

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2022-03ST
June 16, 2022

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ISSUES

Sales and Use Tax - Sales of Digital Goods

Authority: [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [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 6-2.5-4-15](#); [IC 6-2.5-4-16.4](#); *Streamlined Sales and Use Tax Agreement* (December 21, 2021).

A taxpayer ("Company") is seeking an opinion as to whether Company's sales of Company's virtual items are not subject to Indiana sales and use tax as sales of specified digital products or digital codes when sold with or without interactive overlay functionality.

STATEMENT OF FACTS

Company is an out-of-state corporation that operates an online service that enables people ("Viewers") to watch streaming videos on Company's Internet-based platform ("Platform"), accessed by downloading the Company's app or by using Company's website. Company provides the following information, reproduced exactly as submitted in its request for a ruling with certain details redacted:

Viewers can view real-time streaming videos without registering with [Company] or paying to access or view the streaming videos. Viewers may also view the videos of certain third parties ("Streamers") on demand for a limited period of time after they have aired live.¹

[Company] obtains licenses for the videos from Streamers. Streamers often create videos of themselves performing various activities, including playing video games and cooking. Streamers may also watch TV shows or movies with Viewers . . . [, during which] Streamers may provide commentary on their activities to the Viewers.

While viewing real-time streaming videos, Viewers can submit typed comments using the Platform's chat function. The chat function appears to Viewers as a chat box on the right side of the screen. These comments are viewable by the Streamer and other Viewers. Each Streamer has the ability to respond to the Viewers' typed comments by speaking during the video or by submitting its own typed comments via the chat function. Streamers and Viewers may also enter a variety of emotes - i.e., small pictures - into the chat function. Emotes are usually static images; they are occasionally short, repetitive animations.

. . .

A separate feature offered by [Company] is [Company's "virtual item"]. During the live streaming of videos, Viewers may send [the virtual item] to . . . the Streamer. The primary reasons that Viewers [send the virtual item] to Streamers are to show support for that Streamer and be more likely to be noticed and commended by the Streamer and other Viewers. It is important to note that Viewers that [send the virtual item] to Streamers do not receive additional access to the Streamer's videos. A Viewer may access the same videos regardless of how many [virtual item they send] to the Streamer or even if it does not [send the virtual items] at all. Thus, when a Viewer [sends the virtual item], it - in most instances - receives nothing of substance in return. Further, as described in more detail below, the only visual aspect associated with a [virtual item] is an image that may appear in the chat function that notifies the Streamer and other Viewers that the Viewer has [sent the virtual item].

In order to [send the virtual item] for a Streamer, Viewers must first purchase the [virtual items] from [Company]. For example, [Company] charges a Viewer [for virtual items]. Viewers send [virtual items] to the Streamer . . . using the Platform's chat function. To [send the virtual items], Viewers type [special messaging term] into the chat box and then the number of [virtual items] the Viewer would like to send. Upon [sending

the virtual items], [Company] deducts the [virtual items] from the Viewer's account. The typing of [special messaging term] into the chat box informs the Streamer via his or her activity feed that he or she has received a [special message] and the number of [virtual items sent]. The Streamer does not "receive" these [virtual items] or any dollar value conversion of the [virtual items] at that time. Rather, as part of its monthly [Company] payout, the Streamer is rewarded [an amount] for each [virtual item] used in the chat. For example, in December 2021, Viewers A, B, C, and D spend [certain number of virtual items] in Streamer A's chat. In January 2022, [Company] deposits [corresponding dollar amount] into Streamer A's bank account linked to its [Company] account. [Company] occasionally runs limited marketing campaigns wherein Streamers are rewarded with additional prizes for their communities meeting collective [virtual items] usage goals in the Streamers' channels. However, these limited marketing campaigns are not part of the core [Company] product experience.

As noted above, for each [special message sent] by a Viewer, the [virtual item] amount is displayed in the chat box. This amount is accompanied by [a small animated graphic]. The amount of movement displayed by [an animated graphic] is limited; the movements are only short, repeating loops. Viewers may choose from a variety of animated [graphics]. The default [animated graphic] is a small animated gem. The gem color, size, shape, and animation varies depending on the amount of [virtual items sent]. Alternatively, the Viewer may select animated versions of popular global emotes, or choose from custom emotes available for certain Streamers. The [animated graphic] is displayed to the Viewers in only the chat message in which the [virtual items are sent]; it cannot be displayed a second time without again [sending the virtual item]. The [animated graphic] and message remain visible in the chat stream, until they are hidden by the natural flow of the chat. The [animated graphic] and message are still visible if a Viewer scrolls back to the earlier chat messages, unless the page is reloaded.

