

IC 6-2.5

ARTICLE 2.5. STATE GROSS RETAIL AND USE TAXES

IC 6-2.5-1

Chapter 1. Definitions

IC 6-2.5-1-1

"Unitary transaction"

Sec. 1. (a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-2

"Retail transaction" and "retail unitary transaction"

Sec. 2. (a) "Retail transaction" means a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1, that constitutes making a wholesale sale as described in IC 6-2.5-4-2, or that is described in any other section of IC 6-2.5-4.

(b) "Retail unitary transaction" means a unitary transaction that is also a retail transaction.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-3

"Person"

Sec. 3. "Person" includes an individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, national bank, bank, consignee, firm, partnership, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, limited liability company, Indiana political subdivision engaged in private or proprietary activities, estate, trust, or any group or combination acting as a unit.
As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.8-1993, SEC.82.

IC 6-2.5-1-4

"Department"

Sec. 4. "Department" means the Indiana department of state revenue.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-5

"Gross retail income"

Sec. 5. (a) Except as provided in subsection (b), "gross retail

income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:
 - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
 - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
- (7) telecommunications nonrecurring charges.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing.

As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.1; P.L.81-2004, SEC.2; P.L.182-2009(ss), SEC.174; P.L.113-2010, SEC.43.

IC 6-2.5-1-6

"Like kind exchange"

Sec. 6. (a) "Like kind exchange" means the reciprocal exchange of personal property between two (2) persons, when:

- (1) the property exchanged is of the same kind or character, regardless of grade or quality; and
- (2) the persons exchanging the property both own the property prior to the exchange.

(b) A "like kind exchange" may be a part of a transaction involving additional consideration other than the exchanged property.

(c) Notwithstanding subsection (a), a "like kind exchange" does not occur when:

- (1) the transaction involves more than two (2) persons; or
- (2) one (1) party to the transaction, through agreement or negotiation with the second party, acquires personal property for the primary purpose of exchanging that property for like kind property held by the second party.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-7

Repealed

(Repealed by P.L.2-1987, SEC.53.)

IC 6-2.5-1-8

"Retail merchant"

Sec. 8. "Retail merchant" means a person who is described as a retail merchant in IC 6-2.5-4 or who is required to hold a retail merchant's certificate under IC 6-2.5-8.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-9

"Tax year" or "taxable year"

Sec. 9. "Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year if and when permission is obtained from the department to use the taxpayer's fiscal year in lieu of the calendar year.

As added by Acts 1980, P.L.52, SEC.1.

IC 6-2.5-1-10

"Commercial printing"

Sec. 10. "Commercial printing" means a process or an activity, or

both, that is related to the production of printed materials for others, including the following:

- (1) Receiving, processing, moving, storing, and transmitting, either physically or electronically, copy elements and images to be reproduced.
- (2) Plate making or cylinder making.
- (3) Applying ink by one (1) or more processes, such as printing by letter press, lithography, gravure, screen, or digital means.
- (4) Casemaking and binding.
- (5) Assembling, packaging, and distributing printed materials.

The term does not include the business of photocopying.

As added by P.L.192-2002(ss), SEC.48.

IC 6-2.5-1-11

"Alcoholic beverages"

Sec. 11. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume.

As added by P.L.257-2003, SEC.2.

IC 6-2.5-1-11.3

"Ancillary services"

Sec. 11.3. "Ancillary services" means services that are associated with or incidental to the provision of telecommunication services, including the following:

- (1) Detailed telecommunications billing.
- (2) Directory assistance.
- (3) Vertical services.
- (4) Voice mail services.

As added by P.L.145-2007, SEC.1.

IC 6-2.5-1-11.5

"Bundled transaction"

Sec. 11.5. (a) This section applies to retail transactions occurring after December 31, 2007.

(b) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, that are:

- (1) distinct;
- (2) identifiable; and
- (3) sold for one (1) nonitemized price.

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

(d) The term does not include a retail sale that:

- (1) is comprised of:
 - (A) a service that is the true object of the transaction; and
 - (B) tangible personal property that:
 - (i) is essential to the use of the service; and
 - (ii) is provided exclusively in connection with the service;
- (2) includes both taxable and nontaxable products in which:

(A) the seller's purchase price; or
(B) the sales price;
of the taxable products does not exceed ten percent (10%) of the total purchase price or the total sales price of the bundled products; or
(3) includes both exempt tangible personal property and taxable tangible personal property:
(A) any of which is classified as:
(i) food and food ingredients;
(ii) drugs;
(iii) durable medical equipment;
(iv) mobility enhancing equipment;
(v) over-the-counter drugs;
(vi) prosthetic devices; or
(vii) medical supplies; and
(B) for which:
(i) the seller's purchase price; or
(ii) the sales price;
of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or the total sales price of the bundled tangible personal property.
The determination under clause (B) must be made on the basis of either individual item purchase prices or individual item sale prices.

