

DEPARTMENT OF STATE REVENUE

Information Bulletin #20
Sales Tax
January 2023
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(Replaces Bulletin #20, dated October 2015)

SUBJECT: Auctions, Casual Sales, and Consignment Sales

REFERENCES: [IC 6-2.5-2-3](#); [IC 6-2.5-4-12](#); [IC 6-2.5-6-17](#); [45 IAC 2.2-4-33](#); [45 IAC 2.2-4-34](#); [45 IAC 2.2-4-35](#)

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SUMMARY OF CHANGES

Apart from technical, nonsubstantive changes, this bulletin has been changed to reflect how remote seller laws impact the auction guidance contained herein. A new introduction section has also been added.

I. INTRODUCTION

The purpose of this bulletin is to provide guidance concerning the taxability of transactions in which the seller does not own the items being sold, such as auctions and consignment sales, and casual sales where the seller infrequently sells items that they did not purchase for resale (e.g., a garage or yard sale).

II. GENERAL RULE FOR ALL AUCTIONS

An auction company or auctioneer must collect Indiana sales tax unless the sale qualifies as a "casual" sale. Sales at auction that meet **both** of the following conditions qualify as casual sales, and such sales are not subject to sales tax collection by the auction company or auctioneer, nor is use tax due by the purchaser:

1. The sale must be held on premises owned, leased, or provided by the owner of the tangible personal property being sold. The sale cannot be conducted at a site owned, leased, or provided by the auction company or auctioneer.
2. The tangible personal property must not have been purchased for resale nor consigned by a third party for sale.

Example #1: An auctioneer conducts an auction at the residence of the owner of numerous items of household goods. Because the auction/sale is conducted at the residence of the owner and the items were not purchased for resale, the sale qualifies as a "casual sale" and all items sold are exempt from sales tax and use tax.

Additionally, auction companies and auctioneers must collect sales tax at all auctions where either of the following conditions exists:

1. The auction/sale is held at premises owned, leased, or provided by the auction company or auctioneer.
2. The tangible personal property was purchased for resale by the owner or was consigned by a third party for sale.

In the event that certain tangible personal property being sold at a particular auction meets condition (2) but other property fails to meet condition (2), the auction company or auctioneer becomes a retail merchant and sales tax must be collected on the sale of all property meeting the provisions of condition (2). Further, if an auctioneer or auction company combines goods from one estate with those goods owned by another at that other person's property, all sales would be subject to sales tax to the extent the goods can't be identified as belonging to the person at whose location the sale is held.

Before conducting a taxable sale, a licensed auction company or auctioneer must obtain a Registered Retail Merchant Certificate (RRMC) from the department. Registrations may be obtained by visiting the State of

Indiana's INBiz website, which allows businesses to register with multiple state agencies, at inbiz.in.gov.

When an auction is held at the property owner's premises, the fact that bidding may also take place remotely online or by phone does not change the application of the casual sales rule because the auction also occurs at the property owner's premises. However, online auctions are taxable transactions when the auctions are not held in person at the premises of the property owner, as the auctions exclusively occur on a web platform and not at the property owner's location.

NOTE: The department is currently developing additional guidance regarding marketplace facilitators and auctions. The remote seller provisions that went into effect in 2018 did not directly impact the application of sales and use tax to auctions. The fact that an auction is online will not automatically make it taxable; rather, it still depends on whether the auction also occurs in person at the property owner's location where the property is located.

III. AUCTIONS OF VEHICLES, TRAILERS, WATERCRAFT, OR AIRCRAFT

NOTE: Guidelines for auctions of aircraft should be obtained by contacting the Aeronautics Section of the department because some forms and other requirements vary from those listed for vehicles, trailers, and watercraft.

A. Vehicles, Trailers, Watercraft, and Aircraft Sold at Auction

All sales of vehicles, trailers, watercraft, and aircraft by a licensed auction company or auctioneer are subject to the Indiana sales tax if such auction is conducted at a site owned, leased, or provided by the auction house or auctioneer. All sales are subject to the Indiana sales tax unless the buyer presents a valid, fully executed exemption form to the auction house or auctioneer. Forms acceptable as proof of exemption are the ST-105D (purchases by licensed dealers for resale) and the ST-108A (sales to nondealers). If the auction house or auctioneer is registered as a dealer with the Secretary of State and is selling in the capacity as a dealer, the ST-108 and ST-108E must be used when the auction house or auctioneer is selling its own vehicles titled in the auction company's or auctioneer's name. ST-108A is to be used when selling vehicles not owned by the auction company or auctioneer and not titled in the auction's name.

