ARTICLE 2.2. SALES AND USE TAX

Rule 1. Definitions

45 IAC 2.2-1-1 General definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

(b) Unitary Transaction–Public Utility. For purposes of the state gross retail tax and use tax, all public utility services and commodities subject to said taxes invoiced in a single billing or statement, including a minimum charge, submitted to a consumer for payment shall constitute a unitary transaction.

(c) Retail Transaction. The state gross retail tax is imposed on retail transactions made in Indiana. Three general categories are designated as "retail transactions". The first category is described as transactions of a retail merchant that constitute selling at retail as described in IC 6-2.5-4-1. The second category is described as transactions of a retail merchant that constitute making a wholesale sale as described in IC 6-2.5-4-2. The third category is described as a transaction that is described in any other section of IC 6-2.5-4.

(d) Casual Sales. The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

(e) Retail Unitary Transaction. Regulatory definition of "retail unitary transaction" is used synonymously with the act *[IC 6-2.5]*.

(f) Person. Regulatory definition of "person" is used synonymously with the act *[IC 6-2.5]*.

(g) Department. Regulatory definition of "department" as the Indiana department of state revenue is used synonymously with the act *[IC 6-2.5]*.

(h) Gross Retail Income. Regulatory definition of "gross retail income" is used synonymously with the act *[IC 6-2.5]*.

(i) Gross Retail Income of a Public Utility or Power Subsidiary. Gross retail income includes all gross retail income including minimum charge, flat charge, membership fee, or any other form of charge or billing.

(j) Like Kind Exchange: Additional Consideration. Non-taxability extends only to the amount of value of the property received. Any additional consideration, commonly known as "boot", received either in cash or property of unlike kind, must be reported for taxation at actual value. However, when any property is clearly used as a medium of exchange in lieu of cash, the element of taxable exchange will be present.

(k) Like Kind Exchange: Limited to Two Parties. Non-taxable "exchanges" include only transactions for a swap or barter of property between two parties. Property received in an exchange transaction in which a third party is involved, with or without property, is subject to gross retail tax. This rule is not meant to deny non-taxability of exchanges where one or both of the parties in a two-party exchange employ an agent in carrying out the agreement.

(l) Like Kind Exchange: Property to be Owned by Parties at Time of Exchange. Non-taxable "exchanges" include only transactions in which the property exchanged is owned by the parties thereto at the time the exchange agreement is entered into. Transactions in which the property to be exchanged is acquired by one party after the agreement to exchange has been arranged are taxable. The exchange agreement must specify the definite units or quantity of property to be exchanged. However, "retail merchants" are allowed to consider as non-taxable the full value of tangible personal property of like kind received in allowable exchanges, even though ownership of the property received is encumbered by a conditional sales contract, retail installment contract, or a chattel mortgage.

(m) Internal Revenue Code. Regulatory definition of "Internal Revenue Code" as the Internal Revenue Code of 1986, is used synonymously with the act *[IC 6-2.5]*.

(n) Retail Merchant. Regulatory definition of "retail merchant" is used synonymously with the act *[IC 6-2.5]*.

(o) Tax Year or Taxable Year. Regulatory definition of "tax year" or "taxable year" is used synonymously with the act *[IC*

6-2.5]. (Department of State Revenue; Ch. 1, Regs. 6-2.5-1-1 through 6-2.5-1-9; filed Dec 1, 1982, 10:35 am: 6 IR 8; filed Aug 6, 1987, 4:30 pm: 10 IR 2610)

Rule 2. State Gross Retail Tax

45 IAC 2.2-2-1 Excise tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. An excise tax, known as the state gross retail (sales) tax is imposed on retail transaction's *[sic.]* made in Indiana. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 9)*

45 IAC 2.2-2-2 Collection of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. The retail merchant, acting as an agent for the state of Indiana, must collect the tax. The tax is bourne by the customer. Consideration is a necessary element of taxable transaction. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 9)*

45 IAC 2.2-2-3 Tax rate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at the following rates:

STATE GROSS RETAIL TAX	GROSS RETAIL INCOME RECEIVED FROM THE RETAIL UNITARY TRANSACTION
$.0	less than $.10
$.01	at least $ .10, but less than $.30
$.02	at least $ .30, but less than $.50
$.03	at least $ .50, but less than $.70
$.04	at least $ .70, but less than $.90
$.05	at least $ .90, but less than $1.10

On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar and ten cents ($1.10) or more, the state gross retail tax is five percent (5%) of that gross retail income. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-2(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 9; filed Aug 6, 1987, 4:30 pm: 10 IR 2611)*

45 IAC 2.2-2-4 Retail transactions less than 10 cents (Repealed)

Sec. 4. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-2-5 Fractions rounded to next additional cent

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. If the tax, computed under Reg. 6-2.5-2-2(a)(010) *[45 IAC 2.2-2-3]*, results in a fraction of one-half cent ($.005) or

more, the amount of the tax shall be rounded to the next additional cent. *(Department of State Revenue; Ch. 2, Reg. 6-2.5-2-2(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

Rule 3. Use Tax

45 IAC 2.2-3-1 Use defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. Regulatory definition of "use" is used synonymously with the Act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-2 Storage defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. Regulatory definition of "storage" is used synonymously with the Act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-3 Retail merchant engaged in business in Indiana defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. A retail merchant engaged in business in Indiana shall include:

(1) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, and office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in Indiana.

(2) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and having any representative, agent, salesman, canvasser or solicitor operating in Indiana under the authority of the retail merchant or its subsidiary for the purpose of selling, delivering, or taking orders for the sale of any tangible personal property for use, storage, or consumption in Indiana.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-1(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)

45 IAC 2.2-3-4 Use tax; imposition

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-5 Use tax; motor vehicles

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) For purposes of the state gross retail tax and use tax, transactions representing isolated or occasional sales of vehicles required to be licensed by the state for highway use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in this act of a vehicle required to be licensed by the state for highway use in Indiana shall be deemed a retail transaction and the use of such vehicle shall be

subject to the use tax which shall be paid by the purchaser to the Bureau of Motor Vehicles at the time of the licensing of the vehicle by the purchaser.

(b) The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one or more of the exemptions as provided on form ST-108.

(c) If the vehicle is purchased from a registered Indiana motor vehicle dealer, the dealer must collect the tax and provide the purchaser a completed form ST-108 showing that the tax has been paid to him; or if the purchaser claims exemption and no tax is collected by the dealer, the certificate at the bottom of form ST-108 must be completed and signed by the purchaser. Title applications on sales by registered dealers without a form ST-108, completed by the dealer, will not be accepted. The ST-108 must be attached to the revenue copy of the title application (TA) by the license branch. Whenever a purchaser claims exemption on the reverse side of form ST-108, the dealer must retain a completed exemption certificate.

(d) On any vehicle which is not purchased from a registered Indiana dealer, the license branch must collect the use tax at the time of registration unless the purchaser is entitled to claim exemption from the tax for one of the reasons shown on the reverse side of the form ST-108. When the tax is collected by the license branch, a person will be required to have an affidavit signed under penalty of perjury by the seller that contains the actual selling price of the vehicle. However, in absence of an affidavit the buyer will be charged on the average selling price for that vehicle, as determined under a used vehicle guide. The affidavit would be attached to the title instead of an ST-108 in the situation above; however, in the absence of the affidavit the amount of the selling price, trade-in, and the amount subject to the use tax must be noted on the title application (TA) by the license branch.

(e) If the purchaser claims exemption on a vehicle not purchased from a registered dealer, the ST-108 must be completed by the customer or the license branch and attached to the revenue copy of the title application (TA) by the license branch. The ST-108 must show the specific paragraph under which the exemption is claimed, and be signed at the bottom of the form by the purchaser.

(f) Exemptions from the sales tax will not be allowed except for the reasons listed on the reverse side of the revised form ST-108.

(g) The dealer or license branch must collect sales tax in the usual manner from any purchaser claiming exemption from the sales tax for a reason other than those shown on the ST-108. The purchaser may apply for a refund of this tax from the Indiana Department of Revenue, Sales Tax Division.

(h) The deduction for trade-in allowance applies only to vehicles traded-in and does not apply to other property, either personal or real, which is traded on a vehicle.

(i) The assumption by the purchaser of an installment contract or other obligation on a vehicle is subject to the tax on the amount of the obligation plus any other consideration given. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 10)*

45 IAC 2.2-3-6 Use tax; aircraft, watercraft

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a)(1) The term "aircraft" will include "any device which is designed to provide air transportation for one (1) or more individuals or for cargo."

(2) The term "watercraft" will include a contrivance used or designed for navigation on water, including a vessel, boat, motor vessel, steam vessel, sailboat, vessel operated by machinery either permanently or temporarily affixed, scow, tugboat, or any marine equipment that is capable of carrying passengers, except a ferry.

(b) For the purpose of the state gross retail and use tax:

(1) The sale of aircraft by any person licensed as an aircraft dealer in Indiana has been, and will continue to be, a retail sale. Transactions representing isolated or occasional sales of aircraft required to be licensed by the state for use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in the Indiana gross retail tax act *[IC 6-2.5]* of an aircraft required to be licensed by the state for use in Indiana shall be deemed a retail transaction, and the use of such aircraft shall be subject to the use tax which shall be paid by the purchaser to the aeronautics division of the department of transportation at the time of the licensing of the

aircraft by the purchaser.

(2) The sale of watercraft by any person licensed as a watercraft dealer in Indiana has been, and will continue to be, a retail sale. Transactions representing isolated or occasional sales of watercraft required to be licensed by the state for use in Indiana shall constitute retail transactions under the provisions of this section. Every sale by a resident or nonresident person who is not a retail merchant as defined in the Indiana gross retail tax act *[IC 6-2.5]* of a watercraft required to be licensed by the state for use in Indiana shall be deemed a retail transaction, and the use of such watercraft shall be subject to the use tax which shall be paid by the purchaser to the division of natural resources at the time of the licensing of the watercraft by the purchaser.

(c)(1) Persons licensed as aircraft dealers in Indiana will collect sales tax on their sales of aircraft and will record the selling price of the aircraft and the amount of sales tax collected on sales tax form ST-108AC. Form ST-108AC will be used by the purchaser as proof of payment of sales tax when registering the aircraft in Indiana. If the aircraft is purchased from any person other than an aircraft dealer licensed in Indiana, the purchaser must pay all sales or use tax due to the aeronautics division of the department of transportation at the time the aircraft is first registered in Indiana by the purchaser.

(2) Persons licensed as watercraft dealers in Indiana will collect sales tax on their sales of watercraft and will record the selling price of the watercraft and the amount of sales tax collected on sales tax form ST-108WC. Form ST-108WC will be used by the purchaser as proof of payment of sales tax when registering the watercraft in Indiana. If the watercraft is purchased from any person other than a watercraft dealer licensed in Indiana, the purchaser must pay all sales or use tax due to the division of natural resources at the time the watercraft is first registered in Indiana by the purchaser.

(d)(1) If the aircraft has been registered previously in Indiana, the seller must assign certificate of ownership to the purchaser showing the selling price, trade-in, description, and price. If the aircraft has not been previously registered in Indiana, the seller must furnish a bill of sale, signed by the seller, showing the make, model, year, selling price, and trade-in on the aircraft. At the time of registration, the purchaser must furnish the aeronautics division of the department of transportation with either the properly assigned certificate of ownership or bill of sale.

(2) If the watercraft has been registered previously in Indiana, the seller must assign certificate of ownership to the purchaser showing the selling price, trade-in, description, and price. If the watercraft has not been previously registered in Indiana, the seller must furnish a bill of sale, signed by the seller, showing the make, model, year, selling price, and trade-in on the watercraft. At the time of registration, the purchaser must furnish the division of natural resources with either the properly assigned certificate of ownership or bill of sale.

(e) Only the trade-in value of an aircraft for another aircraft, or the trade-in value of a watercraft for another watercraft, may be deducted from the selling price for sales tax purposes.

(f) Aircraft which are purchased to be taken immediately to another state for registration in that state, and not for registration or use in Indiana, are not subject to the Indiana sales tax. The purchaser must furnish the seller with exemption certificate ST-136AC, in triplicate. The seller is required to keep one copy for his files. Two copies of the exemption certificate must be certified by the dealer and forwarded to the sales tax division of the Indiana department of revenue. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 11; filed Aug 6, 1987, 4:30 pm: 10 IR 2612)*

45 IAC 2.2-3-7 Definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. (a) Contractors. For purposes of this regulation *[45 IAC 2.2]* "contractor" means any person engaged in converting construction material into realty. The term "contractor" refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.

(b) Construction material. For purposes of this regulation *[45 IAC 2.2]*, "construction material" means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

(c) Machinery, tools, equipment and supplies used by a contractor to perform a construction contract are not construction materials. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 12)*

45 IAC 2.2-3-8 Tangible personal property sold for incorporation into real property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 *[45 IAC 2.2-5]*). *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 12)*

45 IAC 2.2-3-9 Procedure when tax is not paid on construction material when purchased by the contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. (a) A contractor may purchase construction material exempt from the state gross retail tax only if he issues either an exemption certificate or a direct pay certificate to the seller at the time of purchase.

(b) A contractor who purchases construction material exempt from the state gross retail tax or otherwise acquires construction material "tax-free", is accountable to the Department of Revenue for the state gross retail tax when he disposes of such property.

(c) A contractor has the burden of proof to establish exempt sale or use when construction material, which was acquired tax-free, is not subject to either the state gross retail or use tax upon disposition.

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

(1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction material and the cost for the labor and other charges (only the gross proceeds from the sale of the construction materials are subject to tax), or

(2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction materials a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

(f) A disposition under C. *[subsection (e)(3) of this section]* will be exempt from the use tax only if the contractor received a valid exemption certificate, not a direct pay permit, from the ultimate purchaser or recipient of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 12)*

45 IAC 2.2-3-10 Procedure when tax paid on construction material when purchased by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. A contractor has no further liability for either the state gross retail tax or use tax with respect to construction material acquired by the contractor in a taxable transaction, provided the contractor disposes of such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;
(2) He utilizes the construction material for his own benefit and does not resell or transfer such property to others; or
(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(040); filed Dec 1, 1982, 10:35 am: 6 IR 13)

45 IAC 2.2-3-11 Procedure when construction material not furnished by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) A contractor is not liable for either the state gross retail tax or use tax when he converts construction material into realty on land he does not own, provided such property is furnished by the customer of the contractor.

(b) When the customer furnished the construction materials, the customer is deemed to be the user of such property and, as such, he is accountable to the Department of Revenue for any taxes owing and unpaid with respect to such construction material.

(c) A contractor may function as a retail merchant (having all duties and responsibility as such) with respect to construction material, and then function as an installer or "converter" of such property which will be treated as having been furnished by the customer.

(d) If a contractor functions as both retail merchant and an installer with respect to construction materials and the over-the-counter sales price of such property is less than fair market value, any consideration received by the contractor for installing or "converting" such property will be treated as part of the over-the-counter sales price subject to the state gross retail tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(050); filed Dec 1, 1982, 10:35 am: 6 IR 13)*

45 IAC 2.2-3-12 Contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) Tangible personal property purchased to become a part of an improvement to real estate under a contract with an organization entitled to exemption is eligible for exemption when purchased by the contractor.

(b) In order to be exempt on such purchases, the contractor must be registered as a retail merchant, must obtain an exemption certificate from the exempt organization, and must issue an exemption certificate to his supplier.

(c) Utilities, machinery, tools, forms, supplies, equipment, or any other items used or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed.

(d) A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchaser *[sic.]* price of all material so used.

(e) A person selling tangible personal property to be used as an improvement to real estate may enter into a completely separate contract to furnish the labor to install or construct such improvement, in which case the sales tax shall be collected and remitted by such seller on the materials sold for this purpose. Such sale of materials must be identifiable as a separate transaction from the contract for labor. The fact that the seller subsequently furnished information regarding the charges for labor and material used under a flat bid quotation shall not be considered to constitute separate transactions for labor and material. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-2(c)(060); filed Dec 1, 1982, 10:35 am: 6 IR 13)*

45 IAC 2.2-3-13 Tax rate; use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. Tangible personal property, purchased in Indiana or elsewhere in a retail transaction from a retail merchant, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax measured by the gross retail income received from such property, unless the Indiana state gross retail tax has been collected at the point of purchase. *(Department of State Revenue; Ch.*

3, Reg. 6-2.5-3-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)

45 IAC 2.2-3-14 Exemption from use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-5-24

Sec. 14. The use tax does not apply to the following:

(1) Storage, use, or other consumption in Indiana of tangible personal property sold in a transaction on which the gross retail tax has been paid.

(2) Storage, use, or other consumption in Indiana of tangible personal property sold in a transaction exempt from gross retail tax under any part of IC 6-2.5-5, except IC 6.2.5-5-24(b) *[sic.]*. Therefore, as provided by IC 6-2.5-5-24(a), the exemption from use tax would extend to transactions described in IC 6-2.1-3-2, IC 6-2.1-3-5, IC 6-2.1-3-6, IC 6-2.1-3-7, and IC 6-2.1-3-13. Such items include:

(A) Gross income derived from sales to the United States government, but only to the extent to which the state of Indiana is prohibited from taxing such gross income by the constitution of the United States.

(B) Taxes received or collected by the taxpayer as agent for the state of Indiana and/or the United States of America. (This exemption is limited only to taxpayers explicitly designated as a collection agent in the statute under the terms of which tax is imposed.)

(C) Retailers' excise taxes imposed by the United States solely on the sale at retail of tangible personal property and collected by a retail merchant as a separate item in addition to the price of the property sold, and which is remitted by such retail merchant to the taxing authority. "Retailers' excise taxes imposed by the United States" includes manufacturer excise tax imposed by the United States on motor vehicle bodies and chassis, parts, and accessories therefore, tires, tubes for tires, tread rubber and laminated tires, provided that such tax is separately stated by the seller.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-4(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)

45 IAC 2.2-3-15 Liability for tax following nonexempt use after exemption certificate issued

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. If any person who issues an exemption certificate in respect to the state gross retail tax or use tax and thereafter makes any use of the tangible personal property covered by such certificate, or in any way consumes, stores, or sells such tangible personal property, where such use, consumption, storage or sale is in a manner which is not permitted by such exemption, such use, consumption, or storage shall become subject to the use tax (or such sale shall become subject to the gross retail tax), and such person shall become liable for the tax or gross retail tax due thereon. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-4(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-16 Credits for taxes paid to other states

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. Liability for Indiana use tax shall be reduced by a credit for the amount of any sale, purchase, or use tax paid to any other state, territory or possession of the United States with respect to the tangible personal property on which Indiana use tax applies. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-5(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-17 Credits; exceptions (Repealed)

Sec. 17. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-3-18 Personal liability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. Liability for Indiana use tax shall apply with respect to storage, use, or consumption of tangible personal property in Indiana, and the person who stores, uses, or consumes such property shall be personally liable for such use tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)*

45 IAC 2.2-3-19 Collection of use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 19. (a) The use tax shall be paid by the purchaser to the retail merchant, who shall collect the tax as agent for the state of Indiana.

(b) Retail merchants who must collect use tax as agent for the purchaser are:

(1) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in Indiana.

(2) Any retail merchant engaged in selling at retail for use, storage, or consumption in Indiana and having any representative, agent, saleman, canvasser or solicitor operating in Indiana under the authority of the retail merchant or its subsidiary for the purpose of selling, delivering, or taking orders for the sale of any tangible personal property for use, storage, or consumption in Indiana.

(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 14)

45 IAC 2.2-3-20 Merchandise accepted in Indiana; collection of use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 20. All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax. The use tax must be collected by the seller if he is a retail merchant described in Reg. 6-2.5-3-6(b)(010) *[45 IAC 2.2-3-19]* or if he has Departmental permission to collect the tax. If the seller is not required to collect the tax or fails to collect the tax when required to do so, the purchaser must remit the use tax directly to the Indiana Department of Revenue. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-21 Merchandise accepted outside Indiana; collection of use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 21. All purchases of tangible personal property which are accepted by the purchaser outside the state of Indiana but which are stored, used, or otherwise consumed in Indiana are subject to the use tax. The use tax must be remitted directly to the Indiana Department of Revenue by the Indiana purchaser. (See 6-2.5-3-5(b)(010) *[45 IAC 2.2-3-20]*.) *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(b)(030); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-22 Motor vehicles; collection of use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 22. No vehicle shall be licensed by Indiana for highway use in Indiana unless the registered owner thereof shall present to the licensing agency at the time such vehicle is first licensed in his name proper evidence, as prescribed by the Department, of

the payment of the state gross retail tax or use tax owing in respect to his acquisition of ownership of such vehicle, or shall then pay to such agency upon forms and receipts prescribed by the Department, the amount of any such tax owing and unpaid on the purchase of such vehicle. (See 6-2.5-3-2(b) *[45 IAC 2.2-3-5 and 45 IAC 2.2-3-6]*.) *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-23 Aircraft, watercraft; collection of use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 23. No aircraft or watercraft shall be registered by Indiana for use in Indiana unless the registered owner thereof shall present to the registering agency at the time such aircraft or watercraft is first registered in his name, proper evidence, as prescribed by the department, of the payment of the state gross retail tax or use tax owing in respect to his acquisition of ownership of such aircraft or watercraft, or shall then pay to such agency upon forms and receipts prescribed by the department, the amount of any such tax owing and unpaid on the purchase of such aircraft or watercraft. (See 6-2.5-3-2(b)(020) *[45 IAC 2.2-3-6]*.) *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-6(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 15; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)*

45 IAC 2.2-3-24 Presumption of purchase for use

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 24. All sales of tangible personal property by a retail merchant for delivery in Indiana shall be presumed to be retail transactions for storage, use, or consumption in Indiana. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-7(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-25 Presumption of purchase for use; burden of proof

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 25. The burden of proving the contrary is upon the purchaser. The retail merchant making such a sale shall bear the burden of proving to the contrary also, unless he receives from the purchaser an exemption certificate. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-7(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 15)*

45 IAC 2.2-3-26 Collection of use tax; receipt

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 26. If requested by the purchaser, the retail merchant shall give such purchaser a receipt for collection of the use tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-8(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)*

45 IAC 2.2-3-27 Documentation; use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 27. The person who stores, uses or consumes tangible personal property in Indiana may avoid paying the use tax to the Department if such person retains for inspection by the Indiana Department of Revenue a receipt evidencing payment of the tax. *(Department of State Revenue; Ch. 3, Reg. 6-2.5-3-8(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)*

Rule 4. Retail Transactions of Retail Merchant

45 IAC 2.2-4-1 Selling at retail; application

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".

(b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

(1) The price arrived at between purchaser and seller.

(2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)

45 IAC 2.2-4-2 Selling at retail; services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) 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 gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;

(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;

(3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and

(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in 6-2.5-4-1(c)(010), paragraph (1) *[subsection (a) of this section]*, the gross retail tax shall not apply to such transaction. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-1(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16)*

45 IAC 2.2-4-3 Selling at retail; delivery charges

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) Separately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer.

(b) The following guidelines have been developed:

(1) Delivery charge separately stated with F.O.B. destination–taxable.

(2) Delivery charge separately stated with F.O.B. origin–non taxable.

