



April 5, 2019

ENGROSSED SENATE BILL No. 322

DIGEST OF SB 322 (Updated April 3, 2019 2:36 pm - DI 134)

Citations Affected: IC 6-2.5; IC 6-8.1; IC 6-9; IC 35-52; IC 36-1; 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. Retains provisions that go into effect on July
(Continued next page)

Effective: July 1, 2019.

Holdman, Houchin, Randolph Lonnie M

(HOUSE SPONSORS — HUSTON, LEHMAN, LEONARD, MAHAN)

January 7, 2019, read first time and referred to Committee on Tax and Fiscal Policy.
February 12, 2019, amended, reported favorably — Do Pass.
February 18, 2019, read second time, amended, ordered engrossed.
February 19, 2019, engrossed. Read third time, passed. Yeas 40, nays 0.

HOUSE ACTION

February 26, 2019, read first time and referred to Committee on Ways and Means.
April 4, 2019, amended, reported — Do Pass.

ES 322—LS 6782/DI 120



Digest Continued

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. Requires a marketplace facilitator to collect and remit innkeeper's tax. Repeals the definition of "facilitator" that is set to go into effect on July 1, 2019. Repeals the provision requiring a facilitator who is a retail merchant to provide an itemized statement to the consumer. Provides that primary personal residences are exempt from the state gross retail tax unless the owner rents or furnishes the residence for more than 14 days. Provides for the collection of food and beverage taxes. Makes failure to collect or remit food and beverage taxes a level 6 felony. Provides that a county treasurer may enter into an agreement with the fiscal officer of an entity responsible for the expenditure of funds from an innkeeper's tax to furnish the fiscal officer each month with the name and retail address of each business collecting an innkeeper's tax and the amount of money collected from each business.

ES 322—LS 6782/DI 120



April 5, 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.

ENGROSSED 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

ES 322—LS 6782/DI 120



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 (6) Branding sales as those of the marketplace facilitator.

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

- 22 (1) owns, operates, or otherwise controls a marketplace; and
 23 (2) facilitates a retail transaction pursuant to IC 6-2.5-4-18.
 24 (b) The term does not include a payment processor business:
 25 (1) that is appointed by a merchant to handle payment
 26 transactions from various channels, including credit cards
 27 and debit cards; and
 28 (2) whose sole activity with respect to marketplace sales is to
 29 handle payment transactions between two parties.

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

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

39 (c) A retail merchant that does not have a physical presence in
 40 Indiana shall, as an agent for the state, collect the gross retail tax on a
 41 retail transaction made in Indiana, remit the gross retail tax as provided
 42 in this article, and comply with all applicable procedures and



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

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

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

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

10 (C) a service delivered in Indiana;

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

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

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

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

15 (C) a service delivered in Indiana;

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

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

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

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

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

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

40 (B) a house, condominium, or apartment in which rooms,
 41 lodgings, or accommodations are rented or furnished for
 42 transient residential housing for consideration.



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

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

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

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

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

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

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

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

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

22 **(e) The gross retail income derived from a transaction to which
 23 this section applies is equal to the total amount of consideration
 24 paid by the purchaser, including the payment of any fee (including
 25 a facilitation fee), commission, or other charge by the retail
 26 merchant (including a marketplace facilitator), except that the
 27 gross retail income does not include any taxes on the transaction
 28 that are imposed directly on the consumer.**

29 **(f) A marketplace facilitator who is considered a retail merchant
 30 under section 18 of this chapter for a transaction to which this
 31 section applies shall collect and remit innkeeper's taxes imposed
 32 under IC 6-9 on the retail transaction.**

33 SECTION 6. IC 6-2.5-4-4.2 IS REPEALED [EFFECTIVE JULY 1,
 34 2019]. Sec. 4.2: (a) A person or a facilitator who is a retail merchant
 35 making a retail transaction described in section 4 of this chapter shall
 36 give to the consumer of the room, lodging, or accommodation an
 37 itemized statement separately stating all the following:

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

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



- 1 (A) the state gross retail or use tax; and
 2 (B) any innkeeper's tax due under IC 6-9.
 3 (3) Any part of the gross retail income that is a fee, commission,
 4 or other charge of a facilitator.

5 (b) A penalty of twenty-five dollars (\$25) is imposed for each
 6 transaction described in subsection (a) in which a facilitator fails to
 7 separately state the information required to be separately stated by
 8 subsection (a).

9 SECTION 7. IC 6-2.5-4-18 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2019]: **Sec. 18. (a) A marketplace facilitator shall be considered
 12 the retail merchant of each retail transaction (including a retail
 13 transaction under IC 6-2.5-4-4) that is facilitated for sellers on its
 14 marketplace when it does any of the following on behalf of the
 15 seller:**

- 16 (1) Collects the sales price or purchase price of the seller's
 17 products.
 18 (2) Provides access to payment processing services, either
 19 directly or indirectly.
 20 (3) Charges, collects, or otherwise receives fees or other
 21 consideration for transactions made on its electronic
 22 marketplace.

