# Indiana's New Successor Tax Liability Statute – How to Comply and Avoid Pitfalls

Jul 28, 2023

**Categories:**

Blogs
Tax Law Defined™ Blog

**Authors:**

Daniel G. Mudd
Patrick W. Thomas

**Kenny Schwalbert, a J.D. candidate at the University of Louisville Brandeis School of Law, contributed to this article while working as a summer associate at Frost Brown Todd.*

Business owners in Indiana should note a major change to the Indiana Code regarding successor liability for business tax debts. Failure to closely follow the new required notices and procedures can result in *automatic* liability for any of the predecessor entity's tax liabilities. This change affects *all* taxpayers looking to acquire a business with operations in Indiana; taxpayers should stay apprised of developments in the Department of Revenue's implementation of the law, leading up to its January 2024 effective date.

## Triggering the Successor Liability Statute

During the 2023 legislative session, the Indiana legislature decided to join other states, such as Kentucky, in enacting *statutory* successor sales and use tax (and certain other Indiana trust fund tax) liability provisions if the acquiring taxpayer does not provide timely notice of the transfer of business assets and obtain a tax clearance letter. Not only does this statutory successor provision apply to sales and use tax, *but it also applies* to Indiana county innkeeper and beverage taxes. After several revisions to the legislation, which was modeled after Minnesota's successor liability statutes, and after originally intending to be effective by July 1, 2023, Section 33 of SB 419 was finalized, and becomes effective January 1, 2024. On May 4, 2023, with the signature of Governor Eric Holcomb, Indiana formally enacted SB 419. This new statute sets forth very detailed statutory requirements to apply or prevent statutory liability, as summarized below.

IC 6-8.1-10-9.5, enacted by SB 419, now imposes new requirements for businesses engaging in sales of more than half of the assets of the business, through either an asset or equity sale. Under the new


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

legislation, whenever a business engages in a "**transfer in bulk,**" either the transferring business or a potential successor in liability must notify the Department of Revenue (the "Department") of the transfer and the terms and conditions of the transfer (the "Notice" or "Notice Requirement"). This Notice must include the tax identification number of both the transferring business and the successor in liability. The Notice must be delivered at least forty-five (45) days before taking possession of the assets or paying the purchase price for the transfer. [1]

Who is a potential "successor in liability"? The statute defines this as someone who "directly or indirectly purchases, acquires, is gifted, or succeeds to ownership of more than one-half (1/2) of all tangible personal property of a business…."[2] However, a "successor in liability" does not include "a personal representative or beneficiary of an estate, a trustee in bankruptcy, a debtor in possession, a receiver, a secured party, a mortgagee, an assignee of rents, or any other lienholder."

To trigger the statute, a business must also engage in a "transfer in bulk." A "transfer" is defined as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with a business or an interest in a business, or a stock of goods."[3] Transfer also means the change in the type of business entity or business' name where the business is discontinued and a new one is started. In contrast, "transfer in bulk" means "a transfer, other than in the ordinary course of the transferor's trade or business, of more than one-half (1/2) of all the tangible personal property of a business, by value, including inventory, at all locations combined, as measured by the value of the property at the time of the transfer."[4]

## Notice Requirements – Consequences for Complying and Failure to Comply

Critically, if the Notice is not delivered to the Department within the 45-day period, the potential successor in liability *will* become the "**successor in liability**" and will thus be liable for any unpaid taxes, interest, and penalties due from the transferring business.[5]


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

If the transferring business or potential successor in liability does provide the Notice within the 45-day period, and within 20 days the Department places a summary of liability in the mail, addressed to the successor in liability, determining that tax liability exists in addition to liabilities subject to a department lien or that tax returns are due but not filed—at which point the successor in liability **is liable for all taxes, interest, and liabilities determined in the summary**, but only to the extent of the purchase price.[6] The successor in liability will trigger the liability if it pays the purchase price or takes possession of the assets without withholding and remitting the liability to the Department.

