

SENATE BILL No. 322

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5; IC 6-8.1-9-7.

Synopsis: Sales tax administration. Provides that a marketplace facilitator is required to collect and remit state sales tax as a retail merchant when it facilitates a retail transaction for sellers on the marketplace facilitator's marketplace. Specifies circumstances in which a marketplace facilitator or a seller would not be required to collect and remit the state sales tax on the retail sale. Retains provisions that go into effect on July 1, 2019, for state sales tax collection and remittance requirements of an accommodations facilitator that facilitates a retail transaction for sellers that rent or furnish rooms, lodgings, or accommodations in Indiana.

Effective: July 1, 2019.

Holdman

January 7, 2019, read first time and referred to Committee on Tax and Fiscal Policy.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 322

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 6-2.5-1-19.5, AS ADDED BY P.L.181-2016,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 19.5. "~~Facilitator~~" "**Accommodation facilitator**"
4 means a person who:

- 5 (1) contracts or otherwise enters into an agreement:
6 (A) with a person who rents or furnishes rooms, lodgings, or
7 accommodations for consideration; and
8 (B) to market the rooms, lodgings, or accommodations through
9 the Internet; and
10 (2) accepts payment from the consumer for the room, lodging, or
11 accommodation.

12 The term does not include a licensee (as defined in IC 25-34.1-1-2(6))
13 under the real estate broker licensing act (IC 25-34.1) or the owner of
14 the room, lodging, or accommodation.

15 SECTION 2. IC 6-2.5-1-21.7 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2019]: **Sec. 21.7. "Marketplace" means a**



1 forum, whether physical or electronic, that a marketplace
 2 facilitator uses to connect sellers to purchasers for the purpose of
 3 making retail transactions involving a seller's products (including
 4 tangible personal property, specified digital products, or
 5 enumerated services), by means of any of the following:

- 6 (1) Listing, making available, or advertising products.
 7 (2) Transmitting or otherwise communicating an offer or
 8 acceptance of a retail transaction of products between a seller
 9 and a purchaser.
 10 (3) Providing or offering fulfillment or storage services for a
 11 seller.
 12 (4) Setting prices for a seller's sale of the seller's products.
 13 (5) Providing or offering customer service to a seller or a
 14 seller's customers, or accepting or assisting with taking
 15 orders, returns, or exchanges of products sold by a seller.

16 SECTION 3. IC 6-2.5-1-21.9 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2019]: **Sec. 21.9. "Marketplace facilitator"**
 19 **means a person, including any affiliate (as determined by the**
 20 **relationship standards in Section 267(b) of the Internal Revenue**
 21 **Code) of the person, who:**

- 22 (1) owns, operates, or otherwise controls a marketplace; and
 23 (2) facilitates a retail transaction pursuant to IC 6-2.5-4-18.

24 SECTION 4. IC 6-2.5-2-1, AS AMENDED BY P.L.247-2017,
 25 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2019]: Sec. 1. (a) An excise tax, known as the state gross
 27 retail tax, is imposed on retail transactions made in Indiana.

28 (b) The person who acquires property in a retail transaction is liable
 29 for the tax on the transaction and, except as otherwise provided in this
 30 chapter, shall pay the tax to the retail merchant as a separate added
 31 amount to the consideration in the transaction. The retail merchant
 32 shall collect the tax as agent for the state.

33 (c) A retail merchant that does not have a physical presence in
 34 Indiana shall, as an agent for the state, collect the gross retail tax on a
 35 retail transaction made in Indiana, remit the gross retail tax as provided
 36 in this article, and comply with all applicable procedures and
 37 requirements of this article as if the retail merchant has a physical
 38 presence in Indiana, if the retail merchant meets either of the following
 39 conditions for the calendar year in which the retail transaction is made
 40 or for the calendar year preceding the calendar year in which the retail
 41 transaction is made:

- 42 (1) The retail merchant's gross revenue from any combination of:



