



February 10, 2021

SENATE BILL No. 234

DIGEST OF SB 234 (Updated February 9, 2021 11:51 am - DI 120)

Citations Affected: IC 6-3; IC 6-8.1; IC 35-52.

Synopsis: Withholding tax remittance. Beginning after December 31, 2022, requires entities whose average monthly remittance for the preceding year exceeds \$1,500 (not \$1,000 under current law) to file and remit monthly withholding taxes 20 days after the end of each month and to make periodic deposits on the following schedule: (1) For pay dates that occur between the 1st day of the month and the 15th day of the month, the entity shall deposit all employee state and county withholdings for that time period by the 20th day of the month. (2) For pay dates that occur between the 16th day of the month and the last day of the month, the entity shall deposit the employee state and county
(Continued next page)

Effective: July 1, 2021; January 1, 2022.

**Rogers, Holdman, Buchanan,
Doriot, Garten, Perfect, Raatz,
Niezgodski, Buck, Kruse, Niemeyer,
Messmer, Walker G, Mishler, Busch,
Charbonneau, Bassler, Qaddoura,
Bohacek**

January 7, 2021, read first time and referred to Committee on Tax and Fiscal Policy.
February 9, 2021, amended, reported favorably — Do Pass.

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Digest Continued

withholdings for that time period by the 5th day of the following month. Requires the department of state revenue (department) to provide written notice, by electronic means, to each employer that is registered in the department's online IN-Time and whose employer's Form WH-1 monthly withholding tax report or withholding tax remittance is past due. Requires each payroll service provider to annually register with the department beginning January 1, 2022. Specifies the contents of the annual registration form. Defines "payroll service provider" and "responsible persons" for purposes of these provisions. Provides that the department may charge an annual payroll service provider registration fee for purposes of the registration program. Provides that a provider shall be permitted to retain any income generated on business client (client) funds while held in a provider's legal possession pending remittance to authorized payees if the client agreement expressly permits it and the provider complies with certain rules. Provides that a payroll service provider contract must include a provision that specifies that if the payroll service provider fails to deposit or remit a business client's employer withholding taxes when due, and the failure is caused by an error or omission of the payroll service provider and not by the business client, the payroll service provider shall be required to reimburse the business client for the business client's payment of any penalties or interest assessed by the department as a result of the failure. Provides that, if a provider knowingly fails to remit taxes withheld, the provider is liable and responsible persons shall be personally liable for such taxes that were withheld and not remitted, along with penalties and interest. Provides that a responsible person of the provider who knowingly fails to withhold or remit taxes commits a Level 6 felony. Provides that the liability shall not be construed to relieve the liability of the employer or any person otherwise with a duty to withhold. Provides that the employer's address shall be the address of record with the department for withholding tax purposes and that a payroll service provider may not change the address of record with the department.

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February 10, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 234

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

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 JULY 1, 2021]: 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:
6 **(1)** shall file those returns and make those remittances twenty (20)
7 days (rather than thirty (30) days) after the end of each month for
8 which those returns and remittances are filed, if that entity's
9 average monthly remittance for the immediately preceding
10 calendar year exceeds one thousand dollars (\$1,000) **before**
11 **January 1, 2023, and one thousand five hundred dollars**
12 **(\$1,500) after December 31, 2022; and**
13 **(2) beginning after December 31, 2022, shall make periodic**
14 **deposits on the following schedule:**
15 **(A) For pay dates that occur between the first day of the**

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1 **month and the fifteenth day of the month, the entity shall**
 2 **deposit all employee state and county withholdings for that**
 3 **time period by the twentieth day of the month.**

4 **(B) For pay dates that occur between the sixteenth day of**
 5 **the month and the last day of the month, the entity shall**
 6 **deposit the employee state and county withholdings for**
 7 **that time period by the fifth day of the following month.**

8 **The department may require an informational return on a**
 9 **form prescribed by the department for each periodic**
 10 **payment. The department shall notify, in a manner prescribed**
 11 **by the department, all entities subject to this section of the**
 12 **deposit requirements of this section.**

