

COMMISSIONER'S DIRECTIVE #4

Revised July 2005

(replaces Directive #4 dated November 2000)

DISCLAIMER: Commissioner's Directives 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.

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

Introduction: The purpose of this directive is to outline the Department's position on the collection of sales tax and adjusted gross income tax from transient merchants.

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 under IC 6-2.5-8 from the Department. A Retail Merchant Certificate application (BT-1) can be obtained either from the Department's website, www.in.gov/dor, from the Department's Tax order line: (317) 615-2581, or a district office.

A Retail Merchant Certificate, however, is not related to a Transient Merchant License. A Transient Merchant License must 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 Commissioner's Directive, Parke County was the only county with such a requirement.

Retail merchants who have no certificate (or an invalid one) are subject to imprisonment and a fine (Class B 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 (Class D 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.

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 \$400 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 any thing 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.



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Commissioner