

DEPARTMENT OF STATE REVENUE

Commissioner's Directive #41
October 2018
(Replaces Commissioner's Directive #41 dated December 2014)
Effective Date: Upon Publication

SUBJECT: The Taxability of Products Transferred Electronically

REFERENCES: [IC 6-2.5-1-11.3](#); [IC 6-2.5-1-16.2](#); [IC 6-2.5-1-16.3](#); [IC 6-2.5-1-16.4](#); [IC 6-2.5-1-26.5](#); [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 6-2.5-4-16.4](#); [IC 6-2.5-4-16.7](#); *Streamlined Sales and Use Tax Agreement (October 8, 2014)*

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SUMMARY OF CHANGES

Aside from technical, nonsubstantive changes, this directive is changed to address SEA 257 (2018), which amended the law with respect to the taxability of Software as a Service, cloud computing, and various other matters related to remotely accessed software, effective July 1, 2018.

I. INTRODUCTION

Prior to the initial publication of this document, the department imposed sales and use tax on products transferred electronically based on whether the products were taxable in their tangible forms. However, to achieve compliance with the Streamlined Sales and Use Tax Agreement ("SSUTA"), of which Indiana is a signatory, on a going-forward basis, the department may now impose sales and use tax on products transferred electronically only if the products meet the definition of "specified digital products," "prewritten computer software," or "telecommunication services."

II. DEFINITIONS

"Specified digital products" includes only "digital audio works," "digital audiovisual works," and "digital books" that are electronically transferred.

"Digital audio works" are works that result from the fixation of a series of musical, spoken, or other sounds (e.g., songs, spoken word recordings, and ringtones).

"Digital audiovisual works" are works consisting of a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any (e.g., movies).

"Digital books" are works generally recognized in the ordinary and usual sense as books.

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

"End user" has the ordinary meaning of the term, but it does **not** include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

"Digital code" means a method that permits a purchaser to obtain at a later date a product transferred electronically.

"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.

"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.

III. APPLICATION OF POLICY

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. Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. 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.

Indiana law also provides that a transaction involving specified digital products may be a retail transaction. [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. The statute also provides in subsection (c) that the sale of a digital code that may be used to obtain a product transferred electronically shall be taxed in the same manner as the product transferred electronically.

Pursuant to Section 333 of the SSUTA, "A member state shall not include any product transferred electronically in its 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." However, [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](#). Accordingly, ancillary services are not subject to sales tax in Indiana.

Section 332 provides that "A member state shall not include 'specified digital products', 'digital audio-visual works', 'digital audio works', or 'digital books' within its definition of 'ancillary services', 'computer software', 'telecommunication services', or 'tangible personal property.'" However, Section 332 also provides that a state is not prohibited from imposing a sales or use tax on specified digital products.

Therefore, in order to stay in conformity with the SSUTA, 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. Because "computer software" and "telecommunication services" are not restricted by the phrase "product transferred electronically," and [IC 6-2.5-4-16.4](#)(b) makes "specified digital products" taxable under certain circumstances, the department will impose sales and use tax on products transferred electronically only if the products meet the definition of specified digital products, prewritten computer software, or telecommunication services.

NOTE: As of July 1, 2018, prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the internet, over private or public networks, or through wireless media, is **not** considered an electronic transfer of computer software and is not considered a retail transaction. In other words, transactions for prewritten computer software remotely accessed from a hosted computer or server or through a pool of shared resources from multiple computers and servers ("cloud computing"), without having to download the software to the user's computer, are not considered retail transactions, and therefore the purchase, rental, lease, or license of that software is not subject to Indiana sales or use tax. For more information, please see Sales Tax Information Bulletin #8 (June 2018 or later).

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Commissioner

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