

SENATE BILL No. 298

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-4-8; IC 6-8.1.

Synopsis: State tax administration. Deletes the provision that prohibits an employee from receiving a refund of state income taxes withheld if the employee fails to file the employee's tax return within two years of the due date of the tax return. Provides that for taxable years beginning after 2013, a person may not file a claim for a refund with the department of revenue more than 10 years (rather than more than three years, under current law) after the later of the due date of the return or the date of payment. Requires the department of revenue to maintain for 10 years (rather than three years, under current law) a record of all money received and disbursed and copies of all returns filed with the department.

Effective: July 1, 2013; January 1, 2014.

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January 8, 2013, read first time and referred to Committee on Appropriations.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 298



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 6-3-4-8, AS AMENDED BY P.L.137-2012,
2 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2014]: Sec. 8. (a) Except as provided in subsection (d),
4 every employer making payments of wages subject to tax under this
5 article, regardless of the place where such payment is made, who is
6 required under the provisions of the Internal Revenue Code to
7 withhold, collect, and pay over income tax on wages paid by such
8 employer to such employee, shall, at the time of payment of such
9 wages, deduct and retain therefrom the amount prescribed in
10 withholding instructions issued by the department. The department
11 shall base its withholding instructions on the adjusted gross income tax
12 rate for persons, on the total rates of any income taxes that the taxpayer
13 is subject to under IC 6-3.5, and on the total amount of exclusions the
14 taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4).
15 However, the withholding instructions on the adjusted gross income of
16 a nonresident alien (as defined in Section 7701 of the Internal Revenue
17 Code) are to be based on applying not more than one (1) withholding



1 exclusion, regardless of the total number of exclusions that
 2 IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply
 3 on the taxpayer's final return for the taxable year. Such employer
 4 making payments of any wages:

5 (1) shall be liable to the state of Indiana for the payment of the tax
 6 required to be deducted and withheld under this section and shall
 7 not be liable to any individual for the amount deducted from the
 8 individual's wages and paid over in compliance or intended
 9 compliance with this section; and

10 (2) shall make return of and payment to the department monthly
 11 of the amount of tax which under this article and IC 6-3.5 the
 12 employer is required to withhold.

13 (b) An employer shall pay taxes withheld under subsection (a)
 14 during a particular month to the department no later than thirty (30)
 15 days after the end of that month. However, in place of monthly
 16 reporting periods, the department may permit an employer to report and
 17 pay the tax for a calendar year reporting period, if the average monthly
 18 amount of all tax required to be withheld by the employer in the
 19 previous calendar year does not exceed one thousand dollars (\$1,000).
 20 An employer using a reporting period (other than a monthly reporting
 21 period) must file the employer's return and pay the tax for a reporting
 22 period no later than the last day of the month immediately following
 23 the close of the reporting period.

24 (c) For purposes of determining whether an employee is subject to
 25 taxation under IC 6-3.5, an employer is entitled to rely on the statement
 26 of an employee as to the employee's county of residence as represented
 27 by the statement of address in forms claiming exemptions for purposes
 28 of withholding, regardless of when the employee supplied the forms.
 29 Every employee shall notify the employee's employer within five (5)
 30 days after any change in the employee's county of residence.

31 (d) A county that makes payments of wages subject to tax under this
 32 article:

33 (1) to a precinct election officer (as defined in IC 3-5-2-40.1); and

34 (2) for the performance of the duties of the precinct election
 35 officer imposed by IC 3 that are performed on election day;

36 is not required, at the time of payment of the wages, to deduct and
 37 retain from the wages the amount prescribed in withholding
 38 instructions issued by the department.

39 (e) Every employer shall, at the time of each payment made by the
 40 employer to the department, deliver to the department a return upon the
 41 form prescribed by the department showing:

42 (1) the total amount of wages paid to the employer's employees;

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- 1 (2) the amount deducted therefrom in accordance with the
- 2 provisions of the Internal Revenue Code;
- 3 (3) the amount of adjusted gross income tax deducted therefrom
- 4 in accordance with the provisions of this section;
- 5 (4) the amount of income tax, if any, imposed under IC 6-3.5 and
- 6 deducted therefrom in accordance with this section; and
- 7 (5) any other information the department may require.

