
SUBSTITUTE SENATE BILL 6412

State of Washington

63rd Legislature

2014 Regular Session

By Senate Ways & Means (originally sponsored by Senators Cleveland, Rolfes, Hasegawa, Chase, Ranker, Braun, and Kline)

READ FIRST TIME 02/07/14.

1 AN ACT Relating to tax, penalty, and interest assessments on claims
2 for collection of sales tax debt; and amending RCW 82.08.050.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to read
5 as follows:

6 (1) The tax imposed in this chapter must be paid by the buyer to
7 the seller. Each seller must collect from the buyer the full amount of
8 the tax payable in respect to each taxable sale in accordance with the
9 schedule of collections adopted by the department under the provisions
10 of RCW 82.08.060.

11 (2) The tax required by this chapter, to be collected by the
12 seller, is deemed to be held in trust by the seller until paid to the
13 department. Any seller who appropriates or converts the tax collected
14 to the seller's own use or to any use other than the payment of the tax
15 to the extent that the money required to be collected is not available
16 for payment on the due date as prescribed in this chapter is guilty of
17 a gross misdemeanor.

18 (3) Except as otherwise provided in this section, if any seller
19 fails to collect the tax imposed in this chapter or, having collected

1 the tax, fails to pay it to the department in the manner prescribed by
2 this chapter, whether such failure is the result of the seller's own
3 acts or the result of acts or conditions beyond the seller's control,
4 the seller is, nevertheless, personally liable to the state for the
5 amount of the tax.

6 (4) Sellers are not relieved from personal liability for the amount
7 of the tax unless they maintain proper records of exempt or nontaxable
8 transactions and provide them to the department when requested.

9 (5) Sellers are not relieved from personal liability for the amount
10 of tax if they fraudulently fail to collect the tax or if they solicit
11 purchasers to participate in an unlawful claim of exemption.

12 (6) Sellers are not relieved from personal liability for the amount
13 of tax if they accept an exemption certificate from a purchaser
14 claiming an entity-based exemption if:

15 (a) The subject of the transaction sought to be covered by the
16 exemption certificate is actually received by the purchaser at a
17 location operated by the seller in Washington; and

18 (b) Washington provides an exemption certificate that clearly and
19 affirmatively indicates that the claimed exemption is not available in
20 Washington. Graying out exemption reason types on a uniform form and
21 posting it on the department's web site is a clear and affirmative
22 indication that the grayed out exemptions are not available.

23 (7)(a) Sellers are relieved from personal liability for the amount
24 of tax if they obtain a fully completed exemption certificate or
25 capture the relevant data elements required under the streamlined sales
26 and use tax agreement within ninety days, or a longer period as may be
27 provided by rule by the department, subsequent to the date of sale.

28 (b) If the seller has not obtained an exemption certificate or all
29 relevant data elements required under the streamlined sales and use tax
30 agreement within the period allowed subsequent to the date of sale, the
31 seller may, within one hundred twenty days, or a longer period as may
32 be provided by rule by the department, subsequent to a request for
33 substantiation by the department, either prove that the transaction was
34 not subject to tax by other means or obtain a fully completed exemption
35 certificate from the purchaser, taken in good faith.

36 (c) Sellers are relieved from personal liability for the amount of
37 tax if they obtain a blanket exemption certificate for a purchaser with
38 which the seller has a recurring business relationship. The department

1 may not request from a seller renewal of blanket exemption certificates
2 or updates of exemption certificate information or data elements if
3 there is a recurring business relationship between the buyer and
4 seller. For purposes of this subsection (7)(c), a "recurring business
5 relationship" means at least one sale transaction within a period of
6 twelve consecutive months.

7 (d) Sellers are relieved from personal liability for the amount of
8 tax if they obtain a copy of a direct pay permit issued under RCW
9 82.32.087.

10 (8) The amount of tax, until paid by the buyer to the seller or to
11 the department, constitutes a debt from the buyer to the seller. No
12 claim on the debt may be brought by the seller more than four years
13 after the close of the tax year in which the taxable sale was made or
14 more than one year from the date the seller is assessed for failing to
15 collect the tax, whichever is later. Any seller who fails or refuses
16 to collect the tax as required with intent to violate the provisions of
17 this chapter or to gain some advantage or benefit, either direct or
18 indirect, and any buyer who refuses to pay any tax due under this
19 chapter is guilty of a misdemeanor.

20 (9) Except as otherwise provided in this subsection, the tax
21 required by this chapter to be collected by the seller must be stated
22 separately from the selling price in any sales invoice or other
23 instrument of sale. On all retail sales through vending machines, the
24 tax need not be stated separately from the selling price or collected
25 separately from the buyer. Except as otherwise provided in this
26 subsection, for purposes of determining the tax due from the buyer to
27 the seller and from the seller to the department it must be
28 conclusively presumed that the selling price quoted in any price list,
29 sales document, contract or other agreement between the parties does
30 not include the tax imposed by this chapter. But if the seller
31 advertises the price as including the tax or that the seller is paying
32 the tax, the advertised price may not be considered the selling price.

33 (10) Where a buyer has failed to pay to the seller the tax imposed
34 by this chapter and the seller has not paid the amount of the tax to
35 the department, the department may, in its discretion, proceed directly
36 against the buyer for collection of the tax. If the department
37 proceeds directly against the buyer for collection of the tax as
38 authorized in this subsection, the department may add a penalty of ten

1 percent of the unpaid tax to the amount of the tax due for failure of
2 the buyer to pay the tax to the seller, regardless of when the tax may
3 be collected by the department. In addition to the penalty authorized
4 in this subsection, all of the provisions of chapter 82.32 RCW,
5 including those relative to interest and penalties, apply. For the
6 sole purpose of applying the various provisions of chapter 82.32 RCW,
7 the twenty-fifth day of the month following the tax period in which the
8 purchase was made will be considered as the due date of the tax.

9 (11) Notwithstanding subsections (1) through (10) of this section,
10 any person making sales is not obligated to collect the tax imposed by
11 this chapter if:

12 (a) The person's activities in this state, whether conducted
13 directly or through another person, are limited to:

- 14 (i) The storage, dissemination, or display of advertising;
- 15 (ii) The taking of orders; or
- 16 (iii) The processing of payments; and

17 (b) The activities are conducted electronically via a web site on
18 a server or other computer equipment located in Washington that is not
19 owned or operated by the person making sales into this state nor owned
20 or operated by an affiliated person. "Affiliated persons" has the same
21 meaning as provided in RCW 82.04.424.

22 (12) Subsection (11) of this section expires when: (a) The United
23 States congress grants individual states the authority to impose sales
24 and use tax collection duties on remote sellers; or (b) it is
25 determined by a court of competent jurisdiction, in a judgment not
26 subject to review, that a state can impose sales and use tax collection
27 duties on remote sellers.

28 (13) For purposes of this section:

29 (a) "Exemption certificate" means documentation furnished by a
30 buyer to a seller to claim an exemption from sales tax. An exemption
31 certificate includes a reseller permit or other documentation
32 authorized in RCW 82.04.470 furnished by a buyer to a seller to
33 substantiate a wholesale sale; and

34 (b) "Seller" includes a certified service provider, as defined in
35 RCW 82.32.020, acting as agent for the seller.

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