

**Form ST-105**  
**General Information and Instructions**

All four (4) sections of the ST-105 must be completed or the exemption is not valid and the seller is responsible for the collection of the Indiana sales tax.

Section 1 Instructions

- A) **This section requires an identification number.** In most cases this number will be an Indiana Department of Revenue issued Taxpayer Identification Number (TID# - see note below) used for Indiana sales and/or withholding tax reporting. If the purchaser is from another state and does not possess an Indiana TID#, a resident state's business license, or State issued ID# must be provided.
- B) **Exceptions** - For a purchaser not possessing either an Indiana TID# or another State ID#, the following may be used in lieu of this requirement.
- Federal Government** – place your FID# in the State ID# space.
- Farmer** – place your SS# or FID# in the State ID# space.
- Public transportation haulers** operating under another motor carrier authority, or with a contract as a school bus operator, must indicate their SS# or FID# in the State ID# space.
- Nonprofit Organization** – must show its FID# in the State ID# space.

Section 2 Instructions

- A) Check a box to indicate if this is a single purchase or blanket exemption.
- B) Describe product being purchased.

Section 3 Instructions

- A) Purchaser must check the reason for exemption.
- B) Purchaser must be able to provide additional information if requested.

Section 4 Instructions

- A) Purchaser must sign and date the form.
- B) Printed name and title of signer must be shown.

**Note:** The Indiana Taxpayer Identification Number (TID#) is a ten (10) digit number followed by a three (3) digit LOC#. The TID# is also known as the following:

- a) Registered Retail Merchant Certificate
- b) Tax Exempt Identification Number
- c) Sales Tax Identification Number
- d) Withholding Tax Identification Number

The Registered Retail Merchant Certificate issued by the Indiana Department of Revenue shows the TID# (10 digits) and the LOC# (3 digits) at the top right of the certificate.



DEPARTMENT OF REVENUE  
INDIANA GOVERNMENT CENTER NORTH  
100 N. SENATE AVE

**INFORMATION BULLETIN #4  
SALES TAX  
June 2016  
(Replaces Bulletin #4 dated September 2011)  
Effective Date: Upon Publication**

**SUBJECT:** Sales to and by Indiana State and Local Governments, the United States Government, its Agencies, and Federal Instrumentalities

**REFERENCES:** IC 6-2.5-5-12.5; IC 6-2.5-5-16; IC 6-2.5-5-24; IC 6-2.5-5-44; IC 6-2.5-7-4; 45 IAC 2.2-5-24; 45 IAC 2.2-5-25; 45 IAC 2.2-5-49; 26 U.S.C. 501

**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 the subject matter covered herein.

## **SUMMARY OF CHANGES**

Aside from nonsubstantive, technical changes, this bulletin is changed to reflect updates to guidance previously issued by the Federation of Tax Administrators and to clarify the governmental exemption as it pertains to sales to federal instrumentalities and entities created by Acts of Congress and sales to foreign missions.

## **INTRODUCTION**

Generally, purchases made directly by Indiana state and local government entities are exempt from sales tax. Sales by Indiana state and local government agencies also are exempt from Indiana sales tax unless the sales involve a proprietary or nontraditional activity (i.e., an activity that traditionally is engaged in by a private or commercial entity and that does not directly serve the public's general health, welfare, and/or safety).

Purchases made directly by the United States government, its agencies, and instrumentalities are exempt from Indiana sales tax. Sales by these same entities are also exempt from sales tax.

## I. DEFINITIONS

**State agency** - means an authority, a board, a branch, a commission, a committee, a department, a division, or other instrumentality of the executive, legislative, or judicial departments of Indiana state government

**Local government** - refers to any of the following:

- A city of any class (IC 36-1-2-3);
- A municipal corporation (county, municipality, township, special taxing districts, etc.; IC 36-1-2-10);
- A municipality (city or town; IC 36-1-2-11);
- A political subdivision (IC 36-1-2-13);
- A school corporation (IC 36-1-2-17);
- A special taxing district (IC 36-1-2-18);
- A taxing district (IC 36-1-2-20);
- A unit (county, municipality, township; IC 36-1-2-23); or
- Any agency of any of the above.

**Federal Instrumentality** - means an entity that is organized, created, or authorized under an Act of Congress and otherwise qualifies for inclusion under 26 U.S.C. 501(c)(1). The term does not include entities that are organized under 26 U.S.C. 501(c)(3).

## II. PURCHASES BY STATE AND LOCAL GOVERNMENTS

The state of Indiana and its local governments are not subject to sales or use tax on any purchases to be used primarily to carry out a governmental function. Any purchases used primarily in connection with a proprietary function of the state or a local government are taxable unless some other specific exemption applies.

IC 6-2.5-5-44 provides that purchases of tangible personal property by a city or town to be used in the operation of a municipal golf course are exempt from the sales and use tax.

Traditional governmental activities such as police and fire protection; street construction and maintenance; and the operation of hospitals, public libraries, cemeteries, and similar activities are considered to be governmental functions.

A person who contracts with a municipality to operate, manage, or control any plant or equipment owned by the municipality for the collection, treatment, or processing of wastewater may purchase tangible personal property exempt from the sales or use tax. The property must be classified as collection plant expenses, treatment and disposal plant expenses, or system pumping plant expenses as defined in IC 6-2.5-5-12.5.

A purchase is used “primarily” for a governmental function if the purchase is used more than 50 percent of the time in the performance of that function. To qualify for the exemption, the purchase must be invoiced directly to the state or local government making the purchase.

**NOTE:** If a state or local government employee purchases an item, the purchase is not exempt and the employee must pay sales tax at the time of purchase even if the employee is to be reimbursed by the governmental entity.

To purchase property exempt from tax, local governments must register with the department and issue an exemption certificate to the seller. To recover taxes paid on exempt purchases, including the purchase of gasoline or special fuel through a metered pump, the state agency or local government must file a claim for refund with the department.

A state agency that makes only exempt purchases is not required to register with the department. All state agencies should use the federal ID number and the state TID number issued to the Auditor of State on their exemption certificate (Form ST-105) when making exempt purchases. Additionally, Indiana state agencies issue procurement cards for travel expenses. Purchases made by these cards are paid directly by the agency and therefore are properly exempt from Indiana sales and use tax without the need for an exemption certificate.

### **III. SALES BY THE STATE OF INDIANA OR ITS LOCAL GOVERNMENTS**

A state agency or local unit of government that sells tangible personal property and collects sales tax on those transactions is required to register as a retail merchant and remit the sales tax collected to the department. For example, the sale of key chains or license cases by a license branch is taxable. The state may purchase any property to be resold exempt from tax, but it must collect the tax from the purchaser at the point of sale. The following are other examples of proprietary activities that require the state agency or local unit of government to collect tax from the purchaser:

- Sales of tangible personal property from college bookstores; sales and rentals in state parks; food services and concessions; and similar activities;
- The rental of tangible personal property to the public;
- Sales of the byproducts of sewage disposal plants; or
- Any other activity customarily considered as being competitive with private enterprise.

Some sales may qualify as related to the performance of a governmental function if the sales do not compete with private enterprise. For example, if a city in Indiana were to charge a fee for providing copies of its ordinances, the city would not need to collect tax on the sale of the copies because providing the copies of its ordinances could be considered a governmental function of the city.

#### **IV. PURCHASES BY THE UNITED STATES GOVERNMENT AND ITS AGENCIES**

The United States Constitution prohibits any state from imposing any tax directly on the U.S. government, its agencies, and federal instrumentalities, unless Congress consents to such taxation. Additionally, Congress has passed legislation prohibiting states from imposing taxes on entities that are instrumentalities not wholly owned or controlled by the U.S. government, such as the American Red Cross, federal land banks, federal reserve banks, federal credit unions, and federal home loan banks. Thus, much federal purchasing, leasing, and renting of tangible personal property; the use of utilities; meals consumed in restaurants; and other normally taxable goods or services (including accommodations for fewer than 30 days) are exempt from Indiana sales and other transaction-based taxes. However, the fact that the U.S. government, agency, or federal instrumentality may ultimately reimburse an employee who paid the tax does not exempt such a purchase from tax.

