

# HOUSE BILL No. 1352

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5.

**Synopsis:** Sales tax administration. Provides that a marketplace facilitator is required to collect and remit state sales and use taxes as a retail merchant when it facilitates a retail sale for a marketplace seller on the marketplace facilitator's marketplace. Provides that a marketplace seller is not required to collect and remit the state sales tax on the retail sale under certain circumstances. Provides that the requirement shall not be applied retroactively.

**Effective:** July 1, 2019.

---

---

## Porter

---

---

January 14, 2019, read first time and referred to Committee on Ways and Means.

---

---



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.

## HOUSE BILL No. 1352

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 6-2.5-1-21.6 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2019]: **Sec. 21.6. "Marketplace facilitator"**  
4 **means a person that contracts with sellers to facilitate for**  
5 **consideration, regardless of whether deducted as a fee from the**  
6 **transaction, the sale of the seller's products through a physical or**  
7 **electronic marketplace operated by the person, and engages:**  
8 (1) **directly or indirectly, through one (1) or more affiliated**  
9 **persons in:**  
10 (A) **transmitting or otherwise communicating the offer or**  
11 **acceptance between the buyer and seller;**  
12 (B) **owning or operating the infrastructure, electronic or**  
13 **physical, or technology that brings buyers and sellers**  
14 **together;**  
15 (C) **providing a virtual currency that buyers are allowed or**  
16 **required to use to purchase products from the seller; or**  
17 (D) **software development or research and development**



1 activities related to any of the activities described in  
 2 subdivision (2), if such activities are directly related to a  
 3 physical or electronic marketplace operated by the person  
 4 or an affiliated person; and  
 5 (2) in any of the following activities with respect to the seller's  
 6 products:

- 7 (A) Payment processing services.
- 8 (B) Fulfillment or storage services.
- 9 (C) Listing products for sale.
- 10 (D) Setting prices.
- 11 (E) Branding sales as those of the marketplace facilitator.
- 12 (F) Order taking.
- 13 (G) Advertising or promotion.
- 14 (H) Providing customer service or assisting with returns or  
 15 exchanges.

16 SECTION 2. IC 6-2.5-1-21.8 IS ADDED TO THE INDIANA  
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 18 [EFFECTIVE JULY 1, 2019]: **Sec. 21.8. "Marketplace seller" means**  
 19 **a seller that makes retail sales through any physical or electronic**  
 20 **marketplace operated by a marketplace facilitator.**

21 SECTION 3. IC 6-2.5-4-3.5 IS ADDED TO THE INDIANA CODE  
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 23 1, 2019]: **Sec. 3.5. (a) A marketplace facilitator is a retail merchant**  
 24 **making a retail transaction when it facilitates a retail sale for a**  
 25 **marketplace seller on the marketplace facilitator's marketplace.**

26 (b) A marketplace facilitator shall, as an agent of the state,  
 27 collect the state gross retail tax, remit the state gross retail tax as  
 28 provided in this article, and comply with all applicable procedures  
 29 and requirements in this article. However, the requirements for a  
 30 marketplace facilitator under this section shall not be applied  
 31 retroactively.

32 (c) A marketplace seller who is a retail merchant shall not be  
 33 required to collect and remit the state gross retail tax on a retail  
 34 sale if the marketplace facilitator elects to request and maintain a  
 35 copy of the seller's registered retail merchant certificate.

36 (d) Nothing in this section shall be construed to interfere with  
 37 the ability of a marketplace facilitator and a marketplace seller to  
 38 enter into an agreement with each other regarding fulfillment of  
 39 the requirements of this article.

40 (e) A marketplace facilitator is relieved of liability to collect and  
 41 remit tax as a retail merchant under this section to the extent the  
 42 marketplace seller or customer has remitted the state gross retail



1 tax or use tax on the retail transaction.

2 (f) A marketplace facilitator is relieved of liability to collect and  
3 remit the correct amount of tax as a retail merchant under this  
4 section to the extent the error was due to incorrect information  
5 given to the marketplace facilitator by the marketplace seller.  
6 However, this subsection shall not apply if the marketplace  
7 facilitator and the marketplace seller are related (as determined by  
8 the relationship standards in Section 267(b) of the Internal  
9 Revenue Code).

10 (g) No class action may be brought against a marketplace  
11 facilitator in any court of Indiana on behalf of customers arising  
12 from or in any way related to an overpayment of state gross retail  
13 or use taxes collected on sales facilitated by the marketplace  
14 facilitator, regardless of whether that claim is characterized as a  
15 tax refund claim. Nothing in this subsection affects a customer's  
16 right to seek a refund under IC 6-8.1-9.

17 (h) Nothing in this section shall prohibit the department from  
18 auditing marketplace facilitators or marketplace sellers, except  
19 that the department is prohibited from auditing:

20 (1) marketplace facilitators to the extent that the marketplace  
21 seller collected and remitted state gross retail or use taxes on  
22 sales and was audited for such sales; or

23 (2) marketplace sellers to the extent that the marketplace  
24 facilitator collected and remitted state gross retail or use taxes  
25 on sales and was audited for such sales, unless the  
26 marketplace facilitator is seeking relief from liability under  
27 subsection (e).

28 (i) If a marketplace facilitator pays the state gross retail or use  
29 taxes on a sale facilitated for a marketplace seller as a result of an  
30 audit or otherwise, the marketplace facilitator may recover such  
31 tax and any associated interest and penalties from the marketplace  
32 seller within the period of the applicable statute of limitations  
33 following the date of payment by the marketplace facilitator.

34 (j) The department shall waive any interest and penalties  
35 applicable to a tax assessment against a marketplace facilitator if  
36 the marketplace facilitator can show that the failure to pay the tax  
37 was due to reasonable cause and not willful neglect.