As added by P.L.153-2006, SEC.1.

IC 6-2.5-1-12

"Candy"

Sec. 12. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The term does not include any preparation:

- (1) containing flour; or
- (2) requiring refrigeration.

As added by P.L.257-2003, SEC.3.

IC 6-2.5-1-13

"Computer"

Sec. 13. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

As added by P.L.257-2003, SEC.4.

IC 6-2.5-1-14

"Computer software"

Sec. 14. "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

As added by P.L.257-2003, SEC.5.

IC 6-2.5-1-14.5**"Computer software"**

Sec. 14.5. "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades of computer software.

As added by P.L.113-2010, SEC.44.

IC 6-2.5-1-15**"Delivered electronically"**

Sec. 15. "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

As added by P.L.257-2003, SEC.6.

IC 6-2.5-1-16**"Dietary supplement"**

Sec. 16. "Dietary supplement" means any product, other than tobacco, that:

- (1) is intended to supplement the diet;
- (2) contains one (1) or more of the following dietary ingredients:
 - (A) a vitamin;
 - (B) a mineral;
 - (C) an herb or other botanical;
 - (D) an amino acid;
 - (E) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
 - (F) a concentrate, a metabolite, a constituent, an extract, or a combination of any ingredient described in this subdivision;
- (3) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
- (4) is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required under 21 CFR 101.36.

As added by P.L.257-2003, SEC.7.

IC 6-2.5-1-16.2**"Digital audio works"**

Sec. 16.2. (a) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(b) As used in this section, "ringtones" means digitized sound files that:

- (1) are downloaded onto a device; and
- (2) may be used to alert the customer with respect to a communication.

As added by P.L.19-2008, SEC.1.

IC 6-2.5-1-16.3

"Digital audiovisual works"

Sec. 16.3. "Digital audiovisual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

As added by P.L.19-2008, SEC.2.

IC 6-2.5-1-16.4

"Digital books"

Sec. 16.4. "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

As added by P.L.19-2008, SEC.3.

IC 6-2.5-1-16.5

"Direct mail"

Sec. 16.5. (a) "Direct mail" means printed material delivered by United States mail or another delivery service to:

- (1) a mass audience; or
- (2) addresses on a mailing list:
 - (A) provided by a purchaser; or
 - (B) specified at the direction of a purchaser;

if the cost of the item is not billed directly to the recipient.

(b) The term includes tangible personal property that the purchaser supplies directly or indirectly to the direct mail seller for inclusion in the package containing the printed material.

(c) The term does not include multiple items of printed material delivered to a single address.

As added by P.L.153-2006, SEC.2.

IC 6-2.5-1-17

"Drug"

Sec. 17. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation that is:

- (1) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
- (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (3) intended to affect the structure or any function of the body.

The term does not include food and food ingredients, dietary supplements, or alcoholic beverages.

As added by P.L.257-2003, SEC.8.

IC 6-2.5-1-18

"Durable medical equipment"

Sec. 18. (a) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;

(3) generally is not useful to a person in the absence of illness or injury; and

(4) is not worn in or on the body.

The term does not include mobility enhancing equipment.

(b) As used in this section, "repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

As added by P.L.257-2003, SEC.9. Amended by P.L.19-2008, SEC.4.

IC 6-2.5-1-19

"Electronic"

Sec. 19. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

As added by P.L.257-2003, SEC.10.

IC 6-2.5-1-20

"Food and food ingredients"

Sec. 20. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value. The term does not include alcoholic beverages, candy, dietary supplements, tobacco products, or soft drinks.

As added by P.L.257-2003, SEC.11. Amended by P.L.153-2006, SEC.3.

IC 6-2.5-1-20.3

"Intrastate telecommunications service"

Sec. 20.3. "Intrastate telecommunications service" means a telecommunications service that originates in a particular state, territory, or possession of the United States and terminates in that same state, territory, or possession.

As added by P.L.145-2007, SEC.2.

IC 6-2.5-1-21

"Lease" or "rental"

Sec. 21. (a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. "Lease" or "rental" does not include:

(1) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(3) providing tangible personal property along with an operator

for a fixed or indeterminate period, if:

(A) the operator is necessary for the equipment to perform as designed; and

(B) the operator does more than maintain, inspect, or set up the tangible personal property.

