



February 13, 2019

SENATE BILL No. 322

DIGEST OF SB 322 (Updated February 12, 2019 1:10 pm - DI 125)

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

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 a person or marketplace facilitator that facilitates a retail transaction for sellers that rent or furnish rooms, lodgings, or accommodations in Indiana. Repeals the definition of facilitator that is set to go into effect on July 1, 2019.

Effective: July 1, 2019.

Holdman

January 7, 2019, read first time and referred to Committee on Tax and Fiscal Policy.
February 12, 2019, amended, reported favorably — Do Pass.

SB 322—LS 6782/DI 120



February 13, 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.

SENATE BILL No. 322

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 IC 6-2.5-1-19.5 IS REPEALED [EFFECTIVE JULY
2 1, 2019]. ~~Sec. 19.5. "Facilitator" means a person who:~~
3 ~~(1) contracts or otherwise enters into an agreement:~~
4 ~~(A) with a person who rents or furnishes rooms, lodgings, or~~
5 ~~accommodations for consideration; and~~
6 ~~(B) to market the rooms, lodgings, or accommodations through~~
7 ~~the Internet; and~~
8 ~~(2) accepts payment from the consumer for the room, lodging, or~~
9 ~~accommodation.~~
10 The term does not include a licensee (as defined in IC 25-34.1-1-2(6))
11 under the real estate broker licensing act (IC 25-34.1) or the owner of
12 the room, lodging, or accommodation.
13 SECTION 2. IC 6-2.5-1-21.7 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2019]: **Sec. 21.7. "Marketplace" means a**
16 **forum, whether physical or electronic, that a marketplace**
17 **facilitator uses to connect sellers to purchasers for the purpose of**

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1 making retail transactions involving a seller's products (including
 2 tangible personal property, specified digital products, rooms,
 3 lodgings, or accommodations, or enumerated services), by means
 4 of any of the following:

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

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

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

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

27 (b) The person who acquires property in a retail transaction is liable
 28 for the tax on the transaction and, except as otherwise provided in this
 29 chapter, shall pay the tax to the retail merchant as a separate added
 30 amount to the consideration in the transaction. The retail merchant
 31 shall collect the tax as agent for the state.

32 (c) A retail merchant that does not have a physical presence in
 33 Indiana shall, as an agent for the state, collect the gross retail tax on a
 34 retail transaction made in Indiana, remit the gross retail tax as provided
 35 in this article, and comply with all applicable procedures and
 36 requirements of this article as if the retail merchant has a physical
 37 presence in Indiana, if the retail merchant meets either of the following
 38 conditions for the calendar year in which the retail transaction is made
 39 or for the calendar year preceding the calendar year in which the retail
 40 transaction is made:

- 41 (1) The retail merchant's gross revenue from any combination of:
 42 (A) the sale of tangible personal property that is delivered into



- 1 Indiana;
- 2 (B) a product transferred electronically into Indiana; or
- 3 (C) a service delivered in Indiana;
- 4 exceeds one hundred thousand dollars (\$100,000).
- 5 (2) The retail merchant sells any combination of:
- 6 (A) tangible personal property that is delivered into Indiana;
- 7 (B) a product transferred electronically into Indiana; or
- 8 (C) a service delivered in Indiana;
- 9 in two hundred (200) or more separate transactions.
- 10 **(d) A marketplace facilitator must include both transactions**
- 11 **made on its own behalf and transactions facilitated for sellers**
- 12 **under IC 6-2.5-4-18 for purposes of establishing the requirement**
- 13 **to collect gross retail or use tax without having a physical presence**
- 14 **in Indiana for purposes of subsection (c). In addition, except in**
- 15 **instances where the marketplace facilitator has not met the**
- 16 **thresholds in subsection (c), the transactions of the seller made**
- 17 **through the marketplace are not counted toward the seller for**
- 18 **purposes of determining whether the seller has met the thresholds**
- 19 **in subsection (c).**
- 20 SECTION 5. IC 6-2.5-4-4, AS AMENDED BY P.L.181-2016,
- 21 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2019]: Sec. 4. (a) A person is a retail merchant making a retail
- 23 transaction when the person rents or furnishes rooms, lodgings, or other
- 24 accommodations, such as booths, display spaces, banquet facilities, and
- 25 cubicles or spaces used for adult relaxation, massage, modeling,
- 26 dancing, or other entertainment to another person:
- 27 (1) if those rooms, lodgings, or accommodations are rented or
- 28 furnished for periods of less than thirty (30) days; and
- 29 (2) if the rooms, lodgings, and accommodations are located in:
- 30 (A) a hotel, motel, inn, tourist camp, tourist cabin, gymnasium,
- 31 hall, coliseum, or other place, where rooms, lodgings, or
- 32 accommodations are regularly furnished for consideration; or
- 33 (B) a house, condominium, or apartment in which rooms,
- 34 lodgings, or accommodations are rented or furnished for
- 35 transient residential housing for consideration.
- 36 ~~(b) A facilitator is a retail merchant making a retail transaction when~~
- 37 ~~the facilitator accepts payment from the consumer for a room, lodging,~~
- 38 ~~or accommodation rented or furnished in Indiana.~~
- 39 ~~(c)~~ **(b)** Except as provided in section 4.2 of this chapter, each rental
- 40 or furnishing by a retail merchant under subsection (a) ~~or (b)~~ is a
- 41 separate unitary transaction regardless of whether consideration is paid
- 42 to an independent contractor or directly to the retail merchant.



