October 15, 2009

Scott Peterson  
Executive Director  
Streamlined Sales Tax Governing Board  
4205 Hillsboro Pike #305  
Nashville, TN 37215

RE: CRIC Review for Indiana

Dear Scott:

The Indiana Department of Revenue submitted the Certificate of Compliance and Taxability Matrix to the Streamlined Sales Tax Governing Board on August 5, 2009. On September 3, 2009 the Department received the CRIC review for Indiana. The Department responded to the comments on September 4, 2009.

The Preliminary Report on 2009 Annual Recertification prepared by Scott Peterson and Pam Cook cited six areas of potential noncompliance with the Streamlined Sales Tax Agreement. Draft legislation has been prepared to correct the issues that were cited (see attached). All deficiencies cited in the Report with the exception of the provision concerning digital code are being administered as though the draft legislation is in effect.

If you need additional information, please do not hesitate to contact Joe VanDevender, Deputy Commissioner, Indiana Department of Revenue.

Sincerely,

John Eckart  
Commissioner

"Equal Opportunity Employer"
Streamlined Sales Tax Changes

IC 6-2.5-1-5
"Gross retail income"

Sec. 5. (a) Except as provided in subsection (b), "gross retail income" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

(1) the seller's cost of the property sold;
(2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
(3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
(4) delivery charges; or
(5) consideration received by the seller from a third party if:
   (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
   (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
   (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
   (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

(1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
(2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
(3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
(6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(7) telecommunications nonrecurring charges.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing.

IC 6-2.5-1-27.2 “Telecommunication nonrecurring services” means an amount billed for installation, connection, change or initiation of telecommunications service received by the customer.

IC 6-2.5-2-2
Sec. 2. (a) The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at the following rates:

- **STATE GROSS RETAIL INCOME**
- **GROSS FROM THE**
- **RETAIL RETAIL UNITARY**
- **TAX TRANSACTION**
- **$ 0 less than $0.08**
- **$ 0.01 at least $ 0.08 but less than $0.21**
- **$ 0.02 at least $ 0.21 but less than $0.36**
- **$ 0.03 at least $ 0.36 but less than $0.51**
- **$ 0.04 at least $ 0.51 but less than $0.64**
- **$ 0.05 at least $ 0.64 but less than $0.79**
- **$ 0.06 at least $ 0.79 but less than $0.93**
- **$ 0.07 at least $ 0.93 but less than $1.07**

On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar and seven cents ($1.07) or more, the state gross retail tax is seven percent (7%) of that gross retail income.

(b) If the tax computed under subsection (a) carried to the third decimal place results in a fraction of one-half cent ($0.005) or more, the third decimal place being greater than four (4), the amount of the tax shall be rounded to the next additional cent.

IC 6-2.5-4-16.4
Specified digital products

Sec. 16.4. (a) As used in this section, "end user" does not include a person who receives by contract a product transferred electronically for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person or persons.

(b) A person is a retail merchant making a retail transaction when the person:

1. electronically transfers specified digital products to an end user; and
2. grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser.

(c) The sale of a digital code that may be utilized to obtain a product transferred electronically shall be taxed in the same manner as the product transferred.
electronically. A digital code is a code that permits a purchaser to obtain at a later date a product transferred electronically.

IC 6-2.5-5-18
Medical equipment, supplies, and devices
Sec. 18. (a) Sales of durable medical equipment, mobility enhancing equipment, prosthetic devices, artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.
(b) Rentals of durable medical equipment, mobility enhancing equipment, and other medical supplies and devices are exempt from the state gross retail tax, if the rentals are prescribed by a person licensed to issue the prescription.
(c) Sales of hearing aids are exempt from the state gross retail tax if the hearing aids are fitted or dispensed by a person licensed or registered for that purpose. In addition, sales of hearing aid parts, attachments, or accessories are exempt from the state gross retail tax. For purposes of this subsection, a hearing aid is a device which is worn on the body and which is designed to aid, improve, or correct defective human hearing.
(d) Sales of colostomy bags, ileostomy bags, and the medical equipment, supplies, and devices used in conjunction with those bags are exempt from the state gross retail tax.
(e) Sales of equipment and devices used to administer insulin are exempt from the state gross retail tax.
(f) Sales of equipment and devices used to monitor blood glucose level, including blood glucose meters and measuring strips, lancets, and other similar diabetic supplies, are exempt from the state gross retail tax, regardless of whether the equipment and devices are prescribed.

IC 6-2.5-5-20
"Food and food ingredients for human consumption"
Sec. 20. (a) Sales of food and food ingredients for human consumption are exempt from the state gross retail tax.
(b) For purposes of this section, the term "food and food ingredients for human consumption" includes the following items if sold without eating utensils provided by the seller:
(1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
(2) Food sold in an unheated state by weight or volume as a single item.
(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not include:
(1) candy;
(2) alcoholic beverages;
(3) soft drinks;
(4) food sold through a vending machine;
(5) food sold in a heated state or heated by the seller;
(6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses);

(7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); or

(8) tobacco; or

(9) dietary supplements.

IC 6-2.5-11-10 Version b
Certified services providers; allowances for sellers and certified service providers under the agreement; relief for failure to collect tax

Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

(d) A certified service provider or a seller using a certified automated system that obtains a certification or taxability matrix from the department is not liable for sales or use tax collection errors that result from reliance on the department's certification or taxability matrix. If the department determines that an item or transaction is incorrectly classified as to the taxability of the item or transaction, the department shall notify the certified service provider or the seller using a certified automated system of the incorrect classification. The certified service provider or the seller using a certified automated system must revise the incorrect classification within ten (10) days after receiving notice of the determination from the department. If the classification error is not corrected within ten (10) days after receiving the department's notice, the certified service provider
or the seller using a certified automated system is liable for failure to collect the correct amount of sales or use tax due and owing.

(e) If at least thirty (30) days are not provided between the enactment of a statute changing the rate set forth in IC 6-2.5-2-2 and the effective date of the rate change, the department shall relieve the seller of liability for failing to collect tax at the new rate if:

(1) the seller collected the tax at the immediately preceding effective rate; and
(2) the seller's failure to collect at the current rate does not extend beyond thirty (30) days after the effective date of the rate change.

A seller is not eligible for the relief provided for in this subsection if the seller fraudulently fails to collect at the current rate or solicits purchases based on the immediately preceding effective rate.

(f) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.