



INDIANA DEPARTMENT OF REVENUE

Indiana Government Center
100 N. Senate Ave
Indianapolis, IN 46204-2253

INFORMATION BULLETIN #102
GENERAL TAX
DECEMBER 2019
(Replaces Commissioner's Directive #4 dated July 2005)
Effective Date: Upon Publication

SUBJECT: Collection of Tax from Transient Merchants

REFERENCES: IC 6-2.5-2; IC 6-2.5-8; IC 6-3-2; IC 6-3-4; IC 6-3-5; IC 6-8.1-5; IC 6-8.1-8; IC 6-8.1-9; IC 25-37-1

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SUMMARY OF CHANGES

Aside from technical, nonsubstantive changes, this bulletin effectively provides the same information as it had before when it was published under the title Commissioner's Directive #4, with an additional note regarding a transient merchant's possible requirement to collect other tax types.

I. INTRODUCTION

The purpose of this bulletin is to outline the department's position on the collection of sales tax and adjusted gross income tax from transient merchants.

II. APPLICABILITY

A. Sales Tax

Under IC 6-2.5-2-2, the sales tax is imposed on a retail merchant's transactions which constitute selling at retail. The tax also applies to transient merchants, defined in IC 25-37-1 as one who engages in temporary business in Indiana. Before selling at retail in

Indiana, a merchant is required to obtain a Registered Retail Merchant Certificate (RRMC) under IC 6-2.5-8 from the department. A merchant should use INBiz, which is Indiana's online registration portal, or obtain a Business Tax Application (BT-1) from any of the following locations: the department's website, www.in.gov/dor; the department's Tax order line: (317) 615-2581; or a district office.

It is important to note that an RRMC is not the same as a Transient Merchant License and does not grant the same authority. A Transient Merchant License must also be obtained from the county auditor of the county in which the merchant intends to do business (IC 25-37-1-4), if the county so requires. As of the issuance date of this bulletin, Parke County was the only county with such a requirement.

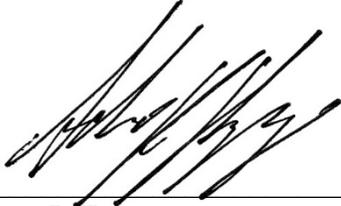
Retail merchants making retail transactions without having a Retail Merchant Certificate (or one that has been revoked or suspended by the department) are subject to imprisonment and a fine (Class A misdemeanor). Failure to remit any taxes collected by any retail merchant to the department or a department representative upon demand may, also, subject the merchant to a longer prison term and a higher fine (Level 6 felony). These criminal penalties are in addition to civil sanctions prescribed by IC 6-8.1-8. In particular, if a retail merchant fails to remit the tax collected, a notice of tax due will be issued, based on the best information available. Failure to pay the tax due could result in a levy against the merchant's property.

NOTE: There are many other transactional taxes that a transient merchant may be required to collect. For instance, the sale of prepared food may be subject to a food and beverage tax if sold in a county or municipality with such a tax. A merchant can register for other tax types using the BT-1 as well.

B. Individual Income Tax

Under IC 6-3-2-1, a tax is imposed on a nonresident's adjusted gross income derived from sources within Indiana. While IC 6-3-5-1 provides that nonresidents from states having reciprocal agreements with Indiana are not subject to Indiana adjusted gross income tax, such reciprocal agreements only apply to salaries, wages, tips, and commissions. Therefore, reciprocity is not applicable to proceeds from a transient merchant's sales.

Under IC 6-3-4-4.1, a taxpayer is required to make a declaration of estimated tax if the taxpayer expects to owe \$1,000 or more in income tax. IC 6-8.1-5-3 allows the department to make an immediate assessment of tax, interest, and penalties if it is determined that a taxpayer intends to: depart the state, remove his property, conceal his person or property, or to do anything to jeopardize, prejudice, or render ineffective, proceedings to collect the tax. If the tax is not paid upon demand, a warrant will be issued. Refusal to pay the warrant can result in a levy against the taxpayer's property.

A handwritten signature in black ink, appearing to read 'Adam J. Krupp', written over a horizontal line.

Adam J. Krupp
Commissioner