23 (b) Regardless of whether a transaction under subsection (a)
 24 was made by the marketplace facilitator on its own behalf or
 25 facilitated on behalf of a seller, a marketplace facilitator is
 26 required to do the following with each retail transaction made on
 27 its marketplace:

- 28 (1) Collect and remit the gross retail tax, even if a seller for
 29 whom a transaction was facilitated:
 30 (A) does not have a registered retail merchant certificate;
 31 or
 32 (B) would not have been required to collect gross retail tax
 33 had the transaction not been facilitated by the marketplace
 34 facilitator.
 35 (2) Comply with all applicable procedures and requirements
 36 imposed under this article as the retail merchant in such
 37 transaction.

38 (c) The gross retail income from a transaction under this section
 39 is equal to the total amount of consideration paid by the purchaser,
 40 including the payment of any fee, commission, or other charge by
 41 the marketplace facilitator, except that the gross retail income does
 42 not include any taxes on the transaction that are imposed directly



1 on the consumer other than taxes under section 1(f)(2) of this
2 chapter.

3 SECTION 8. IC 6-2.5-5-53 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2019]: Sec. 53. (a) This subsection applies only to property that
6 is the owner's primary personal residence. If:

7 (1) at least one (1) owner of a house, condominium, or
8 apartment maintains the house, condominium, or apartment
9 as the owner's primary personal residence;

10 (2) the owner rents or furnishes rooms, lodgings, or other
11 accommodations in the house, condominium, or apartment
12 for consideration for fewer than fifteen (15) days in a calendar
13 year;

14 (3) none of the payments for the room, lodging, or other
15 accommodation are made through a marketplace facilitator;
16 and

17 (4) the rental or furnishing of the room, lodging, or other
18 accommodation qualifies for the special rule for certain use
19 under Section 280A(g) of the Internal Revenue Code;

20 the transaction involving the renting or furnishing of the rooms,
21 lodgings, or other accommodations in the house, condominium, or
22 apartment for consideration during the calendar year is exempt
23 from the state gross retail tax.

24 (b) If an owner described in subsection (a) rents or furnishes
25 rooms, lodgings, or other accommodations in a house,
26 condominium, or apartment for consideration for more than
27 fourteen (14) days in the current calendar year or in the preceding
28 calendar year, the exemption under subsection (a) does not apply
29 and the owner shall collect and remit any state gross retail tax
30 imposed under IC 6-2.5-4-4, subject to the following conditions:

31 (1) If the rental or furnishing for more than fourteen (14) days
32 occurred in the current calendar year, but not the preceding
33 calendar year, then the tax collection must begin on the 15th
34 day of rental or furnishing and each day thereafter in the
35 current calendar year that the owner rents or furnishes
36 rooms, lodgings, or other accommodations in the house,
37 condominium, or apartment for consideration.

38 (2) If the rental or furnishing for more than fourteen (14) days
39 occurred in the preceding calendar year, then the tax
40 collection must begin on the first day of rental or furnishing
41 and each day thereafter in the current calendar year that the
42 owner rents or furnishes rooms, lodgings, or other



- 1 accommodations in the house, condominium, or apartment
 2 for consideration.
- 3 SECTION 9. IC 6-2.5-6-13.5 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2019]: **Sec. 13.5. Any purchaser of tangible**
 6 **personal property or services who has overpaid gross retail or use**
 7 **tax to a marketplace facilitator:**
- 8 (1) may file a claim for refund with the department; and
 9 (2) shall not have a cause of action against the marketplace
 10 facilitator for the recovery of the overpayment.
- 11 A purchaser wishing to file a claim for refund under subdivision
 12 (1) must file the claim on the form, in the manner, and with the
 13 supporting documentation prescribed by the department. If a
 14 purchaser properly files a valid claim for refund, the department
 15 shall refund to the purchaser the amount of the overpayment of
 16 gross retail or use tax with respect to the transaction.
- 17 SECTION 10. IC 6-2.5-9-3, AS AMENDED BY P.L.158-2013,
 18 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2019]: **Sec. 3. (a) Except as provided in subsection (b) and**
 20 **the limited relief provided for marketplace facilitators in section**
 21 **3.5 of this chapter (before its expiration), an individual who:**
- 22 (1) is an individual retail merchant or is an employee, officer, or
 23 member of a corporate or partnership retail merchant; and
 24 (2) has a duty to remit state gross retail or use taxes (as described
 25 in IC 6-2.5-3-2) to the department;
- 26 holds those taxes in trust for the state and is personally liable for the
 27 payment of those taxes, plus any penalties and interest attributable to
 28 those taxes, to the state. If the individual knowingly fails to collect or
 29 remit those taxes to the state, the individual commits a Level 6 felony.
- 30 (b) For calendar years beginning after December 31, 2021,
 31 except in cases in which the marketplace facilitator and the seller
 32 are affiliated, a marketplace facilitator is not liable under this
 33 section for failure to collect and remit gross retail and use taxes if
 34 the marketplace facilitator demonstrates to the satisfaction of the
 35 department that:
- 36 (1) the marketplace facilitator has a system in place to require
 37 the seller to provide accurate information and has made a
 38 reasonable effort to obtain accurate information from the
 39 seller about a retail transaction;
- 40 (2) the failure to collect and remit the correct tax was due to
 41 incorrect or insufficient information provided to the
 42 marketplace facilitator by the seller; and



