

RCW 82.08.052 Remote seller—Nexus. (1) (a) From October 1, 2018, through December 31, 2019, a seller is obligated to collect and remit to the department the taxes imposed under this chapter, except as otherwise provided in RCW 82.08.0531(2) and this subsection, if the seller, in the current or immediately preceding calendar year, had:

(i) More than one hundred thousand dollars of cumulative gross receipts from this state;

(ii) Subject to the limitation in (c)(ii) of this subsection (1), two hundred or more separate transactions for the delivery of products into this state; or

(iii) Subject to the limitation in RCW 82.32.531, physical presence in this state under RCW 82.04.067.

(b) Cumulative gross receipts counting toward the threshold in (a)(i) of this subsection include a person's gross income of the business from all retail sales made by the seller and sourced to this state under RCW 82.32.730.

(c)(i) Transactions counting toward the threshold in (a)(ii) of this subsection include all retail sales transactions made by the seller and sourced to this state under RCW 82.32.730.

(ii) From March 14, 2019, a seller is relieved of the obligation to collect the taxes imposed under this chapter and remit those taxes to the department if that obligation arose solely based on the threshold in (a)(ii) of this subsection.

(iii) For purposes of the threshold in (a)(ii) of this subsection "transaction" means an agreement to furnish a product or products for consideration, and includes a sale as defined in RCW 82.04.040.

(iv) The term "transaction" does not include an agreement if the agreement is canceled or rescinded before any of the products are delivered to the buyer or other recipient designated by the buyer, the seller retains no part of the consideration from the buyer, and the seller did not collect from the buyer any tax imposed or authorized under this title.

(v) With regard to agreements requiring multiple payments by the consumer, such as a lease, rental, or installment sale, such agreements count as a single transaction for purposes of this subsection, regardless of the number of payments required under the agreement. However, any modification of such an agreement that provides for additional payments is counted as an additional transaction.

(d)(i) Subject to (b) and (c) of this subsection (1), for a marketplace facilitator, receipts and transactions counting toward the thresholds in (a)(i) and (ii) of this subsection include, in addition to the cumulative gross receipts and separate transactions of its own sales, the cumulative gross receipts and separate transactions from sales by all marketplace sellers through the marketplace facilitator's marketplace, including marketplace sellers that are not obligated to collect the taxes under this chapter pursuant to the provisions of this section.

(ii) For a purchase made by one consumer through a marketplace facilitator, where the purchase involves sales by multiple marketplace sellers, the purchase is deemed to be one transaction for the marketplace facilitator and one transaction apiece for each marketplace seller.

(2) Beginning January 1, 2020, a seller with a substantial nexus with this state under RCW 82.04.067 is obligated to collect and remit to the department the taxes imposed under this chapter.

(3) (a) For purposes of this section, the following definitions apply:

(i) "Apportionable income" has the same meaning as provided in RCW 82.04.460.

(ii) "Gross income of the business" has the same meaning as provided in RCW 82.04.080.

(iii) "Product" has the same meaning as provided in RCW 82.32.023.

(b) The definitions in RCW 82.13.010 apply to this section through June 30, 2019.

(4) (a) A seller whose obligation to collect the taxes imposed under this chapter arises after October 1, 2018, must begin collecting taxes imposed under this chapter as follows:

(i) For a remote seller, on the first day of the first calendar month that is at least thirty days from the date that the remote seller becomes required under subsection (1) or (2) of this section to collect the taxes imposed under this chapter.

(ii) For a seller that has a physical presence in this state, immediately upon establishing a tax collection obligation under subsection (1)(a)(iii) or (2) of this section.

(b) Nothing in this subsection (4) affects the ongoing tax collection obligation of any seller that was required, or elected, to collect the taxes imposed under this chapter on or before October 1, 2018.

(5) This section is subject to RCW 82.32.762. [2019 c 8 § 106; 2015 3rd sp.s. c 5 § 202.]

Effective date—2019 c 8 §§ 101, 104, 106, 201, 402-405, and 501:
See note following RCW 82.02.250.

Existing rights and liability—Retroactive application—2019 c 8:
See notes following RCW 82.02.250.

Application—2017 c 323 § 305: "Section 305 of this act applies retroactively for the period January 1, 2015, through December 31, 2015." [2017 c 323 § 306.]

Construction—2017 c 323: "Nothing in section 204, chapter 5, Laws of 2015 3rd sp. sess. may be construed as affecting the taxable status in calendar year 2015 of any person with a substantial nexus with this state under RCW 82.04.067 any time on or after January 1, 2015, and before September 1, 2015, with respect to business and occupation taxes on apportionable activities as defined in RCW 82.04.460." [2017 c 323 § 305.]

Effective dates—2015 3rd sp.s. c 5: "(1) Except as provided otherwise in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2015.

(2) Part II of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect September 1, 2015." [2015 3rd sp.s. c 5 § 501.]

Finding—Intent—2015 3rd sp.s. c 5: "(1) The commerce clause of the United States Constitution as currently interpreted by the United States supreme court prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state.

(2) The legislature recognizes that under the United States supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state.

(3) The legislature further recognizes that the requisite physical presence can be established directly through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives who act on behalf of the taxpayer in the taxing state.

(4) However, the legislature finds that because the United States supreme court has not clearly defined the circumstances under which a physical presence is sufficient to establish a substantial nexus for tax purposes, frequent conflicts have arisen throughout the country among state taxing authorities, taxpayers, tax practitioners, and courts.

(5) Therefore, the legislature intends to provide more clarity for out-of-state sellers that compensate Washington residents for referring customers to the out-of-state seller by providing clear statutory guidelines for determining when these out-of-state sellers are required to collect Washington's retail sales tax." [2015 3rd sp.s. c 5 § 201.]