13 (b) The department may require any entity to make the entity's
 14 monthly remittance and file the entity's monthly return twenty (20) days
 15 (rather than thirty (30) days) after the end of each month for which a
 16 return and payment are made if the department estimates that the
 17 entity's average monthly payment for the current calendar year will
 18 exceed one thousand dollars (\$1,000) **before January 1, 2023, and**
 19 **one thousand five hundred dollars (\$1,500) after December 31,**
 20 **2022.**

21 (c) If the department determines that a withholding agent is not
 22 withholding, reporting, or remitting an amount of tax in accordance
 23 with this chapter, the department may require the withholding agent:

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

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

- 27 (1) estimated monthly withholding tax remittance for the current
 28 year; or
 29 (2) average monthly withholding tax remittance for the preceding
 30 year;

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

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

40 **(f) Beginning after June 30, 2021, the department shall provide**
 41 **a notice, by electronic means, to each employer:**

- 42 **(1) that is registered in the department's online tax filing**



- 1 program; and
 2 (2) whose employer's:
 3 (A) Form WH-1 monthly withholding tax report; or
 4 (B) withholding tax remittance;
 5 is past due.

6 The notice under this subsection shall be made by the department
 7 not more than seven (7) days after the date the employer's Form
 8 WH-1 monthly withholding tax report or employer's withholding
 9 taxes become due. The department may provide the notice under
 10 this subsection by advising the employer to check the employer's
 11 online portal account for an important message and that the
 12 department may not have received the employer's Form WH-1
 13 monthly withholding tax report or employee withholding tax
 14 remittance, or both, if applicable, when due.

15 SECTION 2. IC 6-8.1-18 IS ADDED TO THE INDIANA CODE
 16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 17 JANUARY 1, 2022]:

18 **Chapter 18. Payroll Service Provider Registration**

19 **Sec. 1.** As used in this chapter, "payroll service provider" means
 20 a third party service provider that is authorized to prepare and file
 21 returns, withdraw funds and hold the funds in the payroll service
 22 provider's bank account, remit payment, or take other similar
 23 reporting and compliance actions on behalf of a business client
 24 with regard to that client's tax withholding and remittance duties
 25 under IC 6-3-4-8. The term includes a reporting agent as described
 26 in IRS Rev. Proc. 2012-32, 2012-35 I.R.B 1. The term does not
 27 include an entity registered pursuant to IC 27-16-4-1 or
 28 IC 27-16-4-6.

29 **Sec. 2.** As used in this chapter, "responsible person" means an
 30 officer or director of a payroll service provider, or an employee or
 31 any other person affiliated with a payroll service provider, who is
 32 responsible for collecting, accounting for, and paying withholding
 33 taxes on behalf of a business client of the payroll service provider.

34 **Sec. 3. (a)** The department shall require each payroll service
 35 provider to annually register with the department in the manner
 36 prescribed by the department.

37 **(b)** The department shall prescribe the annual registration form
 38 to be used by a registrant under subsection (a). The form must
 39 require at least the following:

- 40 (1) A list of all responsible persons of the payroll service
 41 provider that provide third party payroll services.
 42 (2) A certification and acknowledgment by the payroll service



1 provider that the bank account that is used by the payroll
 2 service provider for employer withholding tax deposits shall
 3 only be used for employer withholding tax liabilities and other
 4 payroll obligations of client employers that the payroll service
 5 provider is holding and is required to remit to the appropriate
 6 agency, employee of the employer, or other payee as
 7 authorized by the employer, and may not be used for any
 8 other purpose (other than using the account as a sweep
 9 account under section 4 of this chapter), including for the
 10 payment of operating expenses or personal use, and that a
 11 payroll service provider's withdrawal or use of funds in the
 12 account for any other purpose constitutes fraud.

13 **Sec. 4.** Notwithstanding section 3(b)(2) of this chapter, a payroll
 14 service provider shall be permitted to retain any income generated
 15 on client funds while held in a payroll service provider's legal
 16 possession pending remittance to authorized payees if the client
 17 agreement expressly permits it and the payroll service provider:

- 18 (1) complies with the National Automated Clearing House
 19 Association rules;
 20 (2) maintains bank and custodial accounts for client funds
 21 that are segregated from any operating funds of the payroll
 22 service provider; and
 23 (3) either:
 24 (A) is a publicly held company (subject to Securities and
 25 Exchange Commission reporting, public company
 26 accounting standards, and audit requirements);
 27 (B) is subject to federal or Indiana financial regulatory
 28 oversight related to the handling of client funds;
 29 (C) is subject to review by partner financial institutions at
 30 least annually; or
 31 (D) conducts annual SOC 1 or SOC 2 reports of security
 32 and integrity controls.

