

**Preliminary draft rule. This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.**

NEW SECTION

**WAC 458-20-27701 Model Two (2) Volunteer Sellers -- Compensation.** (1) **Introduction.** As a requirement of membership in the Streamlined Sales and Use Tax Agreement (SSUTA), Washington has agreed to provide compensation to model 2 volunteer sellers collecting and remitting tax in Washington. For more information concerning the SSUTA, visit <http://www.streamlinedsalestax.org>. This section explains who qualifies as a model 2 volunteer seller and the compensation available to such sellers as authorized under RCW 82.32.715.

The web site referenced in this section is not maintained by Washington or the department. This referenced web site may contain recommendations that require a change to Washington law before becoming effective in Washington. The web site is current as of the date of adoption of this section, but may change in future periods by action of the owner of the web site without notice.

(2) **Model 2 volunteer sellers.** This subsection discusses the qualifications for status as model 2 sellers and model 2 volunteer sellers. Only those model 2 sellers qualifying as model 2 volunteer sellers are eligible to receive compensation for remitting sales and use taxes to Washington.

(a) **What is a model 2 seller?** You will qualify as a model 2 seller if you meet the following conditions:

(i) You use a certified automated system to perform part of your sales and use tax functions. See (e) of this subsection (2) for a definition of certified automated system;

(ii) You retain the responsibility for remitting your sales and use taxes to Washington; and

(iii) You are registered through the SSUTA central registration system (CRS) as a model 2 seller.

(b) **What is a model 2 volunteer seller (also referred to as a "qualified seller" in this section)?** If you are a model 2 seller under subsection (2)(a) above, you will be a qualified seller if you meet the following conditions:

(i) You have represented that you do not have a legal requirement to register and do not in fact have a legal requirement to register in Washington at the time you register with the CRS, regardless of any previous registration you may have made in Washington; or

(ii) If you have registered with Washington after November 12, 2002 and you meet all of the following requirements

**Preliminary draft rule. This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.**

immediately before the date of your registration in Washington:

- (A) You have no fixed place of business in Washington for more than thirty (30) days;
- (B) You have less than fifty thousand dollars (\$50,000) of property in Washington;
- (C) You have less than fifty thousand dollars (\$50,000) of payroll in Washington; and
- (D) You have less than twenty-five percent (25%) of your total property or payroll in Washington.

If you are required to register with the department under RCW 82.32.030(1), you are not relieved of the obligation to register in Washington by reason of subsections (2)(a) and (2)(b) of this section. If you have registered in Washington because you had a legal requirement to register resulting from an administrative, legislative, or judicial action, you cannot be a qualified seller under subsection (2)(b)(ii) of this section.

**(c) What is property for purposes of subsection (2)(b) and how is it valued?** Property refers to the "average value" of the real property and tangible personal property that you own or rent. This property is valued at its original cost basis. Rented property will be valued at eight (8) times the net annual rental rate of that property. The net annual rental rate is the annual rental rate paid by you less any annual rental rates you receive from sub-rentals.

The "average value" of this property is determined by averaging the value of property at the beginning of the twelve month (12) period immediately before the date you register with Washington with the value of property at the end of the twelve month (12) period immediately before you register.

**(d) What is payroll for purposes of subsection 2(b)?** Payroll is the total amount paid by you for compensation during the twelve (12) month period immediately preceding the date you register with Washington. Compensation means wages, salaries, commissions, and any other form of payment to employees that meets the definition of gross income under section 61 of the Internal Revenue Code in effect on the effective date of this section.

Compensation is deemed paid in Washington if:

(i) The employee's service is performed entirely within Washington;

(ii) The employee's service is performed both within and outside Washington, and the performance of services outside Washington is merely incidental to the services performed within Washington;

**Preliminary draft rule. This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.**

(iii) The employee performs some services within Washington, and the base of operations or the place from which the services are directed or controlled is within Washington; or

(iv) The employee performs some services within Washington, and the base of operations or place from which the services are directed or controlled is not within any state (where the services are performed), but the employee's residence is within Washington.

