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**DEPARTMENT OF STATE REVENUE**  
**Commissioner's Directive #21**  
**October 2007**  
**(Replaces Commissioner's Directive #21 Dated April 2004)**

**DISCLAIMER:** Commissioner's Directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Streamlined Sales Tax Agreement Provisions

**REFERENCE:** [IC 6-2.5](#)

**INTRODUCTION:**

In March 2000, a collection of states joined forces to sponsor a national sales tax initiative, the Streamlined Sales Tax Project (SSTP). The SSTP represented an effort on the part of its member states to "simplify and modernize sales and use tax collection and administration". The Streamlined Sales Tax Implementing States (SSTIS) crafted model legislation that became the foundation for the Streamlined Sales and Use Tax Agreement (Agreement). Member states were encouraged to adopt legislation conforming to this model. Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with this model legislation and the Agreement.

The Agreement was officially adopted by the SSTIS on November 12, 2002, and was last amended on June 23, 2007. Indiana is a full member of the Streamlined Sales Tax Governing Board, and is in compliance with the Agreement. Indiana will continue to amend its statutes as necessary to stay in compliance with the Agreement.

**2001 ENACTMENT**

SB 269-2001, effective July 1, 2001 enacted the simplified sales and use tax administration act. The act provided for the appointment of four delegates to enter into multistate discussions concerning the Agreement. The act gave the Department authority to enter into the Agreement with other states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The act authorized the Department to act jointly with other states that are members of the Agreement to establish standards for certification of certified service providers and certified automated systems and to establish performance standards for multistate sellers.

The act prohibited the Department from entering into the Agreement unless the Agreement required each state to have a simplified state rate, and uniform standards for sourcing transactions to taxing jurisdictions, the administration of exempt sales, and sales tax returns and remittances. The Agreement also required a central registration system, a reduction in taxpayer burden for jurisdictions with local sales taxes, monetary allowances to sellers and certified service providers, continued state compliance with the Agreement, consumer privacy, a business advisory council, and a state advisory council composed of non member states. The Agreement was required to provide that registration through the central registration system and collection of sales tax in a state would not be used in determining whether the seller has nexus with a state for any taxes.

The act also provided that no provision of the Agreement invalidated or amended any provision of Indiana law.

**2003 ENACTMENT**

HB 1815-2003, effective January 1, 2004, was the most comprehensive act that has been enacted so far to ensure that Indiana is in compliance with the Agreement. The act amended the definition of **gross retail income** to specifically include the total gross receipts received in a retail transaction without any deduction for the seller's cost of the property sold, the cost of materials, labor, transportation and any other expense of the seller, charges by the seller for any services necessary to complete the sale, delivery charges, installation charges, and the value of exempt property given to the purchaser where taxable and exempt property are bundled together and sold by the seller as a single product or piece of merchandise. Taxation of installation charges was amended in 2004, effective March 18, 2004.

The act added definitions for the following:

1. alcoholic beverage;
2. candy;
3. computer;
4. computer software;
5. delivered electronically;
6. dietary supplement;
7. drug;
8. durable medical equipment;
9. electronic;
10. food and food ingredients;
11. lease or rental;
12. mobility enhancing equipment;
13. prescription;
14. prewritten computer software;
15. prosthetic device;
16. soft drinks; and
17. tangible personal property.

The act amended [IC 6-2.5-4-1](#) which is the imposition section, to include in taxable gross income charges by the seller for preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating and packaging.

The act expanded the exemption for medical supplies to specifically include durable medical equipment and prosthetic devices to the list of medically related equipment and supplies that are eligible for exemption from the sales tax, if prescribed by a licensed practitioner.

The act amended [IC 6-2.5-5-20](#) concerning the sales tax exemption for food to include food ingredients. The exemption was changed to provide that food and food ingredients for human consumption include the following items if sold without eating utensils provided by the seller:

1. Food sold by a seller who is a food manufacturer, except bakeries.
2. Food sold in an unheated state by weight or volume as a single item.
3. Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

Items that are not exempt from the sales tax in the food category include:

1. candy;
2. alcoholic beverages;
3. soft drinks;
4. food sold through a vending machine;
5. food sold in a heated state or heated by the seller;
6. two or more food ingredients mixed or combined by the seller for sale as a single item; or
7. food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

The act amended [IC 6-2.5-6-9](#) concerning the bad debt deduction for uncollectible receivables to provide that the deduction does not include interest, and the amount of the deduction will be determined in accordance with Section 166 of the Internal Revenue Code adjusted to exclude finance charges, sales or use tax charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller, expenses incurred in attempting to collect the debt, and repossessed property. The amendment provided that the deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible, and if the amount of the deduction exceeds the amount of the retail merchant's taxable sales for the reporting period, the seller may file a claim for refund. Any payments received on a previously claimed uncollectible receivable shall be proportionally applied to the taxable price of the property, and to interest, service charges, and any other charges.

[IC 6-2.5-12](#) was added by the act to provide **sourcing of non mobile telecommunications service**. The sale of telecommunications services sold is sourced to the customer's place of primary use. The sourcing rule does not include telecommunication services sold on a call by call basis, mobile telecommunications services, post paid, or prepaid calling service.

[IC 6-2.5-13](#) was added to provide **general sourcing rules**. Sales tax applicable to the purchase of tangible personal property will be sourced to the location of the use of the property if it is delivered to the purchaser by the seller. If the property is delivered to the purchaser at the point of sale, the sales tax will be sourced to the location of the seller.

