

DEPARTMENT OF STATE REVENUE

Information Bulletin #54
Sales Tax
April 2023
Effective Date: Upon Publication
(Replaces Bulletin #54, dated October 2021)

SUBJECT: Catalogs, Advertising Literature and Additional Advertising and Promotional Direct Mail

REFERENCES: [IC 6-2.5-1-10.7](#); [IC 6-2.5-1-16.5](#); [IC 6-2.5-1-22.2](#); [IC 6-2.5-13-3](#)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUMMARY OF CHANGES

Only nonsubstantive, technical changes have made to this bulletin. It has been primarily changed to reflect updated formatting.

INTRODUCTION

The purpose of this bulletin is to explain the taxation of transactions involving printed materials that are not to be resold, but instead delivered by common carrier or the United States Postal Service to recipients for purposes of advertising or promotion. In general, depending upon the location of the printer, the classification of the printed materials, the documentation provided by the purchase, and where the printed materials will be delivered, the printed materials may be subject to Indiana sales or use tax, or may be sourced to another jurisdiction and subject to the sales or use tax of that jurisdiction.

DEFINITIONS

The term "**direct mail**" means printed material delivered by United States mail or another delivery service to a mass audience or addresses on a mailing list (either provided by a purchaser or specified at the direction of a purchaser) if the cost of the item is not billed directly to the recipient. The term "direct mail" includes tangible personal property that the purchaser supplies directly or indirectly to the direct mail seller (for purposes of this bulletin, referred to as the "printer") for inclusion in the package containing the printed material. However, it does not include multiple items of printed material delivered to a single address.

The term "**advertising and promotional direct mail**" means printed material that is direct mail, the primary purpose of which is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization. A "product" means tangible personal property, a product transferred electronically, or a service. Examples of advertising and promotional direct mail include catalogs, brochures, pamphlets, coupons, and advertising circulars.

The term "**other direct mail**" means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing. The term includes the following:

- (1) Transactional direct mail that contains personal information specific to the addressee, including invoices, bills, statements of account, or payroll advices.
- (2) Any legally required mailings, including privacy notices, tax reports, and stockholder reports.
- (3) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including newsletters and informational pieces.

The term does not include the development of billing information or the provision of any data processing service that is more than incidental.

SOURCING OF ADVERTISING AND PROMOTIONAL DIRECT MAIL

Whether a transaction for advertising and promotional direct mail is subject to Indiana sales or use tax depends on many factors, including: the locations of the printer, the purchaser, and the recipients of the materials; whether the purchaser has a direct payment permit, or if not, other required forms or information; and whether the printer and/or purchaser has a physical presence or economic nexus in Indiana. The most important factor to determine

is whether or not the transaction is sourced to Indiana, meaning whether the transaction is considered an Indiana transaction subject to Indiana sales tax (i.e., sourced to Indiana), or considered a transaction of another jurisdiction (i.e., sourced to that jurisdiction) subject to that jurisdiction's tax.

Transactions Involving an Out-of-State Purchaser and an Indiana Printer

First, an out-of-state purchaser engaging the services of an Indiana printer to produce advertising and promotional direct mail may provide a direct payment permit to the printer. However, the purchaser can only provide a direct payment permit if they are registered with the department as a retail merchant and have requested and received a direct payment permit from the department. A printer who receives a direct payment permit has no duty to collect or remit Indiana sales tax on that transaction. Instead, the direct payment permit enables the purchaser to pay Indiana use tax directly to the department based on the purchase price of the materials delivered to addresses within Indiana. If the materials are also delivered to addresses outside of Indiana, the purchaser must source the remainder of the transaction to the jurisdictions to which the advertising and promotional direct mail is to be delivered and then pay or remit the applicable tax on a direct pay basis to those jurisdictions. For more information on direct payment permits, please refer to Sales Tax Information Bulletin #38, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

An Indiana purchaser that does not have a direct payment permit may instead provide the printer with an exemption certificate - either the Indiana General Sales Tax Exemption Certificate (Form ST-105) or a Streamlined Sales Tax Agreement Certificate of Exemption (SSTGB Form F0003) - claiming "direct mail." Like the direct payment permit, these forms relieve the printer of all obligations to collect, pay, or remit the applicable tax on any transaction involving advertising and promotional direct mail to which the certificate applies. The out-of-state purchaser is then required to source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, and then they are obligated to pay or remit the applicable tax to the appropriate jurisdictions on a direct pay basis.

If an out-of-state purchaser does not have a direct payment permit or an exemption certificate, they may provide the printer with information to show the jurisdictions to which the advertising and promotional direct mail is delivered to recipients. Unlike in the case of the use of a direct payment permit or exemption certificate, it is then the **printer's** responsibility to source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and collect the tax of the appropriate jurisdictions according to the delivery information provided by the purchaser. In the absence of bad faith, the printer is relieved of any further obligation to collect tax on any transaction where the printer has sourced the sale and collected tax under the delivery information provided by the purchaser.

If an out-of-state purchaser does not have any of the following forms or information above, then the printer must source the transaction to the location determined by the address from which the advertising and promotional direct mail was shipped. However, this does not limit the purchaser's obligation for sales or use tax to any jurisdiction to which the advertising and promotional direct mail is delivered. In this case, if the materials are shipped from Indiana, it is important to note that the state to which the advertising and promotional direct mail is delivered may disallow a credit for tax paid to Indiana.

