

---

SENATE BILL 6412

---

State of Washington                      63rd Legislature                      2014 Regular Session

By Senators Cleveland, Rolfes, Hasegawa, Chase, Ranker, Braun, and Kline

Read first time 01/24/14. Referred to Committee on Ways & Means.

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~~  
11 ~~to the department,)) constitutes a debt from the buyer to the seller.  
12 The debt continues until the tax is paid by the seller to the  
13 department, but no claim on the debt may be brought by the seller  
14 against the buyer later than the end of the statutory period for  
15 assessment of taxes, penalties, or interest prescribed by RCW  
16 82.32.050. Any seller who fails or refuses to collect the tax as  
17 required with intent to violate the provisions of this chapter or to  
18 gain some advantage or benefit, either direct or indirect, and any  
19 buyer who refuses to pay any tax due under this chapter is guilty of a  
20 misdemeanor.~~

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

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

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

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

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

15 (i) The storage, dissemination, or display of advertising;

16 (ii) The taking of orders; or

17 (iii) The processing of payments; and

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

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

29 (13) For purposes of this section:

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

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

--- END ---