(3) Delivery charge separately stated where no F.O.B. has been established–non taxable.
(4) Delivery charges included in the purchase price are taxable.
(c) Two considerations must always be kept in mind in applying these guidelines:
(1) The rules do not override established interstate commerce exemptions recognized by IC 6-2.1-3-3 (see 6-2.5-5-24(b)(010) *[45 IAC 2.2-5-54]*).
(2) The rules are only applicable in determining whether or not the delivery charge of an otherwise taxable sale is also subject to sales or use tax.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-1(e)(010); filed Dec 1, 1982, 10:35 am: 6 IR 16; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)

45 IAC 2.2-4-4 Wholesale sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. The term "wholesale sales" includes an *[sic.]* is limited to the following:
(1) Sales of tangible personal property, except capital or depreciable assets, to a purchaser for resale in the form in which it was purchased.
(2) Sales of tangible personal property for its direct consumption in direct production by a purchaser in the business of producing tangible personal property by manufacturing, processing, refining, repairing, mining, agriculture or horticulture. "Consumed" as used in this regulation *[45 IAC 2.2]* means the dissipation or expenditure by combustion, use or application, and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, dies, equipment, machinery, or furnishings.
(3) Sales of tangible personal property to be incorporated as material and integral part of tangible personal property produced by the purchaser in the business of manufacturing, assembly, construction, refining or processing.
(4) Sales of drugs, medicine, dental preparations and like materials to be directly consumed in professional use by doctors, dentists, embalmers, hospitals, barber shops, etc.
(5) Sales of tangible personal property for direct consumption by the purchaser in industrial cleaning.
(6) Sales of tangible personal property for direct consumption by the purchaser directly in the business of rendering public utility services.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-2(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 17)

45 IAC 2.2-4-5 Wholesale sales; exceptions from retail transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. Notwithstanding Regulation 6-2.5-4-2(b)(010) *[45 IAC 2.2-4-4]*, retail transaction does not include receipts from industrial servicing or processing of tangible personal property owned by another and which is to be sold by him as either a completed article or a material part thereof, or as an integral or component part of tangible personal property produced for sale by him as part of the business of manufacturing, assembly, construction, refining or processing. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-2(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 17)*

45 IAC 2.2-4-6 Retail transactions; soft water and water conditioning

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a) Water conditioning companies (including all soft water companies) are retail merchants making retail transactions with respect to all tangible personal property sold, leased, or rented by them and must collect the sales tax on all such property unless the purchaser or user is entitled to claim exemption from the sales tax and furnished a properly completed exemption certificate.

(b) For purposes of collection of the tax, the term "water conditioner" shall include all automatic softeners, softener tanks, exchange tanks, purifiers, chlorinators, or any other device or equipment, together with the minerals contained therein used to condition, purify or soften water.

(c) Rented or leased water conditioners, including those leased with an option for purchase, or those otherwise furnished for a monthly or other periodic charge are subject to the sales tax on the amount charged. Such conditioners subsequently sold after July 1, 1969, shall be subject to the tax on the full selling price. The tax is also due on any payment required to exercise the option.

(d) Purchases by a water conditioning company of water conditioners, tanks and other equipment to be subsequently sold or rented are not subject to the sales tax.

(e) Purchases of all other equipment, supplies, and materials not for resale, including salt or any other cleaning agent used to rejuvenate water tanks or the minerals therein, are subject to the sales tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-3(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 17)*

45 IAC 2.2-4-7 Retail transactions; soft water and water conditioning plumbing services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. When a customer is billed separately for materials used to alter or change plumbing to accommodate conditioning equipment, the sales tax shall be charged on such materials. If materials used in an installation are not billed as a separate item to the customer, the company shall then be liable for the use tax thereon. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-3(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 17)*

45 IAC 2.2-4-8 Accommodations furnished for less than 30 days

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) For the purpose of the state gross retail tax and use tax: Every person engaged in the business of renting or furnishing for periods of less than thirty (30) days any accommodation including booths, display spaces and banquet facilities, in any place where accommodations are regularly furnished for a consideration is a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income from retail unitary transactions.

(b) In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for a period of thirty (30) days or more is not subject to the gross retail tax.

(c) There is no exemption for purchases made by persons who are engaged in renting or furnishing accommodations. Such persons are deemed to purchase or otherwise acquire tangible personal property for use or consumption in the regular course of their business.

(d) The renting or furnishing of an accommodation for less than thirty (30) days constitutes a retail merchant making a retail transaction. Every person so engaged must collect the gross retail tax on the gross receipts from such transactions. The tax is borne by the person or organization who uses the accommodation.

(e) The tax is imposed on the gross receipts from "furnishing" an accommodation. The gross receipts subject to tax include the amount which represents consideration for the rendition of those services which are essential to the furnishing of the accommodation, and those services which are regularly provided in furnishing the accommodation. Such amounts are subject to tax even when they are separately itemized on the statement or invoice.

(f) The tax is imposed on the gross receipts from accommodations which are furnished for periods of less than thirty (30) days. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 18)*

45 IAC 2.2-4-9 Accommodation defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. (a) For purposes of the state gross retail and use tax, an "accommodation" is any space, facility, structure, or

combination thereof including booths, display spaces and banquet facilities, together with all associated personal or real property (including land), which is intended for occupancy by human beings for a period less than thirty (30) days including:

(1) Rooms in hotels, motels, lodges, ranches, villas, apartments or houses.

(2) Gymnasiums, coliseums, banquet halls, ballrooms, or arenas, and other similar accommodations requlary *[sic.]* offered for rent.

(3) Cabins or cottages.

(4) Tents or trailers (when situated in place).

(5) Spaces in camper parks and trailer parks wherein spaces are regularly offered for rent for periods of less than thirty (30) days.

(6) Rooms used for banquets, weddings, meetings, sales displays, conventions or exhibits.

(7) Booths or display spaces in a building, coliseum or hall.

(b) The tax does not apply to rental of meeting rooms to charitable or other exempt organizations to be used in the furtherance of the purpose for which they are granted exemption.

–EXAMPLE–

If a person moves into a room for an indefinite period, but pays weekly, sales tax must be collected until a person has rented the room for longer than 30 consecutive days.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-4(020); filed Dec 1, 1982, 10:35 am: 6 IR 18)

45 IAC 2.2-4-10 Power subsidiary

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. Regulatory definition of "power subsidiary" is used synonymously with the Act *[IC 6-2.5]*. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 18)*

45 IAC 2.2-4-11 Power subsidiary; retail transaction

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) In general, the furnishing of electricity, gas, water, steam or steam heating services by public utilities to consumers is subject to the state gross retail tax.

(b) A power subsidiary or a person engaged as a public utility in furnishing or selling electrical energy, natural or artificial gas or mixtures thereof, water, or steam or steam heating services to a person for domestic or commercial consumption shall be a retail merchant in respect thereto, and the gross income received therefrom, shall constitute gross retail income of a retail merchant received from a retail transaction.

(c) The gross receipts of power subsidiaries on public utilities from the furnishing or selling of gas, electricity, water, or steam are subject to the state gross retail tax. The tax applies to the total receipts of such power subsidiary or public utilities for services furnished or sold, irrespective of whether the actual net charge is based upon actual consumption, a flat rate charge, or a minimum charge. The tax is borne by the consumers.

(d) The term "public utilities" as used in this regulation *[45 IAC 2.2]* means any organization which is engaged in the furnishing or selling of electricity, natural or artificial gas or mixtures thereof, water, steam or steam heating, and having the right of eminent domain or subject to government regulation in connection with the furnishing of public utility services. The term includes governmental units and not-for-profit organizations which furnish public utility services. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 18)*

45 IAC 2.2-4-12 Power subsidiary; installation or removal of equipment not subject to the gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) In general, the furnishing of electricity, gas, water, steam or steam heating services by public utilities to consumers is subject to the gross retail tax.

(b) The gross receipts of a power subsidiary or person engaged as a public utility in selling electrical energy, gas, water, or steam to consumers derived from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of any such public utility service or commodity shall not constitute gross retail income of a retail merchant received from a retail transaction.

(c) The gross receipts of power subsidiaires *[sic.]* or public utilities engaged in furnishing electrical energy, gas, water, or steam to consumers from the provision, installation, construction, servicing, or removal of tangible personal property used to furnish such public utility services shall not constitute gross receipts of a retail merchant received from a retail transaction. The gross receipts from connect and disconnect charges, equipment charges, contributions in aid of construction charges, deferred payment charges, delinquency charges, and repair service charges are not subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 19)*

45 IAC 2.2-4-13 Power subsidiary; utilities furnished to industrial consumers not subject to the gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-5; IC 6-2.5-5-5.1

Sec. 13. (a) In general, the furnishing of electricity, gas, water, steam, or steam heating services by public utilities to consumers is subject to tax.

(b) The gross receipt of every person engaged as a power subsidiary or a public utility derived from selling electrical energy, gas, water, or steam to consumers for direct use in direct manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in IC 6-2.5-4-5 shall not constitute gross retail income of a retail merchant received from a retail transaction. Electrical energy, gas, water, or steam will only be considered directly used in direct production, manufacturing, mining, refining, oil or mineral extraction, irrigation, agriculture, or horticulture if the utilities would be exempt under IC 6-2.5-5-5.1.

(c) Sales of public utility services or commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, horticulture, or another public utility or power subsidiary described in IC 6-2.5-4-5, based on a single meter charge, flat rate charge, or other charge, are excepted if such services are separately metered or billed and will be used predominantly for the excepted purposes.

(d) Sales of public utility services and commodities to consumers engaged in manufacturing, mining, production, refining, oil or mineral extraction, irrigation, agriculture, or horticulture, based on a single meter charge, flat rate charge, or other charge, which will be used for both excepted and nonexcepted purposes are taxable unless such services and commodities are used predominantly for excepted purposes.

(e) Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50%) of the utility services and commodities are consumed for excepted uses. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-5(c)(020); filed Dec 1, 1982, 10:35 a.m.: 6 IR 19; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1366)*

45 IAC 2.2-4-14 Local exchange telephone service or intrastate message toll telephone service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 14. (a) In general, the furnishing of telephone services by public utilities to consumers is subject to the state gross retail tax. The gross receipts of public utilities from the furnishing of local exchange telephone service or intrastate message toll service is subject to the state gross retail tax. The tax applies to the total receipts of such public utilities for furnishing such services. The tax is borne by the consumer.

(b) Every person engaged as a public utility in the furnishing of communication service with respect to the furnishing of local exchange telephone service or intrastate message toll telephone shall be and constitute a retail merchant in respect thereto, and

the gross income received therefore upon billings or statements rendered to consumers shall constitute gross retail income received from retail transactions.

(c) Local exchange intrastate telephone service. The tax is imposed on the gross receipts from charges periodically billed to consumers for the privilege of making local exchange calls to other telephones located within the local exchange telephone area. The tax applies irrespective of whether the actual net charge is based upon flat rate charge, a message charge, a minimum charge, service charge, or a membership fee.

(d) Intrastate message toll telephone service. The tax is imposed on the gross receipts from message charges periodically biled *[sic.]* to consumers for the privilege of transmitting messages, information, or intelligence between points located within Indiana where the amount of the charge is regulated by the Public Service Commission of Indiana. The tax applies to the total receipts of such service irrespective of whether the actual net charge is based upon a flat rate charge, a message charge, a minimum charge, service charge or a membership fee.

(e) The term "public utilities" as used in this regulation *[45 IAC 2.2]* means any organization which is engaged in the furnishing or selling of telephone services and having the right of eminent domain or subject to governmental regulations in connection with the furnishing of public utility services. The term includes governmental units and not-for-profit organizations which furnish public utility services. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-6(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 20)*

45 IAC 2.2-4-15 Telephone utilities; installation or removal of equipment not subject to gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. (a) In general, the furnishing of telephone services by public utilities is subject to gross retail tax.

(b) The gross receipts of public utilities engaged in furnishing telephone services to consumers derived from the provision, installation, construction, servicing, or removal of tangible personal property used in connection with the furnishing of such public utility service does not constitute gross retail income of a retail merchant received from a retail transaction. The gross receipts from installation charges, repair charges, deferred payment charges and delinquency charges are not subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-6(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 20)*

45 IAC 2.2-4-16 Telephone utilities; utilities furnished to other customers not subject to gross retail tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-5

Sec. 16. The gross receipts of every person engaged as a public utility derived from furnishing local exchange telephone service or intrastate message toll telephone service to other public utilities which furnish local exchange telephone service, intrastate message toll telephone service or intrastate telegraph service or another public utility or power subsidiary described in IC 6-2.5-4-5 shall not constitute gross retail income received from a retail transaction. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-6(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 20)*

45 IAC 2.2-4-17 Public utilities furnishing intrastate telegraph service (Repealed)

Sec. 17. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-4-18 Telegraph utilities; installation or removal of equipment not subject to gross retail tax (Repealed)

Sec. 18. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-4-19 Telegraph utilities; utilities furnished to other utility customers not subject to the gross retail tax (Repealed)

Sec. 19. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-4-20 Private or proprietary activities or business; state, local governments and agencies

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 20. The state of Indiana, its agencies and instrumentalities, all counties, townships and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, shall, in the performance of private or proprietary activities or business, constitute retail merchants making retail transactions in respect to receipts which would constitute gross retail income from a retail transaction if received by a retail merchant. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-8(010); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-21 Tangible personal property sold for incorporation into real property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 21. (a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 *[45 IAC 2.2-5]*). *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-22 Procedure when a tax is not paid on construction material when purchased by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 22. (a) A contractor may purchase construction material exempt from the state gross retail tax only if he issues either an exemption certificate or a direct pay certificate to the seller at the time of purchase.

(b) A contractor, who purchases construction material exempt from the state gross retail tax or otherwise acquires construction material "tax-free", is accountable to the Department of Revenue for the state gross retail tax when he disposes of such property unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 *[45 IAC 2.2-5]*).

(c) A contractor has the burden of proof to establish exempt sale or use when construction material, which was acquired "tax-free", is not subject to either the state gross retail tax or use tax upon disposition.

(d) Disposition subject to the state gross retail tax. A contractor-retail merchant has the responsibility to collect the state gross retail tax and to remit such tax to the Department of Revenue whenever he disposes of any construction material in the following manner:

(1) Time and material contract. He converts the construction material into realty on land he does not own and states separately the cost for the construction materials and the cost for the labor and other charges (only the gross proceeds from the sale of the construction material are subject to tax); or

(2) Construction material sold over-the-counter. Over the counter sales of construction materials will be treated as exempt from the state gross retail tax only if the contractor receives a valid exemption certificate issued by the person for whom the construction is being performed or by the customer who purchases over-the-counter, or a direct pay permit issued by the customer who purchases over-the-counter.

(e) Disposition subject to the use tax. With respect to construction material a contractor acquired tax-free, the contractor is liable for the use tax and must remit such tax (measured on the purchase price) to the Department of Revenue when he disposes of such property in the following manner:

(1) He converts the construction material into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

A disposition under C. *[subsection (e)(3) of this section]* will be exempt from the use tax if the contractor received a valid exemption certificate from the ultimate purchases (purchaser) or recipient of the construction material (as converted), provided such person could have initially purchased such property exempt from the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 21)*

45 IAC 2.2-4-23 Procedure when tax paid on construction material when purchased by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 23. A contractor has no further liability for either the state gross retail tax or use tax with respect to construction material acquired by the contractor in a taxable transaction, provided the contractor disposes of such property in the following manner:

(1) He converts the construction materials into realty on land he owns and then sells the improved real estate;

(2) He utilizes the construction material for his own benefit and does not resell or transfer such property to others; or

(3) Lump sum contract. He converts the construction material into realty on land he does not own pursuant to a contract that includes all elements of cost in the total contract price.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(030); filed Dec 1, 1982, 10:35 am: 6 IR 22)

45 IAC 2.2-4-24 Procedure when construction material not furnished by contractor

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 24. (a) A contractor is not liable for either the state gross retail tax or use tax when he converts construction material into realty on land he does not own, provided such property is furnished by the customer of the contractor.

(b) When the customer furnishes the construction materials, the customer is deemed to be the user of such property and, as such, he is accountable to the Department of Revenue for any taxes owing and unpaid with respect to such construction material.

(c) A contractor may function as a retail merchant (having all duties and responsibilities as such) with respect to construction material, and then function as an installer or "converter" of such property which will be treated as having been furnished by the customer.

(d) If a contractor functions as both retail merchant and an installer with respect to construction materials and the over-the-counter sales price of such property is less than fair market value, any consideration received by the contractor for installing or "converting" such property will be treated as part of the over-the-counter sales price subject to the state gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(040); filed Dec 1, 1982, 10:35 am: 6 IR 22)*

45 IAC 2.2-4-25 Definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 25. (a) Contractor. For purposes of this regulation *[45 IAC 2.2]*, "contractor" means any person engaged in converting construction material into realty. The term "contractor" refers to general or prime contractors, subcontractors, and specialty contractors, including but not limited to persons engaged in building, cement work, carpentry, plumbing, heating, electrical work, roofing, wrecking, excavating, plastering, tile and road construction.

(b) Construction material. For purposes of this regulation *[45 IAC 2.2]*, "construction material" means any tangible personal property to be used for incorporation in or improvement of a facility or structure constituting or becoming part of the land on which such facility or structure is situated.

(c) Machinery, tools, equipment and supplies used by a contractor to perform a construction contract are not construction materials. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(a)(050); filed Dec 1, 1982, 10:35 am: 6 IR 23)*

45 IAC 2.2-4-26 Contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 26. (a) A person making a contract for the improvement to real estate whereby the material becoming a part of the improvement and the labor are quoted as one price is liable for the payment of sales tax on the purchase price of all material so used.

(b) A person selling tangible personal property to be used as an improvement to real estate may enter into a conpletely *[sic.]* separate contract to furnish the labor to install or construct such improvement, in which case the sales tax shall be collected and remitted by such seller on the materials sold for this purpose. Such sales of materials must be identifiable as a separate transaction from the contract for labor. The fact that the seller subsequently furnished information regarding the charges for labor and material used under a flat bid quotation shall not be considered to constitute separate transactions for labor and material.

(c) Tangible personal property purchased to become a part of an improvement to real estate under a contract with an organization entitled to exemption is eligible for exemption when purchased by the contractor.

(d) In order to be exempt on such purchases the contractor must be registered as a retail merchant and must obtain an exemption certificate from the exempt organization, and must issue an exemption certificate to his supplier.

(e) Utilities, machinery, tools, forms, supplies, equipment or any other items used by or consumed by the contractor and which do not become a part of the improvement to real estate are not exempt regardless of the exempt status of the person for whom the contract is performed. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-9(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 23)*

45 IAC 2.2-4-27 Tangible personal property; renting and leasing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 27. (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation *[45 IAC 2.2]* only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.

(b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.

(c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

(d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.

(1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental of lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

(2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

(3) Renting or leasing property with an operator:

(A) The renting or leasing of tangible personal property, together with the services of an operator shall be subject to the tax when control of the property is exercised by the lessee. Control is exercised when the lessee has exclusive use of the property, and the lessee has the right to direct the manner of the use of the property. If these conditions are

present, control is deemed to be exercised even though it is not actually exercised.

(B) The rental of tangible personal property together with an operator as part of a contract to perform a specific job in a manner to be determined by the owner of the property or the operator shall be considered the performance of a service rather than a rental or lease provided the lessee cannot exercise control over such property and operator.

(C) When tangible personal property is rented or leased together with the service of an operator, the gross retail tax or use tax is imposed on the property rentals. The tax is not imposed upon the charges for the operator's services, provided such charges are separately stated on the invoice rendered by the lessor to the lessee.

(D) Notwithstanding any other provision of this regulation *[45 IAC 2.2]* any lessee leasing or renting a vehicle(s) from any lessor, including an individual lessor, with or without operators, driver(s), or even if the operator (driver) himself is the lessor, regardless of control exercised, shall not be subject to the gross retail tax or use tax, if the leased or rented vehicle(s) are directly used in the rendering of public transportation.

(4) Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased.

(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-10(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 23; filed Aug 6, 1987, 4:30 pm: 10 IR 2613)

45 IAC 2.2-4-28 Tangible personal property; sales by persons engaged in renting or leasing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 28. (a) The sale by a person of tangible personal property which is rented or leased in the regular course of such person's rental or leasing business shall be subject to the gross retail tax and use tax.

(b) In general, casual sales of tangible personal property are exempt from tax. This regulation *[45 IAC 2.2]* imposes a tax on such sales of tangible personal property subsequent to such property's use as rental property. The state gross retail tax shall apply to the gross receipts from the sale of any tangible personal property which had been rented or leased to others in the regular course of the seller's renting or leasing business. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-10(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 24)*

45 IAC 2.2-4-29 Motion picture film; rental or leasing; exclusion

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 29. In general, the rental or leasing of all tangible personal property, including microfilm, slides, video tape, tape recordings, phonograph records, etc., are taxable. The provisions applicable to the imposition of the tax on rental or leasing transactions shall not be applicable to the rental or leasing of motion picture films, audio or video tape where an admission is charged or such film or tape is used for broadcasting for home viewing or listening. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-10(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 24)*

45 IAC 2.2-4-30 Cable TV service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 30. Every person engaged in the furnishing of local or intrastate cable television service shall be a retail merchant making retail transactions in respect to the furnishing of such service, and the gross income received therefrom, upon billings or statement rendered to consumers, shall constitute gross retail income from a retail transaction for the purposes of the gross retail tax. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-11(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 24)*

45 IAC 2.2-4-31 Cable TV service; exclusion

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 31. In general, all charges billed to the user of cable television service are subject to sales tax. This regulation *[this section]* excludes only charges billed to the consumer for the provision, installation, construction, servicing or removal of tangible personal property used in connection with the furnishing of such service. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-11(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-32 Cable TV companies; purchases

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 32. This regulation *[45 IAC 2.2]* does not exempt cable television companies from sales tax on their purchases of tangible personal property; therefore, they will be required to pay sales tax on their purchases. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-11(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-33 Auction sales; sales tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 33. Every person engaged in the business of making sales at auction of tangible personal property owned by such person or others, shall be and constitute a retail merchant making retail transactions in respect thereto and the gross income received therefrom shall constitute gross retail income of a retail merchant received from retail transactions. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-12(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-34 Auction sales; exclusion

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 34. In general, all sales of tangible personal property by any person engaged in the business of making sales at auction are taxable. This regulation *[this section]* excludes only occasional or isolated sales of tangible personal property on the premises of the owner in those instances where such tangible personal property was not acquired for resale. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-12(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

45 IAC 2.2-4-35 Auction sales; application of exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 35. (a) An auction that meets all of the following conditions is casual sale and is therefore not subject to sales tax:

(1) The sale must be on premises owned or provided by the owner of the tangible personal property being sold and not the auctioneer.

(2) The tangible personal property must not have been purchased for resale nor consigned by a third party for sales.

(b) Auctions which do not meet the above conditions are subject to sales tax.

(c) In the event that certain tangible personal property being sold at a particular auction sale meets the above conditions but other property fails to meet such conditions sales tax must be collected on the sale of all property failing to meet the conditions.

(d) If such a taxable sale is conducted by a licensed auctioneer, the auctioneer is a retail merchant with respect to the property being sold and is responsible for the collection of the sales tax thereon.

(e) If such a sale is conducted by the owner or consignee (or his agent other than a licensed auctioneer), the owner,

(consignee) becomes a retail merchant and must collect sales tax on the property being sold.

(f) Before conducting a taxable sale as defined above, a licensed auctioneer or owner (consignee) must obtain a Registered Retail Merchant Certificate from the Department of Revenue. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-4-12(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 25)*

Rule 5. Exempt Transactions of a Retail Merchant

45 IAC 2.2-5-1 Agricultural production; definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) Definitions. "Farmers" means only those persons occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale. These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer.

"To be directly used by the farmer in the direct production of food or agricultural commodities" requires that the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(b) The state gross retail tax shall not apply to:

(1) Sales to farmers of animals and poultry used for breeding purposes are exempt from tax provided the farmer used such animals and poultry to breed animals and poultry to be used by the farmer in the production of food or agricultural commodities.

(2) Sales to farmers of animals and poultry to be directly used by the farmer in the direct production of food and agricultural commodities are exempt from tax. Domestic animals and birds, pets, game animals and birds, furbearing animals, fish, and other animals or poultry not directly used by the farmer in the direct production of food or agricultural commodities are subject to tax. Baby chicks, ducklings, geese, turkey poults, hatching eggs, pigs, hogs *[sic., ,]* lambs, sheep, livestock, calves, and cows are exempt from tax, provided that they are directly used by the farmer in the direct production of food or agricultural commodities for sale.

(3) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, or poultry consumption (either for sale or for further use in producing such food and agricultural commodities for sale) of animal and poultry life to be directly used by the purchaser in the direct production of food and agricultural commodities.

(4) Sales of animals and poultry to a farmer to be directly used by the farmer in the direct production of food or agricultural commodities (either for sale or for further use in producing such food or commodities for sale) for human, animal, or poultry consumption are exempt from tax.

(c) Energy Equipment. (1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(010); filed Dec 1, 1982, 10:35 am: 6 IR 25; filed Aug 6, 1987, 4:30 pm: 10 IR 2614)*

45 IAC 2.2-5-2 Sales to farmers; feed

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) The state gross retail tax shall not apply to any of the following transactions:

(1) Sales to farmers of feed for animals and poultry used by the purchaser in the direct production of food and agricultural commodities.