33 **Sec. 5.** A contract entered into by a business client with a payroll
 34 service provider for third party payroll services must include a
 35 provision that substantially specifies that if the payroll service
 36 provider fails to deposit a business client's employer withholding
 37 taxes when due, and the failure is caused by an error or omission
 38 of the payroll service provider and not by the business client, the
 39 payroll service provider shall be required to reimburse the
 40 business client for the business client's payment of any penalties or
 41 interest assessed by the department as a result of the failure.

42 **Sec. 6. (a)** If a payroll service provider knowingly fails to remit



1 taxes withheld pursuant to IC 6-3-4, the payroll service provider
 2 is liable and the responsible persons of the payroll service provider
 3 shall be personally liable for such taxes that were withheld by the
 4 employer and collected by the payroll service provider and not
 5 remitted, along with any penalties and interest on such taxes.

6 (b) A responsible person of the payroll service provider who
 7 knowingly fails to remit taxes withheld by employer and collected
 8 by the payroll service provider pursuant to IC 6-3-4 commits a
 9 Level 6 felony.

10 (c) The liability under this section shall not be construed to
 11 relieve the liability of the employer, or any person otherwise with
 12 a duty to withhold and remit taxes under IC 6-3-4 for taxes that
 13 were withheld or should have been withheld pursuant to IC 6-3-4.

14 (d) Any amounts paid to or collected by the department
 15 pursuant to this section from a payroll service provider or
 16 responsible person of a payroll service provider must be credited
 17 to the employer's liability in the same manner as if the employer or
 18 person otherwise with a duty to withhold and remit taxes under
 19 IC 6-3-4 had remitted that amount.

20 Sec. 7. The department may charge an annual fee for
 21 registration under this chapter. The following apply to any fee
 22 charged by the department under this section:

23 (1) The fee must be imposed in a range of amounts based on
 24 the number of clients of a payroll service provider.

25 (2) The estimated annual revenue from the fee may not exceed
 26 the cost to implement the provisions of this chapter and on
 27 ongoing maintenance.

28 Any fees collected under this section shall be deposited into a
 29 special account in the state general fund known as the payroll
 30 service provider registration fee account. Money in the payroll
 31 service provider registration fee account is annually appropriated
 32 to the department for its use in carrying out the purposes of this
 33 chapter.

34 Sec. 8. The employer's address shall be the address of record
 35 with the department for withholding tax purposes. An employer's
 36 address of record with the department may be changed only by
 37 direct written request from the employer. A payroll service
 38 provider may not change an address of record with the
 39 department.

40 Sec. 9. The department shall provide notice to an employer
 41 when a payment of taxes pursuant to IC 6-3-4 has been remitted by
 42 either the employer or the payroll service provider or any other



1 entity that pays the taxes on behalf of the employer. The
2 department may provide the notice under this section by advising
3 the employer to check the employer's online portal account.

4 **Sec. 10.** The department may adopt rules under IC 4-22-2,
5 including emergency rules in the manner provided under
6 IC 4-22-2-37.1, for the administration and enforcement of this
7 chapter.

8 SECTION 3. IC 35-52-6-63.5 IS ADDED TO THE INDIANA
9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2021]: **Sec. 63.5. IC 6-8.1-18-6(b)** defines a
11 **crime concerning taxes.**



COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 234, 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:

Delete committee amendment number 4 adopted by the committee on tax and fiscal policy on January 26, 2021.

Page 1, line 10, delete ";" and insert "**before January 1, 2023, and one thousand five hundred dollars (\$1,500) after December 31, 2022;**".

Page 1, line 11, delete "July 1, 2022," and insert "**December 31, 2022,**".

Page 1, line 15, delete "state employee withholdings" and insert "**employee state and county withholdings**".

Page 2, line 4, delete "state employee withholdings" and insert "**employee state and county withholdings**".

Page 2, line 8, after "payment." insert "**The department shall notify, in a manner prescribed by the department, all entities subject to this section of the deposit requirements of this section.**".

Page 2, line 14, delete "." and insert "**before January 1, 2023, and one thousand five hundred dollars (\$1,500) after December 31, 2022.**".

Page 3, line 11, delete "UPON PASSAGE" and insert "JANUARY 1, 2022".

Page 3, line 15, after "returns," insert "**withdraw funds and hold the funds in the payroll service provider's bank account,**".

Page 3, line 19, after "2012-35 I.R.B 1." insert "**The term does not include an entity registered pursuant to IC 27-16-4-1 or IC 27-16-4-6.**".

Page 3, line 42, delete "account)," and insert "**account under section 4 of this chapter,**".

Page 4, between lines 3 and 4, begin a new paragraph and insert:

"Sec. 4. Notwithstanding section 3(b)(2) of this chapter, a payroll service provider shall be permitted to retain any income generated on client funds while held in a payroll service provider's legal possession pending remittance to authorized payees if the client agreement expressly permits it and the payroll service provider:

- (1) complies with the National Automated Clearing House Association rules;**
- (2) maintains bank and custodial accounts for client funds that are segregated from any operating funds of the payroll**



service provider; and

(3) either:

(A) is a publicly held company (subject to Securities and Exchange Commission reporting, public company accounting standards, and audit requirements);

(B) is subject to federal or Indiana financial regulatory oversight related to the handling of client funds;

(C) is subject to review by partner financial institutions at least annually; or

(D) conducts annual SOC 1 or SOC 2 reports of security and integrity controls."

Page 4, line 4, delete "4." and insert "5."

Page 4, line 8, delete "not caused by the business client," and insert "caused by an error or omission of the payroll service provider and not by the business client,".

Page 4, delete lines 9 through 11, and insert "the payroll service provider shall be required to reimburse the business client for the business client's payment of any penalties or interest assessed by the department as a result of the failure."

Page 4, between lines 11 and 12, begin a new paragraph and insert:

"Sec. 6. (a) If a payroll service provider knowingly fails to remit taxes withheld pursuant to IC 6-3-4, the payroll service provider is liable and the responsible persons of the payroll service provider shall be personally liable for such taxes that were withheld by the employer and collected by the payroll service provider and not remitted, along with any penalties and interest on such taxes.

(b) A responsible person of the payroll service provider who knowingly fails to remit taxes withheld by employer and collected by the payroll service provider pursuant to IC 6-3-4 commits a Level 6 felony.

(c) The liability under this section shall not be construed to relieve the liability of the employer, or any person otherwise with a duty to withhold and remit taxes under IC 6-3-4 for taxes that were withheld or should have been withheld pursuant to IC 6-3-4.

(d) Any amounts paid to or collected by the department pursuant to this section from a payroll service provider or responsible person of a payroll service provider must be credited to the employer's liability in the same manner as if the employer or person otherwise with a duty to withhold and remit taxes under IC 6-3-4 had remitted that amount."

Page 4, line 12, delete "5." and insert "7."

Page 4, line 26, delete "6." and insert "8."



Page 4, between lines 31 and 32, begin a new paragraph and insert:
"Sec. 9. The department shall provide notice to an employer when a payment of taxes pursuant to IC 6-3-4 has been remitted by either the employer or the payroll service provider or any other entity that pays the taxes on behalf of the employer. The department may provide the notice under this section by advising the employer to check the employer's online portal account."

Page 4, line 32, delete "7." and insert "10."

Page 4, line 32, delete "rules" and insert **"rules under IC 4-22-2, including emergency rules in the manner provided under IC 4-22-2-37.1,"**.

Page 4, between lines 33 and 34, begin a new paragraph and insert:
"SECTION 3. IC 35-52-6-63.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 63.5. IC 6-8.1-18-6(b) defines a crime concerning taxes."

Page 4, delete line 34.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 234 as introduced and as amended by the committee on tax and fiscal policy on January 26, 2021.)

HOLDMAN, Chairperson

Committee Vote: Yeas 11, Nays 0.

