

SENATE BILL No. 320

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-4.

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the department of state revenue (department) shall only accept payment of employer withholding taxes that are made or withdrawn directly from the business account of the employer that is liable for withholding and remitting the tax. Prohibits the department from accepting payment of employer withholding taxes that are made or withdrawn from the account of a third party withholding agent, or otherwise remitted by a third party withholding agent, on behalf of an employer. Defines "third party withholding agent" to include a payroll service provider, an accounting firm or tax preparer, and a reporting agent that is authorized to prepare and file returns or take other similar reporting and compliance actions on behalf of a business client with regard to that client's employer withholding taxes. Requires each employer that is required to remit withholding taxes to provide to the 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employer's Form WH-1 report is received by the department; and (2) the date on which the department has automatically withdrawn any amount of tax from the employer's business account.

Effective: Upon passage.

Rogers

January 13, 2020, read first time and referred to Committee on Tax and Fiscal Policy.



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



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



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) The following apply to employer withholding taxes under
 19 section 8 of this chapter:**

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

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

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

32 **The department shall prescribe a standard authorization
 33 form to be used for purposes of this subdivision.**

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

36 **(A) not later than December 1, 2020, in the case of
 37 employers that are registered in the department's online
 38 tax filing program before that date; or**

39 **(B) upon initial registration of an employer in the
 40 department's online tax filing program on or after
 41 December 1, 2020.**

42 **(3) Before October 1, 2020, the department shall provide a**



1 written notice to each employer that is registered in the
 2 department's online tax filing program informing the
 3 employer of its duty to submit to the department the
 4 authorization described in subdivision (1). The notice shall
 5 include substantially the following:

6 (A) A reference to the employer's duty to submit the
 7 authorization as set forth in subdivision (1) and the due
 8 date for the submission under subdivision (2)(A).

9 (B) An explanation of how the employer may submit the
 10 required authorization to the department.

11 (C) A statement that the authorization will be used by the
 12 department to automatically withdraw from the
 13 employer's business account on a reoccurring basis
 14 employer withholding taxes on the later of the following
 15 dates:

16 (i) The date on which the employer's withholding taxes
 17 are due.

18 (ii) The date on which the department receives the
 19 employer's Form WH-1 monthly withholding tax report.

20 (D) A statement that the department will make automatic
 21 withdrawals for payment of employer withholding taxes
 22 under the authorization beginning after December 31,
 23 2020, and not before.

24 (4) Beginning after December 31, 2020, the department shall
 25 automatically withdraw from an employer's business account
 26 the amount of tax withholdings under section 8 of this chapter
 27 that are reported as due and owing on the taxpayer's Form
 28 WH-1 withholding tax report as authorized in this subsection.

29 (5) Beginning after December 31, 2020, the department shall
 30 notify each employer described in subdivision (1) of the
 31 following by electronic transmission via the department's
 32 online tax filing program:

33 (A) The date on which the employer's Form WH-1
 34 withholding tax report is received by the department. This
 35 notice must be transmitted to the employer not less than
 36 one (1) day after the date on which the employer's Form
 37 WH-1 is received by the department.

38 (B) The date on which the department has automatically
 39 withdrawn any amount of tax from the employer's
 40 business account under this subsection. This notice must be
 41 transmitted to the employer not less than one (1) day after
 42 the date on which the withdrawal is made by the



1 department.

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

4 SECTION 2. IC 6-3-4-8.6 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 6 **UPON PASSAGE]: Sec. 8.6. (a) For purposes of this section, "third**
 7 **party withholding agent" refers to a third party service provider**
 8 **that is authorized to prepare and file returns or take other similar**
 9 **reporting and compliance actions on behalf of a business client**
 10 **with regard to that client's tax withholding and remittance duties**
 11 **under section 8 of this chapter. The term includes a payroll service**
 12 **provider, an accounting firm or tax preparer, and a reporting**
 13 **agent as described in IRS Rev. Proc. 2012–32, 2012–35 I.R.B 1.**

14 **(b) The following apply beginning after December 31, 2020:**

15 **(1) The department shall only accept or withdraw deposits or**
 16 **payments of withholding taxes under section 8 of this chapter**
 17 **that are made or withdrawn directly from the business**
 18 **account of the employer that is liable for withholding and**
 19 **remitting the tax. For purposes of this subdivision, the**
 20 **employer's business account shall be the account designated**
 21 **as such by the employer for purposes of the department's**
 22 **online tax filing program.**

23 **(2) The department shall not accept and process submissions**
 24 **of deposits or payments of any withholding taxes under**
 25 **section 8 of this chapter that are made or withdrawn from the**
 26 **account of a third party withholding agent, or otherwise**
 27 **remitted by the third party withholding agent to the**
 28 **department, on behalf of an employer.**

29 **(c) Before September 1, 2020, the department shall provide a**
 30 **written notice to each third party withholding agent that is**
 31 **authorized to deposit or pay withholding taxes under section 8 of**
 32 **this chapter on behalf of a business client and each employer that**
 33 **is required to withhold and remit taxes under section 8 of this**
 34 **chapter of substantially the following:**

35 **(1) The authority of a third party withholding agent to deposit**
 36 **or pay withholding taxes under section 8 of this chapter to the**
 37 **department on behalf of its business clients expires on**
 38 **December 31, 2020.**

39 **(2) The department will not accept and process submissions**
 40 **of deposits or payments of any withholding taxes under**
 41 **section 8 of this chapter that are made or withdrawn from the**
 42 **account of the third party withholding agent, or otherwise**



1 remitted by the third party withholding agent to the
2 department, on behalf of an employer after December 31,
3 2020.
4 (3) The scope of the third party withholding agent's authority
5 to prepare and file returns (including Form WH-1 and Form
6 WH-3) with the department, or take other reporting and
7 compliance actions not otherwise described in subdivision (1),
8 with regard to withholding taxes under section 8 of this
9 chapter on behalf of the withholding agent's business clients
10 are not affected by the expiration of the withholding agent's
11 authority to deposit or pay withholding taxes to the
12 department on behalf of its business clients under subdivision
13 (1).
14 (d) A registration application of a third party withholding agent
15 (including an online registration) received after December 31,
16 2020, that would authorize the third party withholding agent to
17 deposit or pay withholding taxes under section 8 of this chapter on
18 behalf of another taxpayer shall not be accepted and processed by
19 the department.
20 SECTION 3. An emergency is declared for this act.