(2) Sales of feed for animals and poultry to a farmer to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption are exempt from tax.

(3) Sales to farmers of feed for animals and poultry are exempt from tax, provided such feed is to be used for animals and poultry which were purchased exempt from tax. This exemption applies also to feed purchased for animals and poultry which are raised by a farmer entitled to this exemption and which animals or poultry would have qualified for exemption if they had been purchased by the farmer.

(b) Definition: The term "feed" includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, and other generally recognized animal feed. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(020); filed Dec 1, 1982, 10:35 am: 6 IR 26; filed Aug 6, 1987, 4:30 pm: 10 IR 2615)*

45 IAC 2.2-5-3 Sales to farmers; agricultural commodities

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) Definitions: Fertilizer. The term "fertilizer" means a commodity which contains one or more substances to increase the available plant food content of the soil and which becomes a part of the products grown therein.

Farmer. For definition of "farmer" as used in this regulation *[45 IAC 2.2]* refer to Regs. 6-2.5-5-1(010) *[45 IAC 2.2-5-1]*.

Farming. The term "farming" means engaged in the commercial production of food or agricultural commodities as a "farmer".

(b) In general, purchases of tangible personal property by farmers are taxable. The exemptions provided by this regulation *[45 IAC 2.2]* apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food and agricultural commodities. This exemption is limited to "farmers".

(c) The state gross retail tax shall not apply to:

(1) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, and poultry consumption (either for sale or further use in producing such food and agricultural commodities for sale) of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the purchaser in the direct production of food and agricultural commodities.

(2) Sales to farmers of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale are exempt from tax. "To be directly used in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale," the property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(3) Seeds and plants. Sales to farmers of seeds and plants for sale or for further use in producing food and agricultural commodities for sale are exempt from tax provided such seeds and plants are used directly in farming.

(4) Fertilizer. Sales to farmers of fertilizer are exempt from tax provided that such fertilizer is used directly in farming.

(5) Fungicides and insecticides. Sales to farmers of fungicides and insecticides are exempt from tax provided such items are used directly in farming.

(6) Sales to farmers of tangible personal property used to groom or treat poultry and animals used in the production of food, so as to preserve their health, (including property such as medicines, serums, dehorners, debeakers, hoof trimmers *[sic.,]* hormones for productive animals, inoculation needles, and syringes) are exempt from tax.

(d) Non-exempt purchases:

(1) Other tangible personal property. Sales to farmers of other tangible personal property are taxable unless the property is used in direct production of food or agricultural commodities.

(2) Sales of beds, mattresses, kitchen equipment, recreation items, etc., used in conjunction with the operation of migrant labor camps are taxable. Such items are not used directly in farming.

(3) Sales to farmers of property to be incorporated into real estate in such a manner as to become part of the real estate are taxable. If the unit is directly used for manufacture or a process of manufacture, it is to be considered as personal property.

(4) Materials purchased for use in construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement of farm buildings incorporated into realty are taxable.

(5) Purchases of fences, fencing material, gates, posts, fence stretchers, and electric fence chargers are taxable.

(6) Purchases of watering tubs and troughs and tile for drainage are taxable.

(7) Tangible personal property purchased by a farmer for use in general farm maintenance of taxable items is taxable.

(8) Sales to farmers of tangible personal property to be used in managerial, sales, or other farm activities not directly related to the production of food are taxable. The following farm activities are not directly related to the production of food or agricultural commodities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings, transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; and transportation of animals, poultry, and other farm produce from the farm to market.

(9) Buildings which only protect the animals from adverse weather conditions are taxable.

(e) Exempt Purchases: (1) Heating, cooling, and ventilation equipment for agricultural production is exempt when it is directly used in the direct agricultural production process provided that such equipment is directly used in the production process, i.e. has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces food or agricultural commodities.

(2) Confinement buildings that confine animals in order to (1) maintain physical integrity of the product, (2) create and control the environment in order to facilitate production, and (3) function in conjunction with exempt machinery such as fans, thermostats, vents, cooling and heating systems, are exempt. In addition, in order to qualify for the exemption, the confinement building must serve a breeding, gestation, farrowing, and nursing or finishing function. For purposes of this exemption, confinement involves holding the animal within the confines of the building or an attached confined porch area.

(3) Fences, fencing materials, gates, posts, and electric fence chargers (listed in 45 IAC 2.2-5-3(d)(6) and 2.2-5-4(c) *[45 IAC 2.2-5-4(c)]*) are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. Fencing materials are taxable if the fence is used to confine horses, ponies, donkeys, or pets not used in agricultural production. Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

(4) Purchases of feeding and watering equipment. *(Department of State Revenue; Ch. 4, Reg. 6-2.5-5-1(030); filed Dec 1, 1982, 10:35 am: 6 IR 26; filed Aug 6, 1987, 4:30 pm: 10 IR 2615)*

45 IAC 2.2-5-4 Farmers and others engaged in agricultural production

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.
Drains.
Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.
Ditchers and graders.
Paints and brushes.
Refrigerators, freezers, and other household appliances.
Garden and lawn equipment, parts, and supplies.
Electricity for lighting and other non-agricultural use.
Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.
Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.
Pumps.
All saws.
All tools, including forks, shovels, hoes, welders, power tools, and hand tools.
Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.
Plumbing, electrical supplies, and accessories, pumps.
Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.
Food for non-exempt horses, ponies, etc.
Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.
Field tile or culverts.
Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).
Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

(1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
(2) Feed and medicines sold for livestock and poultry described in Item (1).
(3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
(4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
(5) Milking machines, filters, strainers, and aerators.
(6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
(7) Grease and repair parts necessary for the servicing of exempt equipment.
(8) Containers used to package farm products for sale.
(9) Equipment designed to haul animal waste.
(10) Equipment such as needles, syringes, and vaccine pumps.

(e) The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale *[sic.]* tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

(g) A farmer would not ordinarily qualify to claim an exemption on electric or other utility bills unless the amount of electricity used in direct agricultural production is separately metered. In order to qualify for an exemption when separate meters are not use *[sic.]*, a farmer should be prepared to prove to the satisfaction of the department of revenue that the predominant use of electricity was for direct agricultural production. An exemption should never be claimed for telephone service.

(h) The sale by a farmer of grocery food not for immediate human consumption from a stand located on the seller's property

is not subject to sales tax, and the farmer is not required to register as a retail merchant unless he conduct *[sic.]* sales of taxable items.

–EXAMPLE–

The selling of whole watermelons by a farmer from a stand located on his property is not subject to sales tax. However, the selling of watermelon by the slice is subject to sales tax since the food is sold for immediate human consumption.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(040); filed Dec 1, 1982, 10:35 am: 6 IR 27; filed Aug 6, 1987, 4:30 pm: 10 IR 2617)

45 IAC 2.2-5-5 Raising horses, donkeys and ponies; application for sales tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) The raising of saddle horses, harness horses, ponies, donkeys, or any other similar animals not used directly in direct agricultural production does not qualify as agricultural production for "human consumption" under the gross retail sales and use tax act. Consequently, the purchase of supplies, food, materials, and equipment used in raising or maintaining such animals are subject to the sales tax unless the items are directly used or consumed in the production of such animals for resale in the regular course of the purchaser's business.

(b) The purchase of any of the above animals is subject to the sales tax unless the purchaser is a registered retail merchant and is buying such animal for resale in the regular course of his business.

(c) A valid exemption certificate must be furnished by the purchaser setting out the reasons for any exemption.

(d) An agricultural exemption certificate may be used only for the purchase of draft animals which are to be directly used in direct production of agricultural products. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(050); filed Dec 1, 1982, 10:35 am: 6 IR 29; filed Aug 6, 1987, 4:30 pm: 10 IR 2618)*

45 IAC 2.2-5-6 Direct production of agricultural commodities; sales of agricultural machinery

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a) In general, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. (The exemption provided in this regulation *[45 IAC 2.2]* extends only to agricultural machinery, tools, and equipment.)

(b) The state gross retail tax shall not apply to sales of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or *[sic.]* agricultural commodities.

(c) Purchasers of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing of agricultural commodities are exempt from tax provided such machinery, tools, and equipment have a direct effect upon the agricultural commodities produced, harvested, etc. Property is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities if the property in question has an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process, i.e. confinement buildings, cooling, heating, and ventilation equipment. The fact that such machinery, tools, or equipment may not touch the commodity or livestock or, by itself, cause a change in the product, is not determinative.

(d) Exempt purchases: (1) Feeds–Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

(2) Seeds and plants–Sales of agricultural machinery, tools, and equipment to be used directly by the purchaser to plant seeds and plants purchased exempt from tax are exempt from tax. This exemption does not apply to lawn tractors used to plant grass seed, storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(3) Fertilizers–Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to fertilize crops. This exemption does not apply to storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(4) Insecticides and fungicides–Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to apply insecticides and fungicides are exempt from tax. This exemption does not apply to storage equipment, transportation equipment, or machinery, tools, or equipment to be incorporated into real estate.

(5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or *[sic.]* agricultural commodities are exempt from tax provided such machinery, tools, and equipment are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

(6) Automatic watering equipment for crops; fruit or crop harvesting or picking equipment; machinery and equipment used to bale crops; pruning machinery and equipment used for fruit trees; and equipment used to shear wool from sheep and similar tangible personal property.

(7) Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale and are, in fact, resold. Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers.

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

(9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.

(10) Replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment.

(11) Safety clothing or equipment which is required to allow a farmer to participate in the production process without injury or to prevent contamination of the livestock or commodity during production.

(e) Taxable purchases: (1) Storage equipment. Machinery, tools, and equipment used for storage of agricultural commodities after completion of the production of agricultural commodities are taxable.

(2) Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process; i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

(3) Machinery, tools, and equipment used in general farm maintenance are taxable. The sale of paint brushes and sprays, oilers, blowers, wheelbarrows, brooms, chain saws, power tools, welders, tire spreaders, drills, sanders, wrenches, and other tools used in general cleaning and maintenances are taxable. However, replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, are exempt from tax.

(4) Sales of machinery, tools, and equipment to be used in managerial, sales, research, and development, or other nonoperational activities not directly used in production, harvesting, extraction, and processing of agricultural commodities are taxable. This category includes, but is not limited to, machinery, tools, and equipment used in any of the following activities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings; lighting fixtures for general illumination; heating and cooling equipment for general temperature control; transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; transportation of animals, poultry, and other farm produce from the farm to market.

(f) "Agricultural machinery, tools, and equipment" as used in this regulation *[45 IAC 2.2]* refers to machinery, tools, and equipment used on a farm to cultivate, grow, produce, reproduce, harvest, extract or process animals, poultry, and crops used to produce food or agricultural commodities for human or animal consumption (or for further use in producing food or agricultural commodities).

(g) "Direct production, extraction, harvesting or processing agricultural commodities" means action which has an immediate effect on the agricultural commodities being produced by "farming" as defined in Regs. 6-2.5-5-1(010) *[45 IAC 2.2-5-1]* for a human, animal, or poultry consumption. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural commodities.

(h) Farmer and farming. Refer to Regs. 6-2.5-5-1(010) *[45 IAC 2.2-5-1]* for definitions of "farmer" and "farming". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 29; filed Aug 6, 1987, 4:30 pm: 10 IR 2619)*

45 IAC 2.2-5-7 Direct production of grain; sales of agricultural machinery

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. (a) Agricultural machinery, tools, and equipment directly used in the direct production, extraction, harvesting, or processing of grain, from the time the grain is harvested until the time the grain is dried, are exempt so long as the agricultural machinery, tools, and equipment have an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

–EXAMPLE–

Machinery, tools, and equipment directly used in the processing, drying, or cleaning of grain.

(b) Transportation equipment directly used in the direct production of grain is exempt so long as such equipment has an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

(1) Grain augers which contain perforated cleaning screens are exempt, since this equipment separates foreign matter from grain and, therefore, is an essential and integral part of an integrated process in direct production, which produces grain.

(2) Grain augers without perforated cleaning screens used exclusively to transport wet grain are exempt, since such transportation aerates wet grain and, therefore, has a direct and immediate effect upon the grain and is an essential and integral part of an integrated process which produces grain.

(3) Machinery, tools, and equipment directly used to transport grain from the field where it is harvested to the production processes of drying, cleaning, and holding for the feeding of livestock, or to be further used in the production of food and commodities are exempt.

(c) Wet holding tanks, continuous flow driers, and batch driers are exempt, since these items are integral parts of drying systems and, therefore, such equipment is directly used in direct production of grain.

(d) Grain drying bins. The department has determined that grain drying accessories of a grain drying bin are exempt, since such equipment is used to dry wet grain and, therefore, has a direct and immediate effect upon grain. Alternatively, the department has determined that a grain drying bin's storage structure and parts thereof are subject to tax, since the storage of grain has no direct and immediate effect upon grain.

(1) The following is a list of grain drying bin accessories which are exempt from tax:

(A) drying floor;
(B) air entrance;
(C) stirring devices;
(D) fans and motor running fans;
(E) electricity (if predominantly used);
(F) electrical control panels;
(G) spreader; and
(H) floor supports.

(2) The following is a partial list of grain drying bin storage accessories which are subject to tax:

(A) anchor bolts;
(B) bin structure;
(C) roof and vents;
(D) unloading auger;
(E) clean sweep;
(F) wells and pulleys;
(G) platform; and
(H) ladders.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-2(020); filed Dec 1, 1982, 10:35 am: 6 IR 30; filed Aug 6, 1987, 4:30 pm: 10 IR 2621)

45 IAC 2.2-5-8 Sales of manufacturing machinery, tools and equipment used in direct production, manufacture, fabrication, assembly, or finishing of other tangible personal property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided in this regulation *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

(b) The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

(c) The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

(1) Aluminum pistons are produced in a manufacturing process that begins, after the removal of raw aluminum from storage inside the plant, with the melting of the raw aluminum and the production of castings in the foundry; continues with the machining of the casting and the plating and surface treatment of the piston; and ends prior to the transportation of the completed pistons to a storage area for subsequent shipment to customers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total production process, comprised of such activities, is integrated.

(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

(A) Air compressors used as a power source for exempt tools and machinery in the production process.

(B) An electrical distribution system, including generators, transformers, electrical switchgear, cables inside or outside the plant, and related equipment used to produce and/or supply electricity to exempt manufacturing equipment used in direct production.

(C) A pulverizer for raw materials to be used in an exempt furnace to produce and/or supply energy to manufacturing equipment used in direct production.

(D) Boilers, including related equipment such as pumps, piping systems, etc., which draw water, or produce and transmit steam to operate exempt machinery and equipment used in direct production.

(E) A work bench used in conjunction with a work station or which supports production machinery within the production process.

(F) Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

(G) An automated scale process which measures quantities of raw aluminum for use in the next production step of the casting process in the foundry.

(3) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

(A) Pumping and filtering equipment and related tanks and tubing used to supply lubricating and coolant fluids to exempt drilling and cutting machinery.

(B) Cooling towers and related pumps and piping used to cool, circulate, and supply water employed to control the temperature of exempt furnaces and exempt machines used in the foundry and machining areas.

(C) Pumping and filtering equipment, including related tanks and tubing, is used to supply lubricating and coolant fluids to both exempt and nonexempt equipment. On the average, 90% of the fluid is used for the exempt equipment employed in direct production and 10% is used for the nonexempt equipment. The taxpayer is entitled to an exemption equal to 90% of the gross retail income attributable to the transaction or transactions in which the equipment

comprising the production process was purchased.

(4) Because of the lack of an essential and integral relationship with the integrated production system in Example (1), the following types of equipment are not exempt:

(A) Equipment and furnishings located in the administrative offices of the plant.

(B) Clothing or other equipment furnished to workers that is used primarily for the workers' comfort and convenience if the workers are able to participate in the production process without it.

(C) An electrical distribution system, including electrical switchgear, transformers, cables, and related equipment used to supply electricity to the administrative office building.

(D) A boiler used to produce steam for general heating in the plant or administrative office building.

(E) A fire extinguisher hung on a wall inside the plant.

(F) Ceiling lights for general illumination in the plant area.

(G) Equipment used to remove raw materials from storage prior to introduction into the production process or to move finished products from the last step of production.

(5) A computer is used to control and monitor various aspects of the plating and surface-treatment operations in Example (1). The computer is located in a separate room in a different part of the plant from the plating and surface-treatment operations but is connected to the equipment comprising those operations by means of electrical devices. The computer equipment, including related terminals, printer, and memory, data storage, and input/output devices, is exempt because its use in this manner is an integral and essential part of the integrated production process.

(6) A computer is used to process accounting, personnel, and sales data. The computer is taxable because its use in this manner is not an integral and essential part of the integrated production process.

(7) A computer is used 40% of the time to perform the functions described in Example (5) and 60% of the time to perform the functions described in Example (6). The taxpayer is entitled to an exemption for the computer equipment, including related equipment such as that described in Example (5), equal to 40% of the gross retail income attributable to the transaction or transactions in which the computer equipment was purchased.

(8) A manufacturer of high technology electronic equipment uses microscopes to enable technicians to produce miniaturized products which could not otherwise be produced. The microscope is essential and integral to the production process. The microscopes are exempt from tax.

(9) A manufacturer of printed circuit boards uses a computerized locator system to assist and direct employees in placing components in their correct positions on printed circuit boards. The system visually demonstrates the location on the board requiring a component and at the same time dispenses the appropriate component for insertion by the employee. The locator system is an essential and integral part of the integrated production process and is, therefore, exempt.

(10) An electrical distribution system, including electrical switchgear, transformers, cables, and related equipment, is used to supply electricity to both equipment used in production and to an administrative office building. On the average, 90% of the electricity is used for the equipment employed in direct production and 10% for the administrative office building. The taxpayer is entitled to an exemption equal to 90% of the gross retail income attributable to the transaction or transactions in which the equipment comprising the electrical distribution system was purchased.

(d) Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

–EXAMPLE–

(1) The production of pharmaceutical items is accomplished by a process which begins with weighing and measuring out appropriate ingredients, continues with combining and otherwise treating the ingredients, and ends with packaging the items. Equipment used to transport raw materials to the manufacturing plant is employed prior to the first operation or activity constituting part of the integrated production process and is taxable. Weighing and measuring equipment and all equipment used as an essential and integral part of the subsequent manufacturing steps, through packaging, qualify for exemption. Equipment which loads packaged products from the packaging step of production into storage, or from storage into delivery vehicles, is subject to tax.

(e) Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or finished goods is subject to tax except for temporary storage equipment necessary for moving materials being manufactured from one (1) machine

to another or from one (1) production step to another.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold.

(2) Storage containers for finished goods after completion of the production process are subject to tax.

(3) Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers and are not subject to tax.

–EXAMPLES–

(1) Purchases of refrigeration equipment used in milk product production during the production process are exempt. However, refrigeration equipment used to store milk products subsequent to production is taxable.

(2) Parts undergoing various machining operations are transported from a machine operation to a storage rack where they are held for periods of time, as required by the processing schedule for the next machine operation in the integrated production process. The length of time required for storage in the processing schedule is not determinative. As the processing schedule dictates, the parts are removed from the storage racks and transported to the next machine operation. The storage racks are exempt.

(3) Finished goods are placed in the packages in which they will be delivered to customers, and the packages are loaded onto storage pallets which are used only in a finished goods storage area. The pallets are taxable.

(4) A metal and alloy manufacturer pulverizes raw materials for use in an exempt furnace. Weigh bins utilized for the temporary storage of the exempt materials after pulverization and prior to use in the exempt furnace are exempt.

(5) Replacement parts for manufacturing equipment are kept in storage bins in the plant "store". The storage bins are taxable because they do not store work-in-process or semi-finished goods.

(f) Transportation equipment.

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.

(3) Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.

(4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process.

–EXAMPLES–

(1) A manufacturer of clay pipe uses forklift tractors to transport the pipe from the machine in which it is formed to the kiln. The forklift tractors are exempt.

(2) A metal and alloy manufacturer pulverizes raw materials for use in an exempt furnace. Weigh bins are utilized for the temporary storage of the exempt materials after pulverization and prior to use in an exempt furnace. Transportation equipment used to transport the pulverized raw material to and from the weigh bins is exempt.

(3) A forklift is used exclusively to move work-in-process from a temporary storage area in a plant and to transport it to a production machine for processing. Because the forklift functions as an integral part of the integrated system comprising the production operations, it is exempt.

(4) A forklift is used exclusively to move finished goods from a storage warehouse and to load them on trucks for shipment to customers. The forklift is taxable because it is used outside the integrated production process.

(5) A forklift is regularly used 40% of the time for the purpose described in Example (3) and 60% of the time for the purpose described in Example (4). The taxpayer is entitled to an exemption equal to 40% of the gross retail income attributable to the transaction in which the forklift was purchased.

(6) A truck is used to transport work-in-process between different buildings which are part of an overall plant facility that constitutes an integrated production process. The truck is exempt.

(7) A truck is used for the same purpose as described in Example (6). However, the two buildings in the plant facility are located on opposite sides of a federal highway, and the truck must be registered with the Indiana bureau of motor vehicles for highway use because it crossed the highway in transporting the work-in-process between buildings. The truck is exempt, notwithstanding its registration for highway use.

(8) A truck is used on the federal highway and must be registered with the Indiana bureau of motor vehicles for highway use. The truck is used to transport a finished component part from the last step of a production process to be introduced into another integrated production process at another business location. The truck is taxable.

(9) A truck is used 40% of the time for the purpose described in Example (6) and 60% of the time for the purpose described in Example (8). The taxpayer is entitled to an exemption equal to 40% of the gross retail income attributable to the transaction in which the truck was purchased.

(10) A crane is used to unload a barge delivering raw materials to a steel plant where the raw materials are stockpiled in a storage yard adjacent to the plant. The crane is taxable.

(11) A crane is used to move stockpiled materials to the next step of production for processing. Stockpiling allows moisture to drain and evaporate from washed stone, thereby reducing moisture levels to a standard generally acceptable to stone purchasers. The crane is exempt.

(12) A crane is used 40% of the time for the purpose described in Example (8), and 60% of the time to move raw materials from the stockpile to a production machine for processing. The taxpayer is entitled to an exemption equal to 60% of the gross retail income attributable to the transaction in which the crane was purchased.

(g) "Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit. The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

(1) The manufacturing equipment utilized for the production of plastics consists of an interconnected system which contains among its components a coal fueled boiler, heat exchangers, vacuum jets, process heating vessels, distillation/stripping columns, related equipment, and piping. All elements of this integrated production process are exempt from tax.

(2) Steam generators used to heat water which is used in mixing and warming component materials in the manufacture of ready-mixed concrete are exempt from tax.

(3) The manufacturer of certain extruded rubber products uses an interconnected production process of an air compressor, an air dryer, and injection molding machines which work together to force rubber through dies in order to form the desired shapes. The component parts of the production process are exempt since the production process has an immediate effect upon the article being produced.

(4) Equipment which constitutes an essential and integral part of the integrated process is exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

The production of flat-rolled metal products requires that an oil mixture, which serves as both a rolling lubricant and a coolant, be continuously sprayed on sheets in the rolling mill. Spent oil is simultaneously removed and passed through a filtering process which is interconnected with the rolling mill, after which the oil is resprayed onto the sheets. The rolling mill and oil filtration process are exempt.

(5) A metal manufacturer uses a variety of electrically-powered production equipment which has differing voltage and power requirements. Power cables used to bring electricity to the manufacturer's plant are taxable. Switch gears, transformers, conduits, cables, controls, rectifiers, and generators which are interconnected with the production equipment and serve as an electrical distribution system for such equipment are exempt from tax. Items used to distribute electricity for general lighting and space heating are taxable.

(6) Computers which are interconnected with and control other production machinery or are used to make tapes which control computerized production machinery are exempt from tax.

(7) Computers which produce designs which are not sold as products are not exempt. Thus, computer-aided design is a non-exempt function.

(8) A computer is used 40% of the time for the purpose described in Example (6) and 60% of the time for the purpose described in Example (7). The taxpayer is entitled to an exemption equal to 40% of the gross retail income attributable to

the transaction in which the computer was purchased.

(9) For security reasons, a mesh screen is installed around the parts and equipment "store" in a manufacturing plant. Because the screen has no physical or functional interrelationship with other parts of the integrated production process, it does not have an immediate effect on the article being produced and is taxable.

(h) Maintenance and replacement equipment.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in the production process which are predominantly used to maintain production machinery are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, are exempt from tax.

