



January 31, 2020

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## SENATE BILL No. 320

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DIGEST OF SB 320 (Updated January 28, 2020 3:39 pm - DI 120)

**Citations Affected:** IC 6-3.

**Synopsis:** Withholding tax remittance. Provides that the department of state revenue (department) shall only accept payment of employer withholding taxes that are made or withdrawn directly from the business account of the employer that is liable for withholding and remitting the tax. However, provides an exception from the requirement for large employers that submit a waiver to the department. Prohibits the department from accepting payment of employer withholding taxes that are made or withdrawn from the account of a third party withholding agent, or otherwise remitted by a third party withholding agent, on behalf of an employer, except in the case of a large employer that has submitted a waiver. Defines "third party withholding agent" and "large employer". Requires each employer that is required to remit withholding taxes to provide to the  
(Continued next page)

**Effective:** Upon passage.

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**Rogers, Holdman, Buchanan, Buck,  
Charbonneau, Niezgodski, Bohacek,  
Ford J.D., Tomes, Doriot, Stoops,  
Gaskill**

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January 13, 2020, read first time and referred to Committee on Tax and Fiscal Policy.  
January 30, 2020, amended, reported favorably — Do Pass.

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SB 320—LS 6762/DI 120



Digest Continued

department an authorization for reoccurring payment of taxes from the employer's business account that is designated by the employer on the department's online INtax system (INtax). Requires the department to automatically withdraw from the employer's business account the amount of tax withholdings that are reported as due and owing on the taxpayer's Form WH-1 report. Requires the department to provide periodic notice to each employer through INtax of: (1) the date on which the employer's Form WH-1 report is received by the department; and (2) the date on which the department has automatically withdrawn any amount of tax from the employer's business account.



January 31, 2020

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

## SENATE BILL No. 320

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-3-4-8.1, AS AMENDED BY P.L.137-2012,  
2 SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 8.1. (a) Any entity that is required to file a  
4 monthly return and make a monthly remittance of taxes under sections  
5 8, 12, 13, and 15 of this chapter shall file those returns and make those  
6 remittances twenty (20) days (rather than thirty (30) days) after the end  
7 of each month for which those returns and remittances are filed, if that  
8 entity's average monthly remittance for the immediately preceding  
9 calendar year exceeds one thousand dollars (\$1,000).  
10 (b) The department may require any entity to make the entity's  
11 monthly remittance and file the entity's monthly return twenty (20) days  
12 (rather than thirty (30) days) after the end of each month for which a  
13 return and payment are made if the department estimates that the  
14 entity's average monthly payment for the current calendar year will  
15 exceed one thousand dollars (\$1,000).  
16 (c) If the department determines that a withholding agent is not  
17 withholding, reporting, or remitting an amount of tax in accordance

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1 with this chapter, the department may require the withholding agent:

- 2 (1) to make periodic deposits during the reporting period; and  
 3 (2) to file an informational return with each periodic deposit.

4 (d) If the department determines that an entity's:

- 5 (1) estimated monthly withholding tax remittance for the current  
 6 year; or  
 7 (2) average monthly withholding tax remittance for the preceding  
 8 year;

9 exceeds five thousand dollars (\$5,000), the entity shall remit the  
 10 monthly withholding taxes due by electronic fund transfer (as defined  
 11 in IC 4-8.1-2-7) or by delivering in person or by overnight courier a  
 12 payment by cashier's check, certified check, or money order to the  
 13 department. The transfer or payment shall be made on or before the  
 14 date the remittance is due.

15 (e) An entity that withholds taxes shall file the withholding tax  
 16 report and remit withholding taxes electronically through the  
 17 department's online tax filing program.

18 (f) **Except as provided in section 8.7 of this chapter, the**  
 19 **following apply to employer withholding taxes under section 8 of**  
 20 **this chapter:**

21 **(1) Each employer that is required to withhold and remit**  
 22 **taxes under section 8 of this chapter shall submit to the**  
 23 **department an authorization of reoccurring payment of taxes**  
 24 **to be made from the employer's business account that is**  
 25 **designated by the employer for purposes of the department's**  
 26 **online tax filing program. The authorization must provide for**  
 27 **automatic withdrawal from the employer's business account**  
 28 **on the later of the following dates:**

29 **(A) The date on which the employer's withholding taxes**  
 30 **are due.**

31 **(B) The date on which the department receives the**  
 32 **employer's Form WH-1 monthly withholding tax report.**

33 **The department shall prescribe a standard authorization**  
 34 **form to be used for purposes of this subdivision, including a**  
 35 **request for the employer's designated contact person's name**  
 36 **and electronic mail address.**

37 **(2) The authorization described in subdivision (1) must be**  
 38 **submitted to the department:**

39 **(A) not later than December 1, 2021, in the case of**  
 40 **employers that are registered in the department's online**  
 41 **tax filing program before that date; or**

42 **(B) upon initial registration of an employer in the**



- 1 department's online tax filing program on or after  
 2 December 1, 2021.
- 3 **(3) Before October 1, 2021, the department shall provide a**  
 4 **written notice to each employer that is registered in the**  
 5 **department's online tax filing program informing the**  
 6 **employer of its duty to submit to the department the**  
 7 **authorization described in subdivision (1). The notice shall**  
 8 **include substantially the following:**
- 9 **(A) A reference to the employer's duty to submit the**  
 10 **authorization as set forth in subdivision (1) and the due**  
 11 **date for the submission under subdivision (2)(A).**
- 12 **(B) An explanation of how the employer may submit the**  
 13 **required authorization to the department.**
- 14 **(C) A statement that the authorization will be used by the**  
 15 **department to automatically withdraw from the**  
 16 **employer's business account on a reoccurring basis**  
 17 **employer withholding taxes on the later of the following**  
 18 **dates:**
- 19 **(i) The date on which the employer's withholding taxes**  
 20 **are due.**
- 21 **(ii) The date on which the department receives the**  
 22 **employer's Form WH-1 monthly withholding tax report.**
- 23 **(D) A statement that the department will make automatic**  
 24 **withdrawals for payment of employer withholding taxes**  
 25 **under the authorization beginning after December 31,**  
 26 **2021, and not before.**
- 27 **(4) Beginning after December 31, 2020, the department shall**  
 28 **automatically withdraw from an employer's designated**  
 29 **business account only the amount of tax withholdings under**  
 30 **section 8 of this chapter that are reported as due and owing**  
 31 **on the taxpayer's Form WH-1 withholding tax report as**  
 32 **authorized in this subsection. The tax withholdings withdrawn**  
 33 **by the department from an employer's business account are**  
 34 **for the purpose of compliance with this chapter.**
- 35 **(5) Beginning after December 31, 2021, the department shall**  
 36 **notify each employer described in subdivision (1) of the**  
 37 **following by electronic transmission via the department's**  
 38 **online tax filing program:**
- 39 **(A) The date on which the employer's Form WH-1**  
 40 **withholding tax report is received by the department. This**  
 41 **notice must be transmitted to the employer not less than**  
 42 **one (1) day after the date on which the employer's Form**



1           WH-1 is received by the department.

2           **(B) The date on which the department has automatically**  
 3           **withdrawn any amount of tax from the employer's**  
 4           **business account under this subsection. This notice must be**  
 5           **transmitted to the employer not less than one (1) day after**  
 6           **the date on which the withdrawal is made by the**  
 7           **department.**

8           **This subsection does not apply to a employer that files a paper**  
 9           **Form WH-1 monthly withholding tax report.**

10           SECTION 2. IC 6-3-4-8.6 IS ADDED TO THE INDIANA CODE  
 11           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 12           UPON PASSAGE]: **Sec. 8.6. (a) For purposes of this section, "third**  
 13           **party withholding agent" refers to a third party service provider**  
 14           **that is authorized to prepare and file returns or take other similar**  
 15           **reporting and compliance actions on behalf of a business client**  
 16           **with regard to that client's tax withholding and remittance duties**  
 17           **under section 8 of this chapter. The term includes a payroll service**  
 18           **provider, an accounting firm or tax preparer, and a reporting**  
 19           **agent as described in IRS Rev. Proc. 2012–32, 2012–35 I.R.B 1. The**  
 20           **term does not include a certified professional employer**  
 21           **organization as defined in Section 7705(a) of the Internal Revenue**  
 22           **Code.**

