

WSR 21-07-141

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed March 24, 2021, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-02-051.

Title of Rule and Other Identifying Information: WAC 458-20-277

Certified service providers—Compensation.

Hearing Location(s): On April 29, 2021, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Contact Keith Dacus at KeithD@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: May 6, 2021.

Submit Written Comments to: Matthew Largent, P.O. Box 47453, Olympia, WA 98504-7453, email MatthewL@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amending WAC 458-20-277 to incorporate changes to the certified service provider (CSP) contract adopted by the streamlined sales tax governing board that became effective January 1, 2021.

Reasons Supporting Proposal: To explain the role and responsibilities of a CSP and to explain the monetary allowances due to a CSP with respect to specified sellers collecting and remitting retail sales and use tax in Washington.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.32.715.

Statute Being Implemented: RCW 82.32.020, 82.32.715, 82.58.030, and 82.58.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Matthew Largent, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1590; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Matthew Largent, 6400 Linderson Way S.W., Tumwater, WA 98504, phone 360-534-1590, fax 360-534-1606, email MatthewL@dor.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any costs on businesses not otherwise imposed by statute or by businesses voluntarily agreeing to perform obligations in exchange for the compensation described in this rule making.

March 24, 2021
Atif Aziz
Rules Coordinator

OTS-2801.1

AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-277 Certified service provider(s)—Compensation.

(1) **Introduction.**

(a) Washington has entered into the streamlined sales and use tax agreement (SSUTA) pursuant to RCW 82.58.030. Washington became an associate member state on July 1, 2007, and was granted full membership status as of July 1, 2008.

(b) This rule explains ~~((compensation paid to))~~ the monetary allowances for certified service providers (CSPs) ~~((as defined in RCW))~~ with respect to CSP-compensated sellers (also referred to as "model 1 sellers"). See RCW 82.32.020, 82.32.715, and 82.58.080. The rule also lists rights and responsibilities applicable to these CSPs when collecting and remitting retail sales and use taxes in Washington.

~~((Washington became a full member state on July 1, 2008. See SSB 5089 (chapter 6, Laws of 2007). The websites referenced in this rule are))~~

(c) This rule is effective for periods beginning January 1, 2021, and is guided by the terms specified in the CSP contract approved by the streamlined sales tax governing board as of August 31, 2020, to be effective January 1, 2021, (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax governing board under which CSPs perform services in SSUTA associate and member states. To the extent there is a conflict between RCW 82.32.715 and the CSP contract, RCW 82.32.715 controls.

(d) For periods prior to January 1, 2021, refer to terms of the applicable CSP contract in effect for such prior period.

(e) For more information concerning SSUTA visit the SSUTA website located at: <http://www.streamlinedsalestax.org>. The SSUTA website may include a list of the current member and associate states, information concerning the CSP contract, CSP certification, and a list of current CSPs, and other information referenced in this rule. The SSUTA website is not maintained by Washington or the department of revenue (department) ~~((. These referenced websites))~~ and may contain recommendations or provisions that require a change to Washington law prior to becoming effective in Washington.

(2) ~~((CSP compensation for volunteer sellers.))~~ **Definitions.**

(a) **What is a CSP for purposes of this rule?** A CSP is an agent of the CSP-compensated seller certified under the SSUTA to perform ~~((all of))~~ a seller's retail sales and use tax functions, other than the seller's obligation to remit retail sales and use tax on its own purchases. ~~((For more information concerning CSP certification or a list of current CSPs, visit the SSUTA website located at: <http://www.streamlinedsalestax.org>))~~ The sales and use tax functions contemplated are those services necessary to:

(i) Set up and integrate a CSP's certified automated system with a seller's system, including a product mapping process;

(ii) Calculate the amount of tax due on a transaction at the time of sale, including determining the jurisdiction to which each of a seller's transactions is sourced, determining whether the transaction is subject to tax, and determining the amount of state and local sales or use tax due on the transaction;

(iii) Generate and file the required sales and use tax returns, including compiling and maintaining the required data, preparing the simplified electronic return (SER), filing the required SER, and remitting tax funds;

(iv) Respond to and provide supporting documentation with respect to notices and sales tax and use tax audits;

(v) Protect the privacy of tax information it obtains; and

(vi) Maintain compliance with the streamlined organization's minimum standards for certification.

(b) **What is a ((volunteer)) CSP-compensated seller?** A ((volunteer)) CSP-compensated seller is ((any)) a seller that has selected a CSP, as agent, to perform ((all of)) that seller's retail sales and use tax functions as described in subsection (2)(a) of this rule, ((other than the obligation to remit retail sales and use tax on the seller's own purchases and)) who has ((voluntarily)) registered through the ((SSUTA central registration system (CRS) in accordance with the terms of the CSP contract (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax governing board under which CSPs perform services in SSUTA associate and member states)) streamlined sales tax registration system (SSTRS), and meets all of the criteria to qualify as a CSP-compensated seller under the terms of Section D.2(b) of the CSP contract.