–EXAMPLE–

A manufacturer of sheet metal repairs and upgrades used machinery by replacing worn or broken parts and adding new elements and features available in state-of-the-art equipment. All items which become components of the upgraded machinery are exempt from tax. However, all tools and equipment used to repair or upgrade used machinery would be taxable.

(i) Testing and inspection. Machinery, tools, and equipment used to test and inspect the product as part of the production process are exempt.

–EXAMPLE–

Selected parts are removed from production according to a schedule dictated by statistical sampling methods. Quality control equipment is used to test the parts in a room in the plant separate from the production line. Because of the functional interrelationship between the testing equipment and the machinery on the production line and because of the product flow, the testing equipment is an integral part of the integrated production process and is exempt.

(j) Managerial, sales, and other non-operational activities. Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: management and administration; selling and marketing; exhibition of manufactured or processed products; safety or fire prevention equipment which does not have an immediate effect on the product; space heating; ventilation and cooling for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

(k) "Direct production, manufacture, fabrication, assembly, or finishing of tangible personal property" is performance as a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different product having a distinctive name, character, and use. Operations such as compounding, fabricating, or assembling are illustrative of the types of operations which may qualify under this definition.

(l) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities purchased for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 31; filed Aug 6, 1987, 4:30 pm: 10 IR 2621)

45 IAC 2.2-5-9 Sales of manufacturing machinery, tools and equipment to be directly used by the purchaser in extraction and mining

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. (a) In general, all purchases of tangible personal property by persons engaged in extraction or mining are taxable.

The exemption provided in this regulation *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment directly used in mining or extraction. It does not apply to materials consumed in mining or extraction.

(b) The state gross retail tax shall not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in extraction or mining.

(c) Manufacturing machinery, tools, and equipment to be directly used by the purchaser in the extraction or mining process are exempt from tax provided that such machinery, tools and equipment are directly used in the production process; i.e., they have an immediate effect on the item being produced by mining or extraction. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

–EXAMPLES–

(1) Crushed stone is produced in a mining, production, and processing operation that begins with stripping overburden from an area to be mined, continues with the extraction and crushing of the stone, and ends with the stockpiling of the stone, which allows moisture to drain and evaporate from the washed stone, thereby reducing moisture levels to a standard more generally acceptable to stone purchasers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total process comprised by these activities is integrated.

(2) Coal is produced in a surface mining operation that begins with the clearing of surface obstacles and overburden from the land above the coal deposit to be mined, continues with the removal of waste material and with the extraction of the coal, continues further with the transportation from the coal seam to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material from a subsequently mined area, continues further with the cleaning of the coal, and ends with the stockpiling of the coal to allow moisture to drain and evaporate from the washed coal, thereby reducing moisture levels to a standard more generally acceptable to coal purchasers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total process comprised of such activities is integrated. The following items are exempt:

(A) Equipment used to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use by exempt equipment;

(B) Pumps and hose used to remove water or to divert water from the active pit area;

(3) "Coal is produced in an underground mining operation that begins with the boring of a shaft from the surface to the coal deposit to be mined, continues with the removal of waste material and the extraction of coal, continues further with transportation from the coal seam to the processing facility, continues further with the installation of roof supports and the coating of walls with rock dust to prevent mine explosion and collapse, continues further with cleaning of coal, and ends with the stockpiling of coal to allow moisture to drain and evaporate from the washed coal, thereby reducing moisture levels to a standard more generally acceptable to coal purchasers. Because of the functional interrelationship of the various steps and the flow of the work in process, the total process comprised of such activities is integrated." The following are exempt:

(A) Continuous miners used to bore the shaft, cut the coal, and load it into shuttle cars.

(B) Shuttle cars used to transport the coal from the continuous miner to the feeder breaker at the end of a conveyor belt or other off-highway transportation system.

(C) The feeder breaker which breaks the large lumps of coal and feeds the coal onto the conveyor belt which carries the coal outside the mine where it is stockpiled or transported to the processing facility.

(D) Electrical cable supplying electricity to exempt production equipment in the underground mine as part of an electrical distribution system.

(E) Equipment used to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use by exempt equipment.

(F) Pumps and hose used to remove water from the underground mine.

(4) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product is not determinative.

(A) A drag line used to remove overburden and other waste materials from the pit to be mined.

(B) Earth-moving equipment used to dig a ditch to divert a stream crossing the area to be mined.

(C) Electrical cable supplying electricity to exempt production equipment in the field as part of an electrical distribution system.

(D) Dozers used in refilling and covering over a previously mined pit with the overburden removed from the next pit being mined.

(E) Equipment used in a coal wash plant to clean the coal prior to sale to customers.

(F) Equipment used to blend different grades of coal together so that the final product meets customer specifications regarding quality and sulfur content.

(5) Because of the lack of an essential and integral relationship with the integrated production process in Example (2), the following types of equipment are not exempt:

(A) Earth-moving equipment used to construct a parking lot next to the mining area and to construct a road leading from the parking lot to the main highway.

(B) Vehicles used to transport workers to and from the mining area.

(C) Pickup trucks used by supervisors in overseeing and directing the mining operations.

(d) Pre-production and post-production activities. "Direct use in the extraction and mining process" begins at the point of the first operation or activity constituting part of the integrated production process." Utilization by the purchaser in extraction or mining begins with the first drilling of the shaft or well or the first removal of overburden in surface mining or quarrying. It ends when the item being mined or extracted has been physically removed from the mine, well, or quarry.

(e) Equipment directly used in extraction or mining: Manufacturing machinery, tools, and equipment used directly in the mining or extraction process are taxable unless the machinery, tools, and equipment have an immediate effect upon mining or extracting the product. The fact that particular property may be considered essential to the conduct of the business of mining because its use is required either by law or practical necessity does not, of itself, mean that the property has an immediate effect upon the mining or extracting of the product. Instead, in addition to being essential for one of the above reason *[sic.]*, the property must also be an integral part of an integrated process.

(1) Examples of taxable machinery, tools, and equipment: transportation equipment used to convey fuel, supplies, and repair parts to coal mining equipment in the mine; field maintenance trucks used to transport men and materials to places where needed; and equipment used to load extracted and processed minerals from storage stockpiles to railroad cars.

(2) Examples of exempt machinery, tools, and equipment: digging and extracting equipment used in the course of mining or extraction operations; machinery used to remove the overburden in surface mining; blasting and dislodging equipment; waste extraction and removal equipment and machinery used in the course of mining or extraction operations; derricks, pumps, pump houses, drilling rigs used in the production of oil and natural gas.

(f) Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or materials after completion of the extraction or mining process is taxable.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold.

(2) Storage containers for finished goods after the completion of the extraction or mining process are subject to tax.

(A) Receiving tanks for natural gas, crude oil, or brine are taxable.

(B) Facilities for storing coal after extraction and processing from the mine are taxable.

(3) Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers and are not subject to tax.

(g) Transportation equipment. Transportation equipment used in mining or extraction is taxable unless it is directly used in the mining or extraction process.

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.

(3) Transportation equipment used to transport work-in-process or semi-finished materials within the extraction or mining process is not subject to tax.

(4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants which are not part of the same integrated production process is taxable.

–EXAMPLES–

(1) Haul trucks, front-end loaders, and conveyors used to transport coal from a crusher to a wash plant are exempt.

(2) Haul trucks, front-end loaders, and conveyors used to transport coal from a wash plant to a stockpile to allow moisture to drain and evaporate from the washed stone, thereby reducing moisture levels to a standard more generally acceptable to coal purchasers, are exempt.

(3) Front-end loaders, cranes, and equipment used to load coal onto trucks, railroad cars, or barges for delivery to customers are taxable.

(h) Maintenance and replacement.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery and equipment used predominantly in mining or extraction are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, however, are exempt from tax.

(i) Testing and inspection.

(1) Machinery, tools, and equipment used to test or inspect the mineral, oil, gas, stone, etc., being mined or extracted are not taxable, as such machinery, tools, and equipment are directly used in the mining or extraction process.

(2) Testing or inspection equipment used to test or inspect machinery, tools, and equipment used in extraction or mining (as distinguished from testing or inspecting the mineral, oil, gas, stone, etc., being mined or extracted) is taxable.

(j) Managerial, sales, and other non-operational activities. Machinery, tools, and equipment used in managerial, sales, research and development, or other non-operational activities are not directly used in the mining or extraction process and, therefore, are subject to tax. The category includes, but is not limited to, tangible personal property used in any of the following activities: management and administration; selling and marketing; exhibition of mined or extracted products; safety or fire prevention equipment which is not an essential and integral part of the extraction or mining process; space heating; ventilation and cooling equipment for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

(k) Definitions.

(1) Extraction means the removal of natural resources, minerals, and mineral aggregates from the earth, pits, or banks.

(2) Mining includes commercial mining (both deep and surface mining), quarrying, gas and oil drilling, and any other commercial extraction of natural resources, minerals, and mineral aggregates from the earth. It also includes the extraction for commercial purposes of coal, clay, crushed and graded stone, gravel, sand, oil, natural gas, gypsum, slate, ore, and all materials and similar natural resources and mineral aggregates.

(l) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities purchased for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-3(020); filed Dec 1, 1982, 10:35 am: 6 IR 32; filed Aug 6, 1987, 4:30 pm: 10 IR 2627)

45 IAC 2.2-5-10 Sales of manufacturing machinery, tools and equipment to be directly used in processing or refining tangible personal property

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-4-2

Sec. 10. (a) In general, all purchases of tangible personal property by persons engaged in the processing or refining of tangible personal property are taxable. The exemption provided in this regulation *[45 IAC 2.2]* extends only to manufacturing machinery, tools, and equipment used in direct production. It does not apply to materials consumed in production or to materials incorporated into the tangible personal property produced. Additionally, the exemption provided in this regulation *[45 IAC 2.2]* extends to industrial processors. An industrial processor, as defined in IC 6-2.5-4-2, is one who:

(1) acquires tangible personal property owned by another person;

(2) provides industrial processing or servicing, including enameling or plating, on the property; and

(3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

(b) The state gross retail tax will not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in processing or refining tangible personal property.

(c) Purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in processing or refining are exempt from tax; provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the tangible personal property being processed or refined. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which processes or refines tangible personal property.

–EXAMPLES–

(1) Whiskey is produced in a process that begins with the grinding and fermenting of grain and the distillation of the fermented mash, continues further with the maturation of the distilled alcohol and with the blending of individual whiskeys, and ends with the bottling, labeling, and packaging of the whiskey prior to shipment to customers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total production process comprised of such activities is integrated.

(2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

(A) Pumps used to circulate cooling water through exempt condensers in the distillery.

(B) Chemicals used to treat the water used in the production of whiskey to ensure that the water is pure or to prevent scale buildup in the boilers and pipes.

(C) Equipment used to pulverize coal prior to being fed into the exempt boiler used to generate steam in the distillation process.

(D) A bottling and packaging process, which includes equipment such as case and bottle conveyors used during the filling operations, equipment to fill the bottles with product and to place labels on the bottles, and case filling equipment and case palletizers. The exempt production process begins after the bottles are introduced onto the bottle conveyors for the filling step of production and ends with the final packaging of the product onto the case palletizers.

(3) Because of the lack of an essential and integral relationship with the integrated production process in Example (1), the following types of equipment are not exempt:

(A) Equipment and furnishings located in the administrative offices of the plant.

(B) Equipment used for research and development of new products.

(C) Equipment used periodically to test the purity of the water in on-site deep wells which supply the plant's water requirements.

(D) Racks on which cases of empty bottles are stored prior to their introduction into the bottling and packaging system.

(E) The depalletizer used to strip pallets from cases containing empty bottles and unscramblers used to move empty bottles out of cases and onto the production line.

(d) Pre-processing and post-processing activities. "Direct use" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the processing or refining has altered the item to its completed form, including packaging, if required.

(e) Storage equipment. Tangible personal property used in or for the purpose of storing raw material, work in process, semi-finished or finished goods is subject to tax except for temporary storage equipment necessary for moving materials being processed or refined from one (1) production step to another.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale and are, in fact, resold.

(2) Storage facilities or containers for finished goods after completion of the production process are subject to tax.

(f) Transportation equipment.

(1) Tangible personal property used for moving raw materials to the plant prior to entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after completion of the processing or refining process is subject to tax.

(3) Transportation equipment used to transport work in process or semi-finished material to or from storage is not subject to tax if such equipment is used to transport work-in-process or semi-finished materials within the production process.

(4) Transportation equipment used to transport work in process or semi-finished goods between plants, however, is taxable, if the plants are not a part of the same essential and integrated production process.

–EXAMPLES–

(1) Transportation equipment, including trucks, conveyors, forklifts, and specialized barrel movers used to move whiskey barrels to, within, and from a maturation warehouse as transportation of work-in-process, is exempt.

(2) Transportation equipment used to move barrels of matured and blended whisky *[sic.]* from a storage warehouse to trucks for shipment to customers is taxable.

(g) "Have an immediate effect on the tangible personal property being processed or refined." Machinery, tools, and equipment used during processing or refining which have an immediate effect upon the tangible personal property being processed or refined are exempt from tax. Component parts of an exempt unit of machinery and equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of the manufacturing unit. The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not, of itself, mean that the property "acts upon and has an immediate effect on the tangible personal property being processed or refined". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property.

(h) Maintenance and replacement equipment.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in processing or refining which are predominantly used to maintain processing or refining machinery are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, however, are exempt from tax.

(i) Testing and inspection. Machinery, tools, and equipment used to test and inspect the product are taxable, unless such machinery, tools, and equipment are used as part of the production process.

(j) Managerial, sales, and other nonoperative activities. Machinery, tools, and equipment used in managerial sales, research and development or other nonoperational activities are not directly used in processing or refining and, therefore, are subject to tax. This category includes, but is not limited to machinery, tools, and equipment used in any of the following activities: management and administration; selling and marketing; exhibition of manufactured or processed products; safety or fire prevention, equipment which is not essential and integral to the production process; space heating; ventilation and cooling for general temperature control; illumination; heating equipment for general temperature control; and shipping and loading.

(k) Definitions. Processing or refining is defined as the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change. Operations such as distilling, brewing, pasteurizing, electroplating, galvanizing, anodizing, impregnating, cooking, heat treating, and slaughtering of animals for meal or meal products are illustrative of the types of operations which constitute processing or refining, although any operation which has such a result may be processing or refining. A processed or refined end product, however, must be substantially different from the component materials used.

(l) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt form *[sic.]* a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integral manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-3(030); filed Dec 1, 1982, 10:35 am: 6 IR 34; filed Aug 6, 1987, 4:30 pm: 10

IR 2630)

45 IAC 2.2-5-11 Sales of tangible personal property used in the direct production of manufacturing or agricultural machinery, tools and equipment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-5-2; IC 6-2.5-5-3

Sec. 11. (a) The state gross retail tax shall not apply to sales of tangible personal property to be directly used by the purchaser in the direct production or manufacture of any manufacturing or agricultural machinery, tools, and equipment described in IC 6-2.5-5-2 or 6-2.5-5-3 *[IC 6-2.5-5-3]*.

(b) The exemption provided in this regulation *[45 IAC 2.2]* extends only to tangible personal property directly used in the direct production of manufacturing or agricultural machinery, tools, and equipment to be used by such manufacturer or producer.

(c) The state gross retail tax shall not apply to purchases of tangible personal property to be directly used by the purchaser in the production or manufacturing process of any manufacturing or agricultural machinery, tools, or equipment, provided that the machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect upon the article being produced or manufactured. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(d) For the application of the rules *[subsections]* above, refer to Regs. 6-2.5-5-3 *[45 IAC 2.2-5-8 through 45 IAC 2.2-5-10]* with respect to tangible personal property used directly in the following activities: pre-production and post-production activities; storage; transportation; tangible personal property which has an immediate effect upon the article produced; maintenance and replacement; testing and inspection; and managerial, sales, and other nonoperational activities.

(e) Energy equipment.

(1) Equipment used to modify energy purchased from public utilities for the production process is exempt if the equipment is used to modify the utilities for use by exempt equipment.

(2) Equipment used to create energy that could otherwise be purchased exempt from a public utility for use by exempt equipment is exempt.

(3) When any equipment qualifies as essential and integral to the production process and also is used in an alternative nonessential and/or non-integrated manner, the exemption shall only apply to the percentage (%) of use of the equipment used in the exempt manner.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 35; filed Aug 6, 1987, 4:30 pm: 10 IR 2632)

45 IAC 2.2-5-12 Sales of tangible personal property directly consumed in manufacturing, processing, refining or mining

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) The state gross retail tax shall not apply to sales of any tangible personal property consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, or mining.

(b) The exemption provided by this regulation *[45 IAC 2.2]* applies only to tangible personal property to be directly consumed in direct production by manufacturing, processing, refining, or mining. It does not apply to machinery, tools, and equipment used in direct production or to materials incorporated into the tangible personal property produced.

(c) The state gross retail tax does not apply to purchases of materials to be directly consumed in the production process or in mining, provided that such materials are directly used in the production process; i.e., they have an immediate effect on the article being produced. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(d) Pre-production and post-production activities.

(1) Direct consumption in the production process begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production process has altered the item to its completed form, including packaging, if required.

(2) "Direct use in mining" begins with the drilling of the shaft or well or the first removal of overburden in surface mining or quarrying. It ends when the item being mined or extracted has been physically removed from the mine, well, or quarry.

(e) "Have an immediate effect upon the article being produced or mined." Purchases of materials to be consumed during the production or mining process are exempt from tax, if the consumption of such materials has an immediate effect upon the article being produced and mined, or upon machinery, tools, or equipment which are both used in the direct production or mining process and are exempt from tax under these regulations *[45 IAC 2.2]*.

(f) Other taxable transactions. Purchases of materials consumed in manufacturing, processing, refining, or mining activities beyond the scope of those described in subsection B above *[subsection (e) of this section]* are taxable. Such activities include post-production activities; storage step) *[sic.]*; maintenance, testing and inspection (except where in direct production); (except where essential and integral to the process system); management and administration; sales; research and development; exhibition of products; safety or fire prevention; space heating; ventilation and cooling equipment for general temperature control; illumination; shipping and loading.

(g) "Consumed" as used in this regulation *[45 IAC 2.2]* means the dissipation or expenditure by combustion, use, or application and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, dies, equipment, machinery, or furnishings. *(Department of State Revenue; Ch. 5; Reg. 6-2.5-5-5.1(010); filed Dec 1, 1982, 10:35 am: 6 IR 35; filed Aug 6, 1987, 4:30 pm: 10 IR 2633)*

45 IAC 2.2-5-13 Sales of tangible personal property directly consumed in agriculture, horticulture, floriculture, or arboriculture

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. (a) The state gross retail tax shall not apply to sales of tangible personal property as a material which is to be directly consumed in direct production by the purchaser in the business of producing agricultural, horticultural, floricultural, or arboricultural commodities.

(b) General rule. Purchases of materials to be directly consumed by the purchaser in the business of producing tangible personal property are exempt from tax provided that such materials are directly used in the production process; i.e., they have an immediate effect upon the commodities being produced. Property has an immediate effect on the commodities being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

(c) Refer to Regs. 6-2.5-5-5.1(010)(7) *[45 IAC 2.2-5-12(g)]* for the definition of "consumed" as used in this regulation *[45 IAC 2.2]*.

(d) Refer to Regs. 6-2.5-5-1 *[45 IAC 2.2-5-1]* for the definition of "farmer" and "farming" as used in this regulation *[45 IAC 2.2]*.

(e) The term "farmer" will be used in this regulation *[45 IAC 2.2]* to signify both "farmers" and "other persons engaged in the business of producing food and agricultural commodities".

(f) "The business of producing tangible personal property by agriculture" means "farming" for purposes of interpreting this regulation *[45 IAC 2.2]*.

(g)(1) "Have an immediate effect upon commodities being produced". Purchases of materials to be consumed during production of commodities are taxable unless the consumption of such materials has an immediate effect upon either (1) the food or agricultural commodities being produced, or (2) machinery, tools, or equipment which are both used in direct production of commodities and are exempt from tax under these regulations *[45 IAC 2.2]*. The consumption of property has an immediate effect on the commodity being produced or on the machinery, tools, or equipment engaged in direct production of commodities if the consumption is an essential and integral part of an integrated process which produces food or an agricultural commodity.

(h) Other taxable transactions. Purchases of materials consumed in farming beyond the scope of those activities described in subsection (g) of this section are taxable. Such activities include, but are not limited to: pre-production activities; post-production activities; storage (except where it is an essential and integral part of an integrated production process); transportation (except where it is an essential and integral part of an integrated production process); maintenance; testing and inspection (except where it is an essential and integral part of an integrated production process); management and administration; sales; research and development; exhibition of products; safety and fire prevention; space heating; ventilation and cooling for general temperature

control; illumination; shipping and loading. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-5.1(020); filed Dec 1, 1982, 10:35 am: 6 IR 36; filed Aug 6, 1987, 4:30 pm: 10 IR 2634)*

45 IAC 2.2-5-14 Material incorporated into tangible personal property produced for resale

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 14. (a) The state gross retail tax shall not apply to sales of any tangible personal property which is to be incorporated by the purchaser as a material or an integral part into tangible personal property produced for sale by such purchaser in the business of manufacturing, assembling, refining or processing.

(b) The exemption provided by this regulation *[45 IAC 2.2]* applies only to tangible personal property to be incorporated as a material or an integral part into tangible personal property produced for sale by a purchaser engaged in the business of manufacturing, assembling, refining or processing. This regulation *[45 IAC 2.2]* does not apply to persons engaged in producing tangible personal property for their own use.

(c) This regulation *[45 IAC 2.2]* does not exempt from tax tangible personal property to be used in production, such as supplies, parts, fuel, machinery, etc., refer to Regs. 6-2.5-5-5(010) and 6-2.5-5-5(020) (dealing with material consumed in direct production) for the application of those regulations to taxpayers engaged in the production of tangible personal property.

(d) The purchase of tangible personal property which is to be incorporated by the purchaser as a material or an integral part is exempt from tax. "Incorporated as a material or an integral part into tangible personal property for sale by such purchaser" means:

(1) That the material must be physically incorporated into and become a component of the finished product;
(2) The material must constitute a material or an integral part of the finished product; and
(3) The tangible personal property must be produced for sale by the purchaser.

(e) Application of general rule.

(1) Incorporation into the finished product. The material must be physically incorporated into and become a component part of the finished product.
(2) Integral or material part. The material must constitute a material or integral part of the finished product.
(3) The finished product must be produced for sale by the purchaser.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-6(010); filed Dec 1, 1982, 10:35 am: 6 IR 37)

45 IAC 2.2-5-15 Sales for resale

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from tax if all of the following conditions are satisfied:

(1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
(2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
(3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.
(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the

purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-8(010); filed Dec 1, 1982, 10:35 am: 6 IR 37)

45 IAC 2.2-5-16 Wrapping materials and containers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. (a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty containers to be used by the purchaser as enclosures or containers for selling contents to be added, and returnable containers containing contents sold in a sale constituting selling at retail and returnable containers sold empty for refilling.

(b) In general the gross proceeds from the sale of tangible personal property in a transaction of a retail merchant constituting selling at retail are taxable. This regulation *[45 IAC 2.2]* provided an exemption for wrapping materials and containers.

(c) General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:

(1) Nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property.

(2) Deposits for returnable containers received as an incident to a transaction of a retail merchant constituting selling at retail.

(3) Returnable containers sold empty for refilling.

(d) Application of general rule.

(1) Nonreturnable wrapping material and empty containers. To qualify for this exemption, nonreturnable wrapping materials and empty containers must be used by the purchaser in the following way:

(A) The purchaser must add contents to the containers purchased; and

(B) The purchaser must sell the contents added.

(2) Returnable containers sold at retail with contents. To qualify for this exemption, the returnable containers must be:

(A) Sold in a taxable transaction of a retail merchant constituting selling at retail; and

(B) Billed as a separate charge by the retail merchant to his customer. If there is a separate charge for such containers, the sale of the container is exempt from tax under this regulation *[45 IAC 2.2]*.

(3) Returnable containers sold empty. To qualify for this exemption the returnable container must be resold with the purpose of refilling. The sale of returnable containers to the original or first user thereof is taxable.

(e) Definitions.