If, on the other hand, the Department determines that no tax is due from the transferring business or that the business has not failed to file any returns, the Department must issue a clearance letter within 20 days. This letter will specify that no tax liabilities exist and that the transferee is not a successor in liability. Even if the Department determines that a transfer is not a "transfer in bulk," it must still send a tax clearance letter. [7] Importantly, if the Department fails to send the required summary in 20 days, the potential successor in liability is not liable for *any* taxes of the transferring business, except with regard to the transfers that were not at arms-length or were gifts. Therefore, while the new law requires timely notice by acquiring taxpayers, it also puts an onerous burden on the Department to receive, process, and timely respond to the Notice—or else a taxpayer may be absolved of any potential successor liability.

The successor must also pay the purchase price and take possession of the assets within 60 days of mailing the Notice to the Department. If the purchase price is not paid or the potential successor in liability does not take possession within 60 days, the potential successor or the transferring business must submit a new Notice to the Department. Further, so long as the successor in liability complies with the Notice Requirement, the successor is not liable for any tax assessments of the transferring business made **after** the Department's summary is issued (unless those assessments are *a result* of the Department's summary).[8]


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

## Procedural Issues

Even if a business fails to comply with the Notice Requirement, the Department must still issue a proposed assessment prior to assessing or collecting any tax from the successor.[9] If the transferring business has already exhausted its protest rights regarding the underlying tax, the successor *cannot* protest the existence of the tax liability itself.[10] However, it appears that the successor could still protest whether they *are* a successor in liability or whether good cause existed for failing to send the Notice to the Department. In the case of such a protest, the statute notes that "the potential successor in liability shall not be considered a successor in liability with respect to such taxes if the potential successor in liability places an amount in escrow sufficient to satisfy such taxes pending resolution of the transferring business's administrative and legal process protesting such taxes."[11]

The statute also clarifies a few issues relevant to other Indiana tax laws. First, it provides that transfers in bulk are not "retail transactions" subject to the Indiana sales or use taxes, except for any inventory, motor vehicles, watercraft, aircraft, or rental property.[12]

Further, the statute imposes *joint* liability on both the successor in liability, the transferor, and any responsible officers that had become individually liable for such taxes; in other words, the transferring business is not off the hook. The good news is that the statute also helpfully notes that no owners, shareholders, directors, officers, or employees of a successor in liability will be held individually liable for these taxes, interest, or penalties. Finally, the statute provides that the Department has discretion in assessing and collecting the tax due from any liable party, but that it cannot collect more than the total tax, interest, or penalties imposed from all parties.[13]

Businesses with operations in Indiana that are considering a sale should be aware of the new law, monitor the Department's implementation, and determine how it will impact them and the potential successor in liability. Please contact the authors of this article for more information. You can also visit our Tax Law Defined®


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Blog for more insight into the latest developments in federal, state, and local tax planning and tax administration.

---

[1] IC 6-8.1-10-9.5(b).

[2] IC 6-8.1-10-9.5(a)(1).

[3] IC 6-8.1-10-9.5(a)(4).

[4] IC 6-8.1-10-9.5(a)(5). The law imposes special rules for transfers in bulk that are not at arm's length or are gifts. In such a case, the successor's liability equals to the value of the transferred property. In determining the type of transfer, the Department may require the successor in liability to provide a third-party valuation of the tangible personal property. However, if a successor in liability returns the gift to the transferor, the statute relinquishes the transferee from any liability. IC 6-8.1-10-9.5(d), (e).

[5] IC 6-8.1-10-9.5(c)(1).

[6] IC 6-8.1-10-9.5(c)(2).

[7] IC 6-8.1-10-9.5(c)(3).

[8] IC 6-8.1-10-9.5(f).

[9] IC 6-8.1-10-9.5(g).

[10] IC 6-8.1-10-9.5(h).

[11] *Id.*

[12] IC 6-8.1-10-9.5(i).

[13] IC 6-8.1-10-9.5(j).

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.


2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons