

DEPARTMENT OF STATE REVENUE

Information Bulletin #94
Sales Tax
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SUBJECT: Bundled and Unitary Transactions

REFERENCES: [IC 6-2.5-1-1](#); [IC 6-2.5-1-2](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-15](#); [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-2](#); Streamlined Sales and Use Tax Agreement, Section 330 (December 2019); Streamlined Sales and Use Tax Agreement, Appendix C, Part I, "Bundled Transactions" (December 2019); Streamlined Sales and Use Tax Governing Board Rules, Section 330.1, "Definition of a Bundled Transaction" (December 2019).

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I. INTRODUCTION

For many decades, the Department applied the concept of a "unitary transaction," in which tangible personal property and services were sold under a single, nonitemized price. The Streamlined Sales and Use Tax Agreement (SSUTA), of which Indiana is a signatory, contains an administrative definition of a "bundled transaction," which is similar in concept but which applies to any combination of tangible personal property, services, or intangible property sold for one nonitemized price. It also contains exceptions or exclusions to the definition accounting for the "true object of the transaction" or other types of threshold requirements, depending on the items at issue in the transaction. (See SSUTA, Appendix C, Part I). The Indiana General Assembly adopted this definition into law, while further providing that a person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction, effective July 1, 2006 (SEA 258-2006). However, the provisions relating to unitary transaction are still contained within Indiana statute. This document explains both concepts and attempts to harmonize the two into a cohesive policy.

II. DEFINITIONS

The term **"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.

The term does not include a retail sale in which the sales price of a product varies, or is negotiable, based on other products that the purchaser selects for inclusion in the transaction.

The term **"unitary transaction"** includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated, except in the case of the furnishing of public utility commodities or services, in which the term means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer. This is irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

The term **"tangible personal property"** means 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.

While the term **"services"** is not defined in the "State Gross Retail and Use Taxes" chapter of the Indiana Code, it is generally understood that except for certain enumerated services, 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 Indiana sales or tax.

The term "**gross retail income**" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. For purposes of this bulletin, it's important to note that this term does not include any deduction for delivery charges, whether separately stated or not, by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage charges that are not separately stated on the invoice, bill of sale, or similar document, handling, crating, and packing. However, installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser, are not included as part of the gross receipts.

III. ELEMENTS OF A BUNDLED TRANSACTION

A. One Nonitemized Price

The sales price or purchase price of a bundled transaction is for one nonitemized price. If a retail sale of two or more products is not made for "one nonitemized price," then the retail sale is not a bundled transaction. A transaction is not considered to be a bundled transaction if, by negotiation or otherwise, the sales price varies with the purchaser's selection of the distinct and identifiable products being sold. A retail sale is not considered made for "one nonitemized price" if the purchaser has the option of declining to purchase any of the products being sold and, as a result of the purchaser's selection of products, the sales price varies or a different price is negotiated.

Example #1: Customer contracts with a software company to provide certain software and services to improve customer's business functions. Software company offers multiple software solutions, as well as certain services, such as on-call technical support, which allows customers to choose the best options for their business needs. As part of the contract discussions, Customer negotiates with software company as to the overall price of the contract and the particular software and services they want during the contract period. Software company will bill all of the software and services under one nonitemized price on a quarterly basis. However, because the sales price varied with the customer's selection of the distinct and identifiable products being sold, the transaction is **not** a bundled transaction. Instead, the transaction is a **unitary transaction**.

A retail sale is not considered a bundled transaction if the price is separately identified by product on binding sales documents or other supporting sales-related documentation made available to the purchaser because the sale is not being made for "one nonitemized price." The sales-related documents made available to a purchaser in paper or electronic form must provide enough information for the purchaser to determine the price(s) of taxable and exempt products.

A transaction is not considered a bundled transaction if a seller bills or invoices one price for the sale of distinct and separate products but the price invoiced is equal to the total of the individually priced or itemized products contained in supporting sales-related documentation, such as a catalog, price list, or service agreement.

If the seller bills or invoices one price for a transaction that includes a bundle of products and also includes one or more additional products that are individually priced or itemized in a catalog or price list, the additional products individually priced or itemized are not considered to be a part of the bundled products sold for one nonitemized price.

If a transaction does not qualify as a bundled transaction because of the provisions in this section, the transaction would also not be considered a bundled transaction as a result of the seller offering a subsequent discount of the total sales price without itemizing the amount of the discount for each product (e.g., if a merchant offers a 20% discount on an entire purchase, the transaction won't be considered a bundled transaction based solely on the discount being shown as one line item instead of as a separate line item for each item purchased). In such a situation, if there is no sales-related documentation showing the allocation of the discount, the discount is considered to be allocated pro rata among the otherwise separately itemized products.