The Viewer may (but is not required to) also submit a message to accompany the amount of [virtual items] and [animated graphics]. Like any other chat message, the message sent with [virtual items] and [an animated graphic] is visible by the Streamer and other Viewers. It is not necessary to buy [virtual items] to submit a message; a Viewer may submit a message in chat, even without [sending virtual items]. Other than the amount of [virtual items sent] and [animated graphic], the message looks otherwise identical to any other chat message. As noted above, chat messages can be submitted at any time for no charge. For example: if Viewer A submits a message in the Platform's chat function for Streamer A, but does not [send virtual items], the message will state, "Viewer A: [Message]." In contrast, if Viewer B [sends a certain number of virtual items], its message will state, "Viewer B: [corresponding number animated graphic] [Message]."

A Viewer may opt to [send virtual items] anonymously. When a Viewer [sends virtual items] anonymously, the . . . message displays a [chat symbol pertaining to the sending of virtual items] with a picture of a ghost, a [graphic] animation of a ghost holding a gem, and the amount of [virtual items sent].² The Viewer's name is listed as [redacted.] The Viewer cannot send a message or emote with the anonymous [chat action].

At the Streamer's option, [sending virtual items] also gives the Viewer access to the Streamer's [private] chat, even if the Viewer is not a Subscriber. [The private] chat is the same chat function typically available to all Viewers, but the Streamer is permitting only Subscribers to submit chat messages. There is no default time period for a non-subscribing [Viewer who sends virtual items] to continue sending chat messages on the [private] chat. The length of the time period is solely at the Streamer's option. As the Streamer and other Viewers are notified of a Viewer's [sending of virtual items] via a chat message, they would not be aware of the [virtual items sent] unless the non-Subscriber Viewer were granted the time-limited ability to submit a chat message.

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Upon reaching certain tiers of [virtual items sent] for a Streamer in total (for all streams of that Streamer combined, not limited to a single stream), the Viewer unlocks varying [chat symbol pertaining to the sending of virtual items]. [The chat symbol pertaining to the sending of virtual items] are small pictures of [description of pictures redacted]. The Streamers can also replace the default [chat symbol pertaining to the sending of virtual items] with their own custom designs. The [chat symbol pertaining to the sending of virtual items] are located next to the Viewer's name in chat messages. The [chat symbol pertaining to the sending of virtual items] available only in the channel of the Streamer to which the Viewer has [sent virtual items] and cannot be used by the Viewer outside of [Company]. [The chat symbol pertaining to the sending of virtual items] thus identify the Viewer as a charitable person that supports the Streamer.

For example, if a Viewer [sends a certain number of virtual items], it receives a [chat symbol] that is a picture

of [description of pictures redacted]. The [chat symbol] will now accompany each message by the Viewer in that Streamer's chat, to the left of the Viewer's name. If the Viewer [sends more virtual items] to the same Streamer, the prior [chat symbol] will be replaced with [description of pictures redacted]. However, if the Viewer instead [sends a smaller number of virtual items], it would not receive a different [chat symbol] pertaining to the sending of virtual items] because the Viewer had not yet reached a new tier. If the Viewer [sends virtual items] anonymously, the [virtual items sent] will not impact that Viewer's [chat symbols pertaining to the sending of virtual items]. Similarly, if another Viewer [sends a large number of virtual items] to the Streamer, that Viewer's messages will also be accompanied by a [chat symbol] in the shape of [description of pictures redacted]. The Viewer cannot choose which [chat symbol] to display; the [chat symbol] is displayed automatically depending on the amount of [virtual items sent].

...

When a Streamer's Viewers [sends enough virtual items] or give enough Streamer subscriptions to themselves or others within a short period of time, a [special event] occurs. Depending on the amount of contributions by all Viewers, contributing Viewers will receive an emote to use in messages permanently in the Platform's chat function for any Streamer. A Viewer must [sends a certain number of virtual items] in order to qualify for the emote award. [Special event] emotes are awarded depending on all Viewers' totals. Thus, an emote award is not attributed to any singular Viewer unless the Viewer met the [special event] reward total independently without additional Viewer contributions. In addition to [chat symbols pertaining to the sending of virtual items], these emotes further identify the Viewer as a charitable person that [sends virtual items] to its favorite Streamers, in general, without singling out the [sending of virtual items] to any particular Streamer.

For example, Viewers A, B, and C contribute month-long subscriptions to Streamer A's videos. Because of the amounts of [virtual items sent] within a short period of time, all Viewers of Streamer A are notified of a [special event], beginning at Tier 1. As Viewers [send virtual items] or purchase subscriptions, the Tier level increases, unlocking emotes for the contributing Viewers. Viewer D [sends a certain number of virtual items] at Tier 2. Viewer E [sends fewer virtual items] at Tier 3. Viewer F [sends even fewer virtual items] at Tier 4. The [special event] event ends at Tier 4 when the time limit for Viewers to [send virtual items] and make subscriptions ends. Viewers A, B, C, D, E, and F obtain an emote that it can use in chat messages in the future on a permanent basis for any Streamer's chat.

