

### **IC 6-2.5-3**

#### Chapter 3. Use Tax

### **IC 6-2.5-3-0.3**

#### **Intent of general assembly in construction of amendments to section 1 of this chapter**

Sec. 0.3. It is the intent of the general assembly that the amendments made to section 1 of this chapter by P.L.70-1993 be construed liberally in favor of persons, corporations, partnerships, or other entities contracting with commercial printers.

*As added by P.L.220-2011, SEC.134.*

### **IC 6-2.5-3-1**

#### **Definitions**

Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property or services for use, storage, or consumption in Indiana and who:

(1) maintains an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by the retail merchant or through a representative, agent, or subsidiary;

(2) maintains a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, installs, repairs, assembles, sets up, accepts returns of, bills, invoices, or takes orders for sales of tangible personal property or services to be used, stored, or consumed in Indiana;

(3) is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or

(4) may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

(2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or

used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.70-1993, SEC.2; P.L.81-2004, SEC.3.*

### **IC 6-2.5-3-2**

#### **Imposition**

Sec. 2. (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

(c) The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if:

- (1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or
- (2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

(d) The use tax is imposed on a person who:

- (1) manufactures, fabricates, or assembles tangible personal property from materials either within or outside Indiana; and
- (2) uses, stores, distributes, or consumes tangible personal property in Indiana.

(e) Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if:

- (1) the property is delivered into Indiana by or for the purchaser of the property;
- (2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and
- (3) the property is subsequently transported out of state for use solely outside Indiana.

(f) As used in this subsection, "prepurchase evaluation" means an examination of an aircraft by a potential purchaser for the purpose of

obtaining information relevant to the potential purchase of the aircraft. Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over an aircraft, if:

- (1) the aircraft is titled, registered, or based (as defined in IC 6-6-6.5-1(m)) in another state or country;
- (2) the aircraft is delivered to Indiana by or for a nonresident owner or purchaser of the aircraft;
- (3) the aircraft is delivered to Indiana for the sole purpose of being repaired, refurbished, remanufactured, or subjected to a prepurchase evaluation; and
- (4) after completion of the repair, refurbishment, remanufacture, or prepurchase evaluation, the aircraft is transported to a destination outside Indiana.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.3; P.L.335-1989(ss), SEC.2; P.L.162-2006, SEC.20; P.L.211-2007, SEC.9.*

### **IC 6-2.5-3-3**

#### **Rates; certain transactions defined**

Sec. 3. The use tax is measured by the gross retail income received in a retail unitary transaction and is imposed at the same rates as the state gross retail tax under IC 6-2.5-2-2. For purposes of this chapter, transactions described in IC 6-2.5-3-2(b) and (c) shall be treated as retail transactions within the meaning of IC 6-2.5-1-2.  
*As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.78, SEC.1.*

### **IC 6-2.5-3-4**

#### **Exemptions**

Sec. 4. (a) The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:

- (1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or
- (2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

(b) If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

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

### **IC 6-2.5-3-5**

#### **Credit for payment of other taxes**

Sec. 5. A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible

personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.26-1985, SEC.4; P.L.335-1989(ss), SEC.3; P.L.81-2004, SEC.4.*

#### **IC 6-2.5-3-6**

##### **Liability; payment; collection; computation**

Sec. 6. (a) For purposes of this section, "person" includes an individual who is personally liable for use tax under IC 6-2.5-9-3.

(b) The person who uses, stores, or consumes the tangible personal property acquired in a retail transaction is personally liable for the use tax.

(c) The person liable for the use tax shall pay the tax to the retail merchant from whom the person acquired the property, and the retail merchant shall collect the tax as an agent for the state, if the retail merchant is engaged in business in Indiana or if the retail merchant has departmental permission to collect the tax. In all other cases, the person shall pay the use tax to the department.