(e) **What is a certified automated system?** 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) **Qualified Seller Compensation.** This subsection explains compensation available to qualified sellers.

(a) **What type of compensation is available to qualified sellers?** If you are a qualified seller, you are entitled to monetary allowances from Washington. You obtain these monetary allowances by retaining a portion of the Washington State retail sales and use tax you collect. However, you are not entitled to retain monetary allowances with respect to the Washington local retail sales and use taxes that you collect and remit. You are not entitled to monetary allowances unless you have properly registered as a model 2 seller in the CRS and have filed and paid a timely return

(b) **How long are qualified sellers permitted to receive monetary allowances?** You are entitled to monetary allowances for a period up to twenty-four (24) months from the date that you install your certified automated system.

(c)(i) **How do qualified sellers calculate their monetary allowances?** You will calculate your monetary allowance under the following formula:

(Base rate) multiplied by (Washington retail sales and use tax you collect and remit).

The base rate for this formula is one and one-half percent (1.5%). You are not entitled to monetary allowances with respect to Washington local retail sales and use taxes, and you must collect and remit these local sales and use taxes in full to the department.

(ii) Your total monetary allowance for the first twelve

**Preliminary draft rule. This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.**

months (12) of the twenty-four (24) month period described in (b) of this subsection (3) cannot exceed ten thousand dollars (\$10,000). Your total monetary allowance for the second twelve months (12) of the twenty-four (24) month period described in (b) of this subsection (3) cannot exceed ten thousand dollars (\$10,000). For purposes of determining when the ten thousand (\$10,000) limit is reached, affiliated qualified sellers must be treated as a single qualified seller if they would qualify as "related persons" under sections 267(b) or 707(b) of the Internal Revenue Code in effect on the effective date of this section.

(iii) You may not retain monetary allowances based on any sales taxes determined or calculated without the use of a certified automated system. Moreover, you may not retain monetary allowances based on any sales taxes determined or calculated with a certified automated system that you have failed to update or modify in accordance with your agreement with your certified automated system provider. It is your duty to make sure all updates and modifications to your certified automated system are properly implemented.

**(d) Can a qualified seller continue to receive monetary allowances if it ceases to be a qualified seller?** No. If you cease to be a qualified seller, you are not entitled to monetary allowances. If you cease to be a qualified seller during any part of a calendar month, you will not be entitled to monetary allowances for that entire month. You will cease to be a qualified seller if you conduct activities in Washington that would require you to register in Washington and as a result of these activities fail to meet one or more of the requirements of subsection (2)(b)(ii)(A) -(D), above. The meanings given to property and payroll in subsections (2)(c) and (2)(d) of this section apply for purposes of this subsection (3)(d).

(i) "Average value" of property, for purposes of this subsection (3)(d), is determined by averaging the values at the beginning and end of your last fiscal year that terminates at least thirty (30) days before the date the determination is made.

(ii) Payroll, for purposes of this subsection (3)(d), is determined by calculating the total amount of compensation paid to employees during your last fiscal year that terminates at least thirty (30) days before the date the determination is made.

**(4) Do qualified sellers have any liability protections when operating in Washington?** You are not liable for charging or collecting the incorrect amount of sales or use tax when that

**Preliminary draft rule. This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.**

error results from reliance on incorrect data provided in the department's taxability matrix. To obtain a copy of the taxability matrix, visit the SSUTA web site located at: <http://www.streamlinedsalestax.org>.

Additionally, you will be held harmless and not liable for sales and use taxes, including interest and penalties on those taxes, not collected due to reliance on Washington's certification of the certified automated system you use. However, you will not be held harmless for the incorrect classification of an item or transaction into a product based exemption certified by the department unless that item or transaction is listed within a product definition approved by the SSUTA's Governing Board or the department. See also RCW 82.32.745.