...

Viewers may also spend [virtual items] on . . . interactive overlays and panels, developed by third parties[, which] allow Viewers to further interact with the Streamer via heat maps and real-time game data overlays to mini-games, music requests, and Viewer leaderboards. Leaderboards may illustrate which Viewers have [sent] the most [virtual items] or Subscriptions to the Streamer. Other examples [interactive overlays] available to Viewers include:

- Playing certain sounds that will be heard by all other Viewers;
- Modifying the Streamer's voice in real time;
- Interacting with the game the Streamer is playing; and
- Applying images to the live stream video.

DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether Company's sales of Company's virtual items are subject to Indiana sales and use tax as sales of specified digital products or digital codes when sold with or without interactive overlay functionality. Company's position is that they are not subject to Indiana sales or use tax, either because the virtual items are not subject to Indiana's sales and use tax because they are not a specified digital product or a digital code, or because the true object of the transaction for virtual items is a nontaxable 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.

"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.

The virtual items are perceptible to the senses, but they are transferred electronically. Regarding the sales of items transferred electronically, pursuant to Section 333 ("Use of Specified Digital Products," effective Jan. 1, 2010) of the *Streamlined Sales and Use Tax Agreement* ("SSUTA;" December 21, 2021), of which Indiana is a signatory, "[a] member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Section 332 of the *SSUTA* 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.'"

Section 332 also provides that a state is not prohibited from imposing a sales or use tax on specified digital products. "Specified digital products," as 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 (meaning "works that are generally recognized in the ordinary and usual sense as books" pursuant to [IC 6-2.5-1-16.4](#)). 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."

Indiana has enacted a statutory provision to impose sales tax on products transferred electronically if the products meet the definition of specified digital products. [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.

[IC 6-2.5-4-16.4](#)(c) further provides 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. Within the meaning of this subsection, a "digital code" means a method that permits a purchaser to obtain at a later date a product transferred electronically.

[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" 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.

(c) 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.

(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; or

(3) includes both exempt tangible personal property and taxable tangible personal property:

- (A) any of which is classified as:
 - (i) food and food ingredients;
 - (ii) drugs;
 - (iii) durable medical equipment;
 - (iv) mobility enhancing equipment;
 - (v) over-the-counter drugs;
 - (vi) prosthetic devices; or
 - (vii) medical supplies; and

(B) for which:

- (i) the seller's purchase price; or

- (ii) 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 under clause (B) must be made on the basis of either individual item purchase prices or individual item sale prices.

With these provisions in mind, Company first contends that its virtual items are not subject to Indiana's sales and use tax because they are not a specified digital product or a digital code. As indicated in the description of virtual items above, Viewers are purchasing the ability to send virtual items to the Streamers (*i.e.*, show support for Streamers). Viewers are also purchasing the ability to be noticed by the Streamer and other Viewers for their charitable nature. The sending of virtual items does not entitle Viewers to access any Streamer's videos (Streamers often create videos of themselves performing various activities, including playing video games and cooking).

Company explains Viewers send virtual items to a Streamer, they are identified to other Viewers so that the Viewers may receive thanks from the Streamer or be acknowledged by the other Viewers of that particular Streamer. In Company's opinion, this is the primary purpose of virtual items. All of the other features of virtual items relate to showing support for the Streamer. Company gives the following examples:

- When virtual goods are sent, they are identified by small pictures and images that repeat in short loops;
- The amount of virtual items sent is identified in a chat message viewable to the other Viewers, along with the small animated graphic that displays limited, repeated movement.
- Viewers can send chat messages regardless of whether they have sent virtual items, except on rare occasions where the Streamer has limited chat to Subscribers.
- Viewers receive chat symbols pertaining to the sending of virtual items after sending a sufficient amount of virtual items. The chat symbol pertaining to the sending of virtual items is then displayed next to the Viewer's name for all chat messages in the chat function for that particular Streamer.
- For special events (which are not common), Viewers that send any amount of virtual items receive emote gifts as thanks for sending virtual items. Emotes are distributed regardless of whether a Viewer sends 100 virtual items, 500 virtual items, 2000 virtual items, etc.

The above items are dissimilar from the specified digital products that are subject to Indiana sales and use tax: digital audio works, digital audiovisual works, and digital books. Furthermore, specified digital products are only subject to sales and use tax if end users are granted the right of permanent use of the specified digital product that is not conditioned upon continued payment. [IC 6-2.5-4-16.4\(b\)](#). Company provided explanations for how none of the above items are specified digital products, and in any event, are not conferred for permanent use.

