

DEPARTMENT OF STATE REVENUE

Information Bulletin #12
Sales Tax
December 2014
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SUBJECT: Public Transportation

REFERENCES: [IC 6-2.5-3-7](#); [IC 6-2.5-5-8](#); [IC 6-2.5-5-27](#); [45 IAC 2.2-5-61](#); [45 IAC 2.2-5-62](#); [45 IAC 2.2-5-63](#);
Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012)

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SUMMARY OF CHANGES:

Apart from nonsubstantive, technical changes, this version of the bulletin has been changed to incorporate decisions of the Indiana Tax Court concerning the exemption for specific items related to public transportation. The bulletin also incorporates statutory changes contained in HEA 1448-2014 that exempt from sales tax natural gas products used in public transportation if it is purchased by a public transportation corporation organized in accordance with [IC 36-9-4](#) providing transportation of persons. The act provides that natural gas products purchased after Dec. 31, 2013, and before Jan. 1, 2017, used in providing public transportation of persons or property is subject to sales tax. This provision takes effect on Jan. 1, 2014, and expires on Dec. 31, 2016.

PUBLIC TRANSPORTATION DEFINITION

"Public transportation" means the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, a contract carrier, a household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the appropriate federal or state regulatory authority.

Even if a person or company operates under the appropriate authority, they also must transport people or property for consideration. That is to say, a public transportation provider must be compensated for transporting people or goods. The goods transported must be goods owned by someone other than the public transportation provider. To qualify for the exemption, the tangible personal property purchased must be predominately used in providing public transportation. The tangible personal property is predominately used in public transportation if more than 50% of its use is attributable to transporting people or property for hire.

PUBLIC TRANSPORTATION REQUIREMENTS

The following requirements are factors the department weighs in determining whether a transportation company is engaged in public transportation. An asterisk (*) indicates a requirement that is considered by the department to be a critical factor in determining whether a transportation company qualifies for the public transportation exemption. A transportation company fails to qualify for the exemption if it does not, at a minimum, adhere to all the critical requirements. However, failure to adhere to one or more of the "noncritical" requirements can also result in a transportation company's failure to qualify for the exemption. The requirements are:

- The transportation company must transport the persons or property of another.*
 - The transportation company must maintain all shipping/transporting documents for all transactions (e.g., trip reports, truck logs, and invoices).*
- The transportation company must receive compensation for the services it provides.*
- The transportation company must hold and pay for appropriate public transportation insurance.*
- The transportation company must be fully and independently authorized by federal and/or state authorities to provide public transportation services.*
- If an employee of the parent company performs duties for the parent company and also performs "leased" duties for the transportation company, the parent company must maintain detailed records of when and which duties that employee is performing for the parent company and when and which duties that employee is performing under the lease.*
- If the parent company makes a capital contribution of the vehicles to the transportation company, titles to

the vehicles must be transferred to the transportation company.*

- The transportation company and the parent company must maintain separate books and records, including separate charts of accounts for each company:
 - Transactions between the parent company and the transportation company must evidence a commercially reasonable, arms-length relationship between the parties.
 - Transactions between the parent company and the transportation company must be evidenced by actual invoicing and payments for all transactions.*
 - The parent company and the transportation company must segregate and account for each entity's purchases and expenses.*
 - The parent company and the transportation company must maintain separate bank accounts.
 - The parent company and the transportation company must issue separate W2 forms to their employees.
 - The parent company and the transportation company must maintain separate federal depreciation schedules pursuant to generally accepted accounting standards.
 - Any income earned by the transportation company for transporting for a third party is to be recognized by the transportation company.
 - Because the transportation company and the parent company must have a distinct, arms-length business relationship, their separate incomes and expenses must be reflected on the taxpayers' federal income tax filings, all of which must be reconciled with the taxpayers' own records. When transactions are eliminated as intercompany transactions, the taxpayers must file the appropriate schedules with their federal returns.*
- If the parent company owns and holds titles to the vehicles, the parent company may lease those vehicles to the transportation company. However:
 - The lease must be documented as a commercially reasonable, arms-length transaction; and
 - The lease must be evidenced by actual payments to the parent company.
- If the transportation company owns the vehicles, titles to the vehicles must be held by the transportation company.
- The parent company and transportation company must have separate employees, or, if the transportation company leases its employees from the parent company, there must be a meaningful, arms-length charge for the leased employees.

ACQUISITION BY A PUBLIC TRANSPORTATION PROVIDER

Tangible personal property bought by a public transportation provider may be purchased exempt from sales or use tax if the property is to be predominately and directly used in providing public transportation. Property is directly used in providing public transportation if the property is reasonably necessary to provide public transportation.