B. Distinct and Identifiable Products

A bundled transaction is a retail sale of two or more products that are "distinct and identifiable." Packaging that accompanies the retail sale of a product, products provided free of charge and items included as part of the definition of "gross retail income" are not distinct and identifiable products.

a. Packaging is not a separate and distinct product when such packaging is the wrapping or packing that accompanies the retail sale of a product(s) and such packaging is incidental or immaterial to the retail sale of the product(s).

b. A product provided free of charge is not a separate and distinct product. A product is considered to be provided free of charge in a retail sale if, in order to obtain the product, the purchaser is required to make a purchase of one or more other products and the price of the purchased products does not change based on the seller providing a product free of charge. Such products provided free of charge with the necessary purchase of another product (e.g., a free car wash with the purchase of gas, or free dinnerware with the purchase of groceries) are considered "promotional products." Items provided free of charge should be analyzed under Sales Tax Information Bulletin #40.

c. A retail sale is not considered to be for "two or more distinct and identifiable products" if the items are included in the definition of "gross retail income." For example, "delivery charges," whether separately itemized or not, are included within the definition of "gross retail income;" therefore, the retail sale of a product and the delivery of that product for a single price is not considered a bundled transaction because the delivery charges are included in the gross retail income of the product under the definition of "gross retail income."

IV. EXCEPTIONS TO BUNDLED TRANSACTIONS

There are three exceptions or exclusions for transactions that would otherwise qualify as bundled transactions. If a transaction meets one of the exceptions, the transaction will not be considered a taxable bundled transaction. Further, as explained in Section V, the transaction will not be considered a taxable unitary transaction either. Therefore, the transaction is not subject to Indiana sales tax (although use tax may be owed by the retailer or manufacturer on items incorporated into the product).

A. True Object Test - The first exception is a transaction which is comprised of: (1) a **service that is the true object** of the transaction; and (2) tangible personal property that is **essential** to the use of the service and is **provided exclusively** in connection with the service. "True object" means the main product or item in the transaction.

Example #2: Unlike in Example #1, Customer pays an IT Security Firm a standard, set price to perform remote IT support and security services, and as part of the service, installs prewritten computer software (which is considered tangible personal property for Indiana sales and use tax purposes) on the computers of their clients in order to monitor the computers for viruses (which is part of the service). Customer never uses the software themselves. Without the software, the IT Security Firm cannot monitor their customer's computers, and the software performs no other function besides allowing the firm to monitor their customer's computers. The remote IT support and security service is the true object of the transaction, and the software is both essential to the use of the service and provided exclusively in connection with the service. The transaction is therefore **not** a bundled transaction.

Example #3: Company provides a two-day Continuing Professional Education (CPE) seminar for certified public accountants, along with three binders containing educational materials, for \$400. Neither the CPE seminar nor the binders are sold separately. Since the binders are essential to the educational service and are provided exclusively in connection with the educational service, and the true object of the transaction is to receive the educational service, the sale is **not** a bundled transaction.

Example #4: An electronics retail store sells a 4K television and one-year subscription to a streaming video service for a single non-itemized price of \$5,000. The streaming video service is not a product provided free of charge. While a television is arguably essential to receiving the streaming video service, that specific television is not required and the purchaser could pay a much lesser price for a television of lesser value and the same audio-video programming service. The 4K television is the true object of the transaction based on the facts of the transaction. Because the service is not the true object of the transaction, the transaction **is** a bundled transaction.

B. De Minimis Test - The second exception is a transaction which includes both taxable and nontaxable products in which the seller's purchase price or the sales price of the taxable products does not exceed ten percent (10%) (i.e., *de minimis* or incidental) of the total purchase price or the total sales price of the bundled products. A "nontaxable product" includes services, intangible property, and tangible personal property that meets a specific exemption from sales and use tax. It does not include real property or services to real property.

Example #5: Company provides digital advertising services. Company creates content in the form of

banner ads and display videos, and will charge its customers a nonitemized amount for all advertisements created for a particular campaign. Company provides digital proofs of all advertisements to its customers, including the videos, which the customers keep for their permanent use. Company's sale of the videos is the sale of digital audiovisual works, which is taxable as a specified digital good. The other digital content is not taxable, as it does not constitute a specified digital good. Finally, advertising is typically a nontaxable service. Assuming that the taxable product does not account for more than 10% of the seller's sales price, Company's sale of the advertising services and non-specified digital goods is **not** a bundled transaction.

Example #6: Company offers a membership fee to an online platform that provides exercise tracking, workout videos, and online coaching, and included with the payment of the fee a customer receives a smartwatch. The fee is one, nonitemized price of \$200, and the watch is not provided free of charge. The smartwatch was purchased by the Company for \$50, which exceeds ten percent of the total purchase price of the fee. Company's sale of the membership fee **is** a bundled transaction. However, a purchaser must pay \$100 per year to keep the membership in the platform. Each annual payment is a new transaction, and as long as no tangible personal property or other taxable good is conferred with the renewal fee, the fee is not subject to sales tax as a bundled transaction.

A seller may use either the sales price of each product or the purchase price of each product in the transaction to measure or quantify whether the taxable products are *de minimis*. A seller shall not use the sales price for some products in the transaction and the purchase price for other products in the transaction to measure or quantify whether the taxable product(s) in the transaction are *de minimis*.

Example #7: An electronics retail store sells a set of five used video games that includes a subscription to a streaming video game service for a single non-itemized price of \$100. The video game service is not a product provided free of charge. The store purchased each game for less than \$2 apiece, but they would sell individually for \$10 apiece. Even though the sales price of the games are over ten percent of the overall nonitemized price, the store can use the purchase price of each game instead, which would be less than ten percent of the overall nonitemized price. Therefore, the transaction is **not** a bundled transaction.

C. Primary Products Test - The third exception is a transaction which includes both exempt tangible personal property and taxable tangible personal property, any of which is classified as:

1. food and food ingredients;
2. drugs;
3. durable medical equipment;
4. mobility enhancing equipment;
5. over-the-counter drugs;
6. prosthetic devices; or
7. medical supplies; and

for which the seller's purchase price or the sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or the total sales price of the bundled tangible personal property. The determination as to whether the property is fifty percent (50%) or less of the total purchase price or the total sales price must be made on the basis of either individual item purchase prices or individual item sale prices.

Example #8: A supermarket sells a gift basket which includes ten pieces of fruit and three candy bars, all in a decorative wicker basket. The fruit meets the definition of exempt food and food ingredients, the candy bars meet the definition of taxable candy items, and the wicker basket is taxable. The supermarket has determined that the total purchase price of the fruit is less than fifty percent of the total purchase of all items. Therefore, the gift basket meets the definition of a bundled transaction and **is** subject to sales tax when sold to the supermarket's customers.

This exception does not apply to transactions that include products that are not tangible personal property (e.g., services).

The seller may use the sales price of each product or the purchase price of each product in the transaction to measure or quantify whether the taxable products in the transaction are the primary products (more than 50% of the total sales price or purchase price). A seller shall not use the sales price for some of the products in the transaction and the purchase price for other products in the transaction to measure or quantify whether the taxable product(s) in the transaction are the primary products.

Example #9: In Example #8 above, the supermarket cannot use the purchase price of the basket and

candy and the sales price of the fruit in order to measure the percentage of the fruit compared to the other items. The supermarket can use purchase price of the fruit, candy, and basket, or the sales price of the fruit, candy, and basket, but they cannot use both on different items.

For transactions that include tangible personal property and a service (or multiple services), sellers may utilize the "true object test" or the "*de minimis* test" to determine if the transaction qualifies as a bundled transaction. The true object test does not apply to transactions that include only tangible personal property.

The "primary products test" may be applied to transactions that include all types of products to determine whether the transaction qualifies as a bundled transaction. The "primary products test" does not apply to transactions that include products that are not tangible personal property.

V. BUNDLED VS. UNITARY TRANSACTIONS

Indiana sales tax is measured by the "gross retail income" received by a retail merchant in a retail unitary transaction. Additionally, a person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction.

If a transaction meets one of the exceptions to the definition of a bundled transaction, the transaction is also not considered to be a unitary transaction. This was only recently stated explicitly in the Indiana tax code. However, the intent of the bundled transaction law was that if a transaction involving personal property and services (or some other combination of taxable and nontaxable goods or services) sold for a single price met one of the exceptions, it would not be considered a taxable transaction. In fact, the SSUTA Governing Board Rules provides that member states shall not limit the application of the true object test, the *de minimis* test, or the primary products test by taxing the total sales price or total purchase price of a transaction that includes both taxable products and nontaxable products when:

- the nontaxable products are determined to not be the true object of the transaction;
- the taxable products in the transaction are *de minimis*; or
- the taxable products are not the primary products (more than 50%) in the transaction;

respective to the particular tests applied to the transaction.

To that end, Senate Enrolled Act 408 (2020) included a provision that clarified that a transaction that otherwise meets the definition of a unitary transaction, but also meets one of the exceptions to a bundled transaction, will not be considered a taxable unitary transaction. It is still the case that if a transaction meets the definition of a unitary transaction, also meets the definition of a bundled transaction, and does not meet one of the exceptions to a bundled transaction, then the transaction is subject to sales tax as both a bundled transaction and a unitary transaction.

Finally, a transaction that:

- is a combination of services and tangible personal property and meets the definition of a unitary transaction;
- does not meet the definition of bundled transaction because it was a retail sale in which the sales price of a product varies, or is negotiable, based on other products that the purchaser selects for inclusion in the transaction

will still be taxable as a unitary transaction.

VI. USE TAX OBLIGATIONS OF THE RETAILER

Use tax is due on a retail merchant's cost of taxable items that are included in a transaction that met one of the exceptions to a bundled transaction. The retail merchant would owe use tax on the taxable items included in the transaction. For further information regarding the use tax, please consult Sales Tax Information Bulletin #95, available online at www.in.gov/dor/6051.htm.

VII. RECORDS REQUIRED TO BE MAINTAINED BY THE SELLER

In order to show whether a retail sale was for one or more distinct and identifiable products and whether the products were sold for one nonitemized price, a seller must maintain copies of invoices, service agreements, contracts, catalogs, price lists, rate cards and other sales-related documents given to, or made available to, the purchaser. Indiana retail merchants are required to keep adequate books and records for both taxable and nontaxable sales for a period of three years, plus the current year. Failure to maintain such books and records detailing proof that the price varied based on the purchaser's selections of products could result in the assessment of tax.

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