1 **(3) the marketplace facilitator provides information showing**
 2 **who the purchaser was in each transaction for which the tax**
 3 **had not been collected.**

4 **If the marketplace facilitator is relieved of liability under this**
 5 **subsection, the purchaser is liable for any amount of uncollected,**
 6 **unpaid, or unremitted tax.**

7 SECTION 11. IC 6-2.5-9-3.5 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2019]: **Sec. 3.5. (a) This section applies only**
 10 **in the context of an audit or other investigation conducted by the**
 11 **department of calendar years beginning after December 31, 2018,**
 12 **and before January 1, 2022.**

13 **(b) Subject to the limits in subsection (c), a marketplace**
 14 **facilitator is relieved of liability for the failure to collect and remit**
 15 **gross retail or use tax on taxable retail transactions to the extent**
 16 **that the marketplace facilitator can show to the department's**
 17 **satisfaction that:**

18 **(1) the taxable retail transaction was made through the**
 19 **marketplace;**

20 **(2) the marketplace facilitator and the seller are not affiliated**
 21 **persons;**

22 **(3) the failure to collect gross retail or use tax was not due to**
 23 **an error in sourcing the transaction; and**

24 **(4) the transaction facilitated by the marketplace facilitator**
 25 **occurred before January 1, 2022, regardless of when the**
 26 **purchased items are delivered to the purchaser.**

27 **(c) Liability relief for a marketplace facilitator under this**
 28 **section for any calendar year to which this section applies is limited**
 29 **as follows:**

30 **(1) For calendar year 2019, the liability relief may not exceed**
 31 **five percent (5%) of the total tax due under this article on**
 32 **taxable retail transactions facilitated by the marketplace and**
 33 **sourced to this state under IC 6-2.5-13-1 during the same**
 34 **calendar year.**

35 **(2) For calendar year 2020, the liability relief may not exceed**
 36 **three percent (3%) of the total tax due under this article on**
 37 **taxable retail transactions facilitated by the marketplace and**
 38 **sourced to this state under IC 6-2.5-13-1 during the same**
 39 **calendar year.**

40 **(3) For calendar year 2021, the liability relief may not exceed**
 41 **two percent (2%) of the total tax due under this article on**
 42 **taxable retail transactions facilitated by the marketplace and**



1 sourced to this state under IC 6-2.5-13-1 during the same
2 calendar year.

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

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

14 **(f) This section expires January 1, 2023.**

15 SECTION 12. IC 6-8.1-3-7.1, AS AMENDED BY P.L.242-2015,
16 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2019]: Sec. 7.1. (a) "Fiscal officer" has the meaning set forth
18 in IC 36-1-2-7.

19 (b) The department shall enter into an agreement with the fiscal
20 officer of an entity that has adopted an innkeeper's tax, a food and
21 beverage tax, or an admissions tax under IC 6-9 to furnish the fiscal
22 officer annually with:

23 (1) the name of each business collecting the taxes listed in this
24 subsection; and

25 (2) the amount of money collected from each business.

26 **For an innkeeper's tax or food and beverage tax remitted through**
27 **a marketplace facilitator, the information must include the name**
28 **of each business and the amount of money collected from each**
29 **business by a marketplace facilitator acting on behalf of the**
30 **business.**

31 (c) The agreement must provide that the department must provide
32 the information in an electronic format that the fiscal officer can use,
33 as well as a paper copy.

34 (d) The agreement must include a provision that, unless in
35 accordance with a judicial order, the fiscal officer, employees of the
36 fiscal officer, former employees of the fiscal officer, counsel of the
37 fiscal officer, agents of the fiscal officer, or any other person may not
38 divulge the names of the businesses, the amount of taxes paid by the
39 businesses, or any other information disclosed to the fiscal officer by
40 the department.

41 (e) The department shall also enter into an agreement with the fiscal
42 officer of a capital improvement board of managers:



- 1 (1) created under IC 36-10-8 or IC 36-10-9; and
 2 (2) that is responsible for expenditure of funds from:
 3 (A) an innkeeper's tax, a food and beverage tax, or an
 4 admissions tax under IC 6-9;
 5 (B) the supplemental auto rental excise tax under IC 6-6-9.7;
 6 or
 7 (C) the state gross retail taxes allocated to a professional sports
 8 development area fund, a sports and convention facilities
 9 operating fund, or other fund under IC 36-7-31 or
 10 IC 36-7-31.3;

11 to furnish the fiscal officer annually with the name of each business
 12 collecting the taxes listed in this subsection, and the amount of money
 13 collected from each business. An agreement with a fiscal officer under
 14 this subsection must include a nondisclosure provision the same as is
 15 required for a fiscal officer under subsection (d).

16 SECTION 13. IC 6-8.1-9-7 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. **(a)** A class action for
 18 the refund of a tax subject to this chapter may not be maintained in any
 19 court, including the Indiana tax court, on behalf of any person who has
 20 not complied with the requirements of section 1(a) of this chapter
 21 before the certification of the class. A refund of taxes to a member of
 22 a class in a class action is subject to the time limits set forth in section
 23 1(a) of this chapter based on the time the class member filed the
 24 required claim for refund with the department.

25 **(b) A class action may not be brought against a marketplace**
 26 **facilitator on behalf of purchasers arising from or in any way**
 27 **related to an overpayment of gross retail tax or use tax collected by**
 28 **the marketplace facilitator, regardless of whether such action is**
 29 **characterized as a tax refund claim. However, nothing in this**
 30 **subsection affects a purchaser's right to seek a refund under this**
 31 **chapter.**

32 SECTION 14. IC 6-9-29-1.2 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2019]: Sec. 1.2. **(a) Except as provided in subsection (b), an**
 35 **innkeeper's tax imposed under this article applies, in addition to**
 36 **any other place explicitly specified in a statute under this article,**
 37 **to rooms, lodgings, or other accommodations in a house,**
 38 **condominium, or apartment that are regularly furnished for**
 39 **consideration for less than thirty (30) days.**

40 **(b) The exemption provided by IC 6-2.5-5-53(a) from the state**
 41 **gross retail tax also applies to innkeeper's taxes imposed under**
 42 **subsection (a).**



1 (c) This subsection is intended as notice to an owner in
 2 subsection (a). The state gross retail tax imposed under
 3 IC 6-2.5-4-4 may also apply to transactions described in subsection
 4 (a) in which an owner is required to collect and remit innkeeper's
 5 taxes under an applicable innkeeper's tax statute in this article.

6 SECTION 15. IC 6-9-29-6 IS ADDED TO THE INDIANA CODE
 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 8 1, 2019]: Sec. 6. (a) A marketplace facilitator (as defined in
 9 IC 6-2.5-1-21.9) of rooms, lodgings, or accommodations subject to
 10 taxation under this article is considered the person engaged in the
 11 business of renting or furnishing the rooms, lodgings, or
 12 accommodations and is required to collect and remit any taxes
 13 imposed under this article.

14 (b) Regardless of whether a transaction under this article was
 15 made by the marketplace facilitator on its own behalf or facilitated
 16 on behalf of a seller, a marketplace facilitator is required to do the
 17 following with each retail transaction made on its marketplace:

18 (1) Collect and remit the tax imposed under this article to the
 19 department, even if:

20 (A) a seller for whom a transaction was facilitated:

21 (i) does not have a registered retail merchant certificate;
 22 or

23 (ii) would not have been required to collect an
 24 innkeeper's tax had the transaction not been facilitated
 25 by the marketplace facilitator; and

26 (B) the innkeeper's tax is normally remitted directly to a
 27 political subdivision of the state.

28 (2) Comply with all applicable procedures and requirements
 29 imposed under this article or IC 6-2.5 as the retail merchant
 30 in the transaction.

31 (c) Upon the request of:

32 (1) the department; or

33 (2) a political subdivision;

34 a marketplace facilitator shall provide information listing the tax
 35 collected in accordance with this article by the marketplace
 36 facilitator on behalf of each of its sellers for the period specified by
 37 the requesting entity.

38 (d) For purposes of subsection (c):

39 (1) if the information is requested by the department, the
 40 department may share the information with the political
 41 subdivision in which the transactions occurred in accordance
 42 with IC 6-8.1-3-7.1; or



1 **(2) if the information is requested by a political subdivision,**
2 **the political subdivision is entitled only to information**
3 **pertaining to transactions that occurred within the political**
4 **subdivision.**

5 SECTION 16. IC 6-9-29-7 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2019]: **Sec. 7. (a) A county treasurer may enter into an**
8 **agreement with the fiscal officer of an entity:**

- 9 **(1) created under this article; and**
10 **(2) that is responsible for the expenditure of funds from an**
11 **innkeeper's tax under this article;**

12 **to furnish the fiscal officer each month with the name and retail**
13 **address of each business collecting the innkeeper's tax and the**
14 **amount of money collected from each business.**

15 **(b) An agreement under subsection (a) must include a provision**
16 **specifying that, unless in accordance with a judicial order, the**
17 **fiscal officer, employees of the fiscal officer, former employees of**
18 **the fiscal officer, counsel of the fiscal officer, agents of the fiscal**
19 **officer, or any other person may not divulge the names or retail**
20 **addresses of the businesses, the amount of taxes paid by the**
21 **businesses, or any other information disclosed to the fiscal officer**
22 **by the county treasurer.**

23 SECTION 17. IC 6-9-29.5 IS ADDED TO THE INDIANA CODE
24 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2019]:

26 **Chapter 29.5. Food and Beverage Tax Administration**

27 **Sec. 1. This chapter applies to all political subdivisions imposing**
28 **a food and beverage tax under this article.**

29 **Sec. 2. (a) A marketplace facilitator (as defined in**
30 **IC 6-2.5-1-21.9) subject to the requirements to collect sales tax on**
31 **its own transactions or on behalf of its sellers in accordance with**
32 **IC 6-2.5-4-18 is also required to collect any taxes imposed under**
33 **this article on a transaction that it facilitates.**