23           **(b) The following apply beginning after December 31, 2021:**

24           **(1) Except as provided in section 8.7 of this chapter, the**  
 25           **department shall only accept or withdraw deposits or**  
 26           **payments of withholding taxes under section 8 of this chapter**  
 27           **that are made or withdrawn directly from the business**  
 28           **account of the employer that is liable for withholding and**  
 29           **remitting the tax. For purposes of this subdivision, the**  
 30           **employer's business account shall be the account designated**  
 31           **as such by the employer for purposes of the department's**  
 32           **online tax filing program.**

33           **(2) Except as provided in section 8.7 of this chapter, the**  
 34           **department shall not accept and process submissions of**  
 35           **deposits or payments of any withholding taxes under section**  
 36           **8 of this chapter that are made or withdrawn from the**  
 37           **account of a third party withholding agent, or otherwise**  
 38           **remitted by the third party withholding agent to the**  
 39           **department, on behalf of an employer.**

40           **(c) Before October 15, 2021, the department shall provide a**  
 41           **written notice to each third party withholding agent that is**  
 42           **authorized to deposit or pay withholding taxes under section 8 of**



1 this chapter on behalf of a business client and each employer that  
 2 is required to withhold and remit taxes under section 8 of this  
 3 chapter of substantially the following:

4 (1) Except as provided in section 8.7 of this chapter, the  
 5 authority of a third party withholding agent to deposit or pay  
 6 withholding taxes under section 8 of this chapter to the  
 7 department on behalf of its business clients expires on  
 8 December 31, 2021.

9 (2) Except as provided in section 8.7 of this chapter, the  
 10 department will not accept and process submissions of  
 11 deposits or payments of any withholding taxes under section  
 12 8 of this chapter that are made or withdrawn from the  
 13 account of the third party withholding agent, or otherwise  
 14 remitted by the third party withholding agent to the  
 15 department, on behalf of an employer after December 31,  
 16 2021.

17 (3) The scope of the third party withholding agent's authority  
 18 to process payroll, prepare and file returns (including Form  
 19 WH-1 and Form WH-3) with the department, or take other  
 20 reporting and compliance actions or other contracted services  
 21 not otherwise described in subdivision (1), with regard to  
 22 withholding taxes under section 8 of this chapter on behalf of  
 23 the withholding agent's business clients are not affected by the  
 24 expiration of the withholding agent's authority to deposit or  
 25 pay withholding taxes to the department on behalf of its  
 26 business clients under subdivision (1).

27 (4) The third party withholding agent that receives  
 28 notification from the department is required to notify its  
 29 business clients of the contents of the notification.

30 (d) Except for large employers that have provided the  
 31 department with a waiver as provided in section 8.7 of this chapter,  
 32 a registration application of a third party withholding agent  
 33 (including an online registration) received after December 31,  
 34 2021, that would authorize the third party withholding agent to  
 35 deposit or pay withholding taxes under section 8 of this chapter on  
 36 behalf of another taxpayer shall not be accepted and processed by  
 37 the department.

38 SECTION 3. IC 6-3-4-8.7 IS ADDED TO THE INDIANA CODE  
 39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
 40 UPON PASSAGE]: Sec. 8.7. (a) As used in this section, "large  
 41 employer" means:

42 (1) an employer that is a semi-weekly depositor as defined by



1           **26 CFR 31.6302-1; or**

2           **(2) an employer that has an Indiana location and at least one**

3           **(1) location outside of Indiana.**

4           **(b) Notwithstanding section 8.6 of this chapter, a large employer**  
5           **may use a third party withholding agent to submit the large**  
6           **employer's withholding tax under section 8 of this chapter on**  
7           **behalf of a large employer if the large employer submits a waiver**  
8           **to the department. The waiver must be on a form prescribed by the**  
9           **department. The large employer must state as part of the waiver**  
10           **that, if the third party withholding agent fails to remit withholding**  
11           **taxes that are due, the large employer is responsible and liable for**  
12           **the taxes and, if applicable, penalties and interest. A large**  
13           **employer's use of a third party withholding agent does not relieve**  
14           **the large employer of its duty to ensure that all withholding taxes**  
15           **due are properly remitted to the department.**

16           **(c) For a large employer under subsection (a)(1), the remittance**  
17           **schedule for the third party withholding agent to the department**  
18           **is as follows:**

19           **(1) For the employees of a large employer paid on either**  
20           **Wednesday, Thursday, or Friday, the withholding taxes**  
21           **collected must be remitted to the department not later than**  
22           **the following Wednesday.**

23           **(2) For the employees of a large employer paid on either**  
24           **Saturday, Sunday, Monday, or Tuesday, the withholding taxes**  
25           **collected must be remitted to the department not later than**  
26           **the following Friday.**

27           **(d) The department may establish procedures, prepare forms,**  
28           **and adopt rules and regulations necessary for the administration**  
29           **of this section.**

30           **SECTION 4. An emergency is declared for this act.**





## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 320, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 18, delete "The" and insert **"Except as provided in section 8.7 of this chapter, the"**.