If an auction house or auctioneer is selling motor vehicles and the purchaser will transport the vehicle within 30 days after delivery and the purchaser will title or register the vehicle for use outside Indiana, the purchaser and auction house or auctioneer must complete Form ST-108NR in order to charge the sales or use tax rate at the sales or use tax rate for the destination state or country. See Sales Tax Information Bulletin #84, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/. **The responsibility to collect, report, and remit the sales tax to the department is that of the auction house or auctioneer for sales at an auction site owned, leased, or provided by the auction company or auctioneer or a third party. Any sales tax charged on Indiana sales is to be remitted to the department, even if the rate charged is determined by another state's sales tax rate.**

B. Auction House or Auctioneer Responsibilities for Vehicle, Trailers, Aircraft, or Watercraft Auctions

An auction house or auctioneer must register as a Registered Retail Merchant with the department and collect sales tax on all vehicles, trailers, watercraft, and aircraft sold at auction unless the buyer issues a fully executed exemption certificate to the auction house or auctioneer. An ST-103CAR should be filed if motor vehicles are sold at auction, using the auction house's or auctioneer's legal entity name, and sales tax collected should be remitted under the Indiana taxpayer identification number (TID).

Auction companies or auctioneers acting in the capacity of a Secretary of State-registered "dealer," selling their own inventory, shall provide the buyer with an ST-108 or ST-108E form evidencing the collection or exemption of sales tax by the auction house or auctioneer for all sales. Forms acceptable as proof of exemption are the ST-105D (dealer and/or auction sales to dealers for resale) and the ST-108E (for sales to nondealers). Auction companies or auctioneers must keep a fully executed copy of the completed exemption form on file to document the reason for noncollection of the sales tax.

Auction companies or auctioneers not registered with the Secretary of State as a dealer shall provide the buyer with documentation of the sales transaction (sales invoice, purchase agreement, etc.) showing the total purchase price (including any buyer premium paid) and the amount of sales tax collected. Form ST-108A is available for auction company or auctioneer use to provide customers with evidence of sales tax paid on the

purchase of a vehicle, a trailer, a watercraft, or an aircraft not owned by the auction house or auctioneer.

Auction companies or auctioneers shall provide a copy of the sales transaction to the consignor/dealer for all sales sold at auction. If the purchaser will transport the vehicle within 30 days after delivery and the purchaser will title or register the vehicle for use outside Indiana, the purchaser and auction house or auctioneer must complete Form ST-108NR in order to charge the sales or use tax rate for the destination state or country. However, only merchants who file the ST-103CAR have the mechanism to report sales tax collected at other than the 7% Indiana rate, so the auction company or auctioneer would potentially need to contact the department to revise their filing mechanism.

C. Dealer Versus Auction Company or Auctioneer Responsibilities Selling at Auction

The selling dealer is not responsible for the collection and remittance of sales tax for a vehicle, a trailer, a watercraft, or an aircraft sold at an auction site owned, leased, or provided **by the auction company, the auctioneer**, or a third party. This responsibility is upon the auction company or auctioneer. The selling dealer shall maintain a copy of the sales transaction, provided by the auction company or auctioneer, as documentation that such vehicle, trailer, watercraft, or aircraft was sold at auction.

D. Dealer and Nondealer Purchaser Responsibilities

A dealer who purchases a vehicle, a trailer, a watercraft, or an aircraft for the dealer's own personal use may not claim an exemption. Dealers who purchase for resale must either complete Form ST-105D (dealer/auction company or auctioneer sales to a dealer) or issue a Form ST-108E. Form ST-105D may be used as either a single purchase or blanket purchase exemption certificate. ST-108E is a single purchase form for nondealer purchases. Auction companies or auctioneers shall collect the sales tax for all sales at auction for which the purchaser has not provided a fully executed exemption certificate.

An auction company or auctioneer licensed as a dealer with the Secretary of State and acting as a dealer shall issue to a nondealer purchaser an ST-108 or ST-108E. The ST-108 shall serve as documentation of Indiana sales tax paid for the purchase. The ST-108E is completed if the purchaser claims an exemption from the sales tax. Auction companies or auctioneers not registered with the Secretary of State shall provide the buyer with documentation of the sales transaction (sales invoice, purchase agreement, etc.) showing the total purchase price and the amount of sales tax collected. Form ST-108A is available for use by an auction company or auctioneer not registered with the Secretary of State to document tax collected or an exemption, if claimed by the purchaser.

If the purchaser will transport the vehicle within 30 days after delivery and the purchaser will title or register the vehicle for use outside Indiana (other than an exempt purpose stated above), the purchaser and auction house or auctioneer must use Form ST-108NR in order to charge the sales or use tax rate for the destination state or country. The auction company or auctioneer must retain a copy of each completed ST-108NR.