NOTE: The guidance above assumes that the purchaser has no physical presence in Indiana, but instead is a remote seller. If the purchaser does not have economic nexus in Indiana, the purchaser's transactions with the Indiana printer that are sourced to Indiana do **not** count towards the purchaser's economic nexus thresholds. However, even if the purchaser does not have economic nexus in Indiana, they are still liable for the use tax owed to Indiana. In *D.H. Holmes v. McNamara*, 108 S. Ct. 1619 (1988), the United States Supreme Court has affirmed the states' ability to tax these transactions if the promotional materials were shipped free of charge to the recipient and mailed to residents indicated by the purchaser. These actions were considered "use" within the meaning of the state's tax code, and did not violate the Commerce Clause of the Constitution. However, the tax may only be imposed on the purchaser if the purchaser has sufficient contact with the taxing state. Use tax returns can be filed using the department's online e-services portal, called the Indiana Taxpayer Information Management Engine (INTIME), which can be accessed at intime.dor.in.gov.

Transactions Involving an Indiana Purchaser and an Out-of-State Printer

An Indiana purchaser that engages the services of an out-of-state printer to produce advertising and promotional direct mail may provide the printer with a direct payment permit, an exemption certificate or information to show the jurisdictions to which the advertising and promotional direct mail is delivered to recipients. However, based on the location of the printer, the printer may be required to accept the exemption forms or direct payment permit of the jurisdiction in which they are located. The customer may also be able to provide a "direct mail form" if the printer's state publishes such a form, which acts in the same way as a direct payment permit or exemption

certificate. Depending on what was provided to the printer (or not provided to the printer, if the Indiana customer cannot provide any forms), the sourcing rules for all of these would be the same as above.

With regard to any advertising and promotional direct mail that is sourced to Indiana for which the printer is responsible, if the printer is not already registered to collect and remit Indiana sales tax and they do not have economic nexus in Indiana, the printer's transactions with the Indiana purchaser that are sourced to Indiana count towards the printer's economic nexus thresholds. If the printer is required to register and collect Indiana sales tax, they must register with the department by visiting the State of Indiana's INBiz website, which allows businesses to register with multiple state agencies, at inbiz.in.gov.

On the other hand, if the printer does not have economic nexus in Indiana, then they do not have a responsibility to collect or remit Indiana sales tax. It then falls on the Indiana purchaser to remit use tax to the department on any materials sent to recipients in Indiana. The Indiana purchaser may have a remittance responsibility for the taxes of other jurisdictions to which the materials will be sourced, depending on whether the printer has physical presence or economic nexus in those jurisdictions. For more information on the responsibility of remote sellers to collect Indiana sales tax, please refer to Sales Tax Information Bulletin #89, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

Transactions Involving an Indiana Purchaser and an Indiana Printer

An Indiana purchaser that engages the services of an Indiana printer to produce advertising and promotional direct mail may provide the printer with a direct payment permit, an exemption certificate or information to show the jurisdictions to which the advertising and promotional direct mail is delivered to recipients. Depending on what was provided to the printer, the sourcing rules for all of these would be the same as above.

Transactions Involving an Out-of-State Purchaser and an Out-of-State Printer

An out-of-state purchaser that engages the services of an out-of-state printer to produce advertising and promotional direct mail will likely be using the forms or direct payment permits of the jurisdiction in which the printer is located. The information regarding the economic nexus issue for the printer and purchaser described above would still apply.

SOURCING OF OTHER DIRECT MAIL

Transactions for other direct mail are sourced differently than transactions for advertising and promotional direct mail. Transactions for other direct mail are sourced to the location indicated by an address for the purchaser that is available from the business records of the printer that are maintained in the ordinary course of the printer's business when use of this address does not constitute bad faith. In other words, if the purchaser is an Indiana purchaser, and the purchaser's address in Indiana is available from the business records of the printer, maintained in the ordinary course of the printer's business, then the transaction for other direct mail is sourced to Indiana.

However, a purchaser can still provide an exemption certificate as outlined in Section III above. This relieves the printer of any responsibility to collect, pay, or remit sales tax. The purchaser must then source the other direct mail to the jurisdictions to which such mail is to be delivered to the recipients. The purchaser must report and pay the applicable tax due based on this sourcing.

RESALE EXEMPTION

The above guidance applies to advertising and promotional direct mail that is not resold. If the materials are resold, then the printer needs to collect exemption certificates and the purchaser is then responsible for determining the sourcing of the materials it resells.

DIRECT MAIL FORMS

The statutory authority for the sourcing rules discussed in this bulletin describes the use of a "direct mail form." Neither the department nor Streamlined Sales Tax has developed a direct mail form. Should the department develop such a form, this bulletin will be updated to reflect that.

NEWSPAPER INSERTS

Advertising inserts which are printed either by a newspaper or private printer and are distributed as part of a newspaper are exempt from sales and use tax in Indiana. An advertising insert is advertising material that is either incorporated into the newspaper or delivered in conjunction with the newspaper.

NOTE: Advertising materials that are mailed directly to the recipient are considered direct mail even if the same materials are being included in newspapers. For more information, please refer to Sales Tax Information Bulletin

Indiana Register

#13, available online at in.gov/dor/legal-resources/tax-library/information-bulletins/sales-tax-information-bulletins/.

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

Robert J. Grennes, Jr.
Commissioner

Posted: 05/10/2023 by Legislative Services Agency

An [html](#) version of this document.