

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2015-09ST  
April 13, 2017

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

## ISSUES

## Sales and Use Tax - Online Banking and Related Cloud-Based Products

Authority: [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-6](#); [IC 6-2.5-4-15](#); [IC 6-2.5-4-16.4](#); [IC 6-2.5-5-24](#); [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-2](#); Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue, 575 N.E.2d 718 (Ind. T.C. 1991); Grand Victoria Casino & Resort, LP v. Indiana Dep't of State Revenue, 789 N.E.2d 1041 (Ind. T.C. 2003); Asplundh Tree Expert Co. v. Indiana Dep't of State Revenue, 38 N.E.3d 744 (Ind. T.C. 2015); Sales Tax Information Bulletin #4 (June 2016); Sales Tax Information Bulletin #8 (December 2016); Revenue Ruling 2011-05ST, (December 9, 2011) 20111130 Ind. Reg. 045110713NRA; Streamlined Sales and Use Tax Agreement (December 23, 2016)

A taxpayer ("Company") is seeking an opinion as to whether Company's products are a service that is not subject to the Indiana sales and use tax when sold to clients located in Indiana.

## STATEMENT OF FACTS

Company is an out-of-state corporation. Company provides the following facts regarding its request for a revenue ruling:

## A. Service Offerings

The Company is an out-of-state corporation with customers located throughout the country, including Indiana. The Company's customers are financial institutions, including banks and federal and state credit unions (Financial Institutions). In order for Financial Institutions to remain competitive, they must be able to offer online banking to their account holders. The Company is the outsourced provider of Financial Institutions for online banking. The Company provides services over the Internet that allows account holders of a Financial Institution (Account Holder) to view and manage their personal bank accounts online. Specifically, the Company provides the Financial Institutions the ability to offer Account Holders the following services: Online Banking, Online Bill Payment, Finance and Budget Tool, and Mobile Banking.

The following is a detailed description of these service offerings:

- Online Banking. The Company's Online Banking service enables Financial Institutions to offer Account Holders online access to their personal bank account information through an online banking webpage unique to the Account Holder's Financial Institution. The Company's Online Banking webpage seamlessly displays the Account Holder's personal bank account information that is provided by the Financial Institution or agents of the Financial Institution in real-time. An Account Holder is also able to view online statements and past transactions.

The Company creates the unique banking webpage for the Financial Institution in order to perform its services. The Company does not turn over control over the website to the Financial Institution. Any changes that might be suggested by the Financial Institution must be made by the Company and not the Financial Institutions. The Company uses the website to provide its services.

- Finance and Budget Tool. An add-on service to Online Banking is the Finance and Budget Tool. The Finance and Budget Tool utilizes the Account Holder's banking information to categorize the Account Holder's personal spending (e.g., restaurants, gas, retail, and utilities). In addition, the Finance and Budget Tool allows Account Holders to create budgets and monitor their individual spending and savings activities.

- **Online Bill Payment.** Another add-on service to Online Banking is Online Bill Payment. Online Bill Payment is a service offering that allows an Account Holder to send payments to any company or person within the United States. All payments are processed by third-party vendors of the Financial Institutions' choosing. When an Account Holder initiates an Online Bill Payment, the Company connects the Account Holder to the third-party vendor selected by the Financial Institution through a single sign-on user interface hosted by the third-party bill payment processor. The third-party bill payment processor handles funds transfers in accordance with the Account Holder's instructions.
- **Mobile Banking.** The final add-on service to Online Banking is Mobile Banking. As part of its Mobile Banking service offerings, the Company offers Account Holders access to Online Banking from cell phones, tablets, and other mobile devices. Similar to the online banking website, the mobile banking website is customized and branded as to provide the Account Holder with a similar experience of accessing Online Banking from a personal computer. Like Online Banking, the Account Holder gains access to account balances, history, and other add-on services such as Online Bill Payments.

In addition, the Company enables Financial Institutions the ability to offer Account Holders a mobile banking application that can be downloaded for free on an iPhone or Android smartphone. With the mobile banking application, the Account Holder can access account balances, history, and other services directly from within the electronically downloaded app rather than on an Internet browser. Although the Account Holder may download the mobile banking application for free, the Company charges fees to Financial Institutions for offering this service on behalf of the Financial Institutions.

In performing the above services, the Company utilizes its proprietary platform. This platform is used exclusively by the Company in performing its services. Financial Institutions do not have rights or access to control or manipulate the Company's platform. Financial Institutions only provide and receive certain data feeds to and from the Company. Except for the mobile banking application, the Company does not sell, license, or transfer any software to Financial Institutions or Account Holders nor does the Company separately charge for use of its platform. In addition, neither the Financial Institution nor Account Holders have the ability to modify or control the Company's proprietary platform used by the Company in performing its services except in the processing of online bill payments. In the case of Online Bill Payment services, Account Holders still do not have the ability to modify or control the platform but simply have the limited ability to authorize amounts to be paid for the purposes of processing bill payments.

