



February 8, 2019

HOUSE BILL No. 1352

DIGEST OF HB 1352 (Updated February 6, 2019 3:33 pm - DI 113)

Citations Affected: IC 6-2.5; IC 6-8.1; noncode.

Synopsis: Sales tax administration. Provides that a marketplace facilitator is required to collect and remit state sales tax as a retail merchant when it facilitates a retail transaction for sellers on the marketplace facilitator's marketplace. Specifies circumstances in which a marketplace facilitator or a seller would not be required to collect and remit the state sales tax on the retail sale. Retains provisions that go into effect on July 1, 2019, for state sales tax collection and remittance requirements of an accommodations facilitator that facilitates a retail transaction for sellers that rent or furnish rooms, lodgings, or accommodations in Indiana.

Effective: July 1, 2019.

Porter, Huston, Campbell, Brown T

January 14, 2019, read first time and referred to Committee on Ways and Means.
February 7, 2019, amended, reported — Do Pass.

HB 1352—LS 7405/DI 120



February 8, 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.

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 6-2.5-1-19.5, AS ADDED BY P.L.181-2016,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 19.5. "~~Facilitator~~" "**Accommodation facilitator**"
4 means a person who:

5 (1) contracts or otherwise enters into an agreement:
6 (A) with a person who rents or furnishes rooms, lodgings, or
7 accommodations for consideration; and
8 (B) to market the rooms, lodgings, or accommodations through
9 the Internet; and
10 (2) accepts payment from the consumer for the room, lodging, or
11 accommodation.

12 The term does not include a licensee (as defined in IC 25-34.1-1-2(6))
13 under the real estate broker licensing act (IC 25-34.1) or the owner of
14 the room, lodging, or accommodation.

15 SECTION 2. IC 6-2.5-1-21.7 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2019]: **Sec. 21.7. "Marketplace" means a**

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1 forum, whether physical or electronic, that a marketplace
 2 facilitator uses to connect sellers to purchasers for the purpose of
 3 making retail transactions involving a seller's products (including
 4 tangible personal property, specified digital products, or
 5 enumerated services) by means of any of the following:

- 6 (1) Listing, making available, or advertising products.
 7 (2) Transmitting or otherwise communicating an offer or
 8 acceptance of a retail transaction of products between a seller
 9 and a purchaser.
 10 (3) Providing or offering fulfillment or storage services for a
 11 seller.
 12 (4) Setting prices for a seller's sale of the seller's products.
 13 (5) Providing or offering customer service to a seller or a
 14 seller's customers, or accepting or assisting with taking
 15 orders, returns, or exchanges of products sold by a seller.
 16 (6) Branding sales as those of the marketplace facilitator.

17 **The term does not include real estate that is leased to sellers for**
 18 **retail sales, such as shopping malls or centers, or sporting event**
 19 **venues.**

20 SECTION 3. IC 6-2.5-1-21.9 IS ADDED TO THE INDIANA
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2019]: **Sec. 21.9. "Marketplace facilitator"**
 23 **means a person, including any affiliate (as determined by the**
 24 **relationship standards in Section 267(b) of the Internal Revenue**
 25 **Code) of the person, who:**

- 26 (1) owns, operates, or otherwise controls a marketplace; and
 27 (2) facilitates a retail transaction pursuant to IC 6-2.5-4-18.

28 **The term does not include a person who only leases or makes**
 29 **available for lease, real estate for use by a retail merchant in**
 30 **making retail transactions.**

31 SECTION 4. IC 6-2.5-2-1, AS AMENDED BY P.L.247-2017,
 32 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2019]: Sec. 1. (a) An excise tax, known as the state gross
 34 retail tax, is imposed on retail transactions made in Indiana.

35 (b) The person who acquires property in a retail transaction is liable
 36 for the tax on the transaction and, except as otherwise provided in this
 37 chapter, shall pay the tax to the retail merchant as a separate added
 38 amount to the consideration in the transaction. The retail merchant
 39 shall collect the tax as agent for the state.

40 (c) A retail merchant that does not have a physical presence in
 41 Indiana shall, as an agent for the state, collect the gross retail tax on a
 42 retail transaction made in Indiana, remit the gross retail tax as provided



1 in this article, and comply with all applicable procedures and
 2 requirements of this article as if the retail merchant has a physical
 3 presence in Indiana, if the retail merchant meets either of the following
 4 conditions for the calendar year in which the retail transaction is made
 5 or for the calendar year preceding the calendar year in which the retail
 6 transaction is made:

7 (1) The retail merchant's gross revenue from any combination of:

8 (A) the sale of tangible personal property that is delivered into
 9 Indiana;

10 (B) a product transferred electronically into Indiana; or

11 (C) a service delivered in Indiana;

12 exceeds one hundred thousand dollars (\$100,000).