(1) Returnable containers. As used in this regulation *[45 IAC 2.2]*, the term returnable container means containers customarily returned by the buyer of the contents for reuse as containers.

(2) Nonreturnable containers. As used in this regulation *[45 IAC 2.2]*, the term "nonreturnable containers" means all containers which are not returnable containers.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-9(010); filed Dec 1, 1982, 10:35 am: 6 IR 38)

45 IAC 2.2-5-17 Exempt accounts for utilities which furnish or sell electrical energy; steam or steam heating service

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) Production Plant.

(1) Steam Production

310. Land and land rights.
311. Structures and improvements.
312. Boiler plant equipment
313. Engines and engine driven generators.
314. Turbogenerator units.

315. Accessory electric equipment.
316. Miscellaneous power plant equipment.

(2) Nuclear Production

320. Land and land rights.
321. Structures and improvements.
322. Reactor plant equipment.
323. Turbogenerator units.
324. Accessory electric equipment.
325. Miscellaneous power plant equipment.

(3) Hydraulic Production

330. Land and land rights.
331. Structures and improvements.
332. Reservoirs, dams and waterways.
333. Water wheels, turbines and generators.
334. Accessory electric equipment.
335. Miscellaneous power plant equipment.
336. Roads, railroads, and bridges.

(4) Other Production

340. Land and land rights.
341. Structures and improvements.
342. Fuel holders, producers and accessories.
343. Prime movers.
344. Generators.
345. Accessory electric-equipment.
346. Miscellaneous power plant equipment.

(b) Power Production Expenses

(1) Steam Power Generation

500. Operation supervision and engineering.
501. Fuel.
502. Steam expenses.
503. Steam from other sources.
504. Steam transferred–cr.
505. Electric expenses.
506. Miscellaneous steam power expenses.
507. Rents.
510. Maintenance supervision and engineering.
511. Maintenance of structures.
512. Maintenance of boiler plant.
513. Maintenance of electric plant.
514. Maintenance of miscellaneous steam plant.

(2) Nuclear Power Generation

517. Operation supervision and engineering.
518. Fuel.
519. Coolants and water.
520. Steam expenses.
521. Steam from other sources.
522. Steam transferred–cr.
523. Electric expenses.
524. Miscellaneous nuclear power expenses.

525. Rents.
528. Maintenance supervision and engineering.
529. Maintenance of structures and improvements.
530. Maintenance of reactor plant equipment.
531. Maintenance of electric plant.
532. Maintenance of miscellaneous nuclear plant.

(3) Hydraulic Power Generation

535. Operation supervision and engineering.
536. Water for power.
537. Hydraulic expenses.
538. Electric expenses.
539. Miscellaneous hydraulic power generation expenses.
540. Rents.
541. Maintenance supervision and engineering.
542. Maintenance of structures.
543. Maintenance of reservoirs, dams and waterways.
544. Maintenance of electric plant.
545. Maintenance of miscellaneous hydraulic plant.

(c) Power Production Expenses

(1) Other Power Generation

546. Operation supervision and engineering.
547. Fuel.
548. Generation expenses.
549. Miscellaneous other power generation expenses.
550. Rents.
551. Maintenance supervision and engineering.
552. Maintenance of structures.
553. Maintenance of generating and electric plant.
554. Maintenance of miscellaneous other power generation plant.

(2) Other Power Supply Expenses

555. Purchased power.
556. System control and load dispatching.
557. Other expenses.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-10(010); filed Dec 1, 1982, 10:35 am: 6 IR 38)

45 IAC 2.2-5-18 Exempt accounts for utilities which furnish or sell natural or artificial gas or mixtures

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. (a) Production Plant

(1) Manufactured Gas Production Plant

304. Land and land rights.
305. Structures and improvements.
306. Boiler plant equipment.
307. Other power equipment.
308. Coke ovens.
309. Producer gas equipment.
310. Water
311. Liquefied petroleum gas equipment.

312. Oil gas generating equipment.
313. Generating equipment–other processes.
314. Coal, coke, and ash handling equipment.
315. Catalytic cracking equipment.
316. Other reforming equipment.
317. Purification equipment.
318. Residual refining equipment.
319. Gas mixing equipment.
320. Other equipment.

(2) Natural Gas Production Plant

(A) Natural gas production and gathering plant.
325.1 Producing land.
325.2 Producing leaseholds.
325.3 Gas rights.
325.4 Rights-of-way.
325.5 Other land and land rights.
326. Gas well structures.
327. Field compressor station structures.
328. Field measuring and regulating station structures.
329. Other structures.
330. Producing gas wells–well construction.
331. Producing gas wells–well equipment.

(b) Gas Plant Accounts

(1) 332. Field lines.
333. Field compressor station equipment.
334. Field measuring and regulating station equipment.
335. Drilling and cleaning equipment.
336. Purification equipment.
337. Other equipment.

(2) Products Extraction Plant

340. Land and land rights.
341. Structures and improvements.
342. Extraction and refining equipment.
343. Pipe lines.
344. Extracted products storage equipment.
345. Compressor equipment.
346. Gas measuring and regulating equipment.
347. Other equipment.

(c) Storage Plant

(1) Underground Storage Plant

350.1 Land.
350.2 Leaseholds.
350.3 Storage rights.
350.4 Rights-of-way.
350.5 Gas rights.
351. Structures and improvements.
352. Wells.
353. Lines.
354. Compressor station equipment.

355. Measuring and regulating equipment.
356. Purification equipment.
357. Other equipment.

(2) Local Storage Plant

360. Land and land rights.
361. Structures and improvements.
362. Gas holders.
363. Other equipment.

(d) Production Expenses

(1) Manufactured Gas Production Expenses

(A) Steam Production

700. Operation supervision and engineering.
701. Operation labor.
702. Boiler fuel.
703. Miscellaneous steam expenses.
704. Steam transferred–cr.
705. Maintenance supervision and engineering.
706. Maintenance of structures and improvements.
707. Maintenance of boiler plant equipment.
708. Maintenance of other steam production plant.

(B) Manufactured Gas Production

710. Operation supervision and engineering.

Production labor and expenses.

711. Steam expenses.
712. Other power expenses.
713. Coke oven expenses.
714. Producer gas expenses.
715. Water gas generating expenses.
716. Oil gas generating expenses.
717. Liquefied petroleum gas expenses.
718. Other process production expenses.

Gas fuels. 719. Fuel under coke ovens.

720. Producer gas fuel.
721. Water gas generator fuel.

(e) Operation and Maintenance Expense Accounts

(1) 722. Fuel for oil gas.

723. Fuel for liquefied petroleum gas process.
724. Other gas fuels.

Gas raw materials.

725. Coal carbonized in coke ovens.
726. Oil for water gas.
727. Oil for oil gas.
728. Liquefied petroleum gas.
729. Raw materials for other gas processes.
730. Residuals expenses.
731. Residuals produced–cr.
732. Purification expenses.
733. Gas mixing expenses.
734. Duplicate charges–cr.

735. Miscellaneous production expenses.
736. Rents.
740. Maintenance supervision and engineering.
741. Maintenance of structures and improvements.
742. Maintenance of production equipment.

(2) Natural Gas Production Expenses

750. Operation supervision and engineering.
751. Production maps and records.
752. Gas wells expenses.
753. Field lines expenses.
754. Field compressor station expenses.
755. Field compressor station fuel and power.
756. Field measuring and regulating station expenses.
757. Purification expenses.
758. Gas well royalties.
759. Other expenses.
760. Rents.
761. Maintenance supervision and engineering.
762. Maintenance of structures and improvements.
763. Maintenance of producing gas wells.
764. Maintenance of field lines.
765. Maintenance of field compressor station equipment.
766. Maintenance of field mes. and reg. station equipment.
767. Maintenance of purification equipment.
768. Maintenance of drilling and cleaning equipment.
769. Maintenance of other equipment.

(f) Operation and Maintenance Expense Accounts

(1) Products Extraction

770. Operation supervision and engineering.
771. Operation labor.
772. Gas shrinkage.
773. Fuel.
774. Power.
775. Materials.
776. Operation supplies and expenses.
777. Gas processed by others.
778. Royalties on products extracted.
779. Marketing expenses.
780. Products purchased for resale.
781. Variation in products inventory.
782. Extracted products used by the utility–cr.
783. Rents.
784. Maintenance supervision and engineering.
785. Maintenance of structures and improvements.
786. Maintenance of extraction and refining equipment.
787. Maintenance of pipe lines.
788. Maintenance of extracted products storage equipment.
789. Maintenance of compressor equipment.
790. Maintenance of gas measuring and regulating equipment.

791. Maintenance of other equipment.

(2) Exploration and Development Expenses

795. Delay rentals.
796. Nonproductive well drilling.
797. Abandoned leases.
798. Other exploration.

(3) Other Gas Supply Expenses

800. Natural gas well head purchases.
801. Natural gas field line purchases.
802. Natural gas gasoline plant outlet purchases.
803. Natural gas transmission line purchases.
804. Natural gas city gate purchases.
805. Other gas purchases.
806. Exchange gas.
807. Purchased gas expenses.
808. Gas withdrawn from underground storage–debit.
809. Gas delivered to underground storage–cr.
810. Gas used for compressor station fuel–cr.
811. Gas used for products extraction–cr.
812. Gas used for other utility operations–cr.
813. Other gas supply expenses.

(g) Underground Storage Expenses

(1) 814. Operation supervision and engineering.

815. Maps and records.
816. Wells expenses.
817. Lines expenses.

(h) Operation and Maintenance Expense Accounts

(1) Underground Storage Expenses

818. Compressor station expenses.
819. Compressor station fuel and power.
820. Measuring and regulating station expenses.
821. Purification expenses.
822. Exploration and development.
823. Gas losses.
824. Other expenses.
825. Storage well royalties.
826. Rents.
830. Maintenance supervision and engineering.
831. Maintenance of structures and improvements.
832. Maintenance of wells.
833. Maintenance of lines.
834. Maintenance of compressor station equipment.
835. Maintenance of measuring and regulating station equipment.
836. Maintenance of purification equipment.
837. Maintenance of other equipment.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-11(010); filed Dec 1 1982, 10:35 am: 6 IR 39)

45 IAC 2.2-5-19 Exempt accounts for utilities which furnish or sell water

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 19. (a) Source of Supply Plant
(1) 310. Land and land rights.
311. Structures and improvements.
312. Collecting and impounding reservoirs.
313. Lake, river and other intakes.
314. Wells and springs.
315. Infiltration galleries and tunnels.
316. Supply mains.
317. Other water source plant.
(b) Pumping Plant
(1) 320. Land and land rights.
321. Structures and improvements.
322. Boiler plant equipment.
323. Other power production equipment.
324. Steam pumping equipment.
325. Electric pumping equipment.
326. Diesel pumping equipment.
327. Hydraulic pumping equipment.
328. Other pumping equipment.
(c) Pumping Expenses
(1) 620. Operation supervision and engineering.
621. Fuel for power production.
622. Power production labor and expenses.
623. Fuel or power purchased for pumping.
624. Pumping labor and expenses.
625. Expenses transferred–cr.
626. Miscellaneous expenses.
627. Rents.
630. Maintenance supervision and engineering.
631. Maintenance of power production equipment.
632. Maintenance of pumping equipment.
(d) Water Treatment Expenses
(1) 640. Operation supervision and engineering.
641. Chemicals.
642. Operation labor and expenses.
643. Miscellaneous expenses.
644. Rents.
650. Maintenance supervision and engineering.
651. Maintenance of structures and improvements.
652. Maintenance of water treatment equipment.
(e) Water Treatment Plant
(1) 330. Land and land rights.
331. Structures and improvements.
332. Water treatment equipment.
(f) Source of Supply Expenses

(1) 600. Operation supervision and engineering.
601. Operation labor and expenses.
602. Purchased water.
603. Miscellaneous expenses.
604. Rents.
610. Maintenance supervision and engineering.
611. Maintenance of structures and improvements.
612. Maintenance of collecting and impounding reservoirs.
613. Maintenance of lakes, river and other intakes.
614. Maintenance of wells and springs.
615. Maintenance of infiltration galleries and tunnels.
616. Maintenance of supply mains.
617. Maintenance of miscellaneous water source plant.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-12(010); filed Dec 1, 1982, 10:35 am: 6 IR 41)

45 IAC 2.2-5-20 Exempt accounts for utilities which furnish or sell telephone services

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 20. (a) Central Office Equipment

Aisle-lighting equipment.
Announcement equipment–time, weather forecast, etc.
Automatic message recording equipment.
Balconies for distributing frames.
Banks–connector, selector.
Batteries.
Battery cabinets.
Boards–floor alarm, power, test, service observing.
Building alterations, minor, such as opening and closing holes in ceilings, partitions, walls, and floors to permit installation of equipment, power conduit and wiring.
Cables.
Calculagraphs.
Call registers.
Carrier-current equipment.
Call registers.
Circuit breakers.
Covers for transmission power apparatus.
Desks and tables when equipped with central office telephone equipment.
Engines, including special foundations not a part of buildings.
Frame–alarm, connector, decoder, decoder connector, line finder, line switch, repeater, selector, sender, test.
Fuse boards.
Fuse panels.
Generators, including special foundations not a part of buildings.
Jumper wires.
Key indicator equipment.
Line concentrator equipment.
Line filters.
Loading coil.
Loudspeaker equipment.

Main and intermediate frames.
Meters.
Motors, including special foundations not a part of building.
Multiplex apparatus.
Operators' transmitters.
Operators' chairs.
Operators' head sets.
Permits and privileges and rights of way for installation of externally mounted central office equipment.
Platforms, not part of buildings.
Pole changers.
Power circuits for emergency use including payment for installation by others of circuits not owned.
Power panels.
Power plants.
Protectors.
Pulse machines and tone machines.
Radio transmitting and receiving equipment.
Rectifiers.
Register cabinets.
Relay racks and coil racks.
Relays.
Repeater sets.
Rheostats.
Ringing machines, including special foundations not a part of buildings.
Rolling ladders.
Submarine cable repeaters.
Switchboards and other electrical equipment used in operators' schools.
Switchboards–subscribers' "A" and "B" trunk, toll, dial system.
Tarpaulins.
Telegraph instruments and equipment.
Telephotographic equipment.
Teletypewriter switchboards and equipment.
Test boards.
Testing and routining *[sic.]* central office equipment prior to assignment to service.
Testing equipment and tools, central office.
Test tables.
Ticket holders.
Toll ticket carriers.
Traffic load counting equipment.
Turrets.
Water stills for battery service.

(b) Station Apparatus

Amplifying equipment.
Answering equipment.
Attendants' cabinets.
Attendants' desks.
Backboards.
Booths.
Code call units.
Code sending sets.

Coin collectors.
Data sets.
Desk sets, hand sets, and combined sets, including those used at main, extension, private branch exchange, and private line stations, etc. (This includes such sets used as operators' sets at large private branch exchanges and in central offices and operators' schools.
Directory stands or shelves.
Distributing frames.
Extension bells.
Facsimile equipment.
Hand set mountings.
Messenger, and similar signaling devices.
Mobile telephone equipment.
Operators' chairs.
Operators' head sets and transmitters.
Order receiving tables.
Order turrets.
Power equipment.
Printer-telegraph equipment.
Private branch exchange equipment–nonmultiple manual and cordless switchboards and dial equipment of types designed to accommodate fewer than 100 lines and which cannot normally be expanded to more than 99 lines.
Program supply equipment–other than television.
Public address equipment.
Public telephone signs.
Station switching and signaling devices including apparatus cabinets, keys, key cabinets, and other devices used as parts of intercommunicating systems.
Subscriber sets.
Telegraph equipment.
Teletypewriter equipment, including switching equipment.

(c) Station Connections

The wires (or small cables) from the station apparatus to the point of connection with the general overhead or underground system or to the junction boxes where the house cable or other cable terminates. This includes circuits, carried by means of wire or small cables, extending to the cable terminal in cases where connection is made with a general cable system or to the point of connection with the aerial wire plant in cases where connection is made with a general wire system.
The wires (or small cables) used to connect station apparatus in the same building, such as main stations with extension stations, and stations of intercommunicating systems.
The wires (or small cables) used to connect private branch exchange switchboards or their distributing frames with terminal stations located in the same building.
The wires (or small cables) used to connect the various parts of a small private branch exchange, such as the cables or wires from distributing frames to switchboard.
The wires (or small cables) installed specifically to serve as trunk, batter, or generator circuits from a small private branch exchange to the point of connection with the permanent house or outside cables or wires.
Connecting blocks, ground wires, ground rods, station protectors, clamps, cleats, nails, screws and other material used in the installation of station apparatus and inside wiring and cabling.
Labor and other costs incurred in connection with station apparatus and station connection installations or additions thereto.
Brackets, bridle rings, insulators, knobs, span clamps, screws, sleeves, strand, tubes, and other material used in the installation of drop and block wires; trimming trees and other costs incurred in the installation of such wires; pipes or other protective covering for underground service connections; and permits and privileges for construction.

(d) Large Private Branch Exchanges

Cables or wires from distributing frame to switchboard.

Dial system private branch exchanges of type designed to accommodate 100 or more lines or which can normally be expanded to 100 or more lines, including any nonmultiple manual switchboards used as attendants' positions in connection with such dial system exchanges.
Distributing frames.
Multiple manual switchboards.
Operators' chairs.
Operators' head sets and transmitters.
Power equipment, including special foundations.
Switching and signaling devices to large installations, such as certain key systems, for governmental agencies, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, and other components of such systems.
Switching equipment at switching or relay centers of large private line teletypewriter systems.
Television program supply equipment and other television equipment on customers' premises except portable equipment subject to use in central offices.
Wires (or small cables used instead of wires) installed specifically to serve as trunk, battery, or generator circuits from a large private branch exchange to the point of connection with the permanent house or outside cables or wires.
(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-13(010); filed Dec 1, 1982, 10:35 am: 6 IR 42)

45 IAC 2.2-5-21 Sales of motor vehicles, trailers or aircraft, delivery for use outside of Indiana (Repealed)

Sec. 21. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-5-22 Motor vehicles (Repealed)

Sec. 22. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-5-23 Aircraft (Repealed)

Sec. 23. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-5-24 Sales to Indiana and its instrumentalities
Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 24. (a) As used in this rule, "predominantly for use in the performance of a governmental function" means that the property acquired will be used for more than fifty percent (50%) for the performance of a governmental function.

(b) The state gross retail tax shall not apply to sales to the state of Indiana, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions of tangible personal property and public utility services and commodities predominantly for use in the performance of governmental functions.

(c) Purchases by all state governmental agencies of tangible personal property, public utility services, and commodities are exempt from the gross retail tax, provided such purchases are used predominantly in the performance of governmental functions. This exemption applies only to those purchases which are directly invoiced to the governmental entity and paid out of government funds.

(d) Purchases must be predominantly for use in performance of governmental functions. Purchases of tangible personal property, public utility services, and commodities by the state or subdivisions thereof are exempt from gross retail tax provided the items purchased are predominantly used in the performance of governmental functions.

(e) Purchases must be invoiced directly to the governmental entity and paid out of governmental funds. Purchases of tangible personal property, public utility services, and commodities by the state or a subdivision thereof are exempt from gross retail tax, provided the purchases are invoiced directly to the governmental entity and paid for out of government funds. Purchases which

are for use by the governmental entity, but which are not invoiced directly to the state or subdivision or are not paid for out of governmental funds, are subject to the gross retail tax.

(f) Purchases of tangible personal property to be incorporated into improvements to real estate owned by a governmental unit by contractors under a contractual obligation with a governmental entity of tangible personal property incorporated into real property used for a governmental purpose are exempt from the gross retail tax. However, purchases of machinery, tools, forms, and supplies which are used in the construction but are not incorporated into the structure are subject to tax.

(g) All purchases of public utility services used predominantly for governmental functions by the state or qualified subdivisions thereof are exempt. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-16(010); filed Dec 1, 1982, 10:35 a.m.: 6 IR 44; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1366)*

45 IAC 2.2-5-25 Government agencies and units purchases; application of sales tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 25. (a) There is not a blanket exemption from the sales tax for purchases by governmental agencies and units. It provides that only the purchase of tangible personal property used by the governmental agency in connection with a governmental function may be purchased exempt from sales tax.

(b) Purchases by a governmental agency or subdivision to be used in connection with or for a proprietary activity are subject to the sales tax.

(c) Proprietary activities by governmental agencies and subdivisions include:

(1) Activities in connection with the sale of tangible personal property, such as college book stores, food services, concessions, etc.

(2) Activities in connection with the rental of tangible personal property made to the general public.

(d) In every case in which a governmental agency engages in a proprietary type activity as defined above, the agency must pay sales tax on the purchase of all tangible personal property used in connection therewith.

(e) The construction of buildings and structures for use in proprietary activities such as concession stands, is subject to sales tax on the tangible personal property incorporated therein.

(f) Governmental agencies should refer to the gross income tax regulations and instructions for other examples of proprietary type activities. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-16(020); filed Dec 1, 1982, 10:35 am: 6 IR 45)*

45 IAC 2.2-5-26 Sales of newspapers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 26. (a) General rule. In general, sales of all publications irrespective of format are taxable. The exemption provided by this rule *[45 IAC 2.2]* is limited to sales of newspapers.

(b) Application of general rule. For purposes of the state gross retail tax, the term "newspaper" means only those publications which are:

(1) commonly understood to be newspapers;

(2) published for the dissemination of news of importance and of current interest to the general public, general news of the day, and information of current events;

(3) circulated among the general public;

(4) published at stated short intervals;

(5) entered or are qualified to be admitted and entered as second class mail matter at a post office in the county where published; and

(6) printed for resale and are sold.

(c) Publications which are primarily devoted to matters of specialized interest such as business, political, religious, or sporting matters may qualify for exemption if they also satisfy the criteria listed in subsection 26 of this rule *[subsection (b) of this section]*.

(d) Magazines, periodicals, journals, bulletins, advertising supplements, handbills, circulars, or the like are not newspapers until distributed as a part of a publication which is a newspaper within the meaning of this rule *[45 IAC 2.2]*.

(1) Magazines are not construed to be newspapers. The retail sales of all magazines and periodicals are subject to the sales tax. The sale of magazines by subscription is subject to sales tax without regard to the price of a single copy, and sales tax must be collected by the seller from the person who subscribes to the magazine on the full subscription price.

(2) For purposes of the state gross retail tax, the term "newspaper" shall include advertising inserts. Advertising inserts shall mean only those publications which are:

(A)(i) produced for a person by a private printer and delivered to the newspaper publishers, or

(ii) produced and printed by a newspaper publisher, or

(iii) produced and printed by a person and delivered to the newspaper publisher, and

(B) inserted by the newspaper publisher into the newspapers and distributed along with the newspapers.

Any distribution not meeting the above test does not qualify for the newspaper insert exemption. Examples of items distributed with a newspaper that do not qualify for the newspaper insert exemption include: gum, shampoo, and detergent samples.

(e) Publications issued monthly, bimonthly, or at longer or irregular intervals are generally not considered to be newspapers.

(f) Racing forms and tip sheets are not newspapers.

(g) A preponderance of advertising, lack of authorization to carry legal advertising, or lack of a masthead setting forth the publisher, editor, circulation, and place of publication are characteristics of publications other than newspapers.

(h) For exemptions pertaining to purchases and expenses of newspaper publishers, refer to Regs. 6-2.5-5-3 *[45 IAC 2.2-5-8 through 45 IAC 2.2-5-10]*, Regs. 6-2.5-5.1 *[45 IAC 2.2-5-12 through 45 IAC 2.2-5-13]* and Regs. 6-2.5-5-6 *[45 IAC 2.2-5-14]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-17(010); filed Dec 1, 1982, 10:35 am: 6 IR 45; filed Aug 6, 1987, 4:30 pm: 10 IR 2635)*

45 IAC 2.2-5-27 Medical exemptions; definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 27. (a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.

(b) Definition: The term "prescribed" shall mean the issuance by a person described in paragraph 1 of this regulation *[subsection (a) of this section]* of a certification in writing that the use of the medical equipment supplies and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 46)*

45 IAC 2.2-5-28 Medical equipment, supplies and devices; exemptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 28. (a) Sales of artificial limbs which are prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(b) The sale to the user of orthopedic devices prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(c) For purposes of the state gross retail tax orthopedic devices are designed to correct deformities and/or injuries to the human skeletal system including the spine, joints, bones, cartilages, ligaments and muscles.