#### B. Customers

As discussed above, the Company's customers are financial institutions, many of which are federal credit unions. Under federal law a state cannot tax federal credit unions. (12 U.S.C. Sec. 1768.)

#### C. Fees

The Company has various billing methods depending on the Financial Institution and services selected. The Company may bill a monthly or annual service fee, charge on a per transaction basis for online bill payment, or charge based on the number of Account Holders. In addition, the Company may charge initial setup fees separate from any service offerings. The Company does not receive fees from Account Holders; all services are provided for the Financial Institution itself, although the end-user is the Account Holder. It is up to the Financial Institution as to whether the Account Holder is charged for access or use of any of the above service offerings and the Financial Institution would charge the Account Holders. Moreover, except for fees charged to Financial Institutions for downloaded mobile banking applications, the Company does not charge Financial Institutions for any software.

#### D. Service Documentation Agreements

In contracting with Financial Institutions, the Company enters into a Master Services Agreement and separate Service Documentation Agreements based on the services selected. . . . As indicated in each agreement, except for mobile banking applications, the agreements are for licenses of services and not the licenses of software.

For example, in the Master Services Agreement, the Company grants a "non-exclusive, non-sublicensable, and non-transferable (except as expressly set forth in this Agreement) license to access and use: (a) the Services as made available by [the Company], solely for the purpose of receiving the Authorized Services and providing the Services' functionality to End Users; and (b) the Service Documentation solely in

connection with Customer's access and use of the Services' as expressly permitted by this Agreement." In Service Documentation agreements, the Company contracts to provide enumerated services such as "provide to eligible End Users with personal computers (PCs running compatible browsers) with the following functionality." "view payments," "schedule payments," and "bill presentment."

## DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether its products are a non-taxable service. Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration. [IC 6-2.5-4-1\(c\)](#) goes on to provide in pertinent part:

For purposes of determining what constitutes selling at retail, it does not matter whether:

...

(2) the property is transferred alone or in conjunction with other property or services . . .

"Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

. . . personal property that:

(1) can be seen, weighed, measured, felt, or touched; or

(2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. [45 IAC 2.2-4-2](#) clarifies the taxability of services as follows:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;

(3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in [subsection (a)], the gross retail tax shall not apply to such transaction.

A unitary transaction is clarified in [45 IAC 2.2-1-1\(a\)](#) as follows:

Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

Sales of specified digital products are also included in the definition of retail transactions. [IC 6-2.5-4-16.4\(b\)](#) provides that a person engages in making a retail transaction when the person (1) electronically transfers specified digital products to an end user; and (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser. "Specified digital products," as currently defined by [IC 6-2.5-1-26.5](#), include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Products "transferred electronically" are

defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media."

Pursuant to Section 333 ("Use of Specified Digital Products," effective Jan. 1, 2010) of the Streamlined Sales and Use Tax Agreement ("SSUTA," effective December 23, 2016), of which Indiana is a signatory, "A member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Therefore, Indiana may not impose sales tax on a product transferred electronically by basing the product's taxability on inclusion of the product in the definition of tangible personal property. Pursuant to the same section of the SSUTA, "ancillary services," "computer software," and "telecommunication services" are excluded from the term "products transferred electronically." This means prewritten computer software transferred electronically is still taxable. Additionally, [IC 6-2.5-1-27.5\(c\)\(8\)](#) explicitly excludes ancillary services from the definition of telecommunication services, which are taxable under [IC 6-2.5-4-6](#) when they are intrastate, meaning "that the transmission must originate and terminate within Indiana." *Grand Victoria Casino & Resort, LP v. Indiana Dep't of State Revenue*, 789 N.E.2d 1041, 1045 (Ind. T.C. 2003). Accordingly, ancillary services are not subject to sales tax in Indiana.

Based on the foregoing, Indiana may impose sales tax on products transferred electronically only if the products meet the definition of specified digital products, pre-written computer software, or telecommunication services.

"Prewritten computer software" is defined in [IC 6-2.5-1-24](#) as follows:

Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

- (1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.
- (2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.
- (3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- (4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

"Telecommunication services" is defined in [IC 6-2.5-1-27.5](#) as follows:

- (a) "Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.
- (b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:
  - (1) is referred to as voice over Internet protocol services; or
  - (2) is classified by the Federal Communications Commission as enhanced or value added.
- (c) The term does not include the following:
  - (1) **Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.**
  - (2) Installation or maintenance of wiring or equipment on a customer's premises.
  - (3) Tangible personal property.
  - (4) Advertising, including but not limited to directory advertising.
  - (5) Billing and collection services provided to third parties.
  - (6) Internet access service.
  - (7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.
  - (8) Ancillary services.
  - (9) Digital products delivered electronically, including the following:

- (A) Software.
- (B) Music.
- (C) Video.
- (D) Reading materials.
- (E) Ring tones.

**(Emphasis added).**

With regard to the taxability of remotely accessed software, the Department in Sales Tax Information Bulletin #8 (December 2016) ("STIB 8") provides the following guidance:

Whether a transaction involving the use of "cloud-based" software is subject to Indiana sales or use tax depends on the facts and circumstances of each transaction, particularly with regards to the amount of control or possession the purchaser is granted in the software, the object of the transaction, and the ownership rights, if any, the purchaser has in the software.

STIB 8 goes on to provide guidance with regard to situations where a vendor uses cloud-based software on a client's behalf:

Depending on the factors of the transaction and arrangement, SaaS may or may not be subject to tax. Charges for accessing prewritten computer software maintained on the vendor's or a third party's computer or servers are not subject to tax when accessed electronically via the Internet if the customer is not transferred the software, does not have an ownership interest in the software, and does not control or possess the software or the server.

Example #3: An Indiana resident pays an hourly rate to utilize a vendor's software resources, which are maintained on the vendor's computer servers located outside of Indiana. The purchaser never uses, receives or has control of the software. Instead, the vendor uses the software to perform services on the Indiana resident's behalf. The transaction is not subject to sales tax.

Further, a purchaser may contract with a business in order to receive services, and as part of those services, tangible personal property in the form of software is provided. If the software provided to the customer is merely incidental to the provision of services (less than 10% of the total price of the transaction), then the service transaction may not be subject to sales tax as a unitary transaction.

Example #4: An Indiana business contracts with a service provider who will perform the business's IT functions. As part of the service, the Indiana business downloads the service provider's prewritten software onto the business's computer. However, the Indiana business does not use the software; rather, the service provider uses the software remotely in order to perform its IT services. The cost of the software is incidental (less than 10% of the total price of the transaction) to the service, so the transaction with the business customer is exempt from sales tax. The service provider, however, is subject to Indiana sales/use tax on the purchase of this software.

Even though software may be located outside Indiana, the Indiana Tax Court has indicated that something need not necessarily be physically present in Indiana for it to be "used" in Indiana. *Asplundh Tree Expert Co. v. Indiana Dep't of State Revenue*, 38 N.E.3d 744, 748 (Ind. T.C. 2015) (quoting *Fisher & Co., Inc. v. Dep't of Treasury*, 282 Mich.App. 207, 769 N.W.2d 740, 743 (2009)). Further, the Court stated the following:

Indiana's statutory definition of a taxable use is broad and leads to a very low threshold of taxability. See *USAir Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, 469 (Ind. Tax Ct.1993). Moreover, this Court has explained that the location of tangible personal property is not dispositive of whether the use tax applies because it would impermissibly limit the definition of a taxable use to either the intended or the ultimate use of the property. See *id.* at 471. . . . [T]herefore, the imposition of use tax does not necessarily depend on whether the subject property is physically present in the taxing state. *Id.*

Company's Online Banking, Online Bill Payment, and Mobile Banking products are provided over the internet and operated using proprietary software controlled by Company and maintained outside Indiana. Company further asserts that because neither the Financial Institutions nor the Account Holders gain possession nor the right to use, control, or direct the use of the Company's proprietary platform, there is no sale of tangible personal property. However, in order for a Financial Institution or Account Holder to use any of these products, they would need to open the Company-created Financial Institution's website from a web browser on a computer or the

Mobile Banking application on a mobile electronic device. In that respect, the products are software used electronically via the internet.

To distinguish Company's software from the guidance in STIB 8, Company compares its products to information services and data processing services, which are nontaxable services per [IC 6-2.5-1-27.5](#). Company further points to a prior Revenue Ruling (Revenue Ruling 2011-05ST, (December 9, 2011) 20111130 Ind. Reg. 045110713NRA) to support this proposition. In this Ruling, the Department concluded that a taxpayer's charges for online access to an information database were not taxable, but charges for the use of certain add-on remotely hosted software applications were taxable under the assumption that the customer obtained a possessory interest in the applications. With regard to the access to the database, the Ruling held that "Taxpayer's sales of access to its online database and its upgraded data packages via the Internet are not subject to Indiana sales and use tax." Regarding the workflow add-ons, however, the Ruling held that "customers are purchasing access to prewritten computer software for which they, the customers, have a possessory interest," and that "Taxpayer's sales of access to its workflow add-ons to end-user customers via the Internet are subject to Indiana sales and use tax when provided to customers located in Indiana."

