

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 608**

Citations Affected: IC 6-2.5.

Synopsis: PROPOSED CONFERENCE COMMITTEE REPORT FOR ESB 608. State gross retail tax. Provides a sales tax exclusion for postage that is separately stated on the invoice, bill of sale, or similar document. Defines postage charges. 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 also applies to the sale of the supplies. **(This conference committee report adds the sales tax exclusion for postage charges that are separately stated and adds a definition of postage charges.)**

Effective: July 1, 2013.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 608 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

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

1 fixed and determinable by the seller at the time of the sale of
 2 the item to the purchaser; and
 3 (D) the price reduction or discount is identified as a third party
 4 price reduction or discount on the invoice received by the
 5 purchaser or on a coupon, certificate, or other documentation
 6 presented by the purchaser.

7 For purposes of subdivision (4), delivery charges are charges by the
 8 seller for preparation and delivery of the property to a location
 9 designated by the purchaser of property, including but not limited to
 10 transportation, shipping, postage **charges that are not separately**
 11 **stated on the invoice, bill of sale, or similar document**, handling,
 12 crating, and packing. **Delivery charges do not include postage**
 13 **charges that are separately stated on the invoice, bill of sale, or**
 14 **similar document.**

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

17 (1) the value of any tangible personal property received in a like
 18 kind exchange in the retail transaction, if the value of the property
 19 given in exchange is separately stated on the invoice, bill of sale,
 20 or similar document given to the purchaser;

21 (2) the receipts received in a retail transaction which constitute
 22 interest, finance charges, or insurance premiums on either a
 23 promissory note or an installment sales contract;

24 (3) discounts, including cash, terms, or coupons that are not
 25 reimbursed by a third party that are allowed by a seller and taken
 26 by a purchaser on a sale;

27 (4) interest, financing, and carrying charges from credit extended
 28 on the sale of personal property if the amount is separately stated
 29 on the invoice, bill of sale, or similar document given to the
 30 purchaser;

31 (5) any taxes legally imposed directly on the consumer that are
 32 separately stated on the invoice, bill of sale, or similar document
 33 given to the purchaser;

34 (6) installation charges that are separately stated on the invoice,
 35 bill of sale, or similar document given to the purchaser; ~~or~~

36 (7) telecommunications nonrecurring charges; **or**

37 **(8) postage charges that are separately stated on the invoice,**
 38 **bill of sale, or similar document.**

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

43 SECTION 2. IC 6-2.5-1-7.5 IS ADDED TO THE INDIANA CODE
 44 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 45 1, 2013]: **Sec. 7.5. "Postage charges", for purposes of this article,**
 46 **mean amounts that:**

47 **(1) are for the purchase price of stamps or similar charges for**
 48 **mail or parcel delivery through the United States mail,**
 49 **without any additional amounts added to the actual price; and**

50 **(2) are incurred by a seller on behalf of its customers or**
 51 **purchasers.**

1 **Postage charges do not include any charges for mail or parcel**
 2 **delivery by any means other than through United States mail.**

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

13 SECTION 4. IC 6-2.5-1-22.2 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2013]: **Sec. 22.2. "Other direct mail" means**
 16 **any direct mail that is not advertising and promotional direct mail,**
 17 **regardless of whether advertising and promotional direct mail is**
 18 **included in the same mailing. The term includes the following:**

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

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

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

27 **The term does not include the development of billing information**
 28 **or the provision of any data processing service that is more than**
 29 **incidental.**

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

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

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

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

50 (e) Sales of equipment and devices used to monitor blood glucose
 51 level, including blood glucose meters and measuring strips, lancets,

1 and other similar diabetic supplies, are exempt from the state gross
 2 retail tax, regardless of whether the equipment and devices are
 3 prescribed.

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

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

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

15 (1) A drug sample, the packaging and literature for a drug sample,
 16 a blood glucose monitoring ~~device~~, **supply**, and the packaging
 17 and literature for a blood glucose monitoring ~~device~~. **supply**.

