



February 13, 2019

SENATE BILL No. 497

DIGEST OF SB 497 (Updated February 12, 2019 1:11 pm - DI 125)

Citations Affected: IC 6-2.5; IC 6-9; IC 36-1.

Synopsis: Taxation of short term rentals. Provides that if a person rents or furnishes rooms, lodgings, or accommodations for consideration for periods of less than 30 days, the owner of the real property is the retail merchant responsible for collecting and remitting any sales tax imposed on the rental income received for the rental. Provides that a facilitator becomes responsible for remitting sales tax on a rental arranged by the facilitator only if the facilitator accepts payment from the consumer for a charge designated as sales tax and subsequently fails to forward the sales tax to the owner. Provides a sales tax exemption for an owner of a house, condominium, or apartment who rents or furnishes rooms, lodgings, or other accommodation in the owner's house, condominium, or apartment if the house, condominium, or apartment is the owner's primary personal residence and the owner rents or furnishes the rooms, lodgings, or other accommodations for fewer than 15 days in a calendar year (residential sales tax exemption). Provides that innkeeper's taxes apply, in addition to any other place explicitly specified in an innkeeper's tax statute, to rooms, lodgings, or other accommodations in a house, condominium, or apartment that are regularly furnished for consideration for less than 30 days. Provides that an owner who rents or furnishes rooms, lodgings, or other accommodations in a house, condominium, or apartment for consideration in a retail transaction and does not use the services of a facilitator to facilitate the retail transaction: (1) is not required to register as a retail merchant; and (2) should report the state gross retail tax collected and remitted by the owner for transactions in the manner specified by the department.

Effective: July 1, 2019.

Tallian, Holdman

January 14, 2019, read first time and referred to Committee on Tax and Fiscal Policy.
February 12, 2019, amended, reported favorably — Do Pass.

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February 13, 2019

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. 497

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 6-2.5-4-4, AS AMENDED BY P.L.181-2016,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 4. (a) A person is a retail merchant making a retail
4 transaction when the person rents or furnishes rooms, lodgings, or other
5 accommodations, such as booths, display spaces, banquet facilities, and
6 cubicles or spaces used for adult relaxation, massage, modeling,
7 dancing, or other entertainment to another person:
8 (1) if those rooms, lodgings, or accommodations are rented or
9 furnished for periods of less than thirty (30) days; and
10 (2) if the rooms, lodgings, and accommodations are located in:
11 (A) a hotel, motel, inn, tourist camp, tourist cabin, gymnasium,
12 hall, coliseum, or other place, where rooms, lodgings, or
13 accommodations are regularly furnished for consideration; or
14 (B) a house, condominium, or apartment in which rooms,
15 lodgings, or accommodations are rented or furnished for
16 transient residential housing for consideration.
17 (b) A facilitator is a retail merchant making a retail transaction when

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1 the facilitator accepts payment from the consumer for a room, lodging,
2 or accommodation rented or furnished in Indiana.

3 (c) Except as provided in section 4.2 of this chapter, each rental or
4 furnishing by a retail merchant under subsection (a) or (b) is a separate
5 unitary transaction regardless of whether consideration is paid to an
6 independent contractor or directly to the retail merchant.

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

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

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

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

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

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

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

21 **(f) As used in this subsection and subsection (g), "owner" means**
22 **a person who has an interest in title of real property used for**
23 **rentals of less than thirty (30) days, whether a fee interest, a**
24 **beneficial interest, life estate, partnership, corporate interest, or**
25 **other similar present possessory interest. Except as otherwise**
26 **provided in IC 6-2.5-5-53, the owner is the retail merchant**
27 **responsible for collecting and remitting any state gross retail tax**
28 **imposed on the gross retail income received from rentals under this**
29 **section. Any deficiency in the amount of the tax may be assessed**
30 **against the owner. However, the owner may enter into an**
31 **agreement with a facilitator to collect and remit this tax. If the**
32 **facilitator accepts payments for rentals under this section and does**
33 **not forward to the owner money accepted as state gross retail tax,**
34 **and designated as state gross retail tax under 6-2.5-4-4.2, then the**
35 **facilitator is the retail merchant for that transaction and is**
36 **responsible for remitting any state gross retail tax due.**

37 (g) This subsection is intended as notice to an owner in
38 subsection (f). Innkeeper's taxes imposed under IC 6-9 may also
39 apply to transactions described in this section in which an owner
40 is the retail merchant responsible for collecting and remitting the
41 state gross retail tax, as required under an applicable innkeeper's
42 tax statute in IC 6-9.



