

This rule was adopted on October 31, 2008 and becomes effective December 1, 2008. It may be used to determine tax liability on and after the effective date, until the codified version is available from the code reviser's office.

NEW SECTION

WAC 458-20-27701 Model 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 retail sales and use taxes 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 of revenue (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 a model 2 seller and a model 2 volunteer seller. Only those model 2 sellers qualifying as model 2 volunteer sellers are eligible to receive compensation for remitting sales and use taxes to Washington under subsection (3) of this section. A taxpayer that qualifies as a model 2 volunteer seller under this subsection will be referred to as a "qualified seller."

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

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

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

(b) **What is a model 2 volunteer seller?** If you are a model 2 seller under (a) of this subsection, you will be a model 2 volunteer seller if you are registered through the SSUTA central registration system (CRS) as a model 2 seller and you meet the following additional 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) You register with Washington through the CRS after November 12, 2002, and you meet all of the following requirements immediately before the date of your registration with Washington through the CRS (and you do not cease to meet these requirements thereafter pursuant to subsection (3)(d) of this section):

(A) You have no fixed place of business in Washington for more than thirty days;

(B) You have less than fifty thousand dollars of property in Washington;

(C) You have less than fifty thousand dollars of payroll in Washington; and

(D) You have less than twenty-five percent of your total property or payroll in Washington.

If you have registered in Washington because you had a legal requirement to register resulting from an administrative, legislative, or judicial action before October 1, 2005, you cannot be a model 2 volunteer seller under this subsection.

(c) **If I am a qualified seller, do I still need to register with the department for Washington state tax purposes under RCW 82.32.030(1)?** Your status as a qualified seller does not impact your requirement to register with the department. If you meet the conditions for registration with the department under RCW 82.32.030, you must register with the department.

(d) **What is property for purposes of (b) of this subsection and how is it valued?** Property refers to the "average value" of the real property and tangible personal property that you own and rent. You will value owned property at its original cost basis. Rented property will be valued at eight 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 subrentals.

You must determine the "average value" of this property by averaging the value of property at the beginning of the twelve-month period immediately before the date you register with Washington with the value of property at the end of the twelve-month period immediately before you register with Washington.

(e) **What is payroll for purposes of (b) of this subsection?** Payroll is the total amount paid by you for compensation during the twelve-month period immediately preceding the date you register with Washington. Compensation means wages, salaries, commissions, and any other form of payment to employees or similar persons that meet 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 to be payroll 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;

(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 some part of the services are performed), but the employee's residence is within Washington.

(f) **What is a certified automated system for purposes of this section?** 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 eligible to receive monetary allowances from Washington under this subsection and this is in addition to any existing discount afforded by each member state. For a list of SSUTA member and associate member states visit <http://www.streamlinedsalestax.org>. You obtain these monetary allowances from Washington by retaining a portion of the Washington state retail sales and use taxes you collect and report to Washington. You are not entitled to monetary allowances unless you are a qualified seller and have filed and paid a timely return.

(b) **How long are qualified sellers permitted to receive monetary allowances?** If you install a certified automated system on or after July 1, 2007, you are eligible to receive monetary allowances under this subsection for a period up to twenty-four months from the date that you install your certified automated system.

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

(Applicable rate) multiplied by (Washington retail sales and use taxes you collect and report).

The applicable rate for this formula is one and one-half percent. Your total monetary allowance for the first twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. Your total

monetary allowance for the second twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. For purposes of determining when each ten thousand dollar 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.

You may not retain monetary allowances under this subsection based on any sales taxes determined or calculated without the use of a certified automated system. Moreover, you may not retain monetary allowances under this subsection 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) through (D) of this section. The meanings given to property and payroll in subsection (2)(d) and (e) of this section apply for purposes of this subsection (3)(d). However, you must determine the "average value" of property and the amount of payroll under this subsection (3)(d) as follows:

(i) You must determine the "average value" of property by averaging the values at the beginning and end of your last fiscal year that terminates at least thirty days before the date the determination is made.

(ii) You must determine payroll, by calculating the total amount of compensation paid to employees during your last fiscal year that terminates at least thirty days before the date the determination is made.

(e) Are monetary allowances funded from both Washington state and local retail sales and use taxes? No, monetary allowances will only be funded from the Washington state portion of the retail sales and use taxes that you collect and must remit.

(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 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.

(5) **Filing returns and remitting taxes.** Qualified sellers must electronically file retail sales and use excise tax returns and must remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fed Wire Funds Transfer System.