

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

### Chapter 4. Retail Transactions of Retail Merchant

#### **IC 6-2.5-4-1**

##### **Selling at retail**

Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion

under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.2-1987, SEC.14; P.L.6-1987, SEC.5; P.L.277-1993(ss), SEC.40; P.L.257-2003, SEC.19; P.L.81-2004, SEC.5.*

#### **IC 6-2.5-4-2**

##### **Wholesale sales; nonretail transactions**

Sec. 2. (a) A person is a retail merchant making a retail transaction when he is making wholesale sales.

(b) For purposes of this section, a person is making wholesale sales when he:

- (1) sells tangible personal property, other than capital assets or depreciable property, to a person who purchases the property for the purpose of reselling it without changing its form;
- (2) sells tangible personal property to a person who purchases the property for direct consumption as a material in the direct production of other tangible personal property produced by the person in his business of manufacturing, processing, refining, repairing, mining, agriculture, or horticulture;
- (3) sells tangible personal property to a person who purchases the property for incorporation as a material or integral part of tangible personal property produced by the person in his business of manufacturing, assembling, constructing, refining, or processing;
- (4) sells drugs, medical or dental preparations, or other similar materials to a person who purchases the materials for direct consumption in professional use by a physician, hospital, embalmer, funeral director, or tonsorial parlor;
- (5) sells tangible personal property to a person who purchases the property for direct consumption in his business of industrial cleaning; or
- (6) sells tangible personal property to a person who purchases the property for direct consumption in the person's business in the direct rendering of public utility service.

(c) Notwithstanding any provision of this article, a person is not making a retail transaction when he:

- (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.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.246-1985, SEC.9.*

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

#### **Water softening and conditioning business**

Sec. 3. (a) A person is a retail merchant making a retail transaction when he regularly and occupationally engages in the business of softening and conditioning water.

(b) For purposes of this section, the business of softening and conditioning water includes the exchange of water softening and conditioning tanks in the ordinary course of the business, but does not include the preparatory plumbing and work necessary for the first installation of tanks.

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

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

#### **Renting or furnishing rooms, lodgings, or other accommodations**

Sec. 4. (a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

- (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and
- (2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

(b) Each rental or furnishing by a retail merchant under subsection (a) is a separate unitary transaction regardless of whether consideration is paid to an independent contractor or directly to the retail merchant.

(c) For purposes of this section, "consideration" includes a membership fee charged to a customer.

(d) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction if:

- (1) the person is a promoter that rents a booth or display space to an exhibitor; and
- (2) the booth or display space is located in a facility that:
  - (A) is described in subsection (a)(2); and
  - (B) is operated by a political subdivision (including a capital improvement board established under IC 36-10-8 or IC 36-10-9) or the state fair commission.

This subsection does not exempt from the state gross retail tax the renting of accommodations by a political subdivision or the state fair commission to a promoter or an exhibitor.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.1; P.L.85-1989, SEC.1; P.L.20-1990, SEC.7.*

### **IC 6-2.5-4-4.5**

#### **Repealed**

*(Repealed by P.L.81-2004, SEC.59.)*

#### **IC 6-2.5-4-5**

##### **Power subsidiaries of public utilities**

Sec. 5. (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

(1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

- (i) relocates all or part of its operations to a facility; or
- (ii) expands all or part of its operations in a facility;

located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-30, the part of an economic development area established under IC 36-7-14.5-12.5 that is or formerly was a military base (as defined in IC 36-7-30-1(c)), a military base recovery site designated under IC 6-3.1-11.5, or a qualified military base enhancement area established under IC 36-7-34.

(B) The business uses the services or commodities in the

facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or expanded in the facility commence.

(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(1), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business is a United States Department of Defense contractor.

(iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(2), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in IC 36-7-34-3).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person sells services or commodities that:

(A) are referred to in subsection (b); and

(B) qualify as home energy (as defined in IC 6-2.5-5-16.5); to a person who acquires the services or commodities after June 30, 2006, and before July 1, 2009, through home energy assistance (as defined in IC 6-2.5-5-16.5).

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.48-1984, SEC.1; P.L.71-1993, SEC.4; P.L.81-2004, SEC.19; P.L.190-2005, SEC.1; P.L.203-2005, SEC.3; P.L.162-2006, SEC.21; P.L.180-2006, SEC.3; P.L.1-2007, SEC.51; P.L.32-2007, SEC.1.*

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

**Taxation of telecommunication services; aggregation of taxable**

**and nontaxable services on customer bills**

Sec. 6. (a) A person is a retail merchant making a retail transaction when the person:

- (1) furnishes or sells an intrastate telecommunication service; and
- (2) receives gross retail income from billings or statements rendered to customers.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:

- (1) the person furnishes or sells telecommunication services to another person described in this section or in section 5 of this chapter;
- (2) the person furnishes telecommunications services to another person who is providing prepaid calling services or prepaid wireless calling services in a retail transaction to customers who access the services described in section 13 of this chapter;
- (3) the person furnishes intrastate mobile telecommunications service (as defined in IC 6-8.1-15-7) to a customer with a place of primary use that is not located in Indiana (as determined under IC 6-8.1-15); or
- (4) the person furnishes or sells value added nonvoice data services in a retail transaction to a customer.