(b) "Lease" or "rental" includes agreements covering motor vehicles and trailers in which the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(c) The definition of "lease" or "rental" set forth in this section applies throughout this article, regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code (IC 26-1), or other provisions of federal, state, or local law.

(d) This section applies only to leases or rentals entered into after June 30, 2003, and has no retroactive effect on leases or rentals entered into before July 1, 2003.

As added by P.L.257-2003, SEC.12. Amended by P.L.97-2004, SEC.25.

IC 6-2.5-1-22

"Mobility enhancing equipment"

Sec. 22. "Mobility enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(1) is primarily and customarily used to provide or increase the ability to move from one (1) place to another and is appropriate for use either in a home or a motor vehicle;

(2) is not generally used by persons with normal mobility; and

(3) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

The term does not include durable medical equipment.

As added by P.L.257-2003, SEC.13.

IC 6-2.5-1-22.3

"Prepaid calling service"

Sec. 22.3. "Prepaid calling service" has the meaning set forth in IC 6-2.5-12-11.

As added by P.L.145-2007, SEC.3.

IC 6-2.5-1-22.4

"Prepaid wireless calling service"

Sec. 22.4. "Prepaid wireless calling service" means a telecommunications service that:

(1) provides the right to use mobile wireless service as well as other nontelecommunications services, including:

(A) the download of digital products delivered electronically; and

(B) content and ancillary services;

(2) must be paid for in advance; and

(3) is sold in predetermined units or dollars of which the number declines with use in a known amount.

As added by P.L.145-2007, SEC.4.

IC 6-2.5-1-23

"Prescription"

Sec. 23. "Prescription" means an order, a formula, or a recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner authorized by Indiana law.

As added by P.L.257-2003, SEC.14.

IC 6-2.5-1-24

"Prewritten computer software"

Sec. 24. Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

(1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.

(2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.

(3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

As added by P.L.257-2003, SEC.15.

IC 6-2.5-1-25

"Prosthetic device"

Sec. 25. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

(1) artificially replace a missing part of the body;

(2) prevent or correct physical deformity or malfunction; or

(3) support a weak or deformed part of the body.

As added by P.L.257-2003, SEC.16.

IC 6-2.5-1-26**"Soft drinks"**

Sec. 26. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

As added by P.L.257-2003, SEC.17.

IC 6-2.5-1-26.5**"Specified digital products"**

Sec. 26.5. "Specified digital products" means electronically transferred:

- (1) digital audio works;
- (2) digital audiovisual works; or
- (3) digital books.

As added by P.L.19-2008, SEC.5.

IC 6-2.5-1-27**"Tangible personal property"**

Sec. 27. "Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

As added by P.L.257-2003, SEC.18.

IC 6-2.5-1-27.2**"Telecommunications nonrecurring charges"**

Sec. 27.2. "Telecommunications nonrecurring charges" means an amount billed for installation, connection, change, or initiation of a telecommunications service received by a customer.

As added by P.L.113-2010, SEC.45.

IC 6-2.5-1-27.5**"Telecommunication services"**

Sec. 27.5. (a) "Telecommunication services" means electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.

(b) The term includes a transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing regardless of whether the service:

- (1) is referred to as voice over Internet protocol services; or
- (2) is classified by the Federal Communications Commission as enhanced or value added.

(c) The term does not include the following:

- (1) Data processing and information services that allow data to

be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.

(2) Installation or maintenance of wiring or equipment on a customer's premises.

(3) Tangible personal property.

(4) Advertising, including but not limited to directory advertising.

(5) Billing and collection services provided to third parties.

(6) Internet access service.

(7) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of the services by the programming service provider. Radio and television audio and video programming services include cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3.

(8) Ancillary services.

(9) Digital products delivered electronically, including the following:

(A) Software.

(B) Music.

(C) Video.

(D) Reading materials.

(E) Ring tones.

As added by P.L.145-2007, SEC.5.

IC 6-2.5-1-28

"Tobacco"

Sec. 28. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

As added by P.L.195-2005, SEC.1.

IC 6-2.5-1-28.5

"Transferred electronically"

Sec. 28.5. "Transferred electronically" means obtained by a purchaser by means other than tangible storage media.

As added by P.L.113-2010, SEC.46.

IC 6-2.5-1-29

"Value added nonvoice data service"

Sec. 29. "Value added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

As added by P.L.145-2007, SEC.6.