

## **INFORMATION BULLETIN #68**

### **SALES TAX**

**FEBRUARY 2012**

(Replaces Information Bulletin #68 dated January 1998)

**DISCLAIMER:** Information 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 its subject matter.

**SUBJECT:** **Nonprofit and State Colleges and Universities**

**AUTHORITY:** IC 6-2.5-4-6; IC 6-2.5-4-8; IC 6-2.5-5-16; IC 6-2.5-5-22; IC 6-2.5-5-24; IC 6-2.5-6-1; 45 IAC 2.2-5-24; 45 IAC 2.2-5-25; 45 IAC 2.2-5-46; 45 IAC 2.2-5-58

**DIGEST:** Apart from technical, non-substantive changes, this version of the bulletin has been changed from the previous version to include separate treatment for colleges and universities that operate as nonprofit organizations and those that operate as governmental agencies.

### **INTRODUCTION**

Indiana state colleges and universities that are nonprofit organizations or governmental agencies created by statute are entitled to certain exemptions from sales and use tax for purchases and sales that support the exempt government function or educational mission of the institutions. However, transactions that do not support the exempt educational mission of a nonprofit educational institution or that are associated with a proprietary activity on the part of a state government educational institution are subject to tax.

## **PURCHASES BY NONPROFIT COLLEGES AND UNIVERSITIES**

Transactions involving tangible personal property or services are exempt from sales tax pursuant to IC 6-2.5-5-25 if the entity acquiring the property or services is a nonprofit organization, the entity primarily uses the property or service to carry on or to raise money to carry on its nonprofit purpose, the entity is not an organization operated predominantly for social purposes, and the purchases are invoiced directly to the nonprofit organization and paid for directly via the organization's funds. For more information related to purchases by nonprofit organizations, please refer to Sales Tax Information Bulletin #10, available online at <http://www.in.gov/dor/3650.htm>.

## **PURCHASES BY STATE COLLEGES AND UNIVERSITIES**

Transactions involving tangible personal property or services are exempt from sales tax pursuant to IC 6-2.5-5-16 if the entity acquiring the property or services is an Indiana state college or university recognized as an Indiana governmental agency, the purchases are invoiced directly to the state educational institution and paid for directly via government funds, and the purchases are for an official government function and not a proprietary activity. For more information related to purchases by governmental agencies, please refer to Sales Tax Information Bulletin #2, available online at <http://www.in.gov/dor/3650.htm>.

## **SALES BY NONPROFIT COLLEGES AND UNIVERSITIES**

In general, transactions involving sales of tangible personal property or services by a nonprofit organization are exempt from sales tax pursuant to IC 6-2.5-5-26 if the entity makes the sales to raise funds to carry on its nonprofit purpose and does not make those sales during more than 30 days in a calendar year. However, when the nonprofit organization sells items that further the educational, cultural, or religious purposes of the organization and the sales are not used in carrying out a private or proprietary business, the 30-day restriction does not apply. An exception to the 30-day restriction is made for sales of food and food ingredients by nonprofit colleges or universities. These sales are exempt from sales and use tax pursuant to IC 6-2.5-5-22 if the purchaser is a student attending the college or university.

Note: The sale of food by third parties (private caterers, restaurants, licensees, or other lessees operating on the campuses of the college or university) to students does not qualify for exemption because such sales are not made by a qualified nonprofit educational organization. However, if the third parties are acting in agency capacity on behalf of the college or university, the exemption is applicable. The contracts with the third parties (private caterers, restaurants, licensees, or other lessees operating on the campuses of the college or university) must specifically designate the third party as an agent on behalf of the college or university. Furthermore, the third-party food provider must be subject to the control of the university in connection with the selling of food to students. Sales of food to members of the faculty or other employees are subject to Indiana sales tax. Sales of food to nonstudents of that college or university do not qualify for exemption. For more information related to sales by nonprofit organizations, please refer to Sales Tax Information Bulletin #10, available online at <http://www.in.gov/dor/3650.htm>.

## SALES BY STATE COLLEGES AND UNIVERSITIES

Sales of educational materials, excluding books, stationery, or supplies, by a state college or university recognized as a governmental agency are exempt if sold to its students because these sales primarily serve the governmental function of the institution. The sale of cartographic, demographic, or topographical maps or surveys required as part of the college or university's operation of the "county extension service" is exempt from Indiana sales and use tax. The sale of such educational material sold to the general public is subject to tax because these items would be taxable if sold by a retail merchant.

**Example:** Sales of the Indiana Law Review to members of the faculty, the staff, and the general public are subject to tax. If the purchaser is entitled to an exemption, the purchaser must supply the educational institution with a valid exemption certificate.

## APPLICATION OF KEY TERMS

The term *educational materials* means materials that communicate information, graphic images, or sounds that are utilized in teaching, instruction, or research. Educational materials may be in various forms of media, including but not limited to:

- Scholarly and professional journals, reviews, and papers;
- Research reports, papers, surveys, polling data, and summaries;
- Books, guides, and other printed instructional materials;
- Instructional audio and video materials; and
- Instructional software and computerized research tools.