The general sourcing rules do not apply to the sale of watercraft, modular homes, manufactured homes, mobile homes, motor vehicles, trailers, semi trailers, or aircraft that do not qualify as transportation equipment, and telecommunications services.

Business purchasers that do not have a direct pay permit and know at the time of their purchase of a digital good, computer software delivered electronically, or service that will be concurrently available for use in more than one jurisdiction shall deliver to the seller a multiple point of use exemption form. This form will allow the purchaser to buy the items exempt from the sales tax, but will require the purchaser to pay use tax to the appropriate jurisdictions where the property is actually used. (Repealed by SB 502-2007)

A purchaser of direct mail that is going to be delivered to recipients in several jurisdictions shall provide the delivery information to the seller, and the seller will collect the tax for the appropriate jurisdictions. If a purchaser of direct mail provides the seller with a direct pay permit, the purchaser is not required to provide a direct mail form to the seller, and the seller is not required to collect the tax.

## 2004 ENACTMENT

HB 1365-2004, effective March 18, 2004, amended [IC 6-2.5-1-5](#) concerning the definition of gross retail income to define delivery charges as charges by the seller for preparation and delivery of the property to a location designated by the purchaser, including but not limited to transportation, shipping, postage, handling, crating, and packing.

The act also provided that installation charges are not subject to sales tax if the charges are separately stated on the invoice, bill of sale, or similar document.

## 2005 ENACTMENT

SB 213-2005, effective July 1, 2005, defines tobacco to mean cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco, and provides that tobacco is not included in the exemption for food for human consumption.

The act also amended [IC 6-2.5-11-10](#) to provide that the Department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes.

## 2006 ENACTMENT

SB 258-2006, effective July 1, 2006, defines a bundled transaction to be a retail sale of two or more products that are distinct, identifiable, and sold for one non-itemized price. The term does not include a retail sale where a service is the true object of the transaction, or a transaction that includes both taxable and nontaxable products in which the sales price of the taxable product does not exceed 10 percent of the total purchase price, or the total sales price of the bundled products.

[IC 6-2.5-1-16.5](#) adds a definition of direct mail to be printed material delivered by U.S. mail or another delivery service to a mass audience or addresses on a mailing list provided by the purchaser. The term does not include multiple items of printed material delivered to a single address.

[IC 6-2.5-4-15](#) effective for transactions occurring after Dec. 31, 2007 provides a person is making a retail transaction when the person sells tangible personal property as part of a bundled transaction.

[IC 6-2.5-6-1](#) provides that a voluntary seller who has registered under the Agreement, who is not a Model 1, Model 2, or Model 3 seller as defined in the Agreement, and whose liability for the preceding calendar year does not exceed \$1,000, is not required to file a monthly sales and use tax return.

[IC 6-2.5-13-1](#) was amended to provide that a floral business that takes a floral order from a purchaser, and transmits the floral order to another florist for delivery, is sourced to the location of the florist that originally takes

the floral order from the purchaser. This provision is effective until December 31, 2007.

## 2007 ENACTMENT

SB 502-2007, effective January 1, 2008, added and amended several provisions concerning the definition and taxability of telecommunication services. The act defines ancillary services as services incidental to providing telecommunication services including detailed telecommunications billing, directory assistance, vertical services, and voice mail services.

[IC 6-2.5-1-20.3](#) defines intrastate telecommunications service as a telecommunication service that originates and terminates in Indiana.

The act defines prepaid wireless calling service, value added non voice data service, and prepaid calling service.

A definition of telecommunication service has been added to incorporate the requirements of the Agreement without changing Indiana law as to the taxability of various services.

The act amends [IC 6-2.5-8-8](#) concerning exemption certificates to provide that a seller that accepts an incomplete exemption certificate is not relieved of the duty to collect sales tax unless the seller obtains a fully completed exemption certificate within 90 days after the sale. If a seller accepts an incomplete exemption certificate and the Department requests that the seller substantiate the exemption, the seller has 120 days to obtain a fully completed exemption certificate.

The act amends [IC 6-2.5-11-10](#) to provide that a certified service provider or a seller using a certified automated system that obtains a certification from the Department is not liable for sales tax collection errors that result from reliance on the Department's certification. If the Department notifies the seller of the error the seller has 10 days to correct their data base.

[IC 6-2.5-11-11](#) was added effective Jan. 1, 2008 to provide that a purchaser is relieved of liability for penalties for failure to pay the amount of tax due if the seller relied on erroneous data provided by the Department regarding the tax rate, boundaries, taxing jurisdiction assignments, or the taxability matrix. The same relief is available for a purchaser using a direct pay permit. The provision also requires the Department to provide relief from tax and interest if the purchaser relied on an erroneous classification in the taxability matrix of terms included as taxable or exempt, included in the sales price, excluded from the sales price, included in a definition, or excluded from a definition.

[IC 6-2.5-11-12](#) was added effective Jan. 1, 2008 to require the Department to review the software submitted to the governing board for certification as a certified automated system. The review is to determine that the program adequately classifies product based exemptions.

[IC 6-2.5-13-2](#) was repealed effective upon passage. The section concerned the multiple point of use exemption for software that may be used concurrently in more than one jurisdiction. This provision was repealed because the Agreement eliminated this provision.

This Directive summarizes legislative changes that have been made to ensure Indiana's compliance with the Agreement. Many administrative changes that did not require statutory changes have also been made by the Department. For further information concerning the Streamlined Sales and Use Tax Agreement in Indiana, access the Department's Web site at [www.in.gov/dor/streamlined](http://www.in.gov/dor/streamlined) The national streamlined sales tax Web site can be accessed at [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)

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