



DEPARTMENT OF REVENUE

INDIANA GOVERNMENT CENTER NORTH
100 N. SENATE AVE

INFORMATION BULLETIN #48 SALES TAX SEPTEMBER 2015 (Replaces Bulletin #48 dated JULY 2013) Effective Date: July 1, 2015

SUBJECT: Sales Tax Application to Medical Profession

REFERENCES: IC 6-2.5-1-17, IC 6-2.5-1-18, IC 6-2.5-1-22, IC 6-2.5-1-23,
IC 6-2.5-1-25, IC 6-2.5-5-18, IC 6-2.5-5-19, IC 6-2.5-5-19.5

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SUMMARY OF CHANGES

Aside from nonsubstantive, technical changes, this bulletin has been changed to reflect clarifying language adopted in HEA 1472-2015.

DEFINITIONS

For purposes of this bulletin, “licensed practitioner” means an individual who is a doctor, dentist, or other practitioner licensed in the United States to prescribe, dispense, and administer drugs to human beings in the ordinary course of the practitioner’s professional practice of treating patients.

“Licensed dispenser” means only those persons licensed or registered in the United States to fit and/or dispense durable medical equipment, devices, drugs, or other supplies upon the prescription of a licensed practitioner.

“Prescribe” means the issuance by a licensed practitioner of a certificate in writing that the use of the drugs, medications, durable medical equipment, supplies, or devices is necessary for the purchaser to correct or alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser’s body.

SALES OF DURABLE MEDICAL EQUIPMENT, DEVICES, DRUGS, AND OTHER SUPPLIES

I. Sales to Patients

The following sales and/or rental of durable medical equipment, devices, drugs, and other supplies are exempt from Indiana sales and use tax provided the end user patient acquires the property upon a prescription or drug order (as defined in IC 16-42-19-3) that is required by law (if such property requires a prescription or drug order by law, subject to the conditions set out below) for the transaction from a licensed practitioner:

- Sales of durable medical equipment that: can stand repeated use; is primarily used to serve a medical purpose; is generally not useful to a person in the absence of an illness or injury; is not worn in or on the body; and is directly required to correct or alleviate injury to, malfunction of, or removal of a portion of the human body
- Sales of prosthetic devices that are a replacement, corrective, or supportive device worn on or in the body to: artificially replace a missing part of the body; prevent or correct physical deformity or malfunction; or support a weak or deformed part of the body. Such devices include:
 - (1) Artificial limbs
 - (2) Orthopedic devices designed to correct deformities and/or injuries to the human skeletal system including the spine, joints, bones, cartilages, ligaments, and muscles
 - (3) Dental prosthetic devices used for the replacement of missing teeth such as bridges and artificial dentures
 - (4) Corrective eyeglasses and contact lenses
- Sales of hearing aid devices worn on the human body and designed for aiding, improving, or correcting defective human hearing (with the exception that a licensed dispenser who is not a licensed practitioner may sell a hearing aid device without a prescription as described below)
- Sales of mobility-enhancing equipment that: is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or motor vehicle, is not generally used by persons with normal mobility, and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer
- Other medical supplies or devices used exclusively for medical treatment of a medically diagnosed condition due to injury, bodily dysfunction, or surgery. The phrase “used exclusively” means the intended usage of the device by the manufacturer, not the use made of the device by the purchaser. Therefore, items such as hot tubs, beds, mattresses, and other items that have general usage would typically not be exempt. However, if modifications are made to such items for medical treatment described in this bullet point, the department may exempt such tangible personal property used in modifying such device, but not the device itself
- Sales of legend or nonlegend drugs by a registered pharmacist or licensed practitioner

- Sales of a nonlegend drug, if it is dispensed upon an original prescription or a drug order (as defined in IC 16-42-19-3) and the ultimate user of the drug is a person confined to a hospital or healthcare facility
- Sales of food, food ingredients, and dietary supplements sold by a licensed practitioner or pharmacist
- Sales of repair and replacement parts for the previously mentioned durable medical equipment, prosthetic devices, mobility-enhancing equipment, and hearing aid devices

Other items exempt from sales tax even when not prescribed include

- Sales of hearing aids worn on the human body designed for aiding, improving, or correcting defective human hearing if fitted or dispensed by a licensed dispenser (if such person is not a licensed practitioner)
- Sales of colostomy and ileostomy bags and equipment
- Sales of insulin, oxygen, blood, or blood plasma if purchased for medical purposes
- Sales of syringes or other instruments used to administer insulin
- Sales of blood glucose monitoring supplies

Sales of blood glucose monitoring supplies are exempt from sales tax, regardless of whether they are sold pursuant to a prescription or are sold by a licensed practitioner to one of the practitioner's patients. A "blood glucose monitoring supply" means blood glucose meters, measuring strips, lancets, and other similar diabetic supplies furnished with or without charge.