NOTE: In general, the sale of motor vehicles, watercraft, and trailers purchased in Indiana are subject to Indiana sales tax. This includes sales where the purchaser intends to immediately register, license, or title for use in another state. However, in the case of motor vehicles, the purchase may be subject to Indiana sales tax at the destination state's tax rate pursuant to [IC 6-2.5-2-3](#) if the motor vehicle is transported to another state for the purpose of titling and registration in that state within 30 days. For more information, please see Sales Tax Information Bulletin #84, available at the link above.

NOTE: Nonresident purchasers of cargo trailers and recreational vehicles (RVs) may qualify for an exemption if the purchaser is a resident of a reciprocal state and will register/title the trailer or RV in the purchaser's state of residence. If the resident is not from a reciprocal state, the purchase may be subject to Indiana sales tax at the destination state's tax rate pursuant to [IC 6-2.5-2-5](#) as of July 1, 2020. For more information, please see Sales Tax Information Bulletin #72.

IV. MISCELLANEOUS INFORMATION FOR AUCTION COMPANIES OR AUCTIONEERS

A. Exemptions Claimed by Purchasers

Auction companies or auctioneers must receive signed exemption certificates from all purchasers claiming an exemption from Indiana sales or use tax. Various exemption forms are available:

- Indiana General Sales Tax Exemption Certificate (Form ST-105) - General exemption certificate that contains exemptions available to purchasers for all items **except** vehicles or watercraft.

- Dealer-to-Dealer Resale Certificate of Sales Tax Exemption (Form ST-105D) - Used by vehicle or watercraft **dealers** who are purchasing for the purpose of resale only.
- Certificate of Sales Tax Paid or Exemption for Auctions (Form ST-108A) - Used by purchasers claiming an exemption on the purchase of a **vehicle or watercraft** for exempt purposes other than for the resale exemption.

B. Farm Equipment

Consignment auctions for farm equipment are not entitled to automatic exemptions from Indiana sales or use tax. Not all pieces of equipment used by farmers are exempt from sales or tax. Farm equipment must be directly used in the direct production of foods or commodities for sale. For example, lawnmowers, bushhogs, post hole diggers, bobcats, gators, and all-terrain vehicles (ATVs) are all items commonly used on farms but are not generally directly used in direct production; thus, they are taxable. Auction companies or auctioneers must obtain a signed exemption certificate from any purchaser claiming an exemption. Sales tax must be collected in the absence of acceptance of an exemption certificate issued by the purchaser. For more information, please see Sales Tax Information Bulletin #9.

C. Fairground and Other Third-Party Sites

When auctions are conducted at fairgrounds or other third-party sites, they may fall under the "casual" sale rules. If the auction site is rented, leased, or provided by the auction company or auctioneer, where the auction company or auctioneer is ultimately responsible and liable for the auction site, all sales will be subject to the collection of sales tax by the auction company or auctioneer.

D. Charity Auctions

Charity auctions conducted by an auction company or auctioneer are exempt if the charitable organization is conducting the auction for a fundraising activity to benefit the charitable purpose for which the nonprofit organization was established. The nonprofit organization must provide an exemption certificate to the auction company or auctioneer. For more information, please see Sales Tax Information Bulletin #10.

E. Buyer's Premiums

If a buyer's premium is added to the winning bid price, it becomes part of the gross retail income and is therefore subject to sales tax. A **seller's premium** is not taxable.

V. GARAGE SALES, RUMMAGE SALES, OR SIMILAR TYPE SALES (NONAUCTION SALES)

A garage sale, rummage sale, or similar sale that meets all the following conditions is a casual sale and therefore the items sold are not subject to sales tax, or use tax:

1. The sale must be at the residence of the owner of the tangible personal property;
2. The sale must be conducted by the owner or the immediate family of the owner of the property being sold;
3. The tangible personal property must not have been acquired by the owner for the purpose of resale;
4. All sales or use tax due on the original acquisition of the property must have been paid by the owner; and
5. The sales must be held on an infrequent basis.

In the event that certain tangible personal property being sold at a particular sale meets the above conditions but other property fails to meet such conditions, **the seller becomes a retail merchant and sales tax must be collected on the sale of all property failing to meet the conditions.** The seller can register for sales tax by visiting the State of Indiana's INBiz website at inbiz.in.gov.

Example #2: An individual attends numerous garage sales throughout the year and purchases items to be resold in the individual's own garage sales, which are held monthly. This person has violated conditions of the "casual sale" exemption rules 3, 4, and 5 shown above and thus must register as a retail merchant and collect sales tax when he/she conducts his/her own garage sales.

If a taxable sale is conducted by the owner of the property, the owner must register as a retail merchant and must collect and remit the sales tax.

The sale of consigned tangible personal property is a retail sale, and the consignee must register as a retail

merchant and must collect and remit sales tax based on the gross retail income of the consignment sale.

If you have any questions concerning this bulletin, please contact the Tax Policy Division at taxpolicy@dor.in.gov.

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Commissioner

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