##### **Example:**

An employee of a federal credit union pays for lodging costs from his own funds. Tax should be collected at the time of payment, since payment is not being made directly by the federal credit union. However, if the same employee pays for the lodging with a check from the federal credit union's account or by the use of a credit card that is billed directly to the federal credit union, then this is a direct expenditure by the federal instrumentality. Therefore, this transaction is exempt from sales tax.

A vendor is not required to collect sales tax on sales made directly to the U.S. government, its agencies, and federal instrumentalities if the exemption can be verified by documenting the facts and circumstances of the transaction. PLEASE SEE THE ATTACHMENT FOR A DETAILED DESCRIPTION OF FEDERAL ACTIVITY INVOLVING THE USE OF CREDIT CARDS.

#### **V. SALES BY THE UNITED STATES GOVERNMENT OR ITS AGENCIES**

Under federal law (4 U.S.C. 107), state and local governments may not levy or collect any type of sales or use tax on transactions in which the U.S. government sells personal property to others. Therefore, federal agencies are not required to register as retail merchants with the department and will not have a Retail Merchants Certificate number to use on an exemption certificate (Form ST-105 or SSTGB Form F0003).

#### **VI. SALES TO FOREIGN GOVERNMENTS**

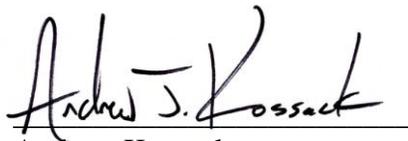
Foreign missions and diplomats of foreign countries are provided exemption from certain state and local sales taxes by international treaty provided their government grants such tax exemption to American Embassies and their personnel. The provisions of these treaties are administered by the Office of Foreign Missions.

Thus, for foreign missions, accredited members, and certain dependents, most purchases, leases, or rentals of tangible personal property; meals consumed in restaurants; and other normally

taxable goods or services (including accommodations for fewer than 30 days) are exempt from Indiana sales and other transaction-based taxes. However, exemptions from sales tax at the point of purchase do not apply to the purchases of motor vehicles, gasoline/diesel fuel, or utility services. Further, the fact that a foreign mission may ultimately reimburse an otherwise eligible individual who paid the tax does not exempt such a purchase from tax.

The Office of Foreign Missions issues a Tax Exemption Card to foreign officials entitled to sales and use tax exemption. An individual's name, photograph, and personal identification appear on the card. There are several different types of cards with minimum purchase amount requirements and other conditions for exemption. Each card provides an explanation of conditions on the reverse.

A vendor is not required to collect sales tax on sales made directly to the foreign mission, accredited members, and certain dependents if the exemption can be verified by documenting the facts and circumstances of the transaction. The person claiming such an exemption should provide a copy of the Tax Exemption Card issued by the United States (or, in the case of Taiwan, the American Institute in Taiwan) and a properly executed exemption certificate (ST-105).

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a horizontal line underneath the name.

Andrew Kossack  
Commissioner

## ATTACHMENT

*NOTE: The following information is taken from the General Services Administration's (GSA) SmartTax Vendor Guide and other resources on the GSA website at <https://smartpay.gsa.gov/> as well as Federation of Tax Administrators Bulletin B-07/02, dated Feb. 26, 2002.*

### **FEDERAL GOVERNMENT ISSUANCE OF CREDIT CARDS TO EMPLOYEES**

Several Indiana taxes are involved in the use of Federal credit/debit cards, including sales tax and other transaction-based taxes. Generally speaking, Indiana law applies appropriate taxes to purchases made by Federal employees **when the card is billed to the employee**. When a card is billed directly to the Federal government, any tax would be treated as being levied directly on the Federal government and therefore prohibited by the U.S. Constitution.