First, Company maintains that the small animated graphic that displays in the chat box accompanying the special message sent by a Viewer is not a specified digital product. While an animated graphic is a series of related images that, when shown in succession, impart an impression of motion, it is Company's position that it is not an item that the Indiana General Assembly likely intended to subject to sales and use tax. Pursuant to Section 332.2 of the SSUTA, examples of digital audiovisual works are: (1) movies; (2) motion pictures; (3) musical videos; (4) news and entertainment programs; and (5) live events. Company explains that an animated graphic is unlike the examples in Section 332.2, as they are purchased in order to be viewed, whereas an animated graphic is instead a symbol used to identify a Viewer, rather than to provide entertainment. Further, Company does not grant the right of permanent use of the animated graphic that is not conditioned upon continued payment. The animated graphic is displayed to the Viewers in only the chat message in which the virtual items are sent. While the animated graphic and message remain visible in the chat stream until they are hidden by the natural flow of the chat, the Viewer cannot display the animated graphic a second time without again sending virtual items.

Second, Company maintains that chat symbols pertaining to the sending of virtual items and special event emotes are not specified digital products. Company explains that they are static images. The sales tax on specified digital products is limited to digital audio works, digital audiovisual works, and digital books. As the sales and use tax on specified digital products does not extend to static images, they are not subject to sales and use tax.

Third, Company maintains that the automatic chat message is not a specified digital product. The sales tax on specified digital products is limited to digital audio works, digital audiovisual works, and digital books. Additionally, digital books are specifically defined to exclude chat rooms and weblogs pursuant to Section 332.2 of the SSUTA.

Therefore, as payment for virtual items do not permit the buyer to obtain a taxable product transferred electronically, Company concludes that virtual items are not digital codes and the incidental benefits are not

specified digital products. It should also be noted that while Viewers may download a Company app or log into the website to watch Streamers, the download of the app or logging into the website is free, and virtual items are not used to download the app or log into the website. Thus, virtual items are not purchased to obtain or access computer software.

The department would agree with Company's conclusion. Further, the inclusion of Extensions functionality does not change this analysis. Virtual items are still not digital codes and buyers do not receive specified digital products when they send virtual items. Viewers may spend virtual items on Extensions, which allow the Viewers to interact with Streamers in various manners, including: (1) playing certain sounds that will be heard by all other Viewers; (2) modifying the Streamer's voice in real time; (3) interacting with the game the Streamer is playing; and (4) applying images to the live stream video. Viewers do not add sounds and images to the stream for the purpose of watching videos, listening to music, enjoying beautiful works of art, etc. Rather, the sounds and images are added to the stream to interact with the Streamer and other Viewers. This interaction is a non-taxable service, not the purchase of digital products.

Company next maintains that the true object of the transaction for virtual items is a nontaxable service. Company's virtual items do not permit buyers to obtain a taxable product transferred electronically, even including Extensions functionality. However, Company maintains that if the department were to conclude that they did, the purchase of virtual items would still not be subject to Indiana sales and use tax because the true object of the transaction is to obtain a nontaxable service.

Company's position is that sending virtual items entitles the Viewer to receive the service of: (1) sending them to a Streamer as thanks for providing their ongoing video service; and (2) being noticed by the Streamer and other Viewers for performing this act of generosity. Including Extensions functionality, the Viewer would also be able to receive the ability to interact with the Streamer. All of the benefits, such as small pictures of animations, serve only to notify the Streamer and other Viewers of the payment of virtual items. These items are not digital products sought by the Viewers. In fact, Company notes, the automatic message, special event emotes, and animated graphics are generally displayed without regard to the amount of virtual items sent. Thus, the Viewer is paying for being noticed by others, not for incidental images or videos.

While it may be the case that the purpose (or one of the purposes) of purchasing virtual items is for the reasons described by Company, the services are not bundled with the purchase of virtual items. The virtual items are used by a Viewer in time and manner of their choosing, but that is not part of the transaction for the virtual units. Regardless, the department would still consider the purchase of virtual items to be nontaxable for the reasons stated above.

RULING

Based on the information provided, Company's sales of virtual items are not sales of specified digital products or digital codes subject to Indiana sales and use tax, regardless of whether inclusive of Extensions functionality.

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.

¹ Access to the videos on-demand may require registration with [Company] and a subscription to view the videos of the particular Streamer. [Company] is currently collecting and remitting Indiana sales tax on sales of [Company] Subscriptions.

² The . . . message may also—solely at the Streamer's option—be overlaid on the video streaming feed.