- 1 (A) the sale of tangible personal property that is delivered into
 2 Indiana;
- 3 (B) a product transferred electronically into Indiana; or
 4 (C) a service delivered in Indiana;
 5 exceeds one hundred thousand dollars (\$100,000).
- 6 (2) The retail merchant sells any combination of:
 7 (A) tangible personal property that is delivered into Indiana;
 8 (B) a product transferred electronically into Indiana; or
 9 (C) a service delivered in Indiana;
 10 in two hundred (200) or more separate transactions.
- 11 **(d) A marketplace facilitator must include both transactions**
 12 **made on its own behalf and transactions facilitated for sellers**
 13 **under IC 6-2.5-4-18 for purposes of establishing the requirement**
 14 **to collect gross retail or use tax without having a physical presence**
 15 **in Indiana for purposes of subsection (c). In addition, except in**
 16 **instances where the marketplace facilitator has not met the**
 17 **thresholds in subsection (c), the transactions of the seller made**
 18 **through the marketplace are not counted toward the seller for**
 19 **purposes of determining whether the seller has met the thresholds**
 20 **in subsection (c).**
- 21 SECTION 5. IC 6-2.5-4-4, AS AMENDED BY P.L.181-2016,
 22 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2019]: Sec. 4. (a) A person is a retail merchant making a retail
 24 transaction when the person rents or furnishes rooms, lodgings, or other
 25 accommodations, such as booths, display spaces, banquet facilities, and
 26 cubicles or spaces used for adult relaxation, massage, modeling,
 27 dancing, or other entertainment to another person:
- 28 (1) if those rooms, lodgings, or accommodations are rented or
 29 furnished for periods of less than thirty (30) days; and
 30 (2) if the rooms, lodgings, and accommodations are located in:
 31 (A) a hotel, motel, inn, tourist camp, tourist cabin, gymnasium,
 32 hall, coliseum, or other place, where rooms, lodgings, or
 33 accommodations are regularly furnished for consideration; or
 34 (B) a house, condominium, or apartment in which rooms,
 35 lodgings, or accommodations are rented or furnished for
 36 transient residential housing for consideration.
- 37 (b) ~~A~~ **An accommodation** facilitator is a retail merchant making a
 38 retail transaction when the **accommodation** facilitator accepts payment
 39 from the consumer for a room, lodging, or accommodation rented or
 40 furnished in Indiana.
- 41 (c) Except as provided in section 4.2 of this chapter, each rental or
 42 furnishing by a retail merchant under subsection (a) or (b) is a separate



1 unitary transaction regardless of whether consideration is paid to an
 2 independent contractor or directly to the retail merchant.

3 (d) For purposes of this section, "consideration" includes a
 4 membership fee charged to a customer.

5 (e) Notwithstanding subsection (a), a person is not a retail merchant
 6 making a retail transaction if:

7 (1) the person is a promoter that rents a booth or display space to
 8 an exhibitor; and

9 (2) the booth or display space is located in a facility that:

10 (A) is described in subsection (a)(2); and

11 (B) is operated by a political subdivision (including a capital
 12 improvement board established under IC 36-10-8 or
 13 IC 36-10-9) or the state fair commission.

14 This subsection does not exempt from the state gross retail tax the
 15 renting of accommodations by a political subdivision or the state fair
 16 commission to a promoter or an exhibitor.

17 SECTION 6. IC 6-2.5-4-4.2, AS ADDED BY P.L.181-2016,
 18 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2019]: Sec. 4.2. (a) A person or a **an accommodation**
 20 facilitator who is a retail merchant making a retail transaction
 21 described in section 4 of this chapter shall give to the consumer of the
 22 room, lodging, or accommodation an itemized statement separately
 23 stating all the following:

24 (1) The part of the gross retail income that is charged by the
 25 person for renting or furnishing the room, lodging, or
 26 accommodation.

27 (2) Any amount collected by the person renting or furnishing the
 28 room, lodging, or accommodation for:

29 (A) the state gross retail or use tax; and

30 (B) any innkeeper's tax due under IC 6-9.

31 (3) Any part of the gross retail income that is a fee, commission,
 32 or other charge of a **an accommodation** facilitator.

33 (b) A penalty of twenty-five dollars (\$25) is imposed for each
 34 transaction described in subsection (a) in which a **an accommodation**
 35 facilitator fails to separately state the information required to be
 36 separately stated by subsection (a).

37 SECTION 7. IC 6-2.5-4-18 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2019]: **Sec. 18. (a) A marketplace facilitator shall be considered**
 40 **the retail merchant of each retail transaction that is facilitated for**
 41 **sellers on its marketplace when it does any of the following on**
 42 **behalf of the seller:**



1 (1) Collects the sales price or purchase price of the seller's
2 products.

3 (2) Provides access to payment processing services, either
4 directly or indirectly.

5 (3) Charges, collects, or otherwise receives selling fees,
6 referral fees, closing fees, fees for making available products
7 as a marketplace facilitator, or other consideration for active
8 facilitation.