1 ~~(d)~~ (c) For purposes of this section, "consideration" includes a
2 membership fee charged to a customer.

3 ~~(e)~~ (d) Notwithstanding subsection (a), a person is not a retail
4 merchant making a retail transaction if:

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

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

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

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

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

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

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

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

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

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

29 (3) Any part of the gross retail income that is a fee, commission,
30 or other charge of a **marketplace** facilitator.

31 (b) A penalty of twenty-five dollars (\$25) is imposed for each
32 transaction described in subsection (a) in which a **marketplace**
33 facilitator fails to separately state the information required to be
34 separately stated by subsection (a).

35 SECTION 7. IC 6-2.5-4-18 IS ADDED TO THE INDIANA CODE
36 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
37 1, 2019]: **Sec. 18. (a) A marketplace facilitator shall be considered**
38 **the retail merchant of each retail transaction (including a retail**
39 **transaction under IC 6-2.5-4-4) that is facilitated for sellers on its**
40 **marketplace when it does any of the following on behalf of the**
41 **seller:**

42 (1) Collects the sales price or purchase price of the seller's



1 **products.**

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

4 **(3) Charges, collects, or otherwise receives selling fees,**
 5 **referral fees, closing fees, fees for making available products**
 6 **as a marketplace facilitator, or other consideration for active**
 7 **facilitation.**

8 **(b) Regardless of whether a transaction under subsection (a)**
 9 **was made by the marketplace facilitator on its own behalf or**
 10 **facilitated on behalf of a seller, a marketplace facilitator is**
 11 **required to do the following with each retail transaction made on**
 12 **its marketplace:**

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

15 **(A) does not have a registered retail merchant certificate;**
 16 **or**

17 **(B) would not have been required to collect gross retail tax**
 18 **had the transaction not been facilitated by the marketplace**
 19 **facilitator.**

20 **(2) Comply with all applicable procedures and requirements**
 21 **imposed under this article as the retail merchant in such**
 22 **transaction.**

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

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

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

31 **A purchaser wishing to file a claim for refund under subdivision**
 32 **(1) must file the claim on the form, in the manner, and with the**
 33 **supporting documentation prescribed by the department. If a**
 34 **purchaser properly files a valid claim for refund, the department**
 35 **shall refund to the purchaser the amount of the overpayment of**
 36 **gross retail or use tax with respect to the transaction.**

37 SECTION 9. IC 6-2.5-9-3.5 IS ADDED TO THE INDIANA CODE
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 39 1, 2019]: **Sec. 3.5. (a) Subject to the limits in subsection (b), a**
 40 **marketplace facilitator is relieved of liability for the failure to**
 41 **collect gross retail or use tax on taxable retail transactions to the**
 42 **extent that the marketplace facilitator can show to the**



1 department's satisfaction that:

- 2 (1) the taxable retail transaction was made through the
3 marketplace;
4 (2) the marketplace facilitator and the seller are not affiliated
5 persons; and
6 (3) the failure to collect gross retail or use tax was not due to
7 an error in sourcing the transaction.

8 (b) Liability relief for a marketplace facilitator under this
9 section for a calendar year is limited as follows:

10 (1) For calendar year 2019, the liability relief may not exceed
11 ten percent (10%) of the total tax due under this article on
12 taxable retail transactions facilitated by the marketplace and
13 sourced to this state under IC 6-2.5-13-1 during the same
14 calendar year.

15 (2) For calendar years 2020 through 2023, the liability relief
16 may not exceed five percent (5%) of the total tax due under
17 this article on taxable retail transactions facilitated by the
18 marketplace and sourced to this state under IC 6-2.5-13-1
19 during the same calendar year.

20 (3) Beginning in calendar year 2024, the liability relief may
21 not exceed three percent (3%) of the total tax due under this
22 article on taxable retail transactions facilitated by the
23 marketplace and sourced to this state under IC 6-2.5-13-1
24 during the same calendar year.

25 (c) The manner in which a marketplace facilitator shall claim
26 the liability relief provided in this section shall be on forms, along
27 with the supporting documentation, prescribed by the department.

28 (d) If a marketplace facilitator is relieved of liability under this
29 section, the seller is also relieved of liability for the amount of
30 uncollected tax due.