1 SECTION 2. IC 6-2.5-5-53 IS ADDED TO THE INDIANA CODE
 2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2019]: **Sec. 53. (a) This subsection applies only to property that
 4 is the owner's primary personal residence. If:**

5 (1) at least one (1) owner of a house, condominium, or
 6 apartment maintains the house, condominium, or apartment
 7 as the owner's primary personal residence;

8 (2) the owner rents or furnishes rooms, lodgings, or other
 9 accommodations in the house, condominium, or apartment for
 10 consideration for fewer than fifteen (15) days in a calendar
 11 year;

12 (3) payments for the room, lodging, or other accommodation
 13 are not made through a facilitator; and

14 (4) the rental or furnishing of the room, lodging, or other
 15 accommodation qualifies for the special rule for certain use
 16 under Section 280A(g) of the Internal Revenue Code;

17 the transactions involving the renting or furnishing of the rooms,
 18 lodgings, or other accommodations in the house, condominium, or
 19 apartment for consideration during the calendar year are exempt
 20 from the state gross retail tax, regardless of whether the owner
 21 arranged for the renting or furnishing of the rooms, lodgings, or
 22 other accommodations to another person through a facilitator.

23 (b) If an owner described in subsection (a) rents or furnishes
 24 rooms, lodgings, or other accommodations in a house,
 25 condominium, or apartment for consideration for more than
 26 fourteen (14) days in a calendar year, on the 15th day and each day
 27 thereafter in the calendar year that the owner rents or furnishes
 28 rooms, lodgings, or other accommodations in the house,
 29 condominium, or apartment for consideration, the exemption
 30 under subsection (a) shall not apply and the owner shall be
 31 responsible for collecting and remitting any state gross retail tax
 32 imposed under IC 6-2.5-4-4.

33 SECTION 3. IC 6-2.5-10-7 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2019]: **Sec. 7. (a) This section applies only to an owner who:**

36 (1) rents or furnishes rooms, lodgings, or other
 37 accommodations in a house, condominium, or apartment for
 38 consideration under IC 6.2.5-4-4; and

39 (2) does not use the services of a facilitator (as defined in
 40 IC 6-2.5-1-19.5) to facilitate the retail transaction.

41 (b) An owner described in subsection (a):

42 (1) is not required to register as a retail merchant under



1 **IC 6-2.5-8-1; and**

2 **(2) should report the state gross retail tax collected and**
 3 **remitted by the owner for transactions described in**
 4 **subsection (a) in the manner specified by the department.**

5 SECTION 4. IC 6-9-29-1.2 IS ADDED TO THE INDIANA CODE
 6 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 7 **1, 2019]: Sec. 1.2. (a) Except as provided in subsection (b), an**
 8 **innkeeper's tax imposed under this article shall apply, in addition**
 9 **to any other place explicitly specified in a statute under this article,**
 10 **to rooms, lodgings, or other accommodations in a house,**
 11 **condominium, or apartment that are regularly furnished for**
 12 **consideration for less than thirty (30) days.**

13 **(b) The exemption provided by IC 6-2.5-5-53(a) from the state**
 14 **gross retail tax also applies to innkeeper's taxes imposed as set**
 15 **forth under subsection (a).**

16 **(c) This subsection is intended as notice to an owner in**
 17 **subsection (a). The state gross retail tax imposed under**
 18 **IC 6-2.5-4-4 may also apply to transactions described in subsection**
 19 **(a) in which an owner is required to collect and remit innkeeper's**
 20 **taxes under an applicable innkeeper's tax statute in this article.**