(d) Notwithstanding subsection (c), a person liable for the use tax imposed in respect to a vehicle, watercraft, or aircraft under section 2(b) of this chapter shall pay the tax:

- (1) to the titling agency when the person applies for a title for the vehicle or the watercraft;
- (2) to the registering agency when the person registers the aircraft; or
- (3) to the registering agency when the person registers the watercraft because it is a United States Coast Guard documented vessel;

unless the person presents proof to the agency that the use tax or state gross retail tax has already been paid with respect to the purchase of the vehicle, watercraft, or aircraft or proof that the taxes are inapplicable because of an exemption under this article.

(e) At the time a person pays the use tax for the purchase of a vehicle to a titling agency pursuant to subsection (d), the titling agency shall compute the tax due based on the presumption that the sale price was the average selling price for that vehicle, as determined under a used vehicle buying guide to be chosen by the titling agency. However, the titling agency shall compute the tax due based on the actual sale price of the vehicle if the buyer, at the time the buyer pays the tax to the titling agency, presents documentation to the titling agency sufficient to rebut the presumption set forth in this subsection and to establish the actual selling price of the vehicle.

*As added by Acts 1980, P.L.52, SEC.1. Amended by Acts 1981, P.L.79, SEC.1; P.L.26-1985, SEC.5; P.L.335-1989(ss), SEC.4; P.L.18-1994, SEC.6; P.L.28-1997, SEC.8; P.L.182-2009(ss), SEC.175.*

#### **IC 6-2.5-3-7**

##### **Presumption of taxability; exemption certificate; verification for**

**property used or consumed in providing public transportation**

Sec. 7. (a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana. However, the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

(c) A retail merchant that sells tangible personal property to a person that purchases the tangible personal property for use or consumption in providing public transportation under IC 6-2.5-5-27 may verify the exemption by obtaining the person's:

- (1) name;
- (2) address; and
- (3) motor carrier number, United States Department of Transportation number, or any other identifying number authorized by the department.

The person engaged in public transportation shall provide a signature to affirm under penalties of perjury that the information provided to the retail merchant is correct and that the tangible personal property is being purchased for an exempt purpose.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.211-2007, SEC.10.*

**IC 6-2.5-3-8**

**Receipt for payment; issuance; evidence of payment**

Sec. 8. (a) When a retail merchant collects the use tax from a person, he shall, upon request, issue a receipt to that person for the use tax collected.

(b) If the department assesses the use tax against a person for the person's storage, use, or consumption of tangible personal property in Indiana, and if the person has already paid the use tax in relation to that property to a retail merchant who is registered under IC 6-2.5-6, to the department, or, in the case of a vehicle or aircraft, to the proper state agency, then the person may avoid paying the use tax to the department if he can produce a receipt or other written evidence showing that he has so made the use tax payment.

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

**IC 6-2.5-3-9**

**Use of additional payments made by remote sellers; pension stabilization fund**

Sec. 9. (a) As used in this section, "excess" means the amount determined under subsection (b)(2).

(b) The budget agency shall, before September 1 of each year, determine the following:

- (1) The amount of use taxes the state has collected in the

previous state fiscal year from remote sellers with respect to remote sales sourced to Indiana.

(2) The amount by which the amount determined under subdivision (1) exceeds one hundred fifty million dollars (\$150,000,000), if any.

(c) The budget agency shall before September 1 of each year certify to the state budget committee:

(1) whether an excess exists; and

(2) the amount of the excess, if any.

(d) If the budget agency certifies to the budget committee that there is an excess in use tax collections on remote sales, the excess amount is appropriated from the state general fund for the state fiscal year in which the certification is made. The budget agency shall allot the excess amount for deposit in the pension stabilization fund established by IC 5-10.4-2-5.

(e) This section expires June 30, 2013.

*As added by P.L.229-2011, SEC.80.*

#### **IC 6-2.5-3-10**

##### **Required publication; duty to pay use tax**

Sec. 10. The department shall publish on the department's web site the information needed to communicate a person's obligation to remit use tax on the exercise of any right or power of ownership over tangible personal property in Indiana for which gross retail tax has not been paid, including purchases using the Internet or a catalog.

*As added by P.L.229-2011, SEC.81.*