The blood glucose monitoring supply sales tax exemption also applies to the packaging and literature that accompany a blood glucose monitoring supply, as well as any tangible personal property that will be processed, manufactured, or incorporated into either the blood glucose monitoring supply or the packaging or literature with which it comes.

II. Sales to Licensed Practitioners

In general, all purchases of tangible personal property by a licensed practitioner are subject to sales tax. However, an exemption is afforded to purchases of blood glucose monitoring supplies (discussed previously), certain drugs, insulin, oxygen, blood, and blood plasma.

Purchases by licensed practitioners of drugs that can be sold only by prescription are exempt from sales tax if the practitioner buys the drugs for direct consumption in the course of rendering professional services in treating patients or if they are for resale to a patient whom the practitioner is treating.

Purchases by licensed practitioners of insulin, oxygen, blood, and blood plasma are exempt from the sales tax if the practitioner buys such items for direct consumption in the course of rendering professional services in treating patients.

Drugs, insulin, oxygen, blood, and blood plasma consumed in the course of rendering professional services are those drugs, etc. that are administered by a licensed practitioner or agent including the furnishing of such drugs as a part of a single charge for professional service.

GENERAL PURCHASES BY LICENSED PRACTITIONERS

Sales tax shall apply to the following purchases made by licensed practitioners:

- All office furniture, equipment, and supplies
- Drugs not requiring a prescription and used by the practitioner in the course of rendering services
- Surgical instruments, equipment, and supplies
- Bandages, splints, and all other medical supplies consumed in professional use;
- Materials purchased by dentists to restore teeth or fill cavities
- Orthodontic supplies, such as bands and wires
- X-ray, diathermy, diagnostic equipment, or any other apparatus used in the practice of surgery or medicine

If the purchase of taxable items by the practitioner is made where sales tax is not charged, the practitioner becomes liable for the use tax and must remit it directly to the Department of Revenue. A practitioner who is a registered retail merchant should report the use tax on his sales tax return. Otherwise, the tax may be paid with the practitioner's annual income tax return or by remitting the tax and filing Form ST-115.

REGISTRATION REQUIREMENTS: RENDERING PROFESSIONAL SERVICE

The rendering of professional services by a licensed practitioner is not subject to Indiana sales tax. A licensed practitioner is not required to become registered as an Indiana retail merchant provided the practitioner is not engaged in making retail sales.

A licensed practitioner who purchases tangible personal property subject to sales tax (such as nonprescription drugs, bandages, etc.) with the intent to resell such property to a patient may make such purchases exempt from sales tax by using an Indiana exemption certificate.

To resell such items, the practitioner must be licensed as a retail merchant and must quote the selling price of any items separately from the charge for professional service. Sales tax must then be collected from the patient on the separately stated charges for such items.

If the practitioner does not separately state the charges for the supplies when billing the patient, the practitioner is liable for the sales/use tax when the licensed practitioner purchases the supplies.

The fact that a professional practice is carried on through the formation of a corporation does not change the status of professional services rendered in relation to sales tax liability or exemption.

A handwritten signature in black ink, reading "Andrew J. Kossack". The signature is stylized with a large, sweeping "A" and a long, horizontal stroke extending from the "K".

Andrew J. Kossack
Commissioner



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**INFORMATION BULLETIN #12
SALES TAX
DECEMBER 2014
(Replaces Bulletin #12 issued September 2014)
Effective Date: Upon Publication**

SUBJECT: Public Transportation

REFERENCES: IC 6-2.5-3-7; IC 6-2.5-5-8; IC 6-2.5-5-27; 45 IAC 2.2-5-61;
45 IAC 2.2-5-62; 45 IAC 2.2-5-63; *Wendt LLP v. Indiana Dep't of
State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012)

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SUMMARY OF CHANGES

Apart from nonsubstantive, technical changes, this version of the bulletin has been changed to incorporate decisions of the Indiana Tax Court concerning the exemption for specific items related to public transportation. The bulletin also incorporates statutory changes contained in HEA 1448-2014 that exempt from sales tax natural gas products used in public transportation if it is purchased by a public transportation corporation organized in accordance with IC 36-9-4 providing transportation of persons. The act provides that natural gas products purchased after Dec. 31, 2013, and before Jan. 1, 2017, used in providing public transportation of persons or property is subject to sales tax. This provision takes effect on Jan. 1, 2014, and expires on Dec. 31, 2016.

