

RCW 82.04.067 Substantial nexus—Engaging in business. (1) A person engaging in business is deemed to have substantial nexus with this state if, in the current or immediately preceding calendar year, the person is:

- (a) An individual and is a resident or domiciliary of this state;
- (b) A business entity and is organized or commercially domiciled in this state; or
- (c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and the person had:

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

(ii) Subject to the limitation in RCW 82.32.531, physical presence in this state, which need only be demonstrably more than a slightest presence.

(2) (a) Cumulative gross receipts counting toward the threshold in subsection (1)(c)(i) of this section include all of a person's gross income of the business attributed to this state. For purposes of this subsection, gross income of the business is attributed to this state as follows:

(i) For apportionable income, all amounts included in the numerator of the receipts factor under RCW 82.04.462 and, in the case of financial institutions, all amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2); and

(ii) For all other income, the gross income of the business allocated to this state in accordance with the sourcing provisions of RCW 82.32.730.

(b) For a marketplace facilitator, cumulative gross receipts counting toward the threshold in subsection (1)(c)(i) of this section include, in addition to the gross proceeds of its own sales, the cumulative gross proceeds from sales by all marketplace sellers through the marketplace facilitator's marketplace, including marketplace sellers that do not have a substantial nexus with this state under the provisions of this section.

(3) (a) For purposes of subsection (1)(c)(ii) of this section, a person is physically present in this state if the person has property or employees in this state.

(b) A person is also physically present in this state for the purposes of subsection (1)(c)(ii) of this section if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

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

(b) "Marketplace," "marketplace facilitator," and "marketplace seller" have the same meaning as provided in RCW 82.08.010.

(c) "Product" has the same meaning as provided in RCW 82.32.023. [2019 c 8 s 102; 2019 c 8 s 101; 2017 3rd sp.s. c 28 s 302; 2016 c 137 s 2; 2015 3rd sp.s. c 5 s 204; 2010 1st sp.s. c 23 s 104.]

Effective date—2019 c 8 ss 102, 103, 107, and 701-703: "Sections 102, 103, 107, 701, 702, and 703 of this act take effect January 1, 2020." [2019 c 8 s 806.]

Effective date—2019 c 8 ss 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.

Existing rights and liability—Severability—Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.08.0531.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective date—2016 c 137: "This act takes effect July 1, 2016." [2016 c 137 s 4.]

Effective dates—Finding—Intent—2015 3rd sp.s. c 5: See notes following RCW 82.08.052.

Contingency—2010 1st sp.s. c 23 ss 102-112: "If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges any provision of section 104(1)(c) of this act unconstitutional or otherwise invalid, Part I of this act is null and void in its entirety." [2010 1st sp.s. c 23 s 1701.]

Application—2010 1st sp.s. c 23 ss 102-112: "Part I of this act applies with respect to gross income of the business, as defined in RCW 82.04.080, including gross income from royalties as defined in RCW 82.04.2907, generated on and after June 1, 2010. For purposes of calculating the thresholds in section 104(1)(c) of this act for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year." [2010 1st sp.s. c 23 s 1702.]

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.