 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) Notwithstanding
35 section 1 of this chapter, a purchaser of **advertising and promotional**
36 direct mail that is not a holder of a direct pay permit ~~shall~~ **may** provide
37 to the seller in conjunction with the purchase: ~~either~~:

38 (1) a direct mail form;

39 (2) a **certificate of exemption claiming "direct mail" (or**
40 **another written statement approved, authorized, or accepted**
41 **by the department);** or

42 (3) information to show the jurisdictions to which the **advertising**

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- 1 **and promotional** direct mail is delivered to recipients.
- 2 (b) ~~Upon receipt of~~ **If the purchaser provides** the direct mail form
3 **referred to in subsection (a)(1), or a certificate or statement**
4 **referred to in subsection (a)(2), in the absence of bad faith,** the
5 seller is relieved of all obligations to collect, pay, or remit the
6 applicable tax ~~and on any transaction involving advertising and~~
7 **promotional direct mail to which the direct mail form, certificate,**
8 **or statement applies.** The purchaser **shall source the sale to the**
9 **jurisdictions to which the advertising and promotional direct mail**
10 **is to be delivered to the recipients and** is obligated to pay or remit the
11 applicable tax on a direct pay basis. ~~A direct mail form remains in~~
12 ~~effect for all future sales of direct mail by the seller to the purchaser~~
13 ~~until it is revoked in writing.~~
- 14 (c) ~~Upon receipt of information from~~ **If the purchaser provides the**
15 **information referred to in subsection (a)(3)** showing the jurisdictions
16 to which the **advertising and promotional** direct mail is delivered to
17 recipients, the seller shall **source the sale to the jurisdictions to**
18 **which the advertising and promotional direct mail is to be**
19 **delivered and** collect the tax according to the delivery information
20 provided by the purchaser. In the absence of bad faith, the seller is
21 relieved of any further obligation to collect tax on any transaction
22 where the seller has **sourced the sale and** collected tax under the
23 delivery information provided by the purchaser.
- 24 (d) If the purchaser of **advertising and promotional** direct mail
25 does not have a direct pay permit and does not provide the seller with
26 either a direct mail form **referred to in subsection (a)(1), a certificate**
27 **or statement referred to in subsection (a)(2),** or delivery information
28 ~~as required by referred to in subsection (a);~~ **(a)(3), the sale shall be**
29 **sourced and the** seller shall collect the tax according to section 1(d)(5)
30 of this chapter. Nothing in this subsection limits a purchaser's
31 obligation for sales or use tax to any state to which the **advertising and**
32 **promotional** direct mail is delivered. **The state to which the**
33 **advertising and promotional direct mail is delivered may disallow**
34 **a credit for tax paid to this state on sales sourced under this**
35 **subsection.**
- 36 (e) **Except as provided in this section, sales of other direct mail**
37 **are sourced in accordance with section 1(d)(3) of this chapter. A**
38 **purchaser of other direct mail may provide the seller with either:**
- 39 (1) **a direct mail form; or**
- 40 (2) **a certificate of exemption claiming "direct mail" (or**
41 **another written statement approved, authorized, or accepted**
42 **by the department).**

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- 1 **(f) If the purchaser provides the direct mail form referred to in**
- 2 **subsection (e)(1) or a certificate or statement referred to in**
- 3 **subsection (e)(2), the seller, in the absence of bad faith, is relieved**
- 4 **of all obligations to collect, pay, or remit any tax on any**
- 5 **transaction involving other direct mail to which the direct mail**
- 6 **form, certificate, or statement applies. Notwithstanding subsection**
- 7 **(e), such a sale shall be sourced to the jurisdictions to which the**
- 8 **other direct mail is to be delivered to the recipients and the**
- 9 **purchaser shall report and pay the applicable tax due.**
- 10 **(g) If a purchaser of direct mail provides the seller with**
- 11 **documentation of direct pay authority, the purchaser shall not be**
- 12 **required to provide a direct mail form, a certificate or statement, or**
- 13 **delivery information to the seller.**
- 14 **(h) A direct mail form remains in effect for all future sales of**
- 15 **direct mail by the seller to the purchaser until it is revoked in**
- 16 **writing.**
- 17 **(i) This section applies to a transaction characterized as the sale**
- 18 **of services only if the service is an integral part of the production**
- 19 **and distribution of printed material that is direct mail.**
- 20 **(j) This section does not apply to any transaction that includes**
- 21 **the development of billing information or the provision of any data**
- 22 **processing service that is more than incidental, regardless of**
- 23 **whether advertising and promotional direct mail is included in the**
- 24 **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.

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