21 SECTION 5. IC 36-1-24-20 IS ADDED TO THE INDIANA CODE
 22 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 23 **1, 2019]: Sec. 20. This section is intended as notice to an owner as**
 24 **defined in section 2 of this chapter. An owner of short term rental**
 25 **property who makes a short term rental may be liable for**
 26 **collecting and remitting the following taxes on consideration**
 27 **received by the owner for the short term rental:**

28 **(1) State gross retail tax imposed under IC 6-2.5-4-4.**

29 **(2) Innkeeper's tax imposed under IC 6-9.**

30 **SECTION 6. 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. 497, 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 1, delete lines 1 through 7.

Page 3, delete lines 2 through 5, begin a new paragraph and insert:

"(g) This subsection is intended as notice to an owner in subsection (f). Innkeeper's taxes imposed under IC 6-9 may also apply to transactions described in this section in which an owner is the retail merchant responsible for collecting and remitting the state gross retail tax, as required under an applicable innkeeper's tax statute in IC 6-9."

Page 3, line 8, after "53." insert **"(a) This subsection applies only to property that is the owner's primary personal residence."**

Page 3, line 11, delete "principal" and insert **"primary personal"**.

Page 3, line 11, delete "and".

Page 3, line 12, after "owner" insert **"rents or"**.

Page 3, line 14, delete "ten (10)" and insert **"fifteen (15)"**.

Page 3, between lines 15 and 16, begin a new line block indented and insert:

"(3) payments for the room, lodging, or other accommodation are not made through a facilitator; and

(4) the rental or furnishing of the room, lodging, or other accommodation qualifies for the special rule for certain use under Section 280A(g) of the Internal Revenue Code;"

Page 3, line 16, after "involving the" insert **"renting or"**.

Page 3, delete lines 22 through 42, begin a new paragraph and insert:

"(b) If an owner described in subsection (a) rents or furnishes rooms, lodgings, or other accommodations in a house, condominium, or apartment for consideration for more than fourteen (14) days in a calendar year, on the 15th day and each day thereafter in the calendar year that the owner rents or furnishes rooms, lodgings, or other accommodations in the house, condominium, or apartment for consideration, the exemption under subsection (a) shall not apply and the owner shall be responsible for collecting and remitting any state gross retail tax imposed under IC 6-2.5-4-4.

SECTION 3. IC 6-2.5-10-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



- 1, 2019]: **Sec. 7. (a) This section applies only to an owner who:**
- (1) rents or furnishes rooms, lodgings, or other accommodations in a house, condominium, or apartment for consideration under IC 6.2.5-4-4; and**
 - (2) does not use the services of a facilitator (as defined in IC 6-2.5-1-19.5) to facilitate the retail transaction.**
- (b) An owner described in subsection (a):**
- (1) is not required to register as a retail merchant under IC 6-2.5-8-1; and**
 - (2) should report the state gross retail tax collected and remitted by the owner for transactions described in subsection (a) in the manner specified by the department.**

SECTION 4. IC 6-9-29-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.2. (a) Except as provided in subsection (b), an innkeeper's tax imposed under this article shall apply, in addition to any other place explicitly specified in a statute under this article, to rooms, lodgings, or other accommodations in a house, condominium, or apartment that are regularly furnished for consideration for less than thirty (30) days.**

(b) The exemption provided by IC 6-2.5-5-53(a) from the state gross retail tax also applies to innkeeper's taxes imposed as set forth under subsection (a).

(c) This subsection is intended as notice to an owner in subsection (a). The state gross retail tax imposed under IC 6-2.5-4-4 may also apply to transactions described in subsection (a) in which an owner is required to collect and remit innkeeper's taxes under an applicable innkeeper's tax statute in this article."

Page 4, delete line 1.

Page 4, line 4, after "Sec. 20." insert "**This section is intended as notice to an owner as defined in section 2 of this chapter.**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 497 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 13, Nays 0.

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