PUBLIC TRANSPORTATION DEFINITION

“Public transportation” means the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, a contract carrier, a household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the appropriate federal or state regulatory authority.

Even if a person or company operates under the appropriate authority, they also must transport people or property for consideration. That is to say, a public transportation provider must be compensated for transporting people or goods. The goods transported must be goods owned by someone other than the public transportation provider. To qualify for the exemption, the tangible personal property purchased must be predominately used in providing public transportation. The tangible personal property is predominately used in public transportation if more than 50% of its use is attributable to transporting people or property for hire.

PUBLIC TRANSPORTATION REQUIREMENTS

The following requirements are factors the department weighs in determining whether a transportation company is engaged in public transportation. An asterisk (*) indicates a requirement that is considered by the department to be a critical factor in determining whether a transportation company qualifies for the public transportation exemption. A transportation company fails to qualify for the exemption if it does not, at a minimum, adhere to all the critical requirements. However, failure to adhere to one or more of the “noncritical” requirements can also result in a transportation company’s failure to qualify for the exemption. The requirements are:

- The transportation company must transport the persons or property of another.*
 - The transportation company must maintain all shipping/transporting documents for all transactions (e.g., trip reports, truck logs, and invoices).*
- The transportation company must receive compensation for the services it provides.*
- The transportation company must hold and pay for appropriate public transportation insurance.*
- The transportation company must be fully and independently authorized by federal and/or state authorities to provide public transportation services.*
- If an employee of the parent company performs duties for the parent company and also performs “leased” duties for the transportation company, the parent company must maintain detailed records of when and which duties that employee is performing for the parent company and when and which duties that employee is performing under the lease.*
- If the parent company makes a capital contribution of the vehicles to the transportation company, titles to the vehicles must be transferred to the transportation company.*
- The transportation company and the parent company must maintain separate books and records, including separate charts of accounts for each company:
 - Transactions between the parent company and the transportation company must evidence a commercially reasonable, arms-length relationship between the parties.
 - Transactions between the parent company and the transportation company must be evidenced by actual invoicing and payments for all transactions.*
 - The parent company and the transportation company must segregate and account for each entity’s purchases and expenses.*

- The parent company and the transportation company must maintain separate bank accounts.
- The parent company and the transportation company must issue separate W2 forms to their employees.
- The parent company and the transportation company must maintain separate federal depreciation schedules pursuant to generally accepted accounting standards.
- Any income earned by the transportation company for transporting for a third party is to be recognized by the transportation company.
- Because the transportation company and the parent company must have a distinct, arms-length business relationship, their separate incomes and expenses must be reflected on the taxpayers' federal income tax filings, all of which must be reconciled with the taxpayers' own records. When transactions are eliminated as intercompany transactions, the taxpayers must file the appropriate schedules with their federal returns.*
- If the parent company owns and holds titles to the vehicles, the parent company may lease those vehicles to the transportation company. However:
 - The lease must be documented as a commercially reasonable, arms-length transaction; and
 - The lease must be evidenced by actual payments to the parent company.
- If the transportation company owns the vehicles, titles to the vehicles must be held by the transportation company.
- The parent company and transportation company must have separate employees, or, if the transportation company leases its employees from the parent company, there must be a meaningful, arms-length charge for the leased employees.

ACQUISITION BY A PUBLIC TRANSPORTATION PROVIDER

Tangible personal property bought by a public transportation provider may be purchased exempt from sales or use tax if the property is to be predominately and directly used in providing public transportation. Property is directly used in providing public transportation if the property is reasonably necessary to provide public transportation.

Determining whether property is reasonably necessary to provide public transportation can be difficult. The following items are reasonably necessary to provide public transportation. These items do not comprise a comprehensive list. Rather, the following are provided to offer some basic examples of items that generally are reasonably necessary to provide public transportation:

- Roadway machinery and equipment;
- Caboose and locomotive supplies such as fuses, lanterns, batteries, and flags;
- Tariff publications;
- Vehicles used for public transportation;
- Vehicles used to escort vehicles used in public transportation;
- Communication equipment;
- Equipment and items purchased to meet federal requirements;
- All replacement parts, repair parts, and materials consumed by exempt equipment;

- Tools and equipment used to repair and maintain rolling stock and track;
- Vehicles used primarily for transportation of track maintenance crews;
- Items used for repairs and maintenance of such vehicles;
- Items used for the production of financial matters, insurance, schedules, routes, and rates
- Items used to provide customer stations, handle baggage, or sell tickets;
- Items used to keep vehicles clean and safe for passengers;
- Items used to disassemble, load, and secure the customer's machinery for movement in public transportation;
- Machine shop and truck tools;
- Equipment related to the construction and operation of terminals;
- Directories;
- Gas storage facilities;
- Caboose and locomotive compliments such as towels, masking tape, powders, cleaners, ice, water coolers, and bottled water;
- Cleaning supplies;
- Employee uniforms;
- Garage supplies; and
- Planning transportation routes and obtaining travel permits.