34 **(b) A marketplace facilitator must source the tax imposed under**
35 **this article on any transaction to the retail location of the seller in**
36 **each transaction.**

37 **(c) Regardless of whether a transaction under this article is**
38 **made by the marketplace facilitator on its own behalf or facilitated**
39 **on behalf of a seller, a marketplace facilitator is required to do the**
40 **following with each retail transaction made on its marketplace:**

- 41 **(1) Collect and remit the tax imposed under this article to the**
42 **department, even if:**



1 (A) a seller for whom a transaction was facilitated:
 2 (i) does not have a registered retail merchant certificate;
 3 or
 4 (ii) would not have been required to collect a food and
 5 beverage tax had the transaction not been facilitated by
 6 the marketplace facilitator; and
 7 (B) the food and beverage tax is normally remitted directly
 8 to a political subdivision of the state.
 9 (2) Comply with all applicable procedures and requirements
 10 imposed under this article or IC 6-2.5 as the retail merchant
 11 in the transaction.
 12 Sec. 3. (a) An individual who:
 13 (1) is an individual taxpayer or an employee, officer, or
 14 member of a corporate or partnership taxpayer; and
 15 (2) has a duty to remit food and beverage taxes to the
 16 department of state revenue or a political subdivision;
 17 holds those food and beverage taxes in trust for the state or
 18 political subdivision and is personally liable for the payment of the
 19 food and beverage taxes, plus any penalties and interest
 20 attributable to the food and beverage taxes, to the state or political
 21 subdivision. An individual who knowingly fails to collect or remit
 22 the food and beverage taxes to the state or political subdivision
 23 commits a Level 6 felony.
 24 (b) Upon the request of:
 25 (1) the department; or
 26 (2) a political subdivision;
 27 a marketplace facilitator shall provide information listing the tax
 28 collected in accordance with this article by the marketplace
 29 facilitator on behalf of each of its sellers for the period specified by
 30 the requesting entity.
 31 (c) For purposes of subsection (b):
 32 (1) if the information is requested by the department, the
 33 department may share the information with the political
 34 subdivision in which the transactions occurred in accordance
 35 with IC 6-8.1-3-7.1; or
 36 (2) if the information is requested by a political subdivision,
 37 the political subdivision is entitled only to information
 38 pertaining to transactions that occurred within the political
 39 subdivision.
 40 SECTION 18. IC 35-52-6-78.5 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2019]: **Sec. 78.5. IC 6-9-29.5-3 defines a**
 2 **crime concerning taxes.**

3 SECTION 19. IC 36-1-24-20 IS ADDED TO THE INDIANA
 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2019]: **Sec. 20. This section is intended as**
 6 **notice to an owner as defined in section 2 of this chapter. An owner**
 7 **of short term rental property who makes a short term rental in**
 8 **which payments for the room, lodging, or other accommodation**
 9 **are not made through a marketplace facilitator (as defined by**
 10 **IC 6-2.5-1-21.9) may be liable for collecting and remitting the**
 11 **following taxes on consideration received by the owner for the**
 12 **short term rental:**

13 (1) **State gross retail tax imposed under IC 6-2.5-4-4.**

14 (2) **Innkeeper's tax imposed under IC 6-9.**

15 SECTION 20. [EFFECTIVE JULY 1, 2019] (a) **As used in this**
 16 **SECTION, "retail transaction" has the meaning set forth in**
 17 **IC 6-2.5-1-2(a).**

18 (b) **The provisions of this act apply only to retail transactions**
 19 **occurring after June 30, 2019.**

20 (c) **A retail transaction is considered to have occurred after**
 21 **June 30, 2019, to the extent that delivery of the property or services**
 22 **constituting selling at retail is made after that date to the**
 23 **purchaser (or to the place of delivery designated by the purchaser).**
 24 **However, a transaction shall be considered to have occurred before**
 25 **July 1, 2019, to the extent that the agreement of the parties to the**
 26 **transaction was entered into before July 1, 2019, and payment for**
 27 **the property or services furnished in the transaction is made before**
 28 **July 1, 2019, notwithstanding the delivery of the property or**
 29 **services after June 30, 2019.**

30 (d) **This SECTION expires July 1, 2022.**

31 SECTION 21. **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. 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.

Re-number 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.

SENATE MOTION

Madam President: I move that Senate Bill 322 be amended to read as follows:

Page 2, line 17, after "21.9." insert "(a)".

Page 2, between lines 22 and 23, begin a new paragraph and insert:

"(b) The term does not include a payment processor business:

(1) that is appointed by a merchant to handle payment transactions from various channels, including credit cards and debit cards; and

(2) whose sole activity with respect to marketplace sales is to handle payment transactions between two parties."

(Reference is to SB 322 as printed February 13, 2019.)

HOLDMAN



COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 322, 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:

Page 2, between lines 14 and 15, begin a new line block indented and insert:

"(6) Branding sales as those of the marketplace facilitator."

Page 3, line 38, strike "regularly".