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

21 (A) a drug sample or a blood glucose monitoring ~~device~~;
 22 **supply**; or

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

25 SECTION 7. IC 6-2.5-13-1, AS AMENDED BY P.L.182-2009(ss),
 26 SECTION 185, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) As used in this section, the
 28 terms "receive" and "receipt" mean:

29 (1) taking possession of tangible personal property;

30 (2) making first use of services; or

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

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

34 (b) This section:

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

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

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

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

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

47 (2) The retail sale, excluding lease or rental, of motor vehicles,
 48 trailers, semitrailers, or aircraft that do not qualify as
 49 transportation equipment, as defined in subsection (g). The retail
 50 sale of these items shall be sourced according to the requirements

1 of this article, and the lease or rental of these items must be
2 sourced according to subsection (f).

3 (3) Telecommunications services, ancillary services, and Internet
4 access service shall be sourced in accordance with IC 6-2.5-12.

5 **(4) Direct mail, which shall be sourced in accordance with**
6 **section 3 of this chapter.**

7 (d) The retail sale, excluding lease or rental, of a product shall be
8 sourced as follows:

9 (1) When the product is received by the purchaser at a business
10 location of the seller, the sale is sourced to that business location.

11 (2) When the product is not received by the purchaser at a
12 business location of the seller, the sale is sourced to the location
13 where receipt by the purchaser (or the purchaser's donee,
14 designated as such by the purchaser) occurs, including the
15 location indicated by instructions for delivery to the purchaser (or
16 donee), known to the seller.

17 (3) When subdivisions (1) and (2) do not apply, the sale is
18 sourced to the location indicated by an address for the purchaser
19 that is available from the business records of the seller that are
20 maintained in the ordinary course of the seller's business when
21 use of this address does not constitute bad faith.

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

28 (5) When none of the previous rules of subdivision (1), (2), (3),
29 or (4) apply, including the circumstance in which the seller is
30 without sufficient information to apply the previous rules, then the
31 location will be determined by the address from which tangible
32 personal property was shipped, from which the digital good or the
33 computer software delivered electronically was first available for
34 transmission by the seller, or from which the service was provided
35 (disregarding for these purposes any location that merely provided
36 the digital transfer of the product sold).

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

39 (1) For a lease or rental that requires recurring periodic payments,
40 the first periodic payment is sourced the same as a retail sale in
41 accordance with the provisions of subsection (d). Periodic
42 payments made subsequent to the first payment are sourced to the
43 primary property location for each period covered by the payment.
44 The primary property location shall be as indicated by an address
45 for the property provided by the lessee that is available to the
46 lessor from its records maintained in the ordinary course of
47 business, when use of this address does not constitute bad faith.
48 The property location shall not be altered by intermittent use at
49 different locations, such as use of business property that
50 accompanies employees on business trips and service calls.

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

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

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

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

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

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

24 (g) The retail sale, including lease or rental, of transportation
 25 equipment shall be sourced the same as a retail sale in accordance with
 26 the provisions of subsection (d), notwithstanding the exclusion of lease
 27 or rental in subsection (d). As used in this subsection, "transportation
 28 equipment" means any of the following:

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

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

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

35 (B) operated under authority of a carrier authorized and
 36 certificated by the U.S. Department of Transportation or
 37 another federal authority to engage in the carriage of persons
 38 or property in interstate commerce.

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

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

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

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

48 (2) transmits the floral order by telegraph, telephone, or other
 49 means of communication to another florist or floral business for
 50 delivery;

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

3 SECTION 8. IC 6-2.5-13-3 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) Notwithstanding
5 section 1 of this chapter, a purchaser of **advertising and promotional**
6 direct mail that is not a holder of a direct pay permit ~~shall~~ **may** provide
7 to the seller in conjunction with the purchase: ~~either:~~

8 (1) a direct mail form;

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

12 (3) information to show the jurisdictions to which the **advertising**
13 **and promotional** direct mail is delivered to recipients.