On November 30, 1999, the Federal government began a new credit card program. The Federal General Services Administration (GSA) entered into contracts with a variety of banks. Each Federal agency may choose among these options. The new program has been named GSA Smart Pay. *What is the GSA SmartPay Payments Program?*

It is the largest federal government payments program. Many government employees will use the GSA SmartPay **Purchase Card, Travel Card, Fleet Card, or Integrated Card** as a form of payment when making authorized purchases, on official government travel, or when using a government fleet vehicle.

*What are the Different Ways Federal Government Charge Cards Are Billed?*

- **Centrally Billed Account (CBA)** expenses are directly paid by the federal government and should not be charged state taxes.
- **Individually Billed Account (IBA)** expenses are paid by the federal cardholder and, depending on the state, may be eligible for state taxation.

All types of federal government charge cards include cards that are centrally billed, but only some SmartPay Travel Cards and Integrated Cards include cards that are individually billed.

*What is a GSA SmartPay Purchase Card?*

The GSA SmartPay Purchase Card is used by federal employees to purchase general supplies, goods and services.

*What is a GSA SmartPay Fleet Card?*

The GSA SmartPay Fleet Card is specifically designed for the purchase of fuel, maintenance services, and repair services of official government vehicles.

*What is a GSA SmartPay Travel Card?*

The GSA SmartPay Travel Card is used by federal employees for official government travel and travel-related costs, including airfare, lodging, meals, and so on.

*What is a GSA SmartPay Integrated Card?*

The GSA SmartPay Integrated Card is a specialized card designed to combine the functions of the Purchase, Travel, and Fleet Cards into one charge card.

NOTE: The SmartPay Travel Card can be used by any federal agency. The SmartPay Integrated (combined) card is in use only by the Department of Interior.

*Tax Status*

Federal employee credit card purchases that are billed to the employee (IBA) must be taxed. All SmartPay cards that are centrally billed (CBA) cannot be taxed.

*Determining Whether a Card is Individually or Centrally Billed*

To determine whether the travel or integrated card is a CBA (exempt) or an IBA (non-exempt), refer to the 6th digit of the account number on the card. Here is a table that can help:

<b>Prefix (1st four digits)</b>	<b>Sixth Digit</b>	<b>Platform</b>	<b>Issuing Bank</b>	<b>Billing Type</b>
4486 & 4614 & 4716	0, 6, 7, 8, 9	Visa	Citibank JP Morgan Chase US Bank	Centrally Billed
4486 & 4614	1, 2, 3, 4	Visa	Citibank JP Morgan Chase US Bank	Individually Billed
5565 & 5568	0, 6, 7, 8, 9	MasterCard	Citibank JP Morgan Chase US Bank	Centrally Billed
5565 & 5568	1, 2, 3, 4	MasterCard	Citibank JP Morgan Chase US Bank	Individually Billed

*Records to be Kept*

Sellers must keep proper documentation as follows:

- The vendor’s copy of the receipt must be kept when a US Government credit card is used.
- A signed copy of Form ST-105.



DEPARTMENT OF REVENUE  
INDIANA GOVERNMENT CENTER NORTH  
100 N. SENATE AVE

**INFORMATION BULLETIN #20**

**SALES TAX**

**OCTOBER 2015**

**Effective Date: October 1, 2015**

(Replaces Information Bulletin #20 dated October 2009)

**SUBJECT:** Auctions/Casual Sales/Consignment Sales

**REFERENCES:** IC 6-2.5-2-3; IC 6-2.5-4-12, IC 6-2.5-6-17, 45 IAC 2.2-4-33, 45 IAC 2.2-4-34, and 45 IAC 2.2-4-35

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**SUMMARY OF CHANGES**

Apart from technical, nonsubstantive changes, this bulletin has been changed to reflect and clarify changes in law applicable to auction companies or auctioneers related to motor vehicle sales when the vehicle is to be transported and titled/registered outside Indiana within thirty (30) days of purchase.

**I. GENERAL RULE FOR ALL AUCTIONS**

**AN AUCTION COMPANY OR AUCTIONEER MUST COLLECT SALES TAX unless the sale qualifies as a “casual” sale.** Sales at auction that meet **ALL** of the following conditions qualify as casual sales, and such sales are not subject to sales tax collection by the auction company or auctioneer, nor is use tax due by the purchaser:

- (a) The sale must be held on premises owned, leased, or provided by the owner of the tangible personal property being sold. The sale cannot be conducted at a site owned, leased, or provided by the auction company or auctioneer.
- (b) The tangible personal property must not have been purchased for resale nor consigned by a third party for sale.

Sales that meet both requirements are considered to be casual sales. Example: An auctioneer conducts an auction at the residence of the owner of numerous items of household goods. Because the auction/sale is conducted at the residence of the owner and the items were not purchased for resale, the sale qualifies as a “casual sale” and all items sold are exempt from sales tax and use tax.

**AUCTION COMPANIES AND AUCTIONEERS MUST COLLECT SALES TAX at all auctions where either of the following conditions exists:**

- (a) The auction/sale is held at premises owned, leased, or provided by the auction company or auctioneer.
- (b) The tangible personal property was purchased for resale by the owner or was consigned by a third party for sale.

In the event that certain tangible personal property being sold at a particular auction meets condition (b) but other property fails to meet condition (b), the auction company or auctioneer becomes a retail merchant and sales tax must be collected on the sale of all property meeting the provisions of condition (b).

Before conducting a taxable sale, a licensed auction company or auctioneer must obtain a Registered Retail Merchant Certificate (RRMC) from the Department of Revenue for sales tax purposes. A Business Tax Application, Form BT-1, is available on the department’s website and must be completed to obtain a business license.

**II. AUCTIONS OF VEHICLES, TRAILERS, WATERCRAFT, OR AIRCRAFT**

*Note: Guidelines for auctions of aircraft should be obtained by contacting the Aeronautics Section of the department because some forms and other requirements vary from those listed for vehicles, trailers, and watercraft.*

### **A. Vehicles, Trailers, Watercraft, and Aircraft Sold at Auction**

All sales of vehicles, trailers, watercraft, and aircraft by a licensed auction company or auctioneer are subject to the Indiana sales tax if such auction is conducted at a site owned, leased, or provided by the auction house or auctioneer. All sales are subject to the Indiana sales tax unless the buyer presents a valid, fully executed exemption form to the auction house or auctioneer. Forms acceptable as proof of exemption are the ST-105D (purchases by licensed dealers for resale) and the ST-108A (sales to nondealers). If the auction house or auctioneer is registered as a dealer with the Secretary of State and is selling in the capacity as a dealer, the ST-108 and ST-108E must be used when the auction house or auctioneer is selling its own vehicles titled in the auction company's or auctioneer's name. ST-108A is to be used when selling vehicles not owned by the auction company or auctioneer and not titled in the auction's name.

If an auction house or auctioneer is selling motor vehicles and the purchaser will transport the vehicle within thirty (30) days after delivery and the purchaser will title or register the vehicle for use outside Indiana, the purchaser and auction house or auctioneer must complete form ST-108NR in order to charge the sales or use tax rate at the sales or use tax rate for the destination state or country. See Sales Tax Information Bulletin #84 for further discussion. **The responsibility to collect, report, and remit the sales tax to the department is that of the auction house or auctioneer for sales at an auction site owned, leased, or provided by the auction company or auctioneer or a third party. Any sales tax charged on Indiana sales is to be remitted to the department, even if the rate charged is determined by another state's sales tax rate.**

### **B. Auction House or Auctioneer Responsibilities for Vehicle, Trailers, Aircraft, or Watercraft Auctions**

1. Register as a Registered Retail Merchant with the department.
2. Collect sales tax on all vehicles, trailers, watercraft, and aircraft sold at auction unless the buyer issues a fully executed exemption certificate to the auction house or auctioneer.
3. File ST-103 or ST-103CAR if motor vehicles are sold at auction, file sales tax returns in the auction house's or auctioneer's legal entity name, and remit the sales tax collected under the Indiana taxpayer identification number (TID).
4. Auction companies or auctioneers acting in the capacity of a Secretary of State-registered "dealer", selling their own inventory, shall provide the buyer with an ST-108 or ST-108E form evidencing the collection or exemption of sales tax by the auction house or auctioneer for all sales. Forms acceptable as proof of exemption are the ST-105D (dealer and/or auction sales to dealers for resale) and the ST-108E (for sales to nondealers). Auction companies or auctioneers must keep a fully executed copy of the completed exemption form on file to document the reason for noncollection of the sales tax.

5. Auction companies or auctioneers not registered with the Secretary of State as a dealer shall provide the buyer with documentation of the sales transaction (sales invoice, purchase agreement, etc.) showing the total purchase price (including any buyer premium paid) and the amount of sales tax collected. Form ST-108A is available for auction company or auctioneer use to provide customers with evidence of sales tax paid on the purchase of a vehicle, a trailer, a watercraft, or an aircraft not owned by the auction house or auctioneer.
6. Auction companies or auctioneers shall provide a copy of the sales transaction to the consignor/dealer for all sales sold at auction.
7. If the purchaser will transport the vehicle within thirty (30) days after delivery and the purchaser will title or register the vehicle for use outside Indiana, the purchaser and auction house or auctioneer must complete form ST-108NR in order to charge the sales or use tax rate for the destination state or country.

**C. Dealer Versus Auction Company or Auctioneer Responsibilities Selling at Auction**

1. The selling dealer is not responsible for the collection and remittance of sales tax for a vehicle, a trailer, a watercraft, or an aircraft sold at an auction site owned, leased, or provided by the auction company, the auctioneer, or a third party. This responsibility is upon the auction company or auctioneer.
2. The selling dealer shall maintain a copy of the sales transaction, provided by the auction company or auctioneer, as documentation that such vehicle, trailer, watercraft, or aircraft was sold at auction.

**D. Dealer and Nondealer Purchaser Responsibilities**

1. A dealer who purchases a vehicle, a trailer, a watercraft, or an aircraft for the dealer's own personal use may not claim an exemption.
2. Dealers who purchase for resale must either complete Form ST-105D (dealer/auction company or auctioneer sales to a dealer) or issue a Form ST-108E. Form ST-105D may be used as either a single purchase or blanket purchase exemption certificate. ST-108E is a single purchase form for nondealer purchases. Auction companies or auctioneers shall collect the sales tax for all sales at auction for which the purchaser has not provided a fully executed exemption certificate.
3. An auction company or auctioneer licensed as a dealer with the Secretary of State and acting as a dealer shall issue to a nondealer purchaser an ST-108 or ST-108E. The ST-108 shall serve as documentation of Indiana sales tax paid for the purchase. The ST-108E is completed if the purchaser claims an exemption from the sales tax. Auction companies or auctioneers not registered with the Secretary of State shall provide the buyer with documentation of the sales transaction (sales invoice, purchase agreement, etc.) showing the total purchase price and the amount of sales tax collected. Form ST-108A is available for use by an auction company or auctioneer not registered with the Secretary of State to document tax collected or an

exemption, if claimed by the purchaser.

4. If the purchaser will transport the vehicle within thirty (30) days after delivery and the purchaser will title or register the vehicle for use outside Indiana (other than an exempt purpose stated above), the purchaser and auction house or auctioneer must use form ST-108NR in order to charge the sales or use tax rate for the destination state or country. The auction company or auctioneer must retain a copy of each completed ST-108NR.

**Effective July 1, 2004, ALL SALES of motor vehicles, watercraft, and trailers purchased in Indiana are subject to Indiana sales tax. This includes sales where the purchaser intends to immediately register, license, or title for use in another state. However, for purchases on or after July 1, 2014, the purchase may be subject to the destination state's tax rate pursuant to IC 6-2.5-2-3.**

**Nonresident purchasers of cargo trailers and recreational vehicles (RVs) may qualify for exemption for purchases after June 30, 2006, if the purchaser is a resident of a reciprocal state and will register/title in the purchaser's home state of residence. See sales tax exemption form ST-137RV on the department's website.**

### **III. MISCELLANEOUS INFORMATION FOR AUCTION COMPANIES OR AUCTIONEERS**

**A. Exemptions Claimed by Purchasers** – Auction companies or auctioneers must receive signed exemption certificates from all purchasers claiming an exemption from the Indiana sales/use tax. Various exemption forms are available:

**ST-105** – General exemption certificate that contains exemptions available to purchasers for all items except vehicles or watercraft.

**ST-105D** – Used by vehicle or watercraft dealers who are purchasing for the purpose of resale only.

**ST-108A** – Used by purchasers claiming an exemption on the purchase of a vehicle or watercraft for exempt purposes other than for the resale exemption.

**B. Farm Equipment** consignment auctions are not entitled to automatic exemptions from the sales/use tax. Various pieces of equipment used by farmers are subject to sales tax because the equipment is not used directly in the direct production of foods or commodities for sale. Example: Lawnmowers, bushhogs, post hole diggers, bobcats, gators, and all-terrain vehicles (ATVs) are all items commonly used on farms but are not generally used directly in direct production; thus they are taxable. Auction companies or auctioneers must obtain a signed exemption certificate from any purchaser claiming an exemption. Sales tax must be collected in the absence of acceptance of an exemption certificate issued by the purchaser.

**C. Fairground and Other Third-party Sites** where auctions are conducted may fall under the “casual” sale rules. If the auction site is rented, leased, or provided by the auction company or auctioneer, where the auction company or auctioneer is ultimately responsible and liable for the auction site, all sales will be subject to the collection of sales tax by the auction company or auctioneer.

**D. Charity Auctions** conducted by an auction company or auctioneer are exempt if the charitable organization is conducting the auction for a fundraising activity to benefit the charitable purpose for which the nonprofit organization was established. The nonprofit organization must provide an exemption certificate to the auction company or auctioneer.

**E. Buyer’s Premiums** added to the winning bid price become part of the gross retail income subject to sales tax. A **seller’s premium** is not taxable.

**IV. GARAGE SALES, RUMMAGE SALES, or SIMILAR TYPE SALES (nonauction sales)**

A garage sale, rummage sale, or similar sale that meets all the following conditions is a casual sale and therefore the items sold are not subject to sales tax, or use tax:

1. The sale must be at the residence of the owner of the tangible personal property;
2. The sale must be conducted by the owner or the immediate family of the owner of the property being sold;
3. The tangible personal property must not have been acquired by the owner for the purpose of resale;
4. All sales or use tax due on the original acquisition of the property must have been paid by the owner; and
5. The sales must be held on an infrequent basis.

In the event that certain tangible personal property being sold at a particular sale meets the above conditions but other property fails to meet such conditions, **the seller becomes a retail merchant and sales tax must be collected on the sale of all property failing to meet the conditions. Form BT-1 must be completed to register for sales tax. This form is available on the Department’s website ([www.in.gov/dor](http://www.in.gov/dor)).**

Example: An individual attends numerous garage sales throughout the year and purchases items to be resold in the individual’s own garage sales, which are held monthly. This person has violated conditions of the “casual sale” exemption rules 3, 4, and 5 shown above and thus must register as a retail merchant and collect sales tax when he/she conducts his/her own garage sales.

If a taxable sale is conducted by the owner of the property, the owner must register as a retail merchant and must collect and remit the sales tax.

The sale of consigned tangible personal property is a retail sale, and the consignee must register as a retail merchant and must collect and remit sales tax based on the gross retail income of the consignment sale.

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a horizontal line underneath the name.

Andrew Kossack  
Commissioner



DEPARTMENT OF REVENUE

INDIANA GOVERNMENT CENTER NORTH  
100 N. SENATE AVE

**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).

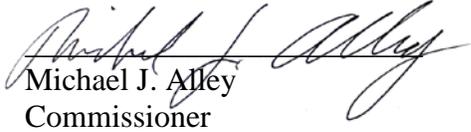
Individuals engaged in public transportation but operating under another person’s United States Department of Transportation (USDOT) or Indiana ID number or similar permit must use Form ST-105 when making an exempt purchase.

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