Page 4, line 3, strike "Except as provided in section 4.2 of this chapter,".

Page 4, line 3, delete "each" and insert "Each".

Page 4, delete lines 21 through 40, begin a new paragraph and insert:

"(e) The gross retail income derived from a transaction to which this section applies is equal to the total amount of consideration paid by the purchaser, including the payment of any fee (including a facilitation fee), commission, or other charge by the retail merchant (including a marketplace facilitator), except that the gross retail income does not include any taxes on the transaction that are imposed directly on the consumer.

(f) A marketplace facilitator who is considered a retail merchant under section 18 of this chapter for a transaction to which this section applies shall collect and remit innkeeper's taxes imposed under IC 6-9 on the retail transaction.

SECTION 6. IC 6-2.5-4-4.2 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 4.2: (a) A person or a facilitator who is a retail merchant making a retail transaction described in section 4 of this chapter shall give to the consumer of the room, lodging, or accommodation an itemized statement separately stating all the following:

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

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

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

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

(3) Any part of the gross retail income that is a fee, commission, or other charge of a facilitator:

(b) A penalty of twenty-five dollars (\$25) is imposed for each transaction described in subsection (a) in which a facilitator fails to



separately state the information required to be separately stated by subsection (a):".

Page 5, line 10, delete "selling fees," and insert "**fees**".

Page 5, delete line 11.

Page 5, line 12, delete "as a marketplace facilitator,".

Page 5, line 12, delete "active".

Page 5, line 13, delete "facilitation." and insert "**transactions made on its electronic marketplace.**".

Page 5, between lines 28 and 29, begin a new paragraph and insert:

"(c) The gross retail income from a transaction under this section is equal to the total amount of consideration paid by the purchaser, including the payment of any fee, commission, or other charge by the marketplace facilitator, except that the gross retail income does not include any taxes on the transaction that are imposed directly on the consumer other than taxes under section 1(f)(2) of this chapter.

SECTION 8. IC 6-2.5-5-53 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 53. (a) This subsection applies only to property that is the owner's primary personal residence. If:**

(1) at least one (1) owner of a house, condominium, or apartment maintains the house, condominium, or apartment as the owner's primary personal residence;

(2) the owner rents or furnishes rooms, lodgings, or other accommodations in the house, condominium, or apartment for consideration for fewer than fifteen (15) days in a calendar year;

(3) none of the payments for the room, lodging, or other accommodation are made through a marketplace facilitator; and

(4) the rental or furnishing of the room, lodging, or other accommodation qualifies for the special rule for certain use under Section 280A(g) of the Internal Revenue Code;

the transaction involving the renting or furnishing of the rooms, lodgings, or other accommodations in the house, condominium, or apartment for consideration during the calendar year is exempt from the state gross retail tax.

(b) If an owner described in subsection (a) rents or furnishes rooms, lodgings, or other accommodations in a house, condominium, or apartment for consideration for more than fourteen (14) days in the current calendar year or in the preceding calendar year, the exemption under subsection (a) does not apply



and the owner shall collect and remit any state gross retail tax imposed under IC 6-2.5-4-4, subject to the following conditions:

(1) If the rental or furnishing for more than fourteen (14) days occurred in the current calendar year, but not the preceding calendar year, then the tax collection must begin on the 15th day of rental or furnishing and each day thereafter in the current calendar year that the owner rents or furnishes rooms, lodgings, or other accommodations in the house, condominium, or apartment for consideration.

(2) If the rental or furnishing for more than fourteen (14) days occurred in the preceding calendar year, then the tax collection must begin on the first day of rental or furnishing and each day thereafter in the current calendar year that the owner rents or furnishes rooms, lodgings, or other accommodations in the house, condominium, or apartment for consideration."

Page 5, after line 42, begin a new paragraph and insert:

"SECTION 10. IC 6-2.5-9-3, AS AMENDED BY P.L.158-2013, SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) **Except as provided in subsection (b) and the limited relief provided for marketplace facilitators in section 3.5 of this chapter (before its expiration)**, an individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;

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

(b) **For calendar years beginning after December 31, 2021, except in cases in which the marketplace facilitator and the seller are affiliated, a marketplace facilitator is not liable under this section for failure to collect and remit gross retail and use taxes if the marketplace facilitator demonstrates to the satisfaction of the department that:**

- (1) **the marketplace facilitator has a system in place to require the seller to provide accurate information and has made a reasonable effort to obtain accurate information from the seller about a retail transaction;**



(2) the failure to collect and remit the correct tax was due to incorrect or insufficient information provided to the marketplace facilitator by the seller; and

(3) the marketplace facilitator provides information showing who the purchaser was in each transaction for which the tax had not been collected.

If the marketplace facilitator is relieved of liability under this subsection, the purchaser is liable for any amount of uncollected, unpaid, or unremitted tax."

Page 6, line 3, after "(a)" insert **"This section applies only in the context of an audit or other investigation conducted by the department of calendar years beginning after December 31, 2018, and before January 1, 2022.**

(b)".

Page 6, line 3, delete "(b)," and insert "(c)".