9 This subsection does not apply to actions by a marketplace
10 facilitator for a retail transaction under IC 6-2.5-4-4.

11 (b) Regardless of whether a transaction under subsection (a)
12 was made by the marketplace facilitator on its own behalf or
13 facilitated on behalf of a seller, a marketplace facilitator is
14 required to do the following with each retail transaction made on
15 its marketplace:

16 (1) Collect and remit the gross retail tax, even if a seller for
17 whom a transaction was facilitated:

18 (A) does not have a registered retail merchant certificate;
19 or

20 (B) would not have been required to collect gross retail tax
21 had the transaction not been facilitated by the marketplace
22 facilitator.

23 (2) Comply with all applicable procedures and requirements
24 imposed under this article as the retail merchant in such
25 transaction.

26 SECTION 8. IC 6-2.5-6-13.5 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2019]: Sec. 13.5. Any purchaser of tangible
29 personal property or services who has overpaid gross retail or use
30 tax to a marketplace facilitator:

31 (1) may file a claim for refund with the department; and

32 (2) shall not have a cause of action against the marketplace
33 facilitator for the recovery of the overpayment.

34 A purchaser wishing to file a claim for refund under subdivision
35 (1) must file the claim on the form, in the manner, and with the
36 supporting documentation prescribed by the department. If a
37 purchaser properly files a valid claim for refund, the department
38 shall refund to the purchaser the amount of the overpayment of
39 gross retail or use tax with respect to the transaction.

40 SECTION 9. IC 6-2.5-9-3, AS AMENDED BY P.L.158-2013,
41 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2019]: Sec. 3. (a) Except as provided in subsections (b) and



- 1 (c), an individual who:
 2 (1) is an individual retail merchant or is an employee, officer, or
 3 member of a corporate or partnership retail merchant; and
 4 (2) has a duty to remit state gross retail or use taxes (as described
 5 in IC 6-2.5-3-2) to the department;
 6 holds those taxes in trust for the state and is personally liable for the
 7 payment of those taxes, plus any penalties and interest attributable to
 8 those taxes, to the state. If the individual knowingly fails to collect or
 9 remit those taxes to the state, the individual commits a Level 6 felony.
- 10 (b) **Except in cases where the marketplace facilitator and the**
 11 **seller are affiliated, a marketplace facilitator is not liable under**
 12 **this section for failure to collect and remit gross retail and use**
 13 **taxes if the marketplace facilitator demonstrates to the satisfaction**
 14 **of the department that:**
 15 (1) **the marketplace facilitator has a system in place to require**
 16 **the seller to provide accurate information and has made a**
 17 **reasonable effort to obtain accurate information from the**
 18 **seller about a retail transaction; and**
 19 (2) **the failure to collect and remit the correct tax was due to**
 20 **incorrect or insufficient information provided to the**
 21 **marketplace facilitator by the seller.**
- 22 **If the marketplace facilitator is relieved of liability under this**
 23 **subsection, the seller and the purchaser are liable for any amount**
 24 **of uncollected, unpaid, or unremitted tax.**
- 25 (c) **Except in cases where the marketplace facilitator and the**
 26 **seller are affiliated, a seller that sells on a marketplace facilitator's**
 27 **marketplace shall not be liable under this section for the state gross**
 28 **retail or use tax on a retail sale if the seller demonstrates to the**
 29 **satisfaction of the department that:**
 30 (1) **the retail sale was facilitated by a marketplace facilitator;**
 31 **and**
 32 (2) **any failure of the marketplace facilitator to collect and**
 33 **remit the proper amount of tax for the retail sale was not the**
 34 **result of the seller providing the facilitator with incorrect**
 35 **information.**
- 36 SECTION 10. IC 6-8.1-9-7 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A class action for
 38 the refund of a tax subject to this chapter may not be maintained in any
 39 court, including the Indiana tax court, on behalf of any person who has
 40 not complied with the requirements of section 1(a) of this chapter
 41 before the certification of the class. A refund of taxes to a member of
 42 a class in a class action is subject to the time limits set forth in section



1 1(a) of this chapter based on the time the class member filed the
2 required claim for refund with the department.

3 **(b) A class action may not be brought against a marketplace**
4 **facilitator on behalf of purchasers arising from or in any way**
5 **related to an overpayment of gross retail tax or use tax collected by**
6 **the marketplace facilitator, regardless of whether such action is**
7 **characterized as a tax refund claim.**