8 Every employer making a declaration of withholding as provided in this
 9 section shall furnish the employer's employees annually, but not later
 10 than thirty (30) days after the end of the calendar year, a record of the
 11 total amount of adjusted gross income tax and the amount of each
 12 income tax, if any, imposed under IC 6-3.5, withheld from the
 13 employees, on the forms prescribed by the department.

14 (f) All money deducted and withheld by an employer shall
 15 immediately upon such deduction be the money of the state, and every
 16 employer who deducts and retains any amount of money under the
 17 provisions of this article shall hold the same in trust for the state of
 18 Indiana and for payment thereof to the department in the manner and
 19 at the times provided in this article. Any employer may be required to
 20 post a surety bond in the sum the department determines to be
 21 appropriate to protect the state with respect to money withheld pursuant
 22 to this section.

23 (g) The provisions of IC 6-8.1 relating to additions to tax in case of
 24 delinquency and penalties shall apply to employers subject to the
 25 provisions of this section, and for these purposes any amount deducted
 26 or required to be deducted and remitted to the department under this
 27 section shall be considered to be the tax of the employer, and with
 28 respect to such amount the employer shall be considered the taxpayer.
 29 In the case of a corporate or partnership employer, every officer,
 30 employee, or member of such employer, who, as such officer,
 31 employee, or member is under a duty to deduct and remit such taxes
 32 shall be personally liable for such taxes, penalties, and interest.

33 (h) Amounts deducted from wages of an employee during any
 34 calendar year in accordance with the provisions of this section shall be
 35 considered to be in part payment of the tax imposed on such employee
 36 for the employee's taxable year which begins in such calendar year, and
 37 a return made by the employer under subsection (b) shall be accepted
 38 by the department as evidence in favor of the employee of the amount
 39 so deducted from the employee's wages. Where the total amount so
 40 deducted exceeds the amount of tax on the employee as computed
 41 under this article and IC 6-3.5, the department shall, after examining
 42 the return or returns filed by the employee in accordance with this

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1 article and IC 6-3.5, refund the amount of the excess deduction.
 2 However, under rules promulgated by the department, the excess or any
 3 part thereof may be applied to any taxes or other claim due from the
 4 taxpayer to the state of Indiana or any subdivision thereof. **For a**
 5 **taxable year beginning before January 1, 2014**, no refund shall be
 6 made to an employee who fails to file the employee's return or returns
 7 as required under this article and IC 6-3.5 within two (2) years from the
 8 due date of the return or returns. In the event that the excess tax
 9 deducted is less than one dollar (\$1), no refund shall be made.

10 (i) This section shall in no way relieve any taxpayer from the
 11 taxpayer's obligation of filing a return or returns at the time required
 12 under this article and IC 6-3.5, and, should the amount withheld under
 13 the provisions of this section be insufficient to pay the total tax of such
 14 taxpayer, such unpaid tax shall be paid at the time prescribed by
 15 section 5 of this chapter.

16 (j) Notwithstanding subsection (b), an employer of a domestic
 17 service employee that enters into an agreement with the domestic
 18 service employee to withhold federal income tax under Section 3402
 19 of the Internal Revenue Code may withhold Indiana income tax on the
 20 domestic service employee's wages on the employer's Indiana
 21 individual income tax return in the same manner as allowed by Section
 22 3510 of the Internal Revenue Code.

23 (k) To the extent allowed by Section 1137 of the Social Security
 24 Act, an employer of a domestic service employee may report and remit
 25 state unemployment insurance contributions on the employee's wages
 26 on the employer's Indiana individual income tax return in the same
 27 manner as allowed by Section 3510 of the Internal Revenue Code.

28 (l) A person who knowingly fails to remit trust fund money as set
 29 forth in this section commits a Class D felony.