Certain functional categories of items are not reasonably necessary to provide public transportation. For example, all items related to the marketing and selling of public transportation are taxable, including preparation of estimates. Telephone utilities used for sales activities; office supplies and furniture for sales personnel; and promotional expenses, such as matches, caps, or jackets given away to the public also would be subject to tax. If a taxpayer acquires tangible personal property for predominant use in providing public transportation, the property is entitled to the exemption. Thus, a phone used 10% of the time for sales calls and 90% of the time to dispatch vehicles would meet the predominant use (greater than 50%) test, so the entire purchase price of the item would be exempt. Items used for reassembly of equipment or machinery moved by a provider of public transportation are taxable. Labels used during disassembly of equipment to facilitate reassembly are taxable.

A person who acquires an aircraft to rent or lease to another person for predominant use in public transportation by the other person is exempt from the sales or use tax (see Sales Tax Information Bulletin #76).

For periods prior to Jan. 1, 2014, IC 6-2.5-5-27 provides a sales tax exemption for purchases of tangible personal property, including natural gas products, used in providing public transportation of persons or property. Effective Jan. 1, 2014, HEA 1448-2014 amends IC 6-2.5-5-27 for periods prior to Jan. 1, 2017, and provides that purchases of natural gas products by a provider of public transportation are subject to tax when the fuel is used to provide public transportation for either persons or property. However, during the same time period, purchases of natural gas products by a public transportation corporation for use in a motor vehicle used to provide public transportation of persons is

exempt from tax. After Jan. 1, 2017, the exemption for natural gas products purchased by providers of public transportation and used to provide public transportation of persons or property will be reinstated.

“Natural gas products” means a liquid or compressed natural gas product, or a combination of liquefied petroleum and a compressed natural gas product.

EXEMPTION CERTIFICATES

Any person or company engaged in providing public transportation may buy certain items exempt from sales or use tax (see Section II), but if the public transportation provider has a facility in Indiana, it must register with the Indiana Department of Revenue to obtain a Registered Retail Merchant Certificate (RRMC) to buy exempt. The RRMC will have a number that must be used on all exemption certificates given to vendors by the public transportation provider. Exemption certificates can be used as a blanket exemption, kept on file by the vendor, or used for each individual transaction. A blanket exemption certificate tells the vendor that all purchases made by the public transportation provider are reasonably necessary to provide public transportation. If a public transportation provider uses property purchased with a blanket exemption in a taxable manner, the provider must pay use tax for the purchase. The tax must be remitted on the provider's sales and use tax return, the annual income tax return, or a consumer use tax return (Form ST-115).

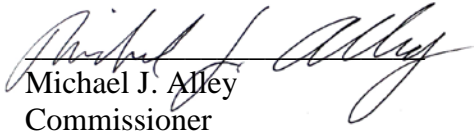
Individuals engaged in public transportation but operating under another person's United States Department of Transportation (USDOT) or Indiana ID number or similar permit must use Form ST-105 when making an exempt purchase.

Another option is for the purchaser to provide the seller with the person's name, address, and motor carrier number or USDOT number and provide a signature to affirm, under penalties of perjury, that the information is correct and that the tangible personal property is being purchased for an exempt purpose.

UTILITIES

Before a person or company engaged in providing public transportation can purchase utilities, natural gas, electricity, local exchange telephone service, intrastate toll message telephone service, steam, or water exempt from tax, an exemption certificate issued by the department on behalf of the transportation provider must be on file with the utility. A public transportation provider will qualify for the special exemption certificate, Form ST-109, only after having an ST-200 utility exemption application approved by the department. The department will issue an ST-109 to a utility on behalf of the provider only if the utility being bought is separately metered, or the utility is predominately used

in providing public transportation. If the utility is being used less than 50% in providing public transportation, the public transportation provider must pay the tax and file a claim for refund for the exempt percentage.



Michael J. Alley
Commissioner