31 (e) Nothing in this section shall be construed to relieve any
32 person of liability for collecting but failing to remit to the
33 department gross retail and use tax. If a marketplace facilitator
34 exceeds the limits of subsection (b), the marketplace facilitator is
35 liable for the payment of any remaining taxes, plus any penalties
36 and interest attributable to those taxes, to the state. The
37 marketplace facilitator also shall be considered a retail merchant
38 for purposes of section 3 of this chapter.

39 SECTION 10. IC 6-8.1-9-7 IS AMENDED TO READ AS
40 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A class action for
41 the refund of a tax subject to this chapter may not be maintained in any
42 court, including the Indiana tax court, on behalf of any person who has



1 not complied with the requirements of section 1(a) of this chapter
2 before the certification of the class. A refund of taxes to a member of
3 a class in a class action is subject to the time limits set forth in section
4 1(a) of this chapter based on the time the class member filed the
5 required claim for refund with the department.
6 **(b) A class action may not be brought against a marketplace**
7 **facilitator on behalf of purchasers arising from or in any way**
8 **related to an overpayment of gross retail tax or use tax collected by**
9 **the marketplace facilitator, regardless of whether such action is**
10 **characterized as a tax refund claim.**



COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 322, 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 1, delete lines 1 through 14, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-19.5 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 19.5: "Facilitator" means a person who:

(1) contracts or otherwise enters into an agreement:

(A) with a person who rents or furnishes rooms, lodgings, or accommodations for consideration; and

(B) to market the rooms, lodgings, or accommodations through the Internet; and

(2) accepts payment from the consumer for the room, lodging, or accommodation.

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

Page 2, line 4, after "products," insert "**rooms, lodgings, or accommodations,**".

Page 3, line 37, strike "(b)".

Page 3, line 37, delete "An accommodation".

Page 3, line 37, strike "facilitator is a retail merchant making a".

Page 3, line 38, strike "retail transaction when the".

Page 3, line 38, delete "accommodation".

Page 3, line 38, strike "facilitator accepts payment".

Page 3, strike lines 39 through 40.

Page 3, line 41, strike "(c)" and insert "**(b)**".

Page 3, line 42, strike "or (b)".

Page 4, line 3, strike "(d)" and insert "**(c)**".

Page 4, line 5, strike "(e)" and insert "**(d)**".

Page 4, line 19, reset in roman "a".

Page 4, line 19, delete "an accommodation" and insert "**marketplace**".

Page 4, line 32, reset in roman "a".

Page 4, line 32, delete "an accommodation" and insert "**marketplace**".

Page 4, line 34, reset in roman "a".

Page 4, line 34, delete "an accommodation" and insert "**marketplace**".



Page 4, line 40, after "transaction" insert "**(including a retail transaction under IC 6-2.5-4-4)**".

Page 5, delete lines 9 through 10.

Page 5, delete lines 40 through 42, begin a new paragraph and insert:

"SECTION 9. IC 6-2.5-9-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 3.5. (a) Subject to the limits in subsection (b), a marketplace facilitator is relieved of liability for the failure to collect gross retail or use tax on taxable retail transactions to the extent that the marketplace facilitator can show to the department's satisfaction that:**

- (1) the taxable retail transaction was made through the marketplace;**
- (2) the marketplace facilitator and the seller are not affiliated persons; and**
- (3) the failure to collect gross retail or use tax was not due to an error in sourcing the transaction.**

(b) Liability relief for a marketplace facilitator under this section for a calendar year is limited as follows:

- (1) For calendar year 2019, the liability relief may not exceed ten percent (10%) of the total tax due under this article on taxable retail transactions facilitated by the marketplace and sourced to this state under IC 6-2.5-13-1 during the same calendar year.**
- (2) For calendar years 2020 through 2023, the liability relief may not exceed five percent (5%) of the total tax due under this article on taxable retail transactions facilitated by the marketplace and sourced to this state under IC 6-2.5-13-1 during the same calendar year.**
- (3) Beginning in calendar year 2024, the liability relief may not exceed three percent (3%) of the total tax due under this article on taxable retail transactions facilitated by the marketplace and sourced to this state under IC 6-2.5-13-1 during the same calendar year.**

(c) The manner in which a marketplace facilitator shall claim the liability relief provided in this section shall be on forms, along with the supporting documentation, prescribed by the department.

(d) If a marketplace facilitator is relieved of liability under this section, the seller is also relieved of liability for the amount of uncollected tax due.



(e) Nothing in this section shall be construed to relieve any person of liability for collecting but failing to remit to the department gross retail and use tax. If a marketplace facilitator exceeds the limits of subsection (b), the marketplace facilitator is liable for the payment of any remaining taxes, plus any penalties and interest attributable to those taxes, to the state. The marketplace facilitator also shall be considered a retail merchant for purposes of section 3 of this chapter."

Page 6, delete lines 1 through 35.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 322 as introduced.)

HOLDMAN, Chairperson

Committee Vote: Yeas 13, Nays 0.