(c) **What are member states and associate member states?** Member states are those states that have petitioned and been granted full membership under the SSUTA. Associate member states are those states that have petitioned and been designated associate member status under the SSUTA. ((Washington became an associate member state on July 1, 2007. Washington has been granted full membership status as of July 1, 2008. For a list of the current member and associate member states, visit the SSUTA website at: <http://www.streamlinedsalestax.org>.)

(d) **What are monetary allowances?** As a condition of becoming an associate member and member state, Washington has agreed to permit CSPs to act as agents for sellers in collecting and remitting sales and use taxes in Washington. Washington has agreed to provide monetary allowances to CSPs acting as agents for ((volunteer)) CSP-compensated sellers. A CSP will obtain these monetary allowances by retaining a portion of the Washington retail sales and use ((tax)) taxes covered by the SSUTA that they collect. However, monetary allowances will not reduce the retail sales and use taxes collected for and remitted to local taxing jurisdictions. The calculation of these monetary allowances is discussed in subsection (3) of this rule.

(e) **What is a certified automated system (CAS)?** A certified automated system is software certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) **How are monetary allowances calculated?** The formula for determining monetary allowances ((is set forth)) in this rule is guided by the compensation formula set out in Section D.5 of the CSP contract. This monetary allowance is the CSP's sole form of compensation with respect to ((volunteer)) CSP-compensated sellers ((during the term of the CSP contract and)). The formula is the same with respect to all CSPs.

((This)) The monetary allowance is calculated ((by using the following formula: (The combined volume of taxes due to all member and associate member states from a volunteer seller in such capacity) multiplied by (the applicable base rate). Simply stated, the formula is (combined collected taxes) x (base rate). Affiliated volunteer sellers will be treated as a single volunteer seller if they are related persons under 267(b) or 707(b) of the United States Internal Revenue Code. The base rate resets annually. Table A below sets forth the

schedule for "combined collected taxes" and the applicable "base rate":

Table A

Combined Collected Taxes:		Base Rate:
\$0.00	- \$250,000	8%
\$250,000.01	- \$1,000,000	7%
\$1,000,000.01	- \$2,500,000	6%
\$2,500,000.01	- \$5,000,000	5%
\$5,000,000.01	- \$10,000,000	4%
\$10,000,000.01	- \$25,000,000	3%
Over \$25,000,000.01		2%))

as a percentage of the taxes that are covered by the SSUTA due to Washington:

(a) CSP-compensated sellers with gross sales in preceding calendar year less than or equal to \$100,000. For CSP-compensated sellers with gross sales in Washington less than or equal to \$100,000 in the preceding calendar year, the allowance equals six percent of the first \$8,000 of taxes due in Washington in the calendar year. Thereafter, the allowance is five percent of taxes due in Washington that exceed \$8,000 but do not exceed \$500,000 in the calendar year, and two percent of the taxes due in Washington in excess of the first \$500,000 in the current calendar year.

(b) CSP-compensated sellers with gross sales in the preceding calendar year exceeding \$100,000. For CSP-compensated sellers who had gross sales in Washington exceeding \$100,000 in the preceding calendar year, the allowance equals five percent of the first \$500,000 of taxes due in Washington and two percent of the taxes due in Washington in excess of the first \$500,000 in the current calendar year.

(4) Change in status of CSP-compensated sellers.

(a) Can ((volunteer)) CSP-compensated sellers lose ((volunteer seller)) CSP-compensated seller status? ((Volunteer)) CSP-compensated seller status ceases when ((the seller conducts)), as a result of activities the seller conducts in Washington ((that would require the seller to legally register in Washington as described in the CSP contract)), the seller fails to meet one or more of the criteria required for qualification as a CSP-compensated seller identified in subsection (2) of this rule.

(b) Seller statements. Each ((volunteer)) CSP-compensated seller must periodically send written statements or written representations (statement) to the CSP verifying that the seller continues to qualify as a ((volunteer)) CSP-compensated seller in Washington. The ((volunteer)) CSP-compensated seller must send the first statement twenty-four consecutive months from the date on which the CSP began remitting sales and use taxes for the ((volunteer)) CSP-compensated seller in Washington. Subsequently, ((volunteer)) CSP-compensated sellers will send a statement every ((twelve consecutive months thereafter)) year. A CSP may request a statement verifying a seller's ((volunteer)) CSP-compensated seller status at any time. ((The CSP must notify the department when a seller loses volunteer seller status and this notification must be sent no later than ten business days after receipt of a seller's statement indicating the seller is no longer a volunteer seller. Notice to the department must be provided consistent with the notice provisions contained in the CSP contract. Entitlement to mone-

~~tary allowances will be terminated after a seller sends a statement that the seller is no longer a volunteer seller.))~~ If the statement indicates a seller is no longer a CSP-compensated seller, the CSP must provide notice of the change in status. The change in status is then effective on the first day of the month following the calendar month the statement was obtained. A CSP-compensated seller's failure to respond to CSP may result in that person losing its status as a CSP-compensated seller.