(c) Subject to IC 6-2.5-12 and IC 6-8.1-15, and notwithstanding subsections (a) and (b), if charges for telecommunication services, ancillary services, Internet access, audio services, or video services that are not taxable under this article are aggregated with and not separately stated from charges subject to taxation under this article, the charges for nontaxable telecommunication services, ancillary services, Internet access, audio services, or video services are subject to taxation unless the service provider can reasonably identify the charges not subject to the tax from the service provider's books and records kept in the regular course of business.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.71-1993, SEC.5; P.L.8-1996, SEC.3; P.L.8-1998, SEC.1; P.L.104-2002, SEC.1; P.L.5-2004, SEC.1; P.L.145-2007, SEC.7; P.L.84-2011, SEC.1.*

**IC 6-2.5-4-7**

**Repealed**

*(Repealed by P.L.71-1993, SEC.28.)*

**IC 6-2.5-4-8**

**Governmental entities; private or proprietary activities**

Sec. 8. An Indiana governmental entity, agency, instrumentality, or political subdivision (including a state college or university) is a retail merchant making a retail transaction when it performs private or proprietary activities that would constitute retail transactions under this article if those activities were performed by a retail merchant. However, this section does not apply to a political subdivision that performs an activity that is related to an annual

festival, carnival, fair, or similar event.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.93-1987, SEC.2.*

#### **IC 6-2.5-4-9**

##### **Sale of property to be added to structures or facilities; exemption**

Sec. 9. (a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

- (1) is to be added to a structure or facility by the purchaser; and
- (2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be 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.

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

#### **IC 6-2.5-4-10**

##### **Rental or leasing of personal property; sale of property rented or leased in course of business; exclusion**

Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

(c) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases motion picture film, audio tape, or video tape to another person. However, this exclusion only applies if:

- (1) the person who pays to rent or lease the film charges admission to those who view the film; or
- (2) the person who pays to rent or lease the film or tape broadcasts the film or tape for home viewing or listening.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.257-2003, SEC.20.*

#### **IC 6-2.5-4-11**

##### **Cable television service; satellite television or radio service**

Sec. 11. (a) A person is a retail merchant making a retail transaction when the person furnishes cable television or radio service or satellite television or radio service that terminates in Indiana.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person provides,

installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of cable television or radio service or satellite television or radio service.

*As added by Acts 1980, P.L.52, SEC.1. Amended by P.L.81-2004, SEC.6; P.L.2-2005, SEC.20.*

#### **IC 6-2.5-4-12**

##### **Auction sales; exceptions**

Sec. 12. (a) A person is a retail merchant making a retail transaction when he sells tangible personal property at auction.

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when:

- (1) he makes isolated or occasional sales of tangible personal property at auction;
- (2) the sales occur on the premises of the owner of the tangible personal property; and
- (3) the owner of the tangible personal property did not originally acquire that property for resale.

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

#### **IC 6-2.5-4-13**

##### **Definition of retail merchant making retail transaction**

Sec. 13. A person is a retail merchant making a retail transaction when a person sells:

- (1) a prepaid calling service or prepaid wireless calling service at retail;
- (2) a prepaid calling service authorization number or prepaid wireless calling service authorization number at retail;
- (3) the reauthorization of a prepaid calling service or prepaid wireless calling service; or
- (4) the reauthorization of a prepaid calling service authorization number or prepaid wireless calling service authorization number.

*As added by P.L.8-1998, SEC.2. Amended by P.L.84-2011, SEC.2.*

#### **IC 6-2.5-4-14**

##### **Notice; proposed public vendors; identification of delinquent taxpayers**

Sec. 14. The department of administration and each purchasing agent for a state educational institution shall provide the department with a list of every person who desires to enter into a contract to sell tangible personal property to an agency (as defined in IC 4-13-2-1) or a state educational institution. The department shall notify the department of administration or the purchasing agent of the state educational institution if a person on the list does not have a registered retail merchant certificate or is delinquent in remitting or paying amounts due to the department under this article.

*As added by P.L.254-2003, SEC.4. Amended by P.L.2-2007, SEC.118; P.L.211-2007, SEC.11.*

#### **IC 6-2.5-4-15**

##### **Bundled transactions**

Sec. 15. (a) This section applies to retail transactions occurring after December 31, 2007.

(b) A person is a retail merchant making a retail transaction when the person sells tangible personal property as part of a bundled transaction.

*As added by P.L.153-2006, SEC.4.*

#### **IC 6-2.5-4-16**

##### **Repealed**

*(Repealed by P.L.1-2009, SEC.174.)*

#### **IC 6-2.5-4-16.2**

##### **Aircraft leasing or renting and flight instruction services**

Sec. 16.2. (a) This section applies to transactions occurring after June 30, 2008.

(b) A person is a retail merchant making a retail transaction when the person:

- (1) leases or rents an aircraft to another person; and
- (2) provides flight instruction services to the lessee or renter during the term of the lease or rental.

(c) The amount of the gross retail income attributable to a retail transaction described in subsection (b) is the amount charged by the retail merchant for the lease or rental of the aircraft used in conjunction with the flight instruction services provided to the lessee or renter.

*As added by P.L.1-2009, SEC.47.*

#### **IC 6-2.5-4-16.4**

##### **Specified digital products**

Sec. 16.4. (a) As used in this section, "end user" does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

(b) A person is a retail merchant making a retail transaction when the person:

- (1) electronically transfers specified digital products to an end user; and
- (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser.

(c) The sale of a digital code that may be used to obtain a product transferred electronically shall be taxed in the same manner as the product transferred electronically. As used in this subsection, a digital code means a method that permits a purchaser to obtain at a later date a product transferred electronically.

*As added by P.L.1-2009, SEC.48. Amended by P.L.113-2010,*

*SEC.48.*

**IC 6-2.5-4-17**

**Computer software maintenance contracts**

Sec. 17. A person is a retail merchant making a retail transaction when the person enters into a computer software maintenance contract to provide future updates or upgrades to computer software.  
*As added by P.L.113-2010, SEC.49.*