Determining whether property is reasonably necessary to provide public transportation can be difficult. The following items are reasonably necessary to provide public transportation. These items do not comprise a comprehensive list. Rather, the following are provided to offer some basic examples of items that generally are reasonably necessary to provide public transportation:

- Roadway machinery and equipment;
- Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
- Tariff publications;
- Vehicles used for public transportation;
- Vehicles used to escort vehicles used in public transportation;
- Communication equipment;
- Equipment and items purchased to meet federal requirements;
- All replacement parts, repair parts, and materials consumed by exempt equipment;
- Tools and equipment used to repair and maintain rolling stock and track;
- Vehicles used primarily for transportation of track maintenance crews;
- Items used for repairs and maintenance of such vehicles;
- Items used for the production of financial matters, insurance, schedules, routes, and rates
- Items used to provide customer stations, handle baggage, or sell tickets;
- Items used to keep vehicles clean and safe for passengers;
- Items used to disassemble, load, and secure the customer's machinery for movement in public transportation;
- Machine shop and truck tools;
- Equipment related to the construction and operation of terminals;
- Directories;
- Gas storage facilities;
- Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottled water;

- Cleaning supplies;
- Employee uniforms;
- Garage supplies; and
- Planning transportation routes and obtaining travel permits.

Certain functional categories of items are not reasonably necessary to provide public transportation. For example, all items related to the marketing and selling of public transportation are taxable, including preparation of estimates. Telephone utilities used for sales activities; office supplies and furniture for sales personnel; and promotional expenses, such as matches, caps, or jackets given away to the public also would be subject to tax. If a taxpayer acquires tangible personal property for predominant use in providing public transportation, the property is entitled to the exemption. Thus, a phone used 10% of the time for sales calls and 90% of the time to dispatch vehicles would meet the predominant use (greater than 50%) test, so the entire purchase price of the item would be exempt. Items used for reassembly of equipment or machinery moved by a provider of public transportation are taxable. Labels used during disassembly of equipment to facilitate reassembly are taxable.

A person who acquires an aircraft to rent or lease to another person for predominant use in public transportation by the other person is exempt from the sales or use tax (see Sales Tax Information Bulletin #76).

For periods prior to Jan. 1, 2014, [IC 6-2.5-5-27](#) provides a sales tax exemption for purchases of tangible personal property, including natural gas products, used in providing public transportation of persons or property. Effective Jan. 1, 2014, HEA 1448-2014 amends [IC 6-2.5-5-27](#) for periods prior to Jan. 1, 2017, and provides that purchases of natural gas products by a provider of public transportation are subject to tax when the fuel is used to provide public transportation for either persons or property. However, during the same time period, purchases of natural gas products by a public transportation corporation for use in a motor vehicle used to provide public transportation of persons is exempt from tax. After Jan. 1, 2017, the exemption for natural gas products purchased by providers of public transportation and used to provide public transportation of persons or property will be reinstated.

"Natural gas products" means a liquid or compressed natural gas product, or a combination of liquefied petroleum and a compressed natural gas product.

EXEMPTION CERTIFICATES

Any person or company engaged in providing public transportation may buy certain items exempt from sales or use tax (see Section II), but if the public transportation provider has a facility in Indiana, it must register with the Indiana Department of Revenue to obtain a Registered Retail Merchant Certificate (RRMC) to buy exempt. The RRMC will have a number that must be used on all exemption certificates given to vendors by the public transportation provider. Exemption certificates can be used as a blanket exemption, kept on file by the vendor, or used for each individual transaction. A blanket exemption certificate tells the vendor that all purchases made by the public transportation provider are reasonably necessary to provide public transportation. If a public transportation provider uses property purchased with a blanket exemption in a taxable manner, the provider must pay use tax for the purchase. The tax must be remitted on the provider's sales and use tax return, the annual income tax return, or a consumer use tax return (Form ST-115).

Individuals engaged in public transportation but operating under another person's United States Department of Transportation (USDOT) or Indiana ID number or similar permit must use Form ST-105 when making an exempt purchase.

Another option is for the purchaser to provide the seller with the person's name, address, and motor carrier number or USDOT number and provide a signature to affirm, under penalties of perjury, that the information is correct and that the tangible personal property is being purchased for an exempt purpose.

UTILITIES

Before a person or company engaged in providing public transportation can purchase utilities, natural gas, electricity, local exchange telephone service, intrastate toll message telephone service, steam, or water exempt from tax, an exemption certificate issued by the department on behalf of the transportation provider must be on file with the utility. A public transportation provider will qualify for the special exemption certificate, Form ST-109, only after having an ST-200 utility exemption application approved by the department. The department will issue an ST-109 to a utility on behalf of the provider only if the utility being bought is separately metered, or the utility is predominately used in providing public transportation. If the utility is being used less than 50% in providing public transportation, the public transportation provider must pay the tax and file a claim for refund for the exempt percentage.

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Commissioner

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