Page 2, line 33, delete "." and insert **", including a request for the employer's designated contact person's name and electronic mail address."**

Page 2, line 36, delete "2020," and insert **"2021,"**.

Page 2, line 41, delete "2020." and insert **"2021."**

Page 2, line 42, delete "2020," and insert **"2021,"**.

Page 3, line 23, delete "2020," and insert **"2021,"**.

Page 3, delete lines 24 through 28, begin a new line block indented and insert:

**"(4) Beginning after December 31, 2020, the department shall automatically withdraw from an employer's designated business account only the amount of tax withholdings under section 8 of this chapter that are reported as due and owing on the taxpayer's Form WH-1 withholding tax report as authorized in this subsection. The tax withholdings withdrawn by the department from an employer's business account are for the purpose of compliance with this chapter."**

Page 3, line 29, delete "2020," and insert **"2021,"**.

Page 4, line 13, after "IRS Rev. Proc. 2012–32, 2012–35 I.R.B 1." insert **"The term does not include a certified professional employer organization as defined in Section 7705(a) of the Internal Revenue Code."**

Page 4, line 14, delete "2020:" and insert **"2021:"**.

Page 4, line 15, delete "The" and insert **"Except as provided in section 8.7 of this chapter, the"**.

Page 4, line 23, delete "The" and insert **"Except as provided in section 8.7 of this chapter, the"**.

Page 4, line 29, delete "September 1, 2020," and insert **"October 15, 2021,"**.

Page 4, line 35, delete "The" and insert **"Except as provided in section 8.7 of this chapter, the"**.

Page 4, line 38, delete "2020." and insert **"2021."**

Page 4, line 39, delete "The" and insert **"Except as provided in section 8.7 of this chapter, the"**.



Page 5, line 3, delete "2020." and insert "2021."

Page 5, line 5, after "to" insert "**process payroll,**".

Page 5, line 7, after "actions" insert "**or other contracted services**".

Page 5, between lines 13 and 14, begin a new line block indented and insert:

**"(4) The third party withholding agent that receives notification from the department is required to notify its business clients of the contents of the notification."**

Page 5, line 14, delete "A" and insert "**Except for large employers that have provided the department with a waiver as provided in section 8.7 of this chapter, a**".

Page 5, line 16, delete "2020," and insert "2021,".

Page 5, between lines 19 and 20, begin a new paragraph and insert:  
**"SECTION 3. IC 6-3-4-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.7. (a) As used in this section, "large employer" means:**

**(1) an employer that is a semi-weekly depositor as defined by 26 CFR 31.6302-1; or**

**(2) an employer that has an Indiana location and at least one**

**(1) location outside of Indiana.**

**(b) Notwithstanding section 8.6 of this chapter, a large employer may use a third party withholding agent to submit the large employer's withholding tax under section 8 of this chapter on behalf of a large employer if the large employer submits a waiver to the department. The waiver must be on a form prescribed by the department. The large employer must state as part of the waiver that, if the third party withholding agent fails to remit withholding taxes that are due, the large employer is responsible and liable for the taxes and, if applicable, penalties and interest. A large employer's use of a third party withholding agent does not relieve the large employer of its duty to ensure that all withholding taxes due are properly remitted to the department.**

**(c) For a large employer under subsection (a)(1), the remittance schedule for the third party withholding agent to the department is as follows:**

**(1) For the employees of a large employer paid on either Wednesday, Thursday, or Friday, the withholding taxes collected must be remitted to the department not later than the following Wednesday.**

**(2) For the employees of a large employer paid on either Saturday, Sunday, Monday, or Tuesday, the withholding taxes**



**collected must be remitted to the department not later than the following Friday.**

**(d) The department may establish procedures, prepare forms, and adopt rules and regulations necessary for the administration of this section."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 320 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 9, Nays 0.