Page 6, line 5, after "collect" insert **"and remit"**.

Page 6, line 11, delete "and".

Page 6, line 13, delete "transaction." and insert **"transaction; and (4) the transaction facilitated by the marketplace facilitator occurred before January 1, 2022, regardless of when the purchased items are delivered to the purchaser."**

Page 6, line 14, delete "(b)" and insert "(c)".

Page 6, line 15, delete "a calendar year" and insert **"any calendar year to which this section applies"**.

Page 6, line 17, delete "ten percent (10%)" and insert **"five percent (5%)"**.

Page 6, line 21, delete "years 2020 through 2023," and insert **"year 2020,"**

Page 6, line 22, delete "five percent (5%)" and insert **"three percent (3%)"**.

Page 6, line 26, delete "Beginning in calendar year 2024," and insert **"For calendar year 2021,"**

Page 6, line 27, delete "three percent (3%)" and insert **"two percent (2%)"**.

Page 6, delete lines 31 through 33.

Page 6, line 40, delete "(b)," and insert "(c)".

Page 7, line 1, delete "also shall" and insert **"shall also"**.

Page 7, between lines 2 and 3, begin a new paragraph and insert:

"(f) This section expires January 1, 2023.

SECTION 12. IC 6-8.1-3-7.1, AS AMENDED BY P.L.242-2015, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2019]: Sec. 7.1. (a) "Fiscal officer" has the meaning set forth in IC 36-1-2-7.

(b) The department shall enter into an agreement with the fiscal officer of an entity that has adopted an innkeeper's tax, a food and beverage tax, or an admissions tax under IC 6-9 to furnish the fiscal officer annually with:

- (1) the name of each business collecting the taxes listed in this subsection; and
- (2) the amount of money collected from each business.

For an innkeeper's tax or food and beverage tax remitted through a marketplace facilitator, the information must include the name of each business and the amount of money collected from each business by a marketplace facilitator acting on behalf of the business.

(c) The agreement must provide that the department must provide the information in an electronic format that the fiscal officer can use, as well as a paper copy.

(d) The agreement must include a provision that, unless in accordance with a judicial order, the fiscal officer, employees of the fiscal officer, former employees of the fiscal officer, counsel of the fiscal officer, agents of the fiscal officer, or any other person may not divulge the names of the businesses, the amount of taxes paid by the businesses, or any other information disclosed to the fiscal officer by the department.

(e) The department shall also enter into an agreement with the fiscal officer of a capital improvement board of managers:

- (1) created under IC 36-10-8 or IC 36-10-9; and
- (2) that is responsible for expenditure of funds from:
 - (A) an innkeeper's tax, a food and beverage tax, or an admissions tax under IC 6-9;
 - (B) the supplemental auto rental excise tax under IC 6-6-9.7; or
 - (C) the state gross retail taxes allocated to a professional sports development area fund, a sports and convention facilities operating fund, or other fund under IC 36-7-31 or IC 36-7-31.3;

to furnish the fiscal officer annually with the name of each business collecting the taxes listed in this subsection, and the amount of money collected from each business. An agreement with a fiscal officer under this subsection must include a nondisclosure provision the same as is required for a fiscal officer under subsection (d)."



Page 7, line 16, after "claim." insert "**However, nothing in this subsection affects a purchaser's right to seek a refund under this chapter.**

SECTION 13. IC 6-9-29-1.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.2. (a) Except as provided in subsection (b), an innkeeper's tax imposed under this article applies, in addition to any other place explicitly specified in a statute under this article, to rooms, lodgings, or other accommodations in a house, condominium, or apartment that are regularly furnished for consideration for less than thirty (30) days.**

(b) The exemption provided by IC 6-2.5-5-53(a) from the state gross retail tax also applies to innkeeper's taxes imposed under subsection (a).

(c) This subsection is intended as notice to an owner in subsection (a). The state gross retail tax imposed under IC 6-2.5-4-4 may also apply to transactions described in subsection (a) in which an owner is required to collect and remit innkeeper's taxes under an applicable innkeeper's tax statute in this article.

SECTION 14. IC 6-9-29-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 6. (a) A marketplace facilitator (as defined in IC 6-2.5-1-21.9) of rooms, lodgings, or accommodations subject to taxation under this article is considered the person engaged in the business of renting or furnishing the rooms, lodgings, or accommodations and is required to collect and remit any taxes imposed under this article.**

(b) Regardless of whether a transaction under this article was made by the marketplace facilitator on its own behalf or facilitated on behalf of a seller, a marketplace facilitator is required to do the following with each retail transaction made on its marketplace:

(1) Collect and remit the tax imposed under this article to the department, even if:

(A) a seller for whom a transaction was facilitated:

(i) does not have a registered retail merchant certificate; or

(ii) would not have been required to collect an innkeeper's tax had the transaction not been facilitated by the marketplace facilitator; and

(B) the innkeeper's tax is normally remitted directly to a political subdivision of the state.



(2) Comply with all applicable procedures and requirements imposed under this article or IC 6-2.5 as the retail merchant in the transaction.

