

RCW 82.08.0531 Marketplace facilitators—When deemed seller agents—Recordkeeping—Liability. (1) For purposes of this chapter and chapters 82.04 and 82.12 RCW, a marketplace facilitator is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's marketplace.

(2) Beginning October 1, 2018, marketplace facilitators subject to a tax collection obligation under RCW 82.08.052 (1) or (2) must collect and remit to the department retail sales tax on all taxable retail sales made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller is subject to a tax collection obligation under RCW 82.08.052 (1) or (2). Beginning January 1, 2020, the collection obligation of a marketplace facilitator under this chapter also applies to any other taxes and fees, as defined under RCW 82.02.260, that are imposed on a retail sale made or facilitated by the marketplace facilitator, whether in its own right or as an agent of a marketplace seller, regardless of whether the marketplace seller has a tax collection obligation under RCW 82.08.052 (1) or (2).

(3) In addition to other applicable recordkeeping requirements, the department may require a marketplace facilitator to provide or make available to the department any information the department determines is reasonably necessary to enforce the provisions of this chapter and *chapter 82.13 RCW. Such information may include documentation of sales made by marketplace sellers through the marketplace facilitator's marketplace. The department may prescribe by rule the form and manner for providing this information.

(4) (a) Beginning July 1, 2019, to ensure that marketplace sellers have the necessary information to timely and accurately file their excise tax returns with the department pursuant to RCW 82.32.045, a marketplace facilitator must, at a minimum, provide each of its marketplace sellers with access, through a written report or other means, to gross sales information for all Washington sales made as an agent of the marketplace seller under this section during the immediately preceding month. Marketplace facilitators must provide such access within fifteen calendar days following the end of each month.

(b) If a marketplace seller does not receive the gross sales information for all Washington sales through a marketplace facilitator, as required under (a) of this subsection (4), the marketplace seller may determine its business and occupation tax liability under chapter 82.04 RCW based on a reasonable method of estimating Washington sales as may be required or approved by the department.

(c) For purposes of this subsection, "Washington sales" means any sale sourced to this state under RCW 82.32.730, regardless of whether the sale is a retail sale.

(5) If a marketplace facilitator has fully complied with the requirements of subsection (4)(a) of this section, the marketplace facilitator is relieved of liability under this chapter and chapter 82.12 RCW for failure to collect the correct amount of tax to the extent that the marketplace facilitator can show to the department's satisfaction that the error was due to incorrect information given to the marketplace facilitator by the marketplace seller, unless the marketplace facilitator and marketplace seller are affiliated persons. Where the marketplace facilitator is relieved of liability under this

subsection (5), the marketplace seller is solely liable for the amount of uncollected tax due.

(6) (a) Subject to the limits in (b) and (c) of this subsection (6), a marketplace facilitator that has fully complied with the requirements of subsection (4)(a) of this section is relieved of liability under this chapter and chapter 82.12 RCW for the failure to collect tax on taxable retail sales to the extent that the marketplace facilitator can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace;

(ii) The taxable retail sale was made solely as the agent of a marketplace seller, and the marketplace facilitator and marketplace seller are not affiliated persons; and

(iii) The failure to collect sales tax was not due to an error in sourcing the sale under RCW 82.32.730.

(b) Liability relief for a marketplace facilitator under (a) of this subsection (6) for a calendar year is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales facilitated by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar year 2019, the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(iii) The provisions of this subsection (6) do not apply to retail sales made after December 31, 2019.

(c) For purposes of this subsection (6), a retail sale is deemed to be facilitated by a marketplace facilitator when the marketplace facilitator either:

(i) Accepts the order for the product;

(ii) Communicates to the marketplace seller the buyer's offer to purchase the product;

(iii) Accepts the buyer's payment for the product; or

(iv) Delivers or arranges for delivery of the product.

(d) Where the marketplace facilitator is relieved of liability under this subsection (6), the marketplace seller is also relieved of liability for the amount of uncollected tax due, subject to the limitations in subsection (7) of this section.

(e) The department may by rule determine the manner in which a taxpayer may claim the liability relief provided under this subsection.

(7) Except as otherwise provided in this section, a marketplace seller obligated to collect the taxes imposed under this chapter and chapter 82.12 RCW is not required to collect such taxes on all taxable retail sales through a marketplace operated by a marketplace facilitator if the marketplace seller has obtained documentation from the marketplace facilitator indicating that the marketplace facilitator is registered with the department and will collect all applicable taxes due under this chapter and chapter 82.12 RCW on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator. The documentation required by this subsection (7) must be provided in a form and manner prescribed by or acceptable to the department. This subsection (7) does not relieve a marketplace seller from liability

for uncollected taxes due under this chapter or chapter 82.12 RCW resulting from a marketplace facilitator's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator by the marketplace seller.

(8) No class action may be brought against a marketplace facilitator in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund from the department as provided under chapter 82.32 RCW.

(9) Nothing in this section affects the obligation of any purchaser to remit sales or use tax and any other applicable taxes and fees, as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax. [2021 c 145 s 10; 2019 c 8 s 201; 2017 3rd sp.s. c 28 s 203.]

***Reviser's note:** Chapter 82.13 RCW was repealed by 2019 c 8 s 301.

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.

Findings—Intent—2017 3rd sp.s. c 28 ss 201-214: "(1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogs. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred fifty-three million dollars in sales and use taxes in fiscal year 2018 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other vital public services.

(2) The legislature finds that Colorado adopted a law requiring out-of-state retailers that do not collect Colorado's sales tax to report tax-related information to their Colorado customers and the Colorado department of revenue. The legislature further finds that in 2016 the United States court of appeals for the tenth circuit upheld that law.

(3) The legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule. To achieve this objective, this act adopts a new program. Under the new program, remote sellers meeting a specified threshold of gross receipts from retail sales into this state would have the option to either collect retail sales or use tax on taxable retail sales into this state or comply with certain sales and use tax notice and reporting provisions. This option is also available to other persons such as marketplace facilitators for facilitated sales on behalf of third-party remote sellers. The sales and use tax notice and reporting provisions in this act are similar to the multistate tax commission's draft model sales and use tax notice and reporting statute and Colorado's sales and use tax notice and reporting law." [2017 3rd sp.s. c 28 s 201.]

Existing rights and liability—2017 3rd sp.s. c 28: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2017 3rd sp.s. c 28 s 602.]

Severability—2017 3rd sp.s. c 28: "(1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If the department of revenue is prevented from enforcing chapter 82.08 or 82.12 RCW against persons without a physical presence in this state because any provision of this act or its application to any person or circumstance is held invalid, the department of revenue must impose such provisions to the fullest extent allowed under the Constitution and laws of the United States." [2017 3rd sp.s. c 28 s 603.]

Application—2017 3rd sp.s. c 28: "The tax collection, reporting, and payment obligations imposed by this act apply prospectively only." [2017 3rd sp.s. c 28 s 604.]

Effective dates—2018 c 92; 2017 3rd sp.s. c 28: "(1) Except as otherwise provided 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 immediately.

(2) Sections 101 through 106 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2017.

(3) Section 213 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 July 23, 2017.

(4) Part III 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 July 1, 2017.

(5) Sections 107 through 109 and 502 of this act take effect January 1, 2018." [2018 c 92 s 2; 2017 3rd sp.s. c 28 s 605.]