13 (2) The retail merchant sells any combination of:

14 (A) tangible personal property that is delivered into Indiana;

15 (B) a product transferred electronically into Indiana; or

16 (C) a service delivered in Indiana;

17 in two hundred (200) or more separate transactions.

18 **(d) A marketplace facilitator must include both transactions**
 19 **made on its own behalf and transactions facilitated for sellers**
 20 **under IC 6-2.5-4-18 for purposes of establishing the requirement**
 21 **to collect gross retail or use tax without having a physical presence**
 22 **in Indiana for purposes of subsection (c). In addition, except in**
 23 **instances where the marketplace facilitator has not met the**
 24 **thresholds in subsection (c), the transactions of the seller made**
 25 **through the marketplace are not counted toward the seller for**
 26 **purposes of determining whether the seller has met the thresholds**
 27 **in subsection (c).**

28 SECTION 5. IC 6-2.5-4-4, AS AMENDED BY P.L.181-2016,
 29 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2019]: Sec. 4. (a) A person is a retail merchant making a retail
 31 transaction when the person rents or furnishes rooms, lodgings, or other
 32 accommodations, such as booths, display spaces, banquet facilities, and
 33 cubicles or spaces used for adult relaxation, massage, modeling,
 34 dancing, or other entertainment to another person:

35 (1) if those rooms, lodgings, or accommodations are rented or
 36 furnished for periods of less than thirty (30) days; and

37 (2) if the rooms, lodgings, and accommodations are located in:

38 (A) a hotel, motel, inn, tourist camp, tourist cabin, gymnasium,
 39 hall, coliseum, or other place, where rooms, lodgings, or
 40 accommodations are regularly furnished for consideration; or

41 (B) a house, condominium, or apartment in which rooms,
 42 lodgings, or accommodations are rented or furnished for



1 transient residential housing for consideration.

2 (b) ~~A~~ **An accommodation** facilitator is a retail merchant making a
3 retail transaction when the **accommodation** facilitator accepts payment
4 from the consumer for a room, lodging, or accommodation rented or
5 furnished in Indiana.

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

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

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

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

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

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

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

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

24 SECTION 6. IC 6-2.5-4-4.2, AS ADDED BY P.L.181-2016,
25 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2019]: Sec. 4.2. (a) A person or ~~a~~ **an accommodation**
27 facilitator who is a retail merchant making a retail transaction
28 described in section 4 of this chapter shall give to the consumer of the
29 room, lodging, or accommodation an itemized statement separately
30 stating all the following:

31 (1) The part of the gross retail income that is charged by the
32 person for renting or furnishing the room, lodging, or
33 accommodation.

34 (2) Any amount collected by the person renting or furnishing the
35 room, lodging, or accommodation for:

36 (A) the state gross retail or use tax; and

37 (B) any innkeeper's tax due under IC 6-9.

38 (3) Any part of the gross retail income that is a fee, commission,
39 or other charge of ~~a~~ **an accommodation** facilitator.

40 (b) A penalty of twenty-five dollars (\$25) is imposed for each
41 transaction described in subsection (a) in which ~~a~~ **an accommodation**
42 facilitator fails to separately state the information required to be



1 separately stated by subsection (a).

2 SECTION 7. IC 6-2.5-4-18 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2019]: **Sec. 18. (a) A marketplace facilitator shall be considered
5 the retail merchant of each retail transaction that is facilitated for
6 sellers on its marketplace when it does any of the following on
7 behalf of the seller:**

8 **(1) Collects the sales price or purchase price of the seller's
9 products.**

10 **(2) Provides access to payment processing services, either
11 directly or indirectly.**

12 **(3) Charges, collects, or otherwise receives selling fees,
13 referral fees, closing fees, fees for making available products
14 as a marketplace facilitator, or other consideration for active
15 facilitation.**

16 **This subsection does not apply to actions by a marketplace
17 facilitator for a retail transaction under IC 6-2.5-4-4.**

18 **(b) Regardless of whether a transaction under subsection (a)
19 was made by the marketplace facilitator on its own behalf or
20 facilitated on behalf of a seller, a marketplace facilitator is
21 required to do the following with each retail transaction made on
22 its marketplace:**

23 **(1) Collect and remit the gross retail tax, even if a seller for
24 whom a transaction was facilitated:**

25 **(A) does not have a registered retail merchant certificate;
26 or**

27 **(B) would not have been required to collect gross retail tax
28 had the transaction not been facilitated by the marketplace
29 facilitator.**

30 **(2) Comply with all applicable procedures and requirements
31 imposed under this article as the retail merchant in such
32 transaction.**

33 SECTION 8. IC 6-2.5-6-13.5 IS ADDED TO THE INDIANA
34 CODE AS A NEW SECTION TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2019]: **Sec. 13.5. Any purchaser of tangible
36 personal property or services who has overpaid gross retail or use
37 tax to a marketplace facilitator:**

38 **(1) may file a claim for refund with the department; and**

39 **(2) shall not have a cause of action against the marketplace
40 facilitator for the recovery of the overpayment.**

41 **A purchaser wishing to file a claim for refund under subdivision
42 (1) must file the claim on the form, in the manner, and with the**



1 **supporting documentation prescribed by the department. If a**
 2 **purchaser properly files a valid claim for refund, the department**
 3 **shall refund to the purchaser the amount of the overpayment of**
 4 **gross retail or use tax with respect to the transaction.**

5 SECTION 9. IC 6-2.5-9-3, AS AMENDED BY P.L.158-2013,
 6 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2019]: Sec. 3. **Except as provided in section 3.3 of this**
 8 **chapter, an individual who:**

9 (1) is an individual retail merchant or is an employee, officer, or
 10 member of a corporate or partnership retail merchant; and

11 (2) has a duty to remit state gross retail or use taxes (as described
 12 in IC 6-2.5-3-2) to the department;

13 holds those taxes in trust for the state and is personally liable for the
 14 payment of those taxes, plus any penalties and interest attributable to
 15 those taxes, to the state. If the individual knowingly fails to collect or
 16 remit those taxes to the state, the individual commits a Level 6 felony.

17 SECTION 10. IC 6-2.5-9-3.3 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2019]: **Sec. 3.3. (a) This section applies for**
 20 **calendar years beginning after December 31, 2018, and before**
 21 **January 1, 2025.**

22 (b) **Subject to subsection (c), for any sale for which the**
 23 **marketplace facilitator is considered a retail merchant making a**
 24 **retail transaction, the marketplace facilitator is not liable for**
 25 **failure to collect or remit state gross retail tax on the retail**
 26 **transaction if the marketplace facilitator demonstrates to the**
 27 **satisfaction of the department that:**

28 (1) **the sale was made through the marketplace facilitator's**
 29 **marketplace;**

30 (2) **the marketplace facilitator and the marketplace seller are**
 31 **not affiliated persons;**

32 (3) **the marketplace facilitator's failure to collect state gross**
 33 **retail tax on the retail transaction was not due to an error in**
 34 **sourcing the sale; and**

35 (4) **the sale facilitated by the marketplace facilitator occurred**
 36 **before January 1, 2025, regardless of when the purchased**
 37 **items are delivered to the purchaser.**

38 (c) **For any calendar year to which this section applies, the total**
 39 **amount of a marketplace facilitator's relief from liability under**
 40 **subsection (b) may not exceed the following:**

41 (1) **For 2019, ten percent (10%) of the state gross retail tax**
 42 **that is imposed under this article without regard to this**



1 section on the aggregate gross retail income received by the
2 marketplace facilitator for all retail transactions that:

3 (A) are facilitated by the marketplace facilitator during the
4 calendar year; and

5 (B) are properly sourced to Indiana.

6 (2) For 2020 through 2023, five percent (5%) of the state gross
7 retail tax that is imposed under this article without regard to
8 this section on the aggregate gross retail income received by
9 the marketplace facilitator for all retail transactions that:

10 (A) are facilitated by the marketplace facilitator during the
11 calendar year; and

12 (B) are properly sourced to Indiana.

13 (3) For 2024, three percent (3%) of the state gross retail tax
14 that is imposed under this article without regard to this
15 section on the aggregate gross retail income received by the
16 marketplace facilitator for all retail transactions that:

17 (A) are facilitated by the marketplace facilitator during the
18 calendar year; and

19 (B) are properly sourced to Indiana.

20 (d) A marketplace seller is relieved of liability for collecting and
21 remitting state gross retail tax under this article for a retail
22 transaction if, and to the same extent, that the marketplace
23 facilitator is relieved of liability for collecting and remitting state
24 gross retail tax on the retail transaction.

25 (e) This section expires January 1, 2026.

26 SECTION 11. IC 6-8.1-9-7 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A class action for
28 the refund of a tax subject to this chapter may not be maintained in any
29 court, including the Indiana tax court, on behalf of any person who has
30 not complied with the requirements of section 1(a) of this chapter
31 before the certification of the class. A refund of taxes to a member of
32 a class in a class action is subject to the time limits set forth in section
33 1(a) of this chapter based on the time the class member filed the
34 required claim for refund with the department.

35 (b) A class action may not be brought against a marketplace
36 facilitator on behalf of purchasers arising from or in any way
37 related to an overpayment of gross retail tax or use tax collected by
38 the marketplace facilitator, regardless of whether such action is
39 characterized as a tax refund claim. However, nothing in this
40 subsection affects a purchaser's right to seek a refund under this
41 chapter.

42 SECTION 12. [EFFECTIVE JULY 1, 2019] The requirements for



1 a marketplace facilitator under this act shall not be applied
2 retroactively.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1352, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1352 as introduced.)

HUSTON

Committee Vote: yeas 23, nays 0.