14 (b) ~~Upon receipt of~~ **If the purchaser provides** the direct mail form
15 **referred to in subsection (a)(1), or a certificate or statement**
16 **referred to in subsection (a)(2), in the absence of bad faith,** the
17 seller is relieved of all obligations to collect, pay, or remit the
18 applicable tax ~~and on any transaction involving advertising and~~
19 **promotional direct mail to which the direct mail form, certificate,**
20 **or statement applies.** The purchaser **shall source the sale to the**
21 **jurisdictions to which the advertising and promotional direct mail**
22 **is to be delivered to the recipients and** is obligated to pay or remit the
23 applicable tax on a direct pay basis. ~~A direct mail form remains in~~
24 ~~effect for all future sales of direct mail by the seller to the purchaser~~
25 ~~until it is revoked in writing.~~

26 (c) ~~Upon receipt of information from~~ **If the purchaser provides the**
27 **information referred to in subsection (a)(3) showing the jurisdictions**
28 **to which the advertising and promotional direct mail is delivered to**
29 **recipients, the seller shall source the sale to the jurisdictions to**
30 **which the advertising and promotional direct mail is to be**
31 **delivered and** collect the tax according to the delivery information
32 provided by the purchaser. In the absence of bad faith, the seller is
33 relieved of any further obligation to collect tax on any transaction
34 where the seller has **sourced the sale and** collected tax under the
35 delivery information provided by the purchaser.

36 (d) If the purchaser of **advertising and promotional** direct mail
37 does not have a direct pay permit and does not provide the seller with
38 either a direct mail form **referred to in subsection (a)(1), a certificate**
39 **or statement referred to in subsection (a)(2),** or delivery information
40 **as required by referred to in** subsection (a); (a)(3), the **sale shall be**
41 **sourced and** the seller shall collect the tax according to section 1(d)(5)
42 of this chapter. Nothing in this subsection limits a purchaser's
43 obligation for sales or use tax to any state to which the **advertising and**
44 **promotional** direct mail is delivered. **The state to which the**
45 **advertising and promotional direct mail is delivered may disallow**
46 **a credit for tax paid to this state on sales sourced under this**
47 **subsection.**

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

- 1 **(1) a direct mail form; or**
2 **(2) a certificate of exemption claiming "direct mail" (or**
3 **another written statement approved, authorized, or accepted**
4 **by the department).**
- 5 **(f) If the purchaser provides the direct mail form referred to in**
6 **subsection (e)(1) or a certificate or statement referred to in**
7 **subsection (e)(2), the seller, in the absence of bad faith, is relieved**
8 **of all obligations to collect, pay, or remit any tax on any**
9 **transaction involving other direct mail to which the direct mail**
10 **form, certificate, or statement applies. Notwithstanding subsection**
11 **(e), such a sale shall be sourced to the jurisdictions to which the**
12 **other direct mail is to be delivered to the recipients, and the**
13 **purchaser shall report and pay the applicable tax due.**
- 14 ~~(e)~~ **(g) If a purchaser of direct mail provides the seller with**
15 **documentation of direct pay authority, the purchaser shall not be**
16 **required to provide a direct mail form, a certificate or statement, or**
17 **delivery information to the seller.**
- 18 **(h) A direct mail form remains in effect for all future sales of**
19 **direct mail by the seller to the purchaser until it is revoked in**
20 **writing.**
- 21 **(i) This section applies to a transaction characterized as the sale**
22 **of services only if the service is an integral part of the production**
23 **and distribution of printed material that is direct mail.**
- 24 **(j) This section does not apply to any transaction that includes**
25 **the development of billing information or the provision of any data**
26 **processing service that is more than incidental, regardless of**
27 **whether advertising and promotional direct mail is included in the**
28 **same mailing.**
- (Reference is to ESB 608 as printed March 15, 2013.)

Conference Committee Report
on
Engrossed Senate Bill 608

Signed by:

Senator Kenley
Chairperson

Representative Smith M

Senator Skinner

Representative Goodin

Senate Conferees

House Conferees