(d) The sale to the user of dental prosthetic devices prescribed by a person licensed to issue the prescription are exempt from sales and use tax.

(e) For the purposes of the state gross retail tax, dental prosthetic devices are devices used for the replacement of missing teeth, as by bridges or artificial dentures.

(f) The sale to the user of eye glasses or contact lenses prescribed by one licensed to do so is exempted from sales tax. The

exemption to the patient applies whether the item is sold by the practitioner or by a dispensing optician.

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 46)*

45 IAC 2.2-5-29 Medical equipment, supplies and devices; rental

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 29. (a) Rentals of medical equipment, supplies, and devices, described in Regulation 6-2.5-5-18(a)(020) *[45 IAC 2.2-5-28]* are exempt from the state gross retail tax if the rentals are prescribed by a person licensed to issue the prescription.

(b) The terms "person licensed to issue prescription" and "prescribed" are defined in Regs. 6-2.5-5-18(a)(010)(I) and (2) *[45 IAC 2.2-5-27]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 46)*

45 IAC 2.2-5-30 Hearing aids; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 30. (a) The sale to the user of hearing aids fitted or dispensed by one licensed or registered to do so is exempt from sales tax.

(b) The term "hearing aid" is defined as any instrument worn on the human body, designed for aiding, improving or correcting defective human hearing.

(c) The term "one licensed or registered to do so" shall include only those persons licensed or registered to fit and/or dispense such devices. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-31 Hearing aids; sales of parts, attachments or accessories

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 31. The exempt sale of parts and accessories for hearing aids may be made by persons other than those licensed for the fitting and dispensing of hearing aids as well as those so licensed or registered. The exempt use of any part or accessory, which is not designed and sold exclusively for use as a part of a hearing aid, should be evidenced by an exemption certificate certifying its use as a part of a hearing aid. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-32 Devices used to administer insulin; exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 32. Sales of syringes or other instruments equipment or devices used to administer insulin are exempt from the gross retail tax. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-18(e)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-33 Prescription drugs; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 33. (a) The state gross retail tax shall not apply to the sales of drugs dispensed by a registered pharmacist upon the order

of a practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals in the course of his professional practice.

(b) In general, all sales of tangible personal property by a retail merchant including pharmacists, hospitals, and drug stores are taxable. This exemption applies only to sales of certain drugs.

(c) General rule: Sales of drugs are exempt from tax provided:

(1) The drug is dispensed by a licensed pharmacist; and

(2) The drug is prescribed by a practitioner who is licensed to prescribe, dispense and administer drugs for human beings and animals; or

(3) The drug is sold by a practitioner licensed to prescribe, dispense and administer drugs to human beings.

(d) Sales by a retail merchant (pharmacy, hospital, etc.) for human use or consumption of aspirin, common cold pills, ordinary cough medicine and other drugs which are purchased without prescriptions are not exempt under this regulation *[45 IAC 2.2]*.

(e) Sales of drugs prescribed by a veterinarian or other practitioner not licensed to prescribe drugs for human use are not exempt under this regulation *[45 IAC 2.2]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-34 Insulin, oxygen, blood and blood plasma; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 34. Sales of insulin, oxygen, blood and blood plasma are exempt from the state gross retail tax only when used for medical purposes. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-35 Sales of drugs to doctors and other licensed practitioners

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 35. (a) In general, all purchases of tangible personal property by a licensed practitioner are subject to gross retail tax. This exemption is limited to sales of certain drugs, insulin, oxygen, blood and blood plasma.

(b) Sales to licensed practitioners, of drugs which may be sold only on a prescription are exempt from the gross retail tax if the practitioner buys the drugs for direct consumption in the course of rendering professional services.

(c) Sales to licensed practitioners of insulin, oxygen, blood, or blood plasma are exempt from the gross retail tax if the practitioner buys such items for direct consumption in the course of rendering professional service. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 47)*

45 IAC 2.2-5-36 Licensed practitioners; purchases

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 36. (a) The gross retail tax shall apply to the following purchase transactions made by licensed practitioners:

(1) All office furniture, equipment and supplies.

(2) Drugs of a type not requiring a prescription, when not purchased for resale.

(3) Surgical instruments, equipment and supplies.

(4) Bandages, splints, and all other medical supplies consumed in professional use.

(5) X-Ray, diathermy, diagnostic equipment, or any other apparatus used in the practice of surgery or medicine.

(b) The purchase of items for resale by the physician or surgeon. In order to resell items the practitioner must be licensed as a retail merchant, and must quote the selling price of any items separately from the charge for professional service. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 48)*

45 IAC 2.2-5-37 Definitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 37. (a) "Licensed practitioner": For purposes of this regulation *[45 IAC 2.2]* a "licensed practitioner" is a doctor, dentist, veterinarian or other practitioner licensed to prescribe, dispense and administer drugs to human beings or animals in the course of their professional practice.

(b) "Directly consumed in the course of rendering professional services": For purposes of this regulation *[45 IAC 2.2]*, "directly consumed in the course of rendering professional services" means the administration of prescription drugs, insulin, oxygen, blood and blood plasma by the licensed practitioner, or his agent. Consumed in professional use includes the furnishing of such drugs as a part of a single charge for professional service. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-19(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 48)*

45 IAC 2.2-5-38 Food for human consumption; exemptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 38. The gross retail tax act exempts food for human consumption. Primarily the exemption is limited to sales by grocery stores, supermarkets, and similar type businesses of items which are commonly known as grocery food. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 48)*

45 IAC 2.2-5-39 Food for human consumption; exemption examples

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 39. (a) The gross retail tax act specifies the items which constitute tax exempt food for human consumption.

(b) A number of items normally sold by grocery stores, supermarkets, and similar type of businesses are classified in this regulation *[45 IAC 2.2]* under the heading "nontaxable items". These examples are for illustrative purposes and are not intended to be all-inclusive.

"NONTAXABLE ITEMS"

Baby Foods
Bakery Products
Baking Soda
Bouillon Cubes
Cereal & Cereal Products
Chocolate (for cooking purposes only)
Cocoa
Coconut
Coffee & Coffee Substitutes
Condiments
Cookies
Crackers
Dehydrated Fruit & Vegetables
Diet Foods
Eggs & Egg Products
Extracts, Flavoring as an Ingredient of Food Products
Fish & Fish Products
Flour
Food Coloring

Fruit & Fruit Products, including Fruit Juices
Gelatin
Health Foods
Honey
Ice Cream, Toppings, and Novelties
Jams
Jellies
Ketchup
Lard
Marshmallows
Mayonnaise
Meat & Meat Products
Milk & Milk Products
Mustard
Nuts, including salted, but not chocolate or candy-coated
Oleomargarine
Olive Oil
Olives
Peanut Butter
Pepper
Pickles
Popcorn
Potato Chips
Powdered Drink Mixes (Presweetened or Natural)
Relishes
Salad Dressings and Dressing Mixes
Salt
Sauces
Sherbets
Shortenings
Soups
Spices
Sandwich Spreads
Sugar, Sugar Products, and Sugar Substitutes
Syrups
Tea
Vegetables & Vegetable Products (Excluding Salad Bars)
Vegetable Juices
Vegetable Oils
Yeast
Some items in the above categories will be subject to tax if they are sold in small quantities and, therefore, are prepared for immediate consumption. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 48; filed Aug 6, 1987, 4:30 pm: 10 IR 2636)*

45 IAC 2.2-5-40 Food not exempt

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 40. The gross retail tax act specifies items which do not constitute "food for human consumption" exempted by the Act

[IC 6-2.5]. A number of items normally sold by grocery stores, supermarkets, and similar type businesses are classified in this regulation *[45 IAC 2.2]* under the heading "taxable items". These examples are for illustrative purposes and are not to be all-inclusive.

"TAXABLE ITEMS"

Alcoholic Beverages
Candy & Confectionery
Candied Apples
Caramel Coated Popcorn
Chewing Gum
Chocolate Covered Nuts
Cocktail (dry or liquid) Mixes
Dietary Supplements in any form
Household Supplies (Brooms, Mops, Etc.)
Ice
Liver Oils, such as Cod and Halibut
Lozenges
Nonprescription Medicines
Paper Products
Pet Foods and Supplies
Soap & Soap Products
Soft Drinks, Sodas & Similar Beverages
Tobacco Products
Tonics, Vitamins and other Dietary Supplements
Toothpaste
Water, including mineral, bottled carbonated & Soda
(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 49)

45 IAC 2.2-5-41 Confectionary items

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 41. (a) Preparations of fruits, nuts, or popcorn in combination with chocolate, sugar, honey, candy, or other confectionary, unless sold for cooking purposes, are not considered exempt "food" items. The method used in packaging and distributing these preparations, including the kind and size of container used, will be considered in determining the primary use for which these preparations are sold.

(b) Chocolate commonly used for cooking purposes is considered exempt "food" within the meaning of this regulation *[45 IAC 2.2]*. The method used in packaging and distributing chocolate, including the kind and size of container used, will be considered in determining the primary use for which it is sold. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 49)*

45 IAC 2.2-5-42 Soft drinks, sodas and similar beverages

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 42. Any "soft drink" which contains carbonated water is subject to tax. However, some other drinks which may not contain carbonated water but which are normally purchased for consumption out of "soft drink bottles or cans will also be subject to tax. This would include, for example, chocolate drinks. The term soft drinks" does not include fruit and vegetable juices. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 49)*

45 IAC 2.2-5-43 Food for immediate consumption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 43. (a) Sales of food which ordinarily is sold for immediate consumption at or near the premises of the seller are taxable even though such food is sold on a "take-out" or "to go" order basis and is actually bagged, packaged, or wrapped and taken from the premises of the seller. Where and when the customer actually eats such food is immaterial. Accordingly, sales through a grocery store, salad bar, bakery, or delicatessen and by restaurants, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshment stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities, of meals, sandwiches, hamburgers, hot dogs, french fries, fried chicken, fish and chips, pizza, potato salad, cole slaw, popcorn, sundaes, cones and cups of ice cream, milk shakes, soft drinks, and similar ready-to-eat food and beverage items are taxable regardless of whether sold by such establishments for consumption on the premises or on a "take-out" or "to go" basis.

(b) Any food which is cooked to the order of the purchaser, or food which is cooked and maintained at or near the cooking temperature prior to sale, or prepared food which is sold by the piece rather than by weight or for immediate consumption is taxable. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(040); filed Dec 1, 1982, 10:35 am: 6 IR 49; filed Aug 6, 1987, 4:30 pm: 10 IR 2636)*

45 IAC 2.2-5-44 Combination business; sales of groceries and meals

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 44. Where a person operates a combination-type business at one location such as an eating place combined with a donut or pastry shop, sales by such retailer of nontaxable grocery items as described in this regulation *[45 IAC 2.2]* are nontaxable when sold for home consumption. The method used in distributing these items, including the kind and size of the order and the container used, will be considered in determining whether the items are sold for home consumption. For example, bulk sales of donuts or other assorted pastries, sales of whole pies or cakes and bulk sales of ice cream are nontaxable when sold for home consumption. However, individual orders (e.g., an order of ice cream, a single serving of pie or cake, or a single serving bakery item) are taxable regardless of whether sold for consumption on the premises or sold on a "take-out" basis for off-premises consumption. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(050); filed Dec 1, 1982, 10:35 am: 6 IR 49; filed Aug 6, 1987, 4:30 pm: 10 IR 2637)*

45 IAC 2.2-5-45 Caterers

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 45. (a) The law provides that the sale of meals shall be taxable whether such meals are served on or off the premises of the retailer. Accordingly the sale of food or meals by caterers is subject to sales tax.

(b) The tax applies to the entire charge made by caterers for serving meals, food and drink, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for labor of serving meals. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-20(c)(060); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-46 School meals

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 46. (a) The state gross retail tax shall not apply to the furnishings of school meals to school children and school employees on school premises in all schools of grades one (1) through twelve (12).

(b) The fact that a school employs a private caterer to prepare and serve meals will not negate the exemption as long as the meals are served on school property and the caterer is merely acting as an agent for the school corporation.

(c) Sales of meals to persons other than students or employees are subject to the sales tax. *(Department of State Revenue;*

Ch. 5, Reg. 6-2.5-5-22(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 50)

45 IAC 2.2-5-47 School building materials

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 20-47-2; IC 20-47-3

Sec. 47. The state gross retail tax shall not apply to sales of tangible personal property incorporated or to be incorporated in a school building or school buildings being constructed by a lessor corporation in accordance with a lease executed under IC 21-5-11 *[IC 21-5 was repealed by P.L.2-2006, SECTION 199, effective July 1, 2006. See IC 20-47-2.]* (School Building Leasing) or IC 21-5-12 *[IC 21-5 was repealed by P.L.2-2006, SECTION 199, effective July 1, 2006. See IC 20-47-3.]* (School Corps. Authorized to Lease School Buildings). *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-23; filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-48 Gross receipts exempt from gross income tax; U.S. and Indiana tax collection agents

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 48. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-5.

(b) The state gross retail tax shall not apply to taxes received or collected by the taxpayer as agent for the state of Indiana and/or the United States of America. No person shall be considered as an agent for the state of Indiana and/or the United States of America under this regulation *[45 IAC 2.2]* unless he has been explicitly designated as a collecting agent in the statute under the terms of which the tax is imposed. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-49 Sales to the United States

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 49. (a) The gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-2.

(b) The state gross retail tax shall not apply to so much of the gross receipts of any transaction from sales to the United States Government, but only to the extent to which the state of Indiana is prohibited from taxing such gross receipts by the Constitution of the United States. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(020); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-50 Selling at retail; gross income

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 50. The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail which is excise tax imposed under Section 4081 of the Internal Revenue Code. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(030); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-51 United States retailer's and manufacturer's excise taxes

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 51. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-6 and IC 6-2.1-3-7.

(b) The state gross retail tax shall not apply to so much of the gross receipts of any transaction from retailer's excise taxes imposed by the United States solely on the sale at retail of tangible personal property and collected by a retail merchant as a separate item in addition to the price of the property sold, and which is remitted by such retail merchant to the taxing authority. "Retailers' excise taxes imposed by the United States" includes manufacturer's excise tax imposed by the United States on motor vehicles, motor vehicle bodies and chassis, parts, and accessories therefore, tires, provided that such tax is separately stated and billed by the seller. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(040); filed Dec 1, 1982, 10:35 am: 6 IR 50)*

45 IAC 2.2-5-52 Encumbrances on trade-ins

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 52. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-13.

(b) The state gross retail tax shall not apply to so mush *[sic.]* of the gross receipts of any transaction from all amounts represented by an encumbrance of any kind on tangible personal property received by a retail merchant in reciprocal exchange for tangible personal property of like kind. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(a)(050); filed Dec 1, 1982, 10:35 am: 6 IR 51)*

45 IAC 2.2-5-53 Interstate commerce; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 53. (a) The state gross retail tax shall not apply to such part of the gross income from transactions constituting selling at retail as is exempt from the gross income tax under the provisions of IC 6-2.1-3-3.

(b) Gross receipts derived from transactions which constitute "retail transactions" which the state of Indiana is prohibited from taxing by the Constitution of the United States of America are exempt from gross retail tax. Under this regulation *[45 IAC 2.2]*, this exemption is limited to gross receipts from transactions conducted in commerce between Indiana and other states of the United States, or between Indiana and foreign countries. Such sales commonly are referred to as "sales in interstate commerce" and Indiana is prohibited from taxing such sales by the United States Constitution. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 51)*

45 IAC 2.2-5-54 Delivery site

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 54. (a) Delivery to purchaser in Indiana. Sales of tangible personal property which are delivered to the purchaser in Indiana are subject to gross retail tax or use tax, except (see Regs. 6-2.5-5-15(020) *[45 IAC 2.2-5-22]*) for certain sales of motor vehicles and aircraft.

(b) Delivery to purchaser in a state other than Indiana. Sales of tangible personal property which are delivered to the purchaser in a state other than Indiana for use in a state other than Indiana are not subject to gross retail tax or use tax, provided the property is not intended to be subsequently used in Indiana.

(c) Delivery by common carriers.

(1) Delivery to common carrier in Indiana for shipment to another state by common carrier shall be deemed delivery to a purchaser in a state other than Indiana for purposes of applying the gross retail tax or use tax.

(2) Delivery to common carriers in a state other than Indiana for shipment to Indiana shall be deemed delivery to a purchaser in Indiana for purposes of applying the use tax.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-24(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 51)

45 IAC 2.2-5-55 Not-for-profit organizations; acquisitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 55. (a) Sales to a qualified not-for-profit organization of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the organization or in raising money for carrying on such purposes are exempt from the gross retail tax.

(b) In order to qualify for the sales tax exemption on purchases, as a qualified not-for-profit organization, the following conditions must prevail:

(1) The organization must be qualified by being named or described in IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22 which deals with fraternities, sororities, student cooperative housing organizations, etc. This includes not-for-profit organizations organized and operated exclusively for one (1) or more of the following purposes:

(A) Religious.
(B) Charitable.
(C) Scientific.
(D) Fraternal.
(E) Educational.
(F) Literary.
(G) Civic.

(2) Also included are the following specifically named not-for-profit organizations:

(A) Labor unions.
(B) Licensed hospitals.
(C) Churches.
(D) Monasteries.
(E) Convents.
(F) Cemetery associations.
(G) Public schools.
(H) Parochial schools.
(I) Pension trust.
(J) Business leagues.

(3) The organization is not operated predominantly for social purposes. The article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodging, are not eligible for exemption. Purchases used for social purposes are never exempt.

(4) The fact that an organization is being exempted by the federal government or by the state of Indiana for income tax purposes does not necessarily mean that a purchase made by the not-for-profit organization is exempt.

(c) Purchases of tangible personal property by a qualified not-for-profit organization used to raise funds to further the exempt purpose of the organization are exempt even if the resale of such property is not subject to tax. The following are examples:

(1) A qualified religious organization purchases envelopes which are distributed to members for use in making weekly contributions to the church. The purchase of the envelopes by the church is exempt because the envelopes will be used to raise funds for the qualified not-for-profit organization.

(2) A qualified hospital purchases advertising posters to be used in a fundraising drive for the hospital. The purchase of the posters is exempt from the state gross retail tax because the posters will be used to raise funds for the qualified not-for-profit organization.

(d) Purchases of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the qualified organization are exempt from tax. This exemption will not apply if such property is primarily used for a purpose other than the not-for-profit purpose of the organization. As used in this section, "primarily used in carrying out the not-for-profit purpose" means that the item or service is used more than fifty percent (50%) of the time to further the organization's not-for-profit purpose. The following are examples:

(1) A religious organization acquired building materials to construct a new church. The purchase of such materials by the church is exempt since the new church will further the not-for-profit purpose of the organization. The fact that the church basement will occasionally be used for social events does not subject the purchase of construction materials to tax.

(2) A church sponsors a ski club for its teenage membership. The ski club purchases skis, boots, and poles to be used by the church ski club members on ski trips. These purchases are taxable because the skis, boots, and poles are used primarily to further the social purposes of the ski group and not the exempt purpose of the church.

(3) A fraternal lodge operated a golf club, a bowling alley, and a lounge where liquor is served. Purchases of property used in these facilities are taxable because the property is used for a purpose other than the not-for-profit fraternal purpose of the lodge. However, the purchase of ceremonial robes for use in fraternal meetings is exempt because the robes are used to further the not-for-profit purpose of the organization.

(4) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting which is furthering their not-for-profit purpose.

(e) A social organization will be deemed to exist for predominantly social purposes if more than fifty percent (50%) of its expenditures are for, or related to, social activities. Social activities include the following:

(1) Food and beverage services.

(2) Furnishing of sleeping rooms.

(3) Club rooms.

(4) Lounges.

(5) Recreational activities.

(6) Any other social activities.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-25(a)(010); filed Dec 1, 1982, 10:35 a.m.: 6 IR 51; filed Dec 11, 1992, 5:00 p.m.: 16 IR 1367)

45 IAC 2.2-5-56 Fraternities, sororities, and student cooperative housing organizations; acquisitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 56. (a) The state gross retail tax exempts transactions occuring *[sic.]* after December 31, 1976, and involving tangible personal property or service, if the person acquiring the property or service:

(1) Is a fraternity, sorority, or student cooperative housing organization which is granted a gross income tax exempt under IC 6-2.1-3-19; and

(2) Uses the property or service to carry on its ordinary and usual activities and operations as a fraternity, sorority, or student cooperative housing organization.

(b) Purchases for the private benefit of any member of the organization or for any other individual are not eligible for exemption.

–EXAMPLE–

(1) A sorority purchases furniture for the sorority house. The state gross retail tax will not apply. The furniture is tangible personal property used by the sorority to carry on its ordinary and usual activities.

(2) A fraternity member purchases a television set for his own individual use in the fraternity house. The purchase would not be exempt. The fraternity member can not use the fraternity's exemption to purchase tangible personal property for his private benefit.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-25(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 52)

45 IAC 2.2-5-57 Not-for-profit organization; sales under 30 day rule

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 57. (a) The state gross retail tax shall not apply to sales by any qualified not-for-profit organization of tangible personal

property for not more than thirty (30) days during any calendar year for the purpose of raising money to be used for carrying on the not-for-profit purpose of such organization.

(b) In general, the gross receipts from sales by not-for-profit organizations are taxable. This subsection exempts from tax the gross receipts from the sale of tangible personal property by a qualified not-for-profit organization in connection with certain fund-raising activities as described in this regulation *[45 IAC 2.2]*.

(c) The gross receipts from the sale or lease of tangible personal property by a qualified not-for-profit organization are exempt under this subsection if the sales are made to raise money to further the not-for-profit purpose of the organization and if the sales are conducted for not more than thirty days during any calendar year. Such sales may be made by all qualified not-for-profit organizations. The tangible personal property sold need not be related to the qualified purpose of the organization, provided such receipts are expended to further the exempt purpose of the organization.

(d) Any organization which makes such sales for thirty-one or more days during any calendar year is a retail merchant and, therefore, is subject to the state gross retail tax. (Refer to Regs. 6-2.5-5-26(b) *[45 IAC 2.2-5-58]* for exemption of certain sales by qualified not-for-profit organization which are not predominantly social.)

(e) Sales conducted for not more than thirty days. Each day during which any selling activities are conducted constitutes a "selling day" for purposes of determining whether a qualified not-for-profit organization has conducted sales for more than thirty days during any calendar year. The solicitation, acceptance, or receipts of a sales order during any day during more than thirty days during any calendar year, then all gross receipts from all sales made during the year are subject to tax. For purposes of applying these rules, the thirty days need not be consecutive.

–EXAMPLE–

(1) A church conducts a bake sale each Sunday after services. All gross receipts including the receipts collected during the first thirty selling days are subject to tax because the selling activities are conducted for more than thirty days during the calendar year.

(2) A hospital's women's auxiliary solicits orders for cookies during a three-month period. Orders are accepted at the point of solicitation but the cookies are delivered on the last day of the three-month solicitation period. These sales are taxable. Selling activities are conducted for more than thirty days during the calendar year because each day during which an order is solicited constitutes a selling date.

(f) Furthering the not-for-profit purpose of the organization. The gross receipts from fund raising sales conducted for not more than thirty days are exempt only if such receipts are expended to further the not-for-profit purpose of the exempt organization. For purposes of this section, the payment of such receipts to offset the direct cost of the product sold will be considered an expenditure to further the not-for-profit purpose of the organization.

(g) Definition. Refer to Regulation 6-2.5-5-25(a)(010)(2) *[45 IAC 2.2-5-55(b)]* for the definition of a "qualified not-for-profit organization". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 53)*

45 IAC 2.2-5-58 Not-for-profit organizations for educational, cultural or religious purposes; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 58. (a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary business.

(b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule *[45 IAC 2.2]* only if:

(1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and

(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural or religious purpose of the qualified not-for-profit organization.

–EXAMPLE–

(1) The sale of textbooks and supplies by a parochial, public or private not-for-profit school is exempt if made to students of the school in grades one through twelve. Such sales are primarily intended to further the educational purposes of the school.
(2) The sale of bibles, choir robes and prayer books by a religious organization is exempt. Such sales are primarily intended to further the religious purposes of the organization.
(3) The sale of meals by an art gallery is taxable. The meals are intended primarily for the convenience of visitors.
(4) The sale of textbooks and other educational materials by a secretarial school which is operated for profit is taxable. A profit-making educational enterprise is not a qualified not-for-profit organization under this regulation *[45 IAC 2.2]*.
(5) The sale of greeting cards by a church bookstore is taxable. Such sales are not primarily intended to further the religious purposes of the organization.

(d) Qualified not-for-profit organization. This regulation *[45 IAC 2.2]* applies only to qualified not-for-profit organizations. For example, the sale of educational books by a social club is taxable. A predominantly social not-for-profit organization is not a qualified not-for-profit organization with respect to sales and use tax.

(e) Definition. Refer to Regulation 6-2.5-5-25(a)(010)(2) *[45 IAC 2.2-5-55(b)]* for the definition of a "qualified not-for-profit organization". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 54)*

45 IAC 2.2-5-59 Not-for-profit organizations to improve skills of members; sales

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 59. (a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designed and intended to improve the skill or professional qualification of members of the organization for carrying on the work or practice of their trade, business or profession and not used in carrying on a private or proprietary business.

(b) The gross receipts from sales of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:
(1) The tangible personal property is sold exclusively to members and is designed and intended to improve the skill or professional qualification of such members; and
(2) The organization is not carrying on a private or proprietary business with respect to such sales.

(c) Designed and intended to improve the skill of professional qualification. The property sold to members of the organization must be designed and intended to improve the skills of such members.

–EXAMPLE–

(1) Sales by a qualified not-for-profit medical society to its members of technical booklets which provide medical information are exempt from tax. These technical booklets are intended to improve the professional qualifications of the members.
(2) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting where the technical booklets described in (1) of this section are sold.
(3) A professional society of certified public accountants publishes and sells technical booklets to students who are not members of the professional society. The sales are taxable because this exemption is limited to sales to members.

(d) Qualified not-for-profit organizations. This regulation *[45 IAC 2.2]* applies only to not-for-profit organizations which are qualified not-for-profit organizations. For example, sales of instructional booklets on golf techniques by a country club are taxable. A country club is a predominantly social not-for-profit organization and not a qualified not-for-profit organization.

(e) Definitions. Refer to Regulation 6-2.5-5-25(a)(010)(2) *[45 IAC 2.2-5-55(b)]* for the definition of a "qualified not-for-profit organization". *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 54)*

45 IAC 2.2-5-60 Property not exempt

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 60. The state gross retail tax does not exempt the sale by any state or accredited college or university of books, stationery, haberdashery, supplies, and other property. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-26(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 55)*

45 IAC 2.2-5-61 Public transportation; acquisitions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 61. (a) The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

(b) Definition: Public Transportation. Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

(c) In order to qualify for exemption, the tangible personal property must be reasonably necessary to the rendering of public transportation. The tangible personal property must be indispensable and essential in directly transporting persons or property.

(d) The following is a list of items which the department has determined to be necessary to the rendering of public transportation:

Roadway machinery and equipment;
Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
Tariff publications;
Vehicles used for public transportation;
Communication equipment;
Equipment and items purchased to meet federal requirements;
All replacement parts, repair parts, and materials consumed by exempt equipment;
Tools and equipment used to repair and maintain rolling stock and track;
Vehicles used primary for transportation of track maintenance crews;
Items used for repairs and maintenance of such vehicles;
Items used for production of financial matters, insurance, schedules, routes, and rates;
Items used to provide customer stations, handle baggage, sell tickets;
Items used to keep vehicles clean and safe for the passengers.
Machine shop and truck tools;
Equipment related to the costruction *[sic.]* and operation of terminals;
Directories;
Gas storage facilities;
Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottles *[sic.]* water;
Cleaning supplies;
Employee uniforms;
Garage supplies.

(e) The following is a PARTIAL list of items which are not directly used or consumed in the rendering of public transportation and, therefore, are subject to tax:

Promotional expenses, matches, jackets, and promotional items given away to existing or potential customers, advertising to the public, except the printing of schedules and routes.

Sales expenses, sales telephones, and related computer equipment used exclusively for sales activities such as marketing, sales projection, and costing. Such equipment used to handle actual ticket sales (i.e., at the reservation office) or to organize loads and dispatch trucks is exempt.

Office supplies, furniture, equipment, and related items for sales personnel executives including ground and lawn care, except grading required for the vehicles directly used in the rendering of public transportation.

Heating and air conditioning for separate, off-site executive headquarters is subject to tax.

Heating and air conditioning for reservation area, vehicle maintenance area, or switching yard control buildings is exempt.

(f) Pre- and post-transportation activity. The purchase, storage, or use of tangible personal property used for activities prior to or subsequent to the rendition of public transportation is subject to tax. For purposes of this regulation *[45 IAC 2.2]*, transportation means the movement, transporting, or carrying of persons or property from one place to another and includes loading and unloading of persons or property into or from transportation vehicles.

–EXAMPLES–

(1) Ramps used by travelers for boarding and departing from airplanes are exempt because the ramps are directly used in rendering public transportation.

(2) Docks possessed by a carrier and used for loading and unloading vehicles operated in rendering public transportation are exempt.

(g) Storage facilities and equipment. In general, storage facilities and associated equipment for exempt vehicles are exempt. Additionally, tangible personal property directly used for temporarily storing persons or property being transported is exempt from tax because temporary storage is considered to be an integral part of rendering transportation.

–EXAMPLES–

(1) Airline passengers' luggage is held in a baggage room until luggage can be loaded on the aircraft. The racks, carts, bins, and other baggage room equipment are exempt from tax.

(2) A carrier receives property from another carrier and temporarily stores such property prior to loading it for further shipment. Equipment used to handle such in transit property is exempt from tax.

(3) Construction materials incorporated into grain elevators or warehouses used for storage are not exempt under this regulation *[45 IAC 2.2]*. Similarly, fuel storage tanks at a truck terminal are exempt.

(h) Repair and maintenance facilities and equipment.

(1) Machinery, tools, equipment, and facilities used for repair and maintenance of tangible personal property directly used in public transportation are not subject to tax.

–EXAMPLE–

Chain hoists, tire spreaders, welding equipment, drills, sanders, wrenches, paint brushes, sprayers, garages, repair shops, wreckers.

(2) Replacement parts used to replace worn, broken, inoperative, or missing parts or accessories on exempt property are exempt from tax.

–EXAMPLE–

Lights, bulbs, batteries, timers, tires, tubes, wheels, etc., used to replace similar parts or accessories on an exempt truck are exempt from tax.

(i) Transportation vehicles. In general, all vehicles including transportation vehicles such as airplanes, locomotives, rolling stocks, watercraft, vessels, pipelines, buses, tractors, trailers, trucks, and other vehicular equipment including containers directly used in rendering public transportation are exempt from tax. This exemption does not extend to motor vehicles, including automobiles, used to solicit business or to automobiles supplied to company employees for their personal use.

–EXAMPLES–

(1) A carrier purchases wreckers and service trucks to be used in towing or servicing transportation vehicles which malfunction. The wreckers and service trucks are exempt because they are directly used in rendering public transportation.

(2) Motor vehicles purchased by a carrier, including automobiles, used to solicit business are taxable because they are not

directly used in rendering public transportation.

(3) Automobiles supplied to company employees for their personal use are taxable.

(j) Other property. In general, all other tangible personal property is taxable.

–EXAMPLES–

(1) A carrier owns or rents a fork lift to be used for loading and unloading cargo from a railroad car, truck, trailer, or container. The purchase price or rental charge for use of this equipment is exempt from tax.

(2) A carrier purchases a scale for use in determining freight charges to be billed to customers. The scale is exempt because it is directly used in rendering public transportation.

(3) An airline provides accommodations at a motel for pilots at a "turnaround" point. Such accommodations are taxable.

(k) Real property used for transportation. In general, the purchase, storage, or use of tangible personal property to be incorporated into or used as an improvement to realty used in connection with rendering public transportation is taxable. If, however, such items are directly used in rendering public transportation, this exemption is applicable.

(1) Items of tangible personal property incorporated into railroad beds and tracks, bridges, signal towers, and signaling equipment used for direct control of rolling stock, and materials and property incorporated into watchmen shacks, warehouses, tool sheds, and maintenance shops are taxable exempt from tax.

(2) Material used by a railroad in the construction of a passenger platform for the accommodation of the traveling public is exempt because the material is directly used in rendering public transportation.

(3) Sheet steel pilings for surfacing the watersides of piers used by railroads are not subject to tax. These steel piles are an integral part of the railroad's roadbed and are directly used in rendering public transportation.

(4) Items of tangible personal property purchased by a railroad and used in the construction of pedestrial subways and of trainmen are exempt because they are directly used in the rendition of public transportation.

(l) Purchasing exempt property.

(1) Motor Carrier. Common and/or contract motor carriers of property, and any person, firm, or corporation otherwise specifically exempt by statute from regulation by a federal or state regulatory body (example: I.C.C. or P.S.C.I.) engaged in public transportation of property for hire, when claiming exemption from the Indiana sales or use tax, shall issue to suppliers the Indiana general exemption certificate (form ST-105).

Before being eligible to issue valid general exemption certificates, form ST-105, the purchaser must be properly registered with the Indiana revenue department for sales tax purposes. Motor carriers maintaining facilities or offices in the state of Indiana should hold an Indiana registered retail merchant certificate, while out-of-state firms should have an out-of-state use tax collection and remittance permit. The registration number indicated on either permit must be indicated on the exemption certificate before it becomes valid.

(2) Individuals. Truckers engaged in public transportation but operating under another person's permit are to use exemption certificate form ST-135 when claiming tax exemption for items purchased which will be directly used or consumed for exempt purposes.

Exemption certificate form ST-135 is used in lieu of the general exemption certificate form ST-105 by the above-described individuals and eliminates the necessity for these individuals to register with the Indiana department of revenue.

(m) Promotional, sales, and other non-operational activities. Purchase, storage, or use of tangible personal property not directly used in rendering public transportation is taxable. Tangible personal property used for sales or other non-operational activities is not directly used in rendering public transportation and, therefore, is subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: promotional advertising; sales marketing; projection and costing; heating, air conditioning and ventilation units, and equipment for general temperature control of separate, off-site executive headquarters; research and development; waste disposal.

–EXAMPLES–

(1) A company possesses a contract carrier permit to transport stone for a limestone company. It also purchases stone and sells it to its own customers. During the period it is transporting its own stone, it is not engaged in public transportation and tangible personal property and equipment used and consumed in such activities are subject to tax.

(2) A company possesses a limited common carrier permit to transport oil drilling mud, water, and equipment. The company also uses its equipment and employees at the well-drilling site in setting up and removing equipment as well as utilizing the mud and water in the drilling process. During all operations and activities, except the actual transportation of the mud, water,

and equipment, the company is not engaged in public transportation, and the tangible personal property used or consumed in such activities is subject to tax.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-27(010); filed Dec 1, 1982, 10:35 am: 6 IR 55; filed Aug 6, 1987, 4:30 pm: 10 IR 2637)

45 IAC 2.2-5-62 Tangible personal property directly consumed in the rendering of public transportation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 62. (a) The state gross retail tax shall not apply to the sale, storage, or use of tangible personal property which is directly consumed in the rendering of public transportation of persons or property.

(b) Definition: Consumed. For purposes of this regulation *[45 IAC 2.2]*, "consumed" means the dissipation or expenditure by combustion, use, or application and shall not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear, or breakage of tangible personal property.

(c) The exemption provided by this regulation *[45 IAC 2.2]* is limited to tangible personal property directly consumed in rendering public transportation. For rules governing materials consumed by persons engaged in manufacturing, processing, mining, repairing, and farming and not engaged in rendering public transportation, refer to Regulation 6-2.5-5-5.

(d) In order to qualify for exemption, the consumption of tangible personal property must be reasonably necessary to the rendering of public transportation.

(e) The following is a list of items which the department has determined to be reasonably necessary to the rendering of public transportation:

Roadway machinery and equipment;
Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
Equipment and items purchased to meet federal requirements;
Tariff publications;
Vehicle used for public transportation;
Communication equipment;
All replacement parts, repair parts, and materials consumed by exempt equipment;
Tools and equipment used to repair and maintain rolling stock and track;
Vehicles used primarily for transportation of maintenance crews;
Items used for repairs and maintenance of such vehicles;
Items used for production of financial matters, insurance, schedules, routes, and rates;
Items used to provide customer stations, handle baggage, sell tickets;
Items used to keep vehicles clean and safe for the passengers;
Machine shop and truck tools;
Equipment related to the construction and operation of terminals;
Directories;
Gas storage facilities;
Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottled water;
Cleaning supplies;
Employee uniforms;
Garage supplies.

(f) The following is a PARTIAL list of items which are not directly used or consumed in the rendering of public transportation and, therefore, are subject to tax:

Promotional expenses, matches, jackets, and promotional items given away to existing or potential customers, advertising to the public, except the printing of schedules and routes;

Sales expenses, sales telephones, and related computer equipment used exclusively for sales activities such as marketing, sales projection, and costing. Such equipment used to handle actual ticket sales (i.e., at the reservation office) or to organize loads and dispatch trucks is exempt;

Office supplies, furniture, equipment, and related items for sales personnel executives, including ground and lawn care, except for grading required for the vehicles directly used in the rendering of public transportation;

Heating and air conditioning for separate, off-site executive headquarters is subject to tax. Heating and air conditioning for reservation area, vehicle maintenance areas, or switching yard control buildings is exempt.

(g) Pre- and post-transportation activity. The purchase, storage, or use of tangible personal property consumed during activities prior to or subsequent to the rendition of public transportation is subject to tax. For purposes of this regulation *[45 IAC 2.2]*, transportation means the movement, transporting, or carrying of persons or property from one place to another and includes loading and unloading of persons or property into or from transportation vehicles.

(h) Fuel and lubricants. In general, fuel and lubricants are taxable except fuel and lubricants consumed by exempt transportation vehicles or other tangible personal property directly used in rendering public transportation.

–EXAMPLES–

(1) Fuel consumed by an exempt airplane is exempt from tax.

(2) Gasoline consumed by wreckers or repair vehicles is exempt from tax.

(3) Oil used to lubricate a conveyor system used to load cargo into or on an exempt trailer is exempt from tax.

(4) Fuel oil used to heat a carrier's terminals is exempt from tax.

(5) Fuel used to heat off-site, executive headquarters is taxable.

(i) Shipping materials. In general, shipping material or supplies are taxable except such shipping materials or supplies directly consumed during the rendition of public transportation.

–EXAMPLES–

(1) Blocking lumber and steel strap purchased by a carrier and used to hold sewer pipe securely in place on a flat bed trailer are exempt from tax.

(2) Routing cards tacked to the sides of railroad cars to expedite the switching of the cars are exempt.

(3) Disposable cardboard lining installed in boxcars to prevent grain from spilling from such cars is exempt from tax.

(4) Packing cases, pads, ropes, and cushions used by a carrier to prevent damage to goods during shipment are exempt from tax.

(5) Ice, salt, and other refrigerants used to preserve perishables during shipment are exempt from tax.

(j) Other tangible personal property. In general, all other items of tangible personal property are taxable except those items which are directly consumed in rendering public transportation.

–EXAMPLES–

(1) Hydraulic fluids used by dock levelers and fork lift trucks used in loading and unloading exempt vehicles are exempt from tax.

(2) Chemicals used to charge air conditioning units for general temperature control in terminals are exempt from tax.

(3) Materials consumed in printing railroad time tables are exempt under this regulation *[45 IAC 2.2]*.

(k) Promotional, sales, and other nonoperational activities. Purchase, storage, or use of tangible personal property not directly consumed in rendering public transportation is taxable. Tangible personal property consumed during sales or other nonoperational activities is not directly consumed in rendering public transportation and, therefore, is subject to tax. This category includes, but is not limited to, tangible personal property consumed during any of the following activities: promotional advertising; sales marketing, projection, and costing; heating, air conditioning and ventilation units and equipment for general temperature control of separate, off-site executive headquarters; illumination for separate, off-site executive headquarters; research and development; waste disposal. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-27(020); filed Dec 1, 1982, 10:35 am: 6 IR 57; filed Aug 6, 1987, 4:30 pm: 10 IR 2640)*

45 IAC 2.2-5-63 Service directly used or consumed in rendering public transportation

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 63. (a) The state gross retail tax shall not apply to the sale and the use in this state of service which is directly used or directly consumed in the rendering of public transportation of persons or property.

(b) Definition. (1) Service: Service as used in this regulation *[45 IAC 2.2]* means those services which are otherwise taxable

under the Gross Retail Tax Act, such as electrical or telephone services.

(2) Public transportation: Refer to Regulation 6-2.5-5-27(010) *[45 IAC 2.2-5-60]* for definition of "public transportation".

(c) General rule. The purchase, sale, storage, use or other consumption in this state of service which is directly used or directly consumed in rendering public transportation of persons or property is exempt from tax. For meaning of "directly used in rendering public transportation" as applied to service and for provisions refer to Regs. 6-2.5-5-27(010) and (020) *[45 IAC 2.2-5-61 and 45 IAC 2.2-5-62]*. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-27(030); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-64 Gasohol exemption (Repealed)

Sec. 64. *(Repealed by Department of State Revenue; filed Dec 5, 2012, 10:01 a.m.: 20130102-IR-045120429FRA)*

45 IAC 2.2-5-65 Mobile homes; industrial residential structures

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 65. (a) For the purpose of this regulation *[45 IAC 2.2]*, "mobile home" means only a structure which:

(1) Is transportable in one or more sections; and
(2) Is eight body feet or more in width; and
(3) Is thirty-two body feet or more in length; and
(4) Is built on a permanent chassis; and
(5) Is designed to be used as a dwelling, with or without a permanent foundation when connected to the required utilities.

(b) If a structure does not meet each of the above conditions it does not qualify as a mobile home, however, it may still qualify for the reduced sales tax rate if all five of the following requirements are fulfilled and the structure constitutes an industrialized building to be used as a one or two family dwelling.

(c) For the purpose of this regulation *[45 IAC 2.2]* an "industrialized building system" means only a structure which:

(1) Must be wholly, or in substantial part, fabricated in an offsite manufacturing facility; and
(2) Must be for use as a one or two family private residence; and
(3) Must be manufactured or assembled for installation or assembly on a permanent foundation at the building site; and
(4) Must be installed on a permanent foundation which transposes the load from the structure to the earth at a depth below the established frost line; and
(5) Does not constitute an "open" system which is capable of inspection at the building site, and does not carry the inspection plate required of a "closed inspection".

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)

45 IAC 2.2-5-66 Sale not attributable to cost of material; exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 66. The gross retail income derived from the sale of a "mobile home" or "industrialized residential structure" which is not attributable to the cost of materials in manufacturing the structure, is exempt from the gross retail tax. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-67 Income from sale of mobile home or industrialized residential structure; exemption

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 67. (a) Thirty-five percent (35%) of the gross retail income derived from the sale of a "mobile home" or "industrialized residential structure" is not subject to the gross retail tax.

(b) Thirty-five percent (35%) of the gross retail income derived from the sale of a "mobile home" or "industrialized

residential structure" is attributable to costs other than the cost of materials used in manufacturing such structures. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 59)*

45 IAC 2.2-5-68 Other exemptions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 68. If a dealer who purchases a mobile home or industrialized building system, as described in this regulation *[45 IAC 2.2]*, does not install the structure as an improvement to realty under a lump sum contract, but rather purchases the structure for resale in the regular course of his business, such purchase for resale is exempted. The dealer may provide the seller with an exemption certificate (form ST-105) certifying exempt use in which case the dealer must collect and remit sales tax on the subsequent resale. *(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 60)*

45 IAC 2.2-5-69 Administration; Form ST-108MH

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 69. (a) On or after September 1, 1979, the Bureau of Motor Vehicles will no longer be authorized to collect sales tax on sales by retail merchants of mobile homes and industrialized building systems.

(b) The tax must be collected by the seller and form ST-108MH must be completed in triplicate and signed by both seller and buyer. The original form ST-108MH must be attached by the seller to the certificate of origin or certificate of title used to assign ownership.

(1) If the seller is a registered retail merchant, form ST-108MH, when properly completed will be accepted by the license branch as proof of payment of the sales tax to the registered retail merchant who is the seller of the structure. A copy of the ST-108MH must be retained by the seller in evidence of the fact that the copy was prepared and given to the purchaser, and the seller must furnish the third copy to the Indiana Department of Revenue within 30 days of the sale.

(2) If the seller is not a retail merchant, both buyer and seller must complete form ST-108MH in triplicate. The original copy of the form must be attached to the certificate of title and a copy of the form must be furnished to the Department of Revenue, Room 202, State Office Building, Indianapolis, Indiana 46204, within 30 days following the date of sale.

Any person claiming the 35% reduction on the purchase of a mobile home or industrialized building system must apply for registration of the structure within 30 days of the purchase date as required by the Bureau of Motor Vehicles.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-29(c)(030); filed Dec 1, 1982, 10:35 am: 6 IR 60)

45 IAC 2.2-5-70 Environmental quality control equipment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 70. (a) The state gross retail tax does not apply to sales of tangible personal property which constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominately used and acquired for the purpose of complying with any state, local or federal environmental qaulity *[sic.]* statutes, regulations or standards; and the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, or agriculture.

(b) Definitions. (1) Consumed as used in this regulation *[45 IAC 2.2]* means the dissipation or expenditure by combustion, use or application, and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage of tools, machinery, devices or furnishings.

(2) Incorporated as used in this regulation *[45 IAC 2.2]* means the material must be physically combined into and become a component of the environmental quality device, facility, or structure. The material must constitue a material or integral part of the finished product.

(c) Portion exemption: The total sales price; multiplied by the percentage prescribed in the following table equals the portion of the sales price exempt from the state gross retail tax:

DATE OF SALE	PERCENTAGE
(1) After June 30, 1980 and before July 1, 1981	33 a%
(2) After June 30, 1981 and before July 1, 1982	66 b%
(3) After June 30, 1982	100%

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-30(010); filed Dec 1, 1982, 10:35 am: 6 IR 60)

Rule 6. Returns, Remittances and Refunds

45 IAC 2.2-6-1 Time limit on returns and payments

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. Every person liable for or required to collect the state gross retail tax or use tax shall file the prescribed returns and made *[sic.]* payments of such taxes for each calendar month within thirty (30) days after the last day of each calendar month unless a longer period is specifically authorized by the Department. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 60)*

45 IAC 2.2-6-2 Reporting periods

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) The Department may permit the taxpayer to divide the year into a different number of reporting periods.

(b) The Department may authorize upon request other fractional periods of the year in lieu of the calendar month including a four (4) week reporting period of a special reporting period resulting from a 52-53 week year for filing the returns and making payments of such taxes. Allowance of a different number of reporting periods is at the Department's discretion.

(c) The returns for reporting periods other than calendar months, specifically authorized by the Department are due thirty days after the last day of the period for which the return is required to be filed. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-3 Fiscal taxpayer's reporting period

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) A taxpayer may report and pay his state gross retail and use taxes over his fiscal period that corresponds to the calendar period he is permitted to use under Indiana Code 6-2.5-6-1(c) if:

(1) The taxpayer reports his gross income tax or the tax he pays in place of the gross income tax, over a fiscal year or fiscal quarter not corresponding to the calendar year or calendar quarter; and

(2) The Department has not required the taxpayer to stop using the fiscal reporting period.

(b) Definition: Fiscal year. A fiscal year, is a period of twelve months ending on the last day of a month other than December. It is thus distinguished from a calendar year, ending always on December 31. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-1(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-4 Accrual basis; reporting and payment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) A taxpayer may, without prior Departmental approval report and pay his state gross retail tax on the accrual basis if:

(1) The taxpayer reports his gross income tax or the tax imposed on him in place of the gross income tax, on the accrual

basis; and

(2) The Department has not required the taxpayer to stop using the accrual basis of accounting.

(b) Definition: Accrual basis of accounting. On the accrual basis, income is accounted for as and when it is earned, whether or not it has been collected. Expenses are deducted when they are incurred, whether or not paid in the same period. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-5 Consolidated filing

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) The Department may permit a retail merchant, wholesaler, or manufacturer holding certificates for more than one store or place of business to file a return consolidating the transactions of all such stores or places of business.

(b) All retail merchants filing consolidated returns for more than one location are assigned an identification number to be used in such filing.