The educational mission or purpose for which state colleges and universities are granted exemption falls into one of four primary categories:

- A. Teaching and instruction that involves educating citizens, businesses, and institutions of the state through the use of conventional and electronic classroom facilities to provide:
  - Courses that grant credit toward the attainment of an undergraduate or a graduate degree;
  - Post-graduate practical training and instruction in academic disciplines offered by state universities;
  - Continuing education courses (non-credit);
  - Professional development activities; and
  - Educational conferences, seminars, and training meetings.
- B. Research that includes expanding the knowledge base of the citizens, businesses, and institutions of the state of Indiana through scientific inquiry and the dissemination of scholarly information. Activities associated with the fulfillment of this function include participation in laboratory and field research and the development and

distribution of educational or research-related tools or materials that are published, copyrighted, or patented by a state college or university.

- C. Public service that includes activities that are consistent with other governmental and educational functions serviced by the state of Indiana and other charitable, nonprofit purposes for which the university is granted exemption from Indiana adjusted gross income tax and federal income tax.
- D. Other university activities that are customarily undertaken in the conduct of governmental functions, including:
- Sponsoring continuing education activities;
  - Operating the county extension service for the state;
  - Providing public access to intercollegiate athletic functions;
  - Providing public access to recreational and physical fitness facilities;
  - Providing public access to musical, theatrical, and artistic performances;
  - Providing access to informational and cultural events and productions; and
  - Providing recruiting and development activities including recruiting of students and faculty.

Sales of tangible personal property as part of a proprietary activity by a state college or university recognized as a governmental agency are subject to sales tax. The term *proprietary activity* is defined as an activity that generates revenues for state colleges or universities from the general public and that is both customarily associated with the conduct of a private business enterprise and that is outside the scope of activities of governmental and educational functions as defined for state colleges or universities. For these transactions, the entity is required to register as a retail merchant and remit the collected sales tax to the Department. The following are examples of proprietary activities that require the entity to collect tax from the purchaser:

- Sales by a bookstore of items such as T-shirts, sweatshirts, hats, athletic apparel, memorabilia, class rings, license plates, etc.;
- Sales of books, stationery, haberdashery, supplies, or other property by an accredited college or university;
- Sales of merchandise, cards, clothing, toiletries, and other goods typically purchased in retail stores;
- Sales of catering and food services provided to the general public;
- Sales of computers, software, and related items;
- Sales of food and drink at athletic, theatrical, artistic, cultural, or informational events;
- Receipts from the rental of accommodations for periods of less than 30 days to nonstudents. These sales are subject to Indiana sales tax and, if applicable, the county innkeepers tax. The term *accommodations* includes any room or rooms and any lodgings in a commercial hotel, motel, inn, university memorial union, university residence hall, tourist camp, or tourist cabin. The tax does not apply to any student renting lodging in a university residence hall while participating in a course of study for college credit at the college or university;

- Sales of abandoned personal property if the property was not originally used in connection with the state educational institution's educational purpose; and
- Any other activity customarily considered as being competitive with private enterprise.

An exception to the proprietary business restriction is made for sales of food and food ingredients by state colleges or universities. These sales are exempt from sales and use tax pursuant to IC 6-2.5-5-22 if the purchaser is a student at the college or university. Note: The sale of food by third parties (private caterers, restaurants, licensees, or other lessees operating on the campuses of the college or university) to students does not qualify for exemption because such sales are not made by a qualified nonprofit educational organization. However, if the third parties are acting in agency capacity on behalf of the college or university, the exemption is applicable. The contracts with the third parties (private caterers, restaurants, licensees, or other lessees operating on the campuses of the college or university) must specifically designate the third party as an agent on behalf of the college or university. Furthermore, the third-party food provider must be subject to the control of the university in connection with the selling of food to students. Sales of food to members of the faculty or other employees are subject to Indiana sales tax. Sales of food to nonstudents of that college or university do not qualify for exemption.

The term *student* is defined to mean an individual enrolled or registered in courses that grant credit toward the attainment of an undergraduate or graduate degree or who is enrolled in an elementary or a secondary school. The term *student* also includes any individual enrolled in remedial courses that are certified by the college or university.

**Example:** A high school student who is enrolled as a participant in a summer conference on a college or university campus is exempt from sales tax on meals provided to that student by the university or its agent on the campus premises.

For more information related to purchases by governmental agencies, please refer to Sales Tax Information Bulletin #2, available online at <http://www.in.gov/dor/3650.htm>.

## TELECOMMUNICATIONS

Indiana Code 6-2.5-4-6 provides that a person is a retail merchant making a retail transaction when such person furnishes or sells an intrastate telecommunication service.

State educational institutions are required to collect Indiana sales tax when they furnish or sell an intrastate telecommunication service to students, members of the faculty, or staff.

**Example:** An educational institution bills students and members of the faculty and staff for their respective long-distance intrastate phone calls. These transactions are subject to tax. Any charges billed directly to students or members of the faculty and staff for "local service charges" would also be subject to the collection of Indiana sales tax.

## **STUDENT ORGANIZATIONS AT STATE COLLEGES AND UNIVERSITIES**

Student organizations are informal student clubs whose memberships consist of students who share a common interest in the particular cause or activity for which the organization exists, promotes, or furthers. To be exempt from sales tax, the student organization must be (1) recognized by the college or university; (2) connected with the college or university; and (3) under the supervision of the college or university. Furthermore, the student organization's records must be maintained by the college or university as an "agency" account.

A student organization that is registered with and under the control of the college or university will not be required to register with the Indiana Department of Revenue as a nonprofit organization. It will be considered a part of the college or university.

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