Differentiating its own products from those at issue in Revenue Ruling 2011-05ST, Company makes the following assertions:

Here, although the Company uses its proprietary platform in performing its services . . . , the Company's services are not sales of tangible personal property as there is no sale, license, or transfer of software by the Company to the Financial Institutions or Account Holders nor does the Company separately charge for use of its platform. In addition, as indicated in the Service Documentation Agreements and like the taxpayer in Revenue Ruling No. 2011-05 ST, the Company does not transfer constructive possession of any software to Financial Institutions or Account Holders. The platform is used exclusively by the Company in performing its services. Unlike the taxpayer's customers in Revenue Ruling No. 2011-05 ST that could input data into the web-based application to modify or control the software tools, neither the Financial Institution nor Account Holders have the ability to modify or control the Company's proprietary platform used by the Company in performing its services. Financial Institutions only provide and receive certain data feeds from the Company. In the case of Online Bill Payment services, Account Holders still do not have the ability to modify or control the software but have the limited ability, as permitted by the Company, to enter individual data into a database used by the software for the purposes of transmitting information to third-party online bill payment processors for the processing of bill payments. In addition, unlike the workflow add-on services in Revenue Ruling No. 2011-05 ST that allow the taxpayer's customers to input their own information, combine that information with the taxpayer's database, and then use the software to make business decisions based on the combined information, the Company's add-on services provide limited functionality and only present the Account Holder's personal information in different formats and categories to assist with budgeting.

Moreover, in applying the true object test,<sup>1</sup> the true object of the transaction is for Financial Institutions to provide custom information services for its Account Holders through Online Banking, Online Bill Payment, and Mobile Banking services. With these services, Account Holders can view their bank accounts and authorize bill payments. As there is no constructive possession of software nor a separate charge for the platform used in providing the services, and the Company does not license, sell, or transfer the platform to Account Holders of Financial Institutions, the true object of the transaction is not tangible personal property, but instead non-taxable services.

Accordingly, except for specific charges related to the electronic download of the mobile banking application and charges for its Finance and Budget Tool, the Company's services within Indiana as outlined above are not subject to Indiana sales or use tax.

In the present matter, Company's Online Banking, Online Bill Payment, and Mobile Banking products have the same limited functionality as the database in the above-mentioned Ruling. The basic platform of the software is strictly to allow an Account Holder to access their bank account. Account Holders essentially can view their account information in the Online Banking or Mobile Banking platform and pay bills using the Online Bill Payment.

Furthermore, the serviceperson test found at [45 IAC 2.2-4-2](#) applies in this instance. Company satisfies all of the requirements of [45 IAC 2.2-4-2\(a\)](#) for finding that the Online Banking, Online Bill Payment, and Mobile Banking products provided by Company are non-taxable. First, Company is primarily in the business of providing digital banking services, and not selling tangible personal property. [45 IAC 2.2-4-2\(a\)\(1\)](#). Second, the software is for the purpose of allowing the Account Holders to view their bank accounts and pay bills. [45 IAC 2.2-4-2\(a\)\(2\)](#). Third, Financial Institutions are not charged for the software, but are either charged a monthly or an annual fee, a



charge per transaction fee on each online bill payment, or a charge based on the number of Account Holders. [45 IAC 2.2-4-2\(a\)\(3\)](#). Fourth, the software was created by Company, and thus Company did not have to pay sales tax when it was created or purchased. [45 IAC 2.2-4-2\(a\)\(4\)](#). Company's software is available to Company's customers incident to the service provided, which is providing digital banking services. Company retains ownership of the software. Customers are not granted any rights to the software.

Additionally, Company argues that the service is the "true object" of the transaction. [IC 6-2.5-4-15](#) provides that "[a] person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction." [IC 6-2.5-1-11.5](#) defines "bundled transaction" in pertinent part as follows:

(b) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, that are:

- (1) distinct;
- (2) identifiable; and
- (3) sold for one (1) nonitemized price.

...  
(d) The term does **not** include a retail sale that:

- (1) is comprised of:
  - (A) **a service that is the true object of the transaction;** and
  - (B) tangible personal property that:
    - (i) is essential to the use of the service; and
    - (ii) is provided exclusively in connection with the service;

(2) includes both taxable and nontaxable products in which:

- (A) the seller's purchase price; or
- (B) the sales price;

of the taxable products does not exceed ten percent (10%) of the total purchase price or the total sales price of the bundled products . . .

**(Emphasis added).**

The requirements for determining the "true object" of a transaction are not defined in statute. Company references *Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue*, 575 N.E.2d 718 (Ind. T.C. 1991), in which the Tax Court held that the determination of whether a sale was a retail transaction turned on whether the "true object" of the transaction was service or property. In *Cowden*, the taxpayer was a hauler who only on occasion sold stone at cost to his customers as a convenience, and therefore the Court concluded that the "true object" of the transaction was the provision of service and not the sale of stone. Company's position is that the true object of the transaction is for Financial Institutions to provide custom information services for its Account Holders through Online Banking, Online Bill Payment, and Mobile Banking services. Further, the tangible personal property is still used by Company to perform the services and neither title nor interest in the property transfers to Account Holders or Financial Institutions. As such, the true object of the transaction does appear to be non-taxable services.

Aside from the Online Banking, Online Bill Payment, and Mobile Banking products, Company concedes that the Finance and Budget Tool, like some of the add-ons in Revenue Ruling 2011-05ST, allows a user greater amounts of control and possesses greater functionality. Account Holders can create budgets and monitor their individual spending and savings activities, which goes beyond the simple inputs provided in the Online Banking, Online Bill Payment, and Mobile Banking products. Because of the greater amount of control one has over the software, this product would be considered taxable.

With regards to applications (or "apps") that are downloaded on a smartphone, tablet, or similar device, while Financial Institutions may make their mobile banking app available for free for Account Holders, Company charges fees to Financial Institutions for offering this product on behalf of the Financial Institutions. Since apps are software, and the software is downloaded and accessed by users, this would constitute a sale of software and subject to sales tax.

Having said that, some of the Financial Institutions are federal credit unions. Such organizations are exempt from sales tax pursuant to [IC 6-2.5-5-24](#), which in essence restates the United States Constitution's prohibition for any state to tax purchases made directly by the United States government. As the Department's guidance in Sales Tax Information Bulletin #4 (June 2016) clarifies, this exemption applies to agencies and instrumentalities of the United States government, including instrumentalities not wholly owned or controlled by the U.S. government, such as federal credit unions, federal land banks, federal reserve banks, and federal home loan banks. As such, if

a Financial Institution that is a federal credit union purchases the Finance and Budget Tool or the mobile banking app, the purchase would be exempt from sales tax.

Company has shown that the Financial Institutions are not granted any rights to the Online Banking, Online Bill Payment, and Mobile Banking products, that the software functionality is limited and primarily provides the ability to view their account information in the Online Banking or Mobile Banking platform and pay bills using the Online Bill Payment, and that the software is available to Financial Institutions and End Users incident to the service provided. Company's Online Banking, Online Bill Payment, and Mobile Banking products appears to be a service under [45 IAC 2.2-4-2](#), and not a sale, lease, license, or other transfer of software or other tangible personal property. Additionally, the product would not meet the definition of a "telecommunication service," which again is defined in [IC 6-2.5-1-27.5](#) as "electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points." Company is transmitting, conveying, or routing information; however, "telecommunication services" does not include "[d]ata processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information," which is what Company's service performs.

Financial Institutions pay for the services in various different ways. As Company states, "[t]he Company may bill a monthly or annual service fee, charge on a per transaction basis for online bill payment, or charge based on the number of Account Holders." However, in reviewing the documents provided, it does not appear that Financial Institutions are explicitly paying for software when it purchases the Online Banking, Online Bill Payment, and Mobile Banking products.

Based on the information provided, Company's Online Banking, Online Bill Payment, and Mobile Banking products are not subject to sales or use tax, as they are nontaxable services with the provision of tangible personal property incident to the service provided. Further, despite a single, bundled price, the true object of the transactions is the provision of a service.

### **RULING**

Company's Online Banking, Online Bill Payment, and Mobile Banking products are services as enumerated in [45 IAC 2.2-4-2](#). Further, the products are not "telecommunication services." Therefore, these services are not subject to Indiana sales and use tax. However, the charges for Finance and Budget Tool and electronic download of the mobile banking application within Indiana are transfers of tangible personal property, and are subject to Indiana sales and use tax, except in cases where they are purchased by a federal credit union.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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<sup>1</sup> Here, Company refers to *Cowden & Sons Trucking, Inc. v. Indiana Dept. of Rev.*, 575 N.E.2d 718 (1991), where the Indiana Tax Court applied the "true object" test to determine whether the transaction was the provision of a service or sale of tangible personal property.

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