

INFORMATION BULLETIN #51T

SALES TAX

SEPTEMBER 2010

(Replaces Information Bulletin #51T dated April 2010)

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

SUBJECT: Telecommunication Services

EFFECTIVE: Upon Publication

REFERENCES: IC 6-2.5-1-20.3; IC 6-2.5-1-27.2; IC 6-2.5-1-27.5; IC 6-2.5-4-6; IC 6-2.5-4-13; IC 6-2.5-5-13; IC 6-8.1-15; Streamlined Sales and Use Tax Agreement (as amended on Sept. 30, 2009)

Telecommunication Services

IC 6-2.5-4-6 subjects a wide range of intrastate telecommunication services to sales tax. The statute states that a person is a retail merchant making a retail transaction when the person provides intrastate telecommunication service. Telecommunication service 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. 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 is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. It is not required that the person furnishing such service be a public utility for the service to be subject to sales tax.

If charges for telecommunication services, ancillary services, Internet access, audio services, or video services that are not taxable are aggregated with and not separately stated from charges that are taxable, the charges for the nontaxable services are exempt from the sales tax only if the provider can reasonably identify the charges not subject to the sales tax from the service provider's books and records kept in the regular course of business.

A person is a retail merchant making a retail transaction when the person sells a prepaid telephone calling card at retail, sells a prepaid telephone authorization number at retail, or reauthorizes either of the above.

Effective Aug. 1, 2002, Indiana adopted the provisions for sales tax on mobile telecommunications services. A standardized method for taxes, charges, and fees levied on mobile telecommunications services was implemented. The method is that all fees are charged and taxed based on the customer's place of primary use.

Example 1

Company A provides cellular phone service. Company A is not a public utility. Company A is required to collect and remit sales tax on its cellular service. The statute imposes sales tax on the transmission of messages or information by microwave, radio, satellite, or similar facilities. Cellular communications are covered by the statute, and the statute does not require that a person be a public utility.

Value-Added Nonvoice Data Services

Value-added nonvoice data services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for purposes other than transmission, conveyance, or routing are not telecommunication services and are therefore not subject to sales tax. Pursuant to IC 6-2.5-1-27.5(c)(8), the definition of telecommunication services does not include ancillary services. IC 6-2.5-1-11.3 defines ancillary services to mean "services that are associated with or incidental to the provision of telecommunication services," including detailed telecommunications billing, directory assistance, vertical services, and voice mail services. A vertical service is defined under the Streamlined Sales and Use Tax Agreement, of which Indiana is a signatory, to mean "an 'ancillary service' that is offered in connection with one or more 'telecommunication services,' which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including 'conference bridging services.'"

Example 2

Company B is a local telephone service provider. Company B provides several additional services and service enhancements to its customers. These include call waiting, caller ID, call forwarding, distinct ringing, and voice mail. Company B's local phone service is subject to sales tax. However, the additional services are not subject to sales tax if separately stated on the customer's monthly bill.

Custom calling service “enhancements,” such as call waiting, caller ID, call forwarding, distinct ringing, and voicemail services are properly included in the definition of vertical services. As such, they qualify under the Streamlined Sales and Use Tax Agreement as ancillary services. Accordingly, they qualify for the exclusion from Indiana sales tax for ancillary telecommunication services, pursuant to IC 6-2.5-4-6. If charges for such ancillary services are aggregated with and not separately stated from charges that are taxable, the charges for the nontaxable services are exempt from the sales tax only if the provider can reasonably identify the charges not subject to the sales tax from the service provider’s books and records kept in the regular course of business.

Example 3

Company C is a local convenience store that offers to fax customers’ documents for a fee. This charge is not subject to sales tax. Company C is not providing telecommunication services; rather, Company C is providing a service whereby it digitizes a document and sends it to its intended destination using a telecommunication service. Company C is the end user of the telecommunication service and must pay sales tax on any intrastate transmissions.

Public Utilities

The sale of telecommunication services to public utilities or any provider of telecommunication services is not subject to sales or use tax.

Example 4

Company D provides local telephone service to Company W. Company W is a public utility providing water service to the community. The sale of local telephone service to Company W is not subject to sales tax because Company W is a public utility.

Example 5

Company E provides cellular phone service to Company D. Company D provides local telephone service to Company E. Neither transaction is subject to sales tax because each is selling a telecommunication service to another provider of a telecommunication service.

Example 6

Company B is a local telephone service provider. Company B offers voice mail service to its customers. This service is not taxable (refer to Example 2). However, the fact that the voice mail service is not subject to tax does not exempt the use of telecommunication service in furtherance of that service. In this case, Company B is a telecommunication service provider and therefore its purchase or use of telecommunication service is exempt even when used in furtherance of a non-taxable service. If Company B was not a telecommunication service provider or a public utility, it would be required to pay sales or use tax on its purchase of telecommunication service in furtherance of its voice mail service.

Tangible Personal Property

A telecommunication service provider is not making a retail transaction subject to sales or use tax when it provides changes to, installs, connects, services, or removes tangible personal property used in connection with the furnishing of the telecommunication service.

Miscellaneous Charges

IC 6-2.5-1-5(b)(7) provides that “telecommunications nonrecurring charges” are not included in gross retail income. As such, when separately stated, these charges are not subject to sales tax. IC 6-2.5-1-27.2 defines “telecommunications nonrecurring charges” to mean amounts billed for the installation, connection, change, or initiation of a telecommunications service received by a customer. Additionally, separately stated charges for installing or servicing tangible personal property related to telecommunication service are not subject to sales tax.

Example 7

Company B is a local telephone service provider. As part of an itemized invoice, Company B charges customers for initial hook-up and an additional charge if any labor is needed to physically connect the customer. The hook-up charge is not subject to sales tax because it is a telecommunications nonrecurring charge exempt from sales tax. The charge for labor necessary to physically connect the telecommunications service is not taxable because it is not a charge for a telecommunication service.

As part of an itemized invoice, Company B charges customers for changes made to the customers’ telecommunications services. The charge is not subject to sales tax because it is a telecommunications nonrecurring charge exempt from sales tax.

Company B also offers a service whereby it will maintain the phone lines within the customer’s house for a fixed monthly fee. This charge is not for telecommunication service and is therefore not subject to sales tax.

Any parts used in providing these services are not subject to sales tax if provided by Company B.

Purchases by Telecommunication Service Providers

Transactions involving the acquisition of tangible personal property by telecommunication service providers are exempt from sales tax if the property is classified as central office equipment, station equipment or apparatus, station connection, wiring, or large private branch exchanges according to the uniform system of accounts adopted and prescribed for the utility by the Indiana Utility Regulatory Commission. Mobile telecommunications switching office equipment and radio or microwave transmitting equipment, including towers and antennae, are also exempt. If the provider is not subject to the control of the Indiana Utility Regulatory Commission, the exemption applies to

any property similar to that mentioned above.

Example 8

Company B is a local telephone service provider. Company B is subject to the authority of the Indiana Utility Regulatory Commission. Company B will look to the uniform system of accounts for local telephone companies to determine whether property it leases or purchases is subject to sales or use tax.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner