

## **INFORMATION BULLETIN #4**

### **SALES TAX**

**SEPTEMBER 2011**

**(Replaces Bulletin #4 dated August 2011)**

**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 inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

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

**EFFECTIVE DATE:** Upon Publication

**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

### **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 another 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, and even if the employee is to be reimbursed by the governmental entity, the purchase is not exempt and the employee must pay sales tax at the time of purchase.

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 when making exempt purchases.

### **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. 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 (which is organized as a federal instrumentality under an Act of Congress) 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 federal credit union check 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).

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

ATTACHMENT

*NOTE: The following information is taken from the Federation of Tax Administrators Bulletin B-07/02, dated Feb. 26, 2002. This attachment has been revised and updated for the purposes of Indiana Information Bulletin #4.*

---

Federation of Tax Administrators, 444 North Capitol St., NW, Washington, D.C. 20001

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

**SUMMARY**

The Federal government has issued new credit cards for its employee purchases. The majority of the new cards are direct-billed to the Federal government and thus represent tax-exempt purchases for State purposes. However, there are both a SmartPay Travel card and a SmartPay Integrated (Combined) Card that are billed to the employee (for later reimbursement). These transactions are taxable in Indiana. The only way to distinguish the direct billed/tax-exempt cards from the employee-billed/taxable cards is to look at the sixth digit of the card. Digits 1, 2, 3 and 4 represent taxable transactions.

**Background.** Before 1998, the Federal government issued credit cards to employees to purchase various goods and services, including office supplies, fuel, transportation, accommodations, and food. Three primary cards were used: a Visa I.M.P.A.C. card, a Discover card, and an American Express card. (A fleet card named Wright Express was also used.) **NONE OF THESE CARDS IS IN USE ANY LONGER.**

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.

**New Cards.** 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. The contracts extend through November 29, 2003, and there are five one-year options to renew.

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. Generally, purchases using SmartPay Cards are directly billed to the U.S. government and are not taxed.

The **exceptions** are:

Federal employee credit card purchases that are billed to the employee and thus may be taxed will:

- Use a SmartPay Travel card which says “For Official Government Travel Only” **and** start with 4486, 4716, or 5568 and have a sixth digit that is either 1, 2, 3, or 4; or
- Use a SmartPay Integrated (Combined) card which says “For Official Government Use Only: **and** has an account number that begins with 5568-16 from the Department of the Interior, **and** the traveler does not carry an I.D. from the Bureau of Reclamation, **and** the purchase is for lodging or food.

All SmartPay cards with other numbers are centrally billed and cannot be taxed.

For more information related to the SmartPay cards, please refer to the General Services Administration website at: <https://smartpay.gsa.gov/>