



Reprinted
February 4, 2020

SENATE BILL No. 320

DIGEST OF SB 320 (Updated February 3, 2020 4:36 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the department of state revenue (department) shall only accept payment of employer withholding taxes that are made or withdrawn directly from the business account of the employer that is liable for withholding and remitting the tax.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 employers that submit a waiver to the department. Specifies provisions for the waiver. Prohibits the department from accepting payment of employer withholding taxes that are made or withdrawn from the account of a third party withholding agent, or otherwise remitted by a third party withholding agent, on behalf of an employer, except in the case of an employer that has submitted a waiver. Defines "third party withholding agent". Requires each
(Continued next page)

Effective: Upon passage.

**Rogers, Holdman, Buchanan, Buck,
Charbonneau, Niezgodski, Bohacek,
Ford J.D., Tomes, Doriot, Stoops,
Gaskill, Perfect, Raatz, Sandlin,
Randolph Lonnie M**

January 13, 2020, read first time and referred to Committee on Tax and Fiscal Policy.
January 30, 2020, amended, reported favorably — Do Pass.
February 3, 2020, read second time, amended, ordered engrossed.

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Digest Continued

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employer's Form WH-1 report is received by the department; and (2) the date on which the department has automatically withdrawn any amount of tax from the employer's business account. However, provides an exception from these requirements for employers that submit a waiver to the department.



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February 4, 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

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.**

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

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 24 **that are made or withdrawn directly from the business**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

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

37 **(c) Before October 15, 2021, the department shall provide a**
 38 **written notice to each third party withholding agent that is**
 39 **authorized to deposit or pay withholding taxes under section 8 of**
 40 **this chapter on behalf of a business client and each employer that**
 41 **is required to withhold and remit taxes under section 8 of this**
 42 **chapter of substantially the following:**



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

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

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

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

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

35 SECTION 3. IC 6-3-4-8.7 IS ADDED TO THE INDIANA CODE
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
37 UPON PASSAGE]: Sec. 8.7. (a) Notwithstanding section 8.6 of this
38 chapter, an employer may use a third party withholding agent to
39 submit the employer's withholding tax under section 8 of this
40 chapter on behalf of the employer if the employer submits a waiver
41 to the department. The employer must state as part of the waiver
42 that, if the third party withholding agent fails to remit withholding



1 taxes that are due, the employer is responsible and liable for the
2 taxes and, if applicable, penalties and interest. An employer's use
3 of a third party withholding agent does not relieve the employer of
4 its duty to ensure that all withholding taxes due are properly
5 remitted to the department.

6 (b) The requirements set forth in sections 8.1(f) and 8.6 of this
7 chapter do not apply to an employer that submits a waiver to the
8 department under this section.

9 (c) For employers that submit a waiver under this section, the
10 remittance schedule for the third party withholding agent to the
11 department is as follows:

12 (1) For the employees of an employer paid on either
13 Wednesday, Thursday, or Friday, the withholding taxes
14 collected must be remitted to the department not later than
15 the following Wednesday.

16 (2) For the employees of an employer paid on either Saturday,
17 Sunday, Monday, or Tuesday, the withholding taxes collected
18 must be remitted to the department not later than the
19 following Friday.

20 (d) The waiver under this section must be a separate document
21 and may not be included as a provision within an agreement or
22 contract with the employer. The department shall prescribe the
23 standard waiver form that must be used by an employer to execute
24 a waiver under this section.

25 (e) The department may establish procedures, prepare forms in
26 addition to the standard waiver form required under subsection
27 (d), and adopt rules and regulations necessary for the
28 administration of this section.

29 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.

SENATE MOTION

Madam President: I move that Senate Bill 320 be amended to read as follows:

Page 4, line 19, delete "The".

Page 4, delete lines 20 through 22.

Page 5, line 30, delete "large".

Page 5, line 40, delete "(a) As used in this section, "large".

Page 5, delete lines 41 through 42.

Page 5, run in line 40 through page 6, line 4.

Page 6, delete lines 1 through 3.

Page 6, line 4, delete "(b)" and insert "**(a)**".

Page 6, line 4, delete "a large" and insert "**an**".

Page 6, line 5, delete "large".

Page 6, line 7, delete "of a large" and insert "**of the**".

Page 6, line 7, delete "if the large" and insert "**if the**".

Page 6, line 8, delete "The waiver must be on a form prescribed by the".

Page 6, line 9, delete "department".

Page 6, line 9, delete "large".

Page 6, line 11, delete "large".

Page 6, line 12, delete "A large" and insert "**An**".

Page 6, line 14, delete "large".

Page 6, between lines 15 and 16, begin a new paragraph and insert:

"(b) The requirements set forth in sections 8.1(f) and 8.6 of this chapter do not apply to an employer that submits a waiver to the



department under this section."

Page 6, line 16, delete "(c) For a large employer under subsection (a)(1)," and insert "**(c) For employers that submit a waiver under this section,**".

Page 6, line 19, delete "a large" and insert "**an**".

Page 6, line 23, delete "a large" and insert "**an**".

Page 6, between lines 26 and 27, begin a new paragraph and insert:

"(d) The waiver under this section must be a separate document and may not be included as a provision within an agreement or contract with the employer. The department shall prescribe the standard waiver form that must be used by an employer to execute a waiver under this section."

Page 6, line 27, delete "(d)" and insert "**(e)**".

Page 6, line 27, delete "forms," and insert "**forms in addition to the standard waiver form required under subsection (d),**".

(Reference is to SB 320 as printed January 31, 2020.)

ROGERS