30 SECTION 2. IC 6-8.1-3-6 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) The department
 32 shall maintain, for a period of at least ~~three (3)~~ **ten (10)** years, a record
 33 of all monies received and disbursed, and copies of all returns filed
 34 with the department.

35 (b) At the end of each fiscal year, the state board of accounts shall
 36 audit the department's record of receipts and disbursements.

37 SECTION 3. IC 6-8.1-9-1, AS AMENDED BY P.L.137-2012,
 38 SECTION 109, IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) If a person has paid more tax
 40 than the person determines is legally due for a particular taxable
 41 period, the person may file a claim for a refund with the department.
 42 Except as provided in subsections (f) and (g), in order to obtain the

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1 refund, the person must file the claim with the department within **the**
 2 **following period:**

3 **(1) For a taxable year beginning before January 1, 2014,** three
 4 (3) years after the ~~latter~~ **later** of the following:

5 (1) **(A)** The due date of the return.

6 (2) **(B)** The date of payment.

7 **(2) For a taxable year beginning after December 31, 2013, ten**
 8 **(10) years after the later of the following:**

9 **(A) The due date of the return.**

10 **(B) The date of payment.**

11 For purposes of this section, the due date for a return filed for the state
 12 gross retail or use tax, the gasoline tax, the special fuel tax, the motor
 13 carrier fuel tax, the oil inspection fee, or the petroleum severance tax
 14 is the end of the calendar year which contains the taxable period for
 15 which the return is filed. The claim must set forth the amount of the
 16 refund to which the person is entitled and the reasons that the person
 17 is entitled to the refund.

18 (b) After considering the claim and all evidence relevant to the
 19 claim, the department shall issue a decision on the claim, stating the
 20 part, if any, of the refund allowed and containing a statement of the
 21 reasons for any part of the refund that is denied. The department shall
 22 mail a copy of the decision to the person who filed the claim. If the
 23 person disagrees with a part of the decision, the person may file a
 24 protest and request a hearing with the department. The department
 25 shall mail a copy of the decision to the person who filed the protest. If
 26 the department allows the full amount of the refund claim, a warrant for
 27 the payment of the claim is sufficient notice of the decision.

28 (c) If the person disagrees with any part of the department's
 29 decision, the person may appeal the decision, regardless of whether or
 30 not the person protested the tax payment or whether or not the person
 31 has accepted a refund. The person must file the appeal with the tax
 32 court. The tax court does not have jurisdiction to hear a refund appeal
 33 suit, if:

34 (1) the appeal is filed more than ninety (90) days after the later of
 35 the date the department mails:

36 (A) the decision of denial of the claim to the person; or

37 (B) the decision made on the protest filed under subsection

38 (b); or

39 (2) the appeal is filed both before the decision is issued and
 40 before the one hundred eighty-first day after the date the person
 41 files the claim for refund with the department.

42 (d) The tax court shall hear the appeal de novo and without a jury,

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1 and after the hearing may order or deny any part of the appealed
2 refund. The court may assess the court costs in any manner that it feels
3 is equitable. The court may enjoin the collection of any of the listed
4 taxes under IC 33-26-6-2. The court may also allow a refund of taxes,
5 interest, and penalties that have been paid to and collected by the
6 department.

7 (e) With respect to the motor vehicle excise tax, this section applies
8 only to penalties and interest paid on assessments of the motor vehicle
9 excise tax. Any other overpayment of the motor vehicle excise tax is
10 subject to IC 6-6-5.

11 (f) If a taxpayer's federal income tax liability for a taxable year is
12 modified by the Internal Revenue Service, and the modification would
13 result in a reduction of the tax legally due, the due date by which the
14 taxpayer must file a claim for refund with the department is the later of:

15 (1) the date determined under subsection (a); or

16 (2) the date that is one hundred eighty (180) days after the date on
17 which the taxpayer is notified of the modification by the Internal
18 Revenue Service.

19 (g) If an agreement to extend the assessment time period is entered
20 into under IC 6-8.1-5-2(h), the period during which a person may file
21 a claim for a refund under subsection (a) is extended to the same date
22 to which the assessment time period is extended.

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