(c) **When will monetary allowances terminate?** Generally, a CSP is entitled to retain monetary allowances granted prior to receiving a statement indicating that the seller has lost ((volunteer)) CSP-compensated seller status. However, entitlement to monetary allowances will end on the first day of the month following ((receipt of such statement)) notice of change in status. Regardless, a CSP will be entitled to monetary allowances for services performed under this rule with respect to a ((volunteer)) CSP-compensated seller for a period of twenty-four months (beginning on the date the CSP commenced remitting sales and use taxes for the ((volunteer)) CSP-compensated seller in Washington and ending twenty-four consecutive months later). If a CSP fails to obtain a statement and the seller is determined not to be a CSP-compensated seller, the CSP will forfeit compensation and such compensation will be forfeited to the later of the due date of the missing statement or the date the seller lost its status as a CSP-compensated seller. Additionally, Washington may also challenge the status of a CSP-compensated seller if the state believes it does not meet the requirements for a CSP-compensated seller.

~~((4))~~ (5) CSP rights and responsibilities.

(a) **Responsibility for retail sales and use taxes.** A CSP is liable to the member states and associate member states for the retail sales and use taxes on the sales transactions that it processes.

If the CSP does not remit the collected retail sales and use taxes when due, those taxes are delinquent. Washington may send a notice of delinquency to a CSP for these delinquent taxes. The CSP must then remit the delinquent taxes within ten business days of that notification. If the CSP does not remit the delinquent taxes within those ten business days, the CSP is not entitled to monetary allowances with respect to the delinquent taxes and is liable for the payment of the taxes along with penalties and interest. However, if the taxes are delinquent because a seller has not remitted part or all of the delinquent taxes to the CSP, the CSP will be given relief if it properly notifies the department and timely files the required return. In order to obtain this relief, the CSP must notify the department of the seller's failure to remit the retail sales and use taxes to the CSP and file the required return within ten business days of the date on which those delinquent taxes should have been remitted to the department. If the CSP has timely filed the return without payment and provided the notice required under the CSP contract, and the seller subsequently remits the taxes due to the CSP within sixty days of the due date of the remittance, the CSP will still be entitled to the monetary allowance provided in the CSP contract for those taxes, provided the CSP remits the taxes due to Washington within ten business days after receiving the taxes due from the seller. Notice by the CSP under this subsection must be provided consistent with the notice provisions contained in the CSP contract.

(b) **CSP liability relief.** The department is responsible for maintaining the state's taxability matrix.

(i) A CSP is not liable for charging or collecting the incorrect amount of sales or use tax where that error results from reliance on incorrect data provided in the department's taxability matrix, or from tax rates, boundaries, and taxing jurisdiction assignments listed in Washington's rates and boundaries databases.

(ii) Beginning July 1, 2015, if the taxability matrix is amended, sellers and certified service providers are relieved from liability to the state and to local jurisdictions to the extent that the seller or certified service provider relied on the immediately preceding version of the state's taxability matrix. Relief under this subsection (~~((4))~~) (5)(b) of this rule is available until the first day of the calendar month that is at least thirty days after the department submits notice of a change to the state's taxability matrix to the streamlined sales tax governing board.

(iii) To obtain a copy of the taxability matrix, visit the SSUTA website located at: streamlinedsalestax.org. Additionally, CSPs will be held harmless and not liable for sales and use taxes, interest, and penalties on those taxes not collected due to reliance on Washington's certification of the CSP's CAS. Pursuant to RCW 82.58.080, sellers that contract with a CSP are not liable to Washington for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresents the type of items it sells or commits fraud.

(c) **Seller's contract with the CSP.** A CSP must provide the department with a copy of its agreement with contracting sellers if requested.

(d) **Credits or refunds with respect to bad debt.** A CSP may, on the behalf of a seller, claim credits or refunds for sales taxes paid on bad debts. Bad debts have the same meaning provided in 26 U.S.C. Section 166, as amended in 2003. Bad debts do not include expenses incurred in collecting bad debts; repossessed property; and amounts due on property in the possession of the seller until the full purchase price has been paid. See RCW 82.08.037, 82.12.037, and WAC 458-20-196 for more information regarding bad debts.

(e) **Retention of personally identifiable consumer information.** With limited exceptions, CSPs must perform their services without retaining personally identifiable consumer information. A CSP may retain personally identifiable consumer information only as long as it is needed to ensure the validity of tax exemptions or to show the intended use of the goods or services purchased. See RCW 82.32.735 for more information regarding personally identifiable consumer information.

(f) **Filing of tax returns and remittance of retail sales and use taxes.** CSP will file retail sales and use excise tax returns using Washington's electronic filing system (E-file). CSPs will remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fedwire Funds Transfer System.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-06-040, § 458-20-277, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.32.715. WSR 08-01-017, § 458-20-277, filed 12/7/07, effective 1/7/08.]