

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 ENROLLED ACT No. 234

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:

SECTION 1. IC 6-3-4-8.1, AS AMENDED BY P.L.137-2012, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 8.1. (a) Any entity that is required to file a monthly return and make a monthly remittance of taxes under sections 8, 12, 13, and 15 of this chapter shall file those returns and make those remittances twenty (20) days (rather than thirty (30) days) after the end of each month for which those returns and remittances are filed, if that entity's average monthly remittance for the immediately preceding calendar year exceeds one thousand dollars (\$1,000).

(b) The department may require any entity to make the entity's monthly remittance and file the entity's monthly return twenty (20) days (rather than thirty (30) days) after the end of each month for which a return and payment are made if the department estimates that the entity's average monthly payment for the current calendar year will exceed one thousand dollars (\$1,000).

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

(1) to make periodic deposits during the reporting period; and

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- (2) to file an informational return with each periodic deposit.
- (d) If the department determines that an entity's:
 - (1) estimated monthly withholding tax remittance for the current year; or
 - (2) average monthly withholding tax remittance for the preceding year;

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

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

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

- (1) that is registered in the department's online tax filing program; and**
 - (2) whose employer's:**
 - (A) Form WH-1 monthly withholding tax report; or**
 - (B) withholding tax remittance;**
- is past due.**

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

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

Chapter 18. Payroll Service Provider Registration

Sec. 1. As used in this chapter, "payroll service provider" means a third party service provider that is authorized to prepare and file returns, withdraw funds and hold the funds in the payroll service provider's bank account, remit payment, and take other similar reporting and compliance actions on behalf of a business client with regard to that client's tax withholding and remittance duties



under IC 6-3-4-8. The term includes a reporting agent as described in IRS Rev. Proc. 2012–32, 2012–35 I.R.B 1. The term does not include an entity registered pursuant to IC 27-16-4-1 or IC 27-16-4-6.

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

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

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

- (1)** A list of all responsible persons of the payroll service provider that provide third party payroll services.
- (2)** A certification and acknowledgment by the payroll service provider that the bank account that is used by the payroll service provider for employer withholding tax deposits shall only be used for employer withholding tax liabilities and other payroll obligations of client employers that the payroll service provider is holding and is required to remit to the appropriate agency, employee of the employer, or other payee as authorized by the employer, and may not be used for any other purpose (other than using the account as a sweep account under section 4 of this chapter), including for the payment of operating expenses or personal use, and that a payroll service provider's withdrawal or use of funds in the account for any other purpose constitutes fraud.

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.

Sec. 5. A contract entered into by a business client with a payroll service provider for third party payroll services must include a provision that substantially specifies that if the payroll service provider fails to deposit 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.

Sec. 6. (a) If a payroll service provider knowingly or intentionally 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 or intentionally fails to remit taxes withheld by an employer and collected by the payroll service provider pursuant to IC 6-3-4 commits failure to remit taxes, a Class A misdemeanor. However, the offense is a:

- (1) Level 6 felony if the amount of the unremitted taxes is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000); and
- (2) Level 5 felony if the amount of the unremitted taxes is at least fifty thousand dollars (\$50,000).

(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.

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

- (1) The fee must be imposed in a range of amounts based on the number of clients of a payroll service provider.
- (2) The estimated annual revenue from the fee may not exceed the cost to implement the provisions of this chapter and on ongoing maintenance.

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

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

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.

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

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 failure to remit taxes collected by a payroll service provider.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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