(c) Upon the request of:

- (1) the department; or**
- (2) a political subdivision;**

a marketplace facilitator shall provide information listing the tax collected in accordance with this article by the marketplace facilitator on behalf of each of its sellers for the period specified by the requesting entity.

(d) For purposes of subsection (c):

- (1) if the information is requested by the department, the department may share the information with the political subdivision in which the transactions occurred in accordance with IC 6-8.1-3-7.1; or**
- (2) if the information is requested by a political subdivision, the political subdivision is entitled only to information pertaining to transactions that occurred within the political subdivision.**

SECTION 15. IC 6-9-29-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A county treasurer may enter into an agreement with the fiscal officer of an entity:

- (1) created under this article; and**
- (2) that is responsible for the expenditure of funds from an innkeeper's tax under this article;**

to furnish the fiscal officer each month with the name and retail address of each business collecting the innkeeper's tax and the amount of money collected from each business.

(b) An agreement under subsection (a) must include a provision specifying that, unless in accordance with a judicial order, the fiscal officer, employees of the fiscal officer, former employees of the fiscal officer, counsel of the fiscal officer, agents of the fiscal officer, or any other person may not divulge the names or retail addresses of the businesses, the amount of taxes paid by the businesses, or any other information disclosed to the fiscal officer by the county treasurer.

SECTION 16. IC 6-9-29.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]:

Chapter 29.5. Food and Beverage Tax Administration



Sec. 1. This chapter applies to all political subdivisions imposing a food and beverage tax under this article.

Sec. 2. (a) A marketplace facilitator (as defined in IC 6-2.5-1-21.9) subject to the requirements to collect sales tax on its own transactions or on behalf of its sellers in accordance with IC 6-2.5-4-18 is also required to collect any taxes imposed under this article on a transaction that it facilitates.

(b) A marketplace facilitator must source the tax imposed under this article on any transaction to the retail location of the seller in each transaction.

(c) Regardless of whether a transaction under this article is made by the marketplace facilitator on its own behalf or facilitated on behalf of a seller, a marketplace facilitator is required to do the following with each retail transaction made on its marketplace:

(1) Collect and remit the tax imposed under this article to the department, even if:

(A) a seller for whom a transaction was facilitated:

(i) does not have a registered retail merchant certificate; or

(ii) would not have been required to collect a food and beverage tax had the transaction not been facilitated by the marketplace facilitator; and

(B) the food and beverage tax is normally remitted directly to a political subdivision of the state.

(2) Comply with all applicable procedures and requirements imposed under this article or IC 6-2.5 as the retail merchant in the transaction.

Sec. 3. (a) An individual who:

(1) is an individual taxpayer or an employee, officer, or member of a corporate or partnership taxpayer; and

(2) has a duty to remit food and beverage taxes to the department of state revenue or a political subdivision;

holds those food and beverage taxes in trust for the state or political subdivision and is personally liable for the payment of the food and beverage taxes, plus any penalties and interest attributable to the food and beverage taxes, to the state or political subdivision. An individual who knowingly fails to collect or remit the food and beverage taxes to the state or political subdivision commits a Level 6 felony.

(b) Upon the request of:

(1) the department; or

(2) a political subdivision;



a marketplace facilitator shall provide information listing the tax collected in accordance with this article by the marketplace facilitator on behalf of each of its sellers for the period specified by the requesting entity.

(c) For purposes of subsection (b):

- (1) if the information is requested by the department, the department may share the information with the political subdivision in which the transactions occurred in accordance with IC 6-8.1-3-7.1; or
- (2) if the information is requested by a political subdivision, the political subdivision is entitled only to information pertaining to transactions that occurred within the political subdivision.

SECTION 17. IC 35-52-6-78.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 78.5. IC 6-9-29.5-3 defines a crime concerning taxes.**

SECTION 18. IC 36-1-24-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 20. This section is intended as notice to an owner as defined in section 2 of this chapter. An owner of short term rental property who makes a short term rental in which payments for the room, lodging, or other accommodation are not made through a marketplace facilitator (as defined by IC 6-2.5-1-21.9) may be liable for collecting and remitting the following taxes on consideration received by the owner for the short term rental:**

- (1) State gross retail tax imposed under IC 6-2.5-4-4.
- (2) Innkeeper's tax imposed under IC 6-9.

SECTION 19. [EFFECTIVE JULY 1, 2019] (a) As used in this SECTION, "retail transaction" has the meaning set forth in IC 6-2.5-1-2(a).

(b) The provisions of this act apply only to retail transactions occurring after June 30, 2019.

(c) A retail transaction is considered to have occurred after June 30, 2019, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser (or to the place of delivery designated by the purchaser). However, a transaction shall be considered to have occurred before July 1, 2019, to the extent that the agreement of the parties to the transaction was entered into before July 1, 2019, and payment for the property or services furnished in the transaction is made before



July 1, 2019, notwithstanding the delivery of the property or services after June 30, 2019.

(d) This SECTION expires July 1, 2022.

SECTION 19. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 322 as reprinted February 19, 2019.)

HUSTON

Committee Vote: yeas 21, nays 0.