(c) The number is in addition to the Retail Merchant Certificate numbers which are required for each business location. Consolidated identification numbers are not valid for use on exemption certificates or for any purpose other than reporting consolidated sales tax collections.

(d) No charge is made for assigning such number, however, prior to being granted permission to file on a consolidated basis, the taxpayer is required to furnish the Department of Revenue a list of all locations and Retail Merchant Certificate numbers which are to be included in consolidated returns together with such other information as is required in the application.

(e) The sales tax returns of one corporation or company may not be consolidated with the sales tax returns of another corporation or company.

(f) Any future location may be included in the consolidated filing by attaching a request to the original application for registration as a retail merchant. Such request should set out the reporting number under which the returns will be filed. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 61)*

45 IAC 2.2-6-6 Sales and use tax collections

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. The Department may require a retail merchant to make periodic deposits of his sales and use tax collections during his reporting period and to file an informational return with those deposits; if the Department feels the retail merchant is not properly collecting, reporting or paying the state gross retail tax. *(Department of State Revenue: Ch. 6, Reg. 6-2.5-6-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)*

45 IAC 2.2-6-7 Final return and payment

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. In this case of any retail merchant who ceases to engage in the kind of business which imposes responsibility for filing returns such retail merchant shall file a final return within one month after discontinuing such business. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-5(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)*

45 IAC 2.2-6-8 Amount of tax liability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-5-7

Sec. 8. (a) In determining the retail merchants' tax liability for a particular reporting period, the retail merchant shall multiply the retail merchant's total gross retail income from taxable transactions made during the reporting period except as

otherwise provided in IC 6-2.5-5-7 or in this chapter of Regulations *[45 IAC 2.2-6]*, by the sales tax rate.

(b) The amount determined under this Regulation *[45 IAC 2.2]* is the retail merchant's state gross retail and use tax liability regardless of the amount of tax he actually collects. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-7(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)*

45 IAC 2.2-6-9 Income exclusion ratio

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. In determining the retail merchants tax liability under Regulation 6-2.5-6-7(010) *[45 IAC 2.2-6-8]* the retail merchant may exclude from his gross retail income from retail transactions made during a particular reporting period, the amount equal to:

(1) The amount of gross retail income for that reporting period, multiplied by;

(2) The retail merchants "income exclusion ratio" for the tax year which contains the reporting period.

(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-8(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 62)

45 IAC 2.2-6-10 Income exclusion ratio defined

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. The retail merchants' "income exclusion ratio" for a particular tax year equals a fraction as set forth:

$$\frac{\text{numerator = gross income from transactions under 10¢}}{\text{denominator = estimated total gross income for tax year from all retail transaction}}$$

(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-8(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 62; filed Aug 6, 1987, 4:30 pm: 10 IR 2642)

45 IAC 2.2-6-11 Recordkeeping requirements on exempt sales less than ten cents

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) In order to minimize the taxpayer's recordkeeping requirements, the department has prescribed a formula for determining the retail merchant's "income exclusion ration" for a tax year.

(1) The retail merchant may determine the ration of 1¢ to 9¢ sales to total sales from actual records of sales during a period of fifteen consecutive days during the first quarter of the calendar year. However, the period of time may be changed if the change is requested by the retail merchant because of his peculiar accounting procedures or marketing factors.

(2) If a merchant has multiple selling locations or different kinds of selling transactions, the merchant may apply in advance to the Indiana department of revenue for permission to use a "representative sampling of locations" at which such checks are to be made. Sufficient information to establish the fact that such locations will be "representative" of all locations will be required.

(3) The merchant using the sampling method must keep an accurate record of the dollar amount of unitary transactions under ten cents (10¢) during this fifteen day period. By dividing this total amount of gross sales at the locations used for the fifteen day period, a percentage can be determined which the merchant may apply against gross sales to establish "sales not subject to the tax". This percentage factor is used throughout the balance of the calendar year in which the sampling is made.

–EXAMPLE–

(A) Gross sales for 15 consecutive days during first quarter $2500.00
(B) Sales of 1¢ to 9¢ during same period 150.00
(C) $150.00 divided by $2500.00 . . . . . 6%

Accordingly, the merchant would deduct 6% of gross receipts as nontaxable 1¢ to 9¢ sales on line "D" of his sales and use tax reporting form ST-103.

(b) It is important that the percentage factor be arrived at from the merchant's actual records. These records must be maintained for four (4) years because the merchant will be required to substantiate the percentage factor used upon the request of the department. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-8(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 62; filed Aug 6, 1987, 4:30 pm: 10 IR 2642)*

45 IAC 2.2-6-12 Bad debts deduction

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) In determining the taxpayer's sales and use tax liability under Regulation 6-2.5-6-7 *[45 IAC 2.2-6-8]*, a retail merchant shall deduct from his gross retail income from retail transactions made during a particular reporting period, the retail merchant's bad debts or uncollectible receivables.

(b) In order to qualify for this exemption the retail merchant must have:

(1) Previously reported the transaction and remitted the sales or use tax to the Department;

(2) Not collected the tax from the customer; and

(3) Written the receivable off for federal income tax purposes.

(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-9(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)

45 IAC 2.2-6-13 Collection from bad debts

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. If a retail merchant deducts a receivable under Regulation 6-2.5-6-9(a)(010) *[45 IAC 2.2-6-12]* and subsequently collects that receivable, the amount collected shall be included in the gross retail income, from retail transactions, for the particular reporting period in which he makes the collection. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-9(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-14 Collection allowance

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7-5

Sec. 14. In order to compensate retail merchants for collecting and timely remitting the state gross retail and use tax, the retail merchant, except the retail merchant referred to in Regulation 6-2.5-6-10(c)(010) *[45 IAC 2.2-6-16]*, is entitled to deduct and retain from the tax liability determined in IC 6-2.5-7-5 or under this chapter of the Regulation *[45 IAC 2.2-6]*, if timely remitted, a retail merchant's collection allowance. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-10(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-15 Collection allowance rates

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. The collection allowance equals one percent (1%) of the retail merchant's state gross retail and use tax liability accrued during reporting periods which begin after December 31, 1979. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-10(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-16 Collection allowance; those not entitled

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. A retail merchant described in IC 6-2.5-4-5, IC 6-2.5-4-6, or IC 6-2.5-4-7 is not entitled to the allowance provided by this regulation *[45 IAC 2.2]*. The aforementioned statutes described power susidiaries *[sic.]* or public utilities, telephone utilities, and telegraph utilities as not entitled to the collection allowance. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-10(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-6-17 Energy assistance deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) A retail merchant who extends energy assistance under IC 4-3-10 *[Repealed by P.L.11-1980, SECTION 8.]*, may deduct from his sales and use tax liability cost of the energy assistance extended under IC 4-3-10 *[Repealed by P.L.11-1980, SECTION 8.]* during the reporting period for which the state gross retail and use tax payment is made.

(b) If the cost of the energy assistance is greater than the retail merchant's sales and use tax liability for that reporting period, the retail merchant will be entitled to claim a refund from the Department for the additional funds.

(c) Alternatively, the excess credits may be applied to subsequent months tax liability in lieu of a refund application. *(Department of State Revenue; Ch. 6, Reg. 6-2.5-6-11(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

Rule 7. Collection and Remittance of State Gross Retail Tax on Motor Fuel

45 IAC 2.2-7-1 Display of price on pump

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. (a) A retail merchant who uses a metered pump to dispense gasoline shall display on the pump the total price per unit of gasoline.

(b) The retail merchant may not advertise the motor fuel at a price which is different than the pump price he is required to dispaly *[sic.]* on the metered pump.

(c) This regulation *[45 IAC 2.2]* does not apply to the sale of motor fuel which is not dispensed through a metered pump.

(d) "Metered pump" means a stationary pump which is capable of metering the amount of motor fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the motor fuel so dispensed.

(e) The regulation also does not apply to the sale of diesel fuels. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 63)*

45 IAC 2.2-7-2 Rate of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. With respect to the sale of gasoline which is dispensed from a metered pump, the retail merchant shall collect for each unit sold an amount equal to:

(1) The price per unit before the addition of state and federal taxes;

(2) Multiplied by the sales tax rate.

(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 64)

45 IAC 2.2-7-3 Collection by retail merchant

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. The retail merchant selling gasoline which is dispensed from a metered pump must collect the state gross retail tax prescribed in Regulation 6-2.5-7-3(010) *[45 IAC 2.2-7-2]* even if the transaction is exempt from taxation under IC 6-2.5-5-5

[Repealed by P.L.61-1980, SECTION 15.]. (Department of State Revenue; Ch. 7, Reg. 6-2.5-7-3(020); filed Dec 1, 1982, 10:35 am: 6 IR 64)

45 IAC 2.2-7-4 Exempt transactions; refund procedures for cash transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 4. (a) All persons purchasing gasoline through a metered pump to be used for an exempt purchase may receive a refund of the sales tax paid at the time of the purchase.

(b) Each claim must be filed on a Claim for Refund form (GA110L-MP). The white and pink copies of your receipts must accompany the white and pink copies of your refund claim. Claims may be filed on a monthly, quarterly, semi-annual or annual status.

(c) To obtain additional receipt books, a written request along with the proper payment should be addressed to the Sales Tax Division, Room 208, State Office Building, Indianapolis, Indiana 46204. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 64)*

45 IAC 2.2-7-5 Exempt transactions; refunds, procedures for credit transactions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) If the credit card of a participating credit card company is used for the purchase of gasoline through a metered pump and the gasoline is for an exempted purpose the full pump price must be charged, however, the participating credit card company will credit the card holders account with the amount of sales tax included, provided the card holder has furnished to the card company a properly completed exemption certificate certifying exempt use.

(b) The credit card company would then either use the total amount of sales tax credited to credit card holders as an offset to sales tax due to the state from the oil company which operates the credit card company; or would apply to the Indiana Department of Revenue for a refund if no sales tax is due from the credit card company or its owner. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-4(020); filed Dec 1, 1982, 10:35 am: 6 IR 64)*

45 IAC 2.2-7-6 Reports; payments, deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 6-6-1.1

Sec. 6. Each retail merchant selling gasoline from a metered pump is required to provide the Department with the following information:

(1) Total number of units sold from a metered pump during the period covered by the report;

(2) The total amount of money received from the sale of the gasoline described in clause (1) during the period covered by the report; and

(3) That portion of the amount described in clause (2) which represents state and federal taxes imposed under IC 6-2.5, IC 6-6-1.1 or Section 4081 of the Internal Revenue Code.

(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-5(010); filed Dec 1, 1982, 10:35 am: 6 IR 64)

45 IAC 2.2-7-7 Payments and deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-6-11

Sec. 7. (a) The retail merchant's tax liability for the sale of gasoline from a metered pump shall be computed by taking one twenty-sixth (1/26) of the gross receipts:

(1) Including state gross retail tax, but;

(2) Excluding Indiana and federal gasoline taxes.

(b) The retail merchant is required to remit the amount arrived at by using the formula in clause (1) *[subsection (a) of this section]* regardless of the amount of state gross retail tax which was actually collected.

(c) The retail merchant is entitled to deduct the amounts prescribed in IC 6-2.5-6-11 as the collection allowance and IC 6-2.5-6-11 the energy assistance credit. *(Department of State Revenue; Ch. 7, Reg. 6-2.5-7-5(020); filed Dec 1, 1982, 10:35 am: 6 IR 64)*

Rule 8. Registration

45 IAC 2.2-8-1 Registered retail merchants' certificate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 1. Without a retail merchants' certificate, a retail merchant may not make a retail transaction in Indiana.

A "retail merchant" is defined in Regulation 6-2.5-1-8(010) *[45 IAC 2.2-1-1(n)]*.

A "retail transaction" is defined in Regulation 6-2.5-1-2(a)(010) *[45 IAC 2.2-1-1(c)]*. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)*

45 IAC 2.2-8-2 Registered retail merchants' certificate; requirements

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. To obtain a registered retail merchants' certificate the merchant is required to fill out an application provided by the Indiana Department of Revenue, Central Registration Section;

(1) Pay a registration fee;

(2) Obtain a certificate for each place of business; and

(3) Provide security, if required by the Department, pursuant to Regulation 6-2.5-6-12.

(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)

45 IAC 2.2-8-3 Supplemental application

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. If a retail merchant intends to open additional business sites during a calendar year, the merchant must file a supplemental application and pay the registration fee for that place of business. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(e)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)*

45 IAC 2.2-8-4 Registered retail merchants' certificate; use tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-3-1; IC 6-2.5-8-1

Sec. 4. If a retail merchant engaged in business in Indiana as defined ic *[sic.]* IC 6-2.5-3-1(c) makes retail transactions that are only subject to the use tax, the retail merchant is required to obtain a registered retail merchants' certificate before making those transactions. In order to obtain the certificate the retail merchant is required to:

(1) Follow same procedure as stated in IC 6-2.5-8-1(b) and (c), and

(2) Also include on the application:

(A) The names and addresses of the retail merchants' principal employees, agents, or representatives who are engaged in Indiana in the solicitation or negotiation of the retail transactions;

(B) The location of all of the retail merchants' places of business in Indiana, including offices and distribution houses;

and

(C) Any other information that the Department requests.

(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(f)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)

45 IAC 2.2-8-5 Out-of-state registration

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 5. (a) An out-of-state merchant may register with the Indiana Department of Revenue to collect and remit the Indiana use tax on sales to Indiana purchasers. The Indiana purchaser then pays the Indiana use tax on the sale to those merchants who are properly registered.

(b) The proper application for obtaining the out-of-state registration form is form DB-001. When the application is completed and returned to the Department, a registration number will be issued and the sales and use tax reporting form (ST-103) will be mailed regularly. No charge is made for the out-of-state use tax permit, however, only those businesses located outside Indiana may qualify for such registration.

(c) Upon receiving the certificate, the out-of-state retail merchant becomes subject to the same conditions and duties as an Indiana retail merchant and must then collect the use tax due on all sales of tangible personal property that he knows is intended for use in Indiana. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-1(g)(010); filed Dec 1, 1982, 10:35 am: 6 IR 65)*

45 IAC 2.2-8-6 Valid exemption certificate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 6. (a) A manufacturer or wholesaler may register with the Department so that he may issue valid exemption certificates when making an exempt purchase. The registered retail merchants' certificate number is necessary to complete a valid exemption certificate.

(b) A manufacturer or wholesaler, wishing to register, must apply in the same manner and pay the same fee as a retail merchant under Regulation 6-2.5-8-1 *[45 IAC 2.2-8-1 through 45 IAC 2.2-8-5]*. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-3(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-7 Retail merchants' certificate; each place of business

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. The wholesaler or manufacturer is required to obtain a retail merchants' certificate for each place of business making exempt purchases, and which are listed on the application. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-3(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-8 Exempt organizations; certificate

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 8. (a) Organizations exempt from gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 may register with the Not-For-Profit Section, Income Tax Division, in order to issue proper exemption certificates for exempt transactions.

(b) An exempt organization making taxable sales must register with the Central Registration Section and obtain a registered retail merchants' certificate. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-4(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-9 Outstanding tax warrants

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 9. The Department may not issue or renew a certificate for a retail merchant whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax or makes arrangements satisfactory to the Department for the payment of the tax. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-6(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-10 Revocation of certificate; notice

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 10. The Department may revoke any certificate issued, after giving the holder of the certificate at least five (5) days notice, before it revokes the certificate. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-7(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-11 Revocation of certificate required

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 11. (a) The Department must revoke a lifetime retail merchants' certificate, wholesaler's certificate or exempt organization certificate, if for a period of three (3) years the certificate holder:

(1) Failed to file the required sales and use tax returns; or

(2) Failed to report any sales and use tax on the required returns.

(b) The Department must give the taxpayer at least five (5) days notice, prior to revoking a certificate. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-7(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-12 Exemption certificates

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 12. (a) Exemption certificates may be issed *[sic.]* only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act *[IC 6-2.5]* may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this Act *[IC 6-2.5]* with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number.

(b) Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item purchased will be used by the purchaser for an exempt purpose.

(c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate.

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. The mere filing of a Registered Retail Merchant Certificate number is not sufficient to relieve the seller of the responsibility to collect the sales tax or prove exempt use by the buyer.

(e) No exemption certificates are required for sales in interstate commerce, however, proper records must be maintained to substantiate such sales.

(f) An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.

(g) An exemption certificate or other evidence supporting an exempt sale must be maintained by the seller for at least three (3) years after the due date of the tax return upon which such exempt transaction is reported.

(h) Exemption certificates may be reproduced provided no change is made in the wording or content. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-8(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 66)*

45 IAC 2.2-8-13 Exemption certificates; authorization

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 13. The following are the only persons authorized to issue exemption certificates:

(1) Retail merchants, wholesalers, and manufacturers, who are registered with the Department under this chapter *[45 IAC 2.2-8]*;

(2) Organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the Department under this chapter *[45 IAC 2.2-8]*; and

(3) Other persons who are exempt from the state gross retail tax with respect to any part of their purchases.

(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-8(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)

45 IAC 2.2-8-14 Blanket exemption certificates

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 14. (a) The Department may allow taxpayers to issue blanket exemption certificates to cover exempt purchases.

(b) The Department may impose conditions or set forth restrictions on the use of the blanket exemption certificates. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-8(c)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-15 Direct payment permits

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 15. The Department may issued *[sic.]* a "direct payment permit" to retail merchants, manufacturers, or wholesalers, upon request. The Department may issue the permit subject to such conditions as it deems reasonable. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-16 Direct payment permits; application

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 16. (a) The direct payment permit must be applied for, and is normally issued only in those instances where it is shown that it is impossible at the time of purchase to determine whether or not the materials will be used for an exempt purpose. The holder of such a permit is required to furnish his suppliers with a copy of the permit, and the permit must be renewed annually.

(b) The retail merchant who sells to a customer who furnishes a copy of a direct payment permit is not required to collect sales tax; but must retain a copy of the permit in his file.

(c) A direct payment permit is not a declaration that the issuer is entitled to exemption, but is rather a declaration that the issuer will remit use tax on any purchase on which sales tax was due. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-17 Direct payment permits; contractors

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 17. (a) The contractor who has applied for and received permission to pay on a direct payment permit basis may issue direct payment permits to his suppliers, but when acting as a contractor should remember that he must obtain an exemption certificate–not a direct payment permit–from any exempt customer for whom he is making an improvement to real estate as a result of a flat bid or lump sum contract.

(b) A builder under a time and material agreement is selling the material to his customer and should normally collect sales tax. The builder may accept a direct payment permit from his customer and is then relieved from the liability to collect sales tax.

(c) A flat bid contractor, on the other hand, does not sell tangible personal property or collect sales tax as a result of his contract, and the receipt of a direct payment permit is of no value to him. If the organization, for which the contractor is constructing the improvement, is entitled to exemption, they must give the contractor an exemption certificate (ST-105) certifying that fact. A direct payment permit from the organization would not certify that the organization was entitled to exemption–only that they would pay tax for which they were liable. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(b)(020); filed Dec 1, 1982, 10:35 am: 6 IR 67)*

45 IAC 2.2-8-18 Revocation of direct payment permit

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 18. The Department may revoke a direct payment certificate, without cause, at any time. *(Department of State Revenue; Ch. 8, Reg. 6-2.5-8-9(c)(020); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

Rule 9. Enforcement and Penalties

45 IAC 2.2-9-1 Exemption certificate; unlawful issuance or acceptance

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 35-50-3-3

Sec. 1. (a) A person who issues an exemption certificate, with the intention of unlawfully avoiding the payment of the state gross retail or use tax, commits a Class B misdemeanor.

(b) As provided in IC 35-50-3-3: A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days; in addition, he may be fined not more than one thousand dollars ($1,000). *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-1(a)(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

45 IAC 2.2-9-2 Penalties; individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 2. (a) A person who accepts an exemption certificate with the intention of helping the issuer unlawfully avoid paying the state gross retail and use tax, commits *[sic.]* Class B misdemeanor.

(b) A Class B misdemeanor is defined in Regulation 6-2.5-9-1(a)(010)(2) *[45 IAC 2.2-9-1(b)]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-1(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

45 IAC 2.2-9-3 Penalties; retail merchants

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 3. (a) A retail merchant who makes a retail transaction without having applied for or obtained a registered retail merchants' certificate or a renewal of a registered retail merchants' certificate commits a Class B infraction.

(b) As provided in IC 35-50-4-3 *[Repealed by P.L.108-1981, SECTION 40.]*: A person who commits a Class B infraction shall be fined not more than one thousand dollars ($1,000). *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-2(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)*

45 IAC 2.2-9-4 Responsible officer liability

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5; IC 35-50-2-7

Sec. 4. (a) Businesses hold sales and use taxes in trust accounts for the state of Indiana. If businesses do not properly remit these taxes, responsible officers can be held personally liable for those trust fund taxes.

(b) Responsible officer is defined as an individual who:

(1) Is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) Has a duty to remit state gross retail or use taxes to the Department of Revenue.

(c) If a responsible officer knowingly fails to remit those taxes to the state, he commits a Class D felony.

(d) As provided in IC 35-50-2-7:

(1) A person who commits a Class D felony shall be imprisoned for a fixed term of two (2) years, with not more than two (2) years added for aggravating circumstances; in addition, he may be fined not more than ten thousand dollars ($10,000).

(2) Notwithstanding subsection (1) of this section *[subsection (a) of this section]*, if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. The court shall enter in the record, in detail, the reasons for its action whenever it exercizes *[sic.]* the power granted in this subsection.

(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-3(010); filed Dec 1, 1982, 10:35 am: 6 IR 68)

45 IAC 2.2-9-5 Inclusion in the price or absorption of the tax; offense

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7

Sec. 5. (a) Except as provided in IC 6-2.5-7, it is unlawful to:

(1) Display an advertised price, marked price, or publicly stated price that includes the state gross retail or use taxes;

(2) Offer to assume or absorb part of a customer's state gross retail or use tax on a sale; or

(3) Offer to refund part of a customer's state gross retail or use tax as a part of a sale.

(b) An individual who commits any of the unlawful acts described in section one (1) of this regulation *[subsection (a) of this section]* commits a Class B infraction.

(c) A Class B infraction is defined in Regulation 6-2.5-9-2(010)(2) *[45 IAC 2.2-9-3(b)]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-4(010); filed Dec 1, 1982, 10:35 am: 6 IR 69)*

45 IAC 2.2-9-6 Penalties; retail merchants; false advertisement

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5-7-2

Sec. 6. (a) A retail merchant who uses a metered pump to dispense gasoline and who advertises the gasoline at a price other than that provided in IC 6-2.5-7-2, commits a Class B infraction.

(b) A Class B infraction is defined in Regulation 6-2.5-9-2(010)(2) *[45 IAC 2.2-9-3(b)]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-4(b)(010); filed Dec 1, 1982, 10:35 am: 6 IR 69)*

45 IAC 2.2-9-7 Vehicle license, aircraft or watercraft registration; payment of taxes

Authority: IC 6-8.1-3-3
Affected: IC 6-2.5

Sec. 7. (a) The state may not license a vehicle for use on the highways or register an aircraft or watercraft unless the person obtaining the license or registration:

(1) presents proper evidence, prescribed by the department, showing that the state gross retail and use taxes imposed in respect to the vehicles, aircraft, or watercraft have been paid or that the state gross retail and use taxes are inapplicable because of an exemption; or

(2) files the proper form and pays the state gross retail and use taxes imposed in respect to the vehicle, aircraft, or watercraft.

(b) For further information in regards to motor vehicles, see Regulation 6-2.5-5-15(020) *[45 IAC 2.2-5-22]* and Regulation 6-2.5-3-6(c)(010) *[45 IAC 2.2-3-22]*.

(c) For further information in regards to aircraft or watercraft, see Regulation 6-2.5-5-15(030) *[45 IAC 2.2-5-23]* and Regulation 6-2.5-3-6(c)(020) *[45 IAC 2.2-3-23]*. *(Department of State Revenue; Ch. 9, Reg. 6-2.5-9-6(010); filed Dec 1, 1982, 10:35 am: 6 IR 69; filed Aug 6, 1987, 4:30 pm: 10 IR 2643)*

Rule 10. Miscellaneous

45 IAC 2.2-10-1 Miscellaneous (Repealed)

Sec. 1. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 2.2-10-2 Gross income tax law; application (Repealed)

Sec. 2. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 2.2-10-3 Citations to prior law (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

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