



Gratuities

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Wyoming Department of Revenue

“Gratuity,” as defined by *Merriam Webster’s Collegiate Dictionary, 10th edition*, means something given voluntarily or beyond obligation to recognize service. The most commonly recognized gratuity is a tip given by a customer to a restaurant wait person for service beyond what is expected. The customer is generally not required to give this gratuity though it may be customary or even mandated in certain circumstances, such as a gratuity of 15% for parties of 10 or more in certain establishments.

Gratuities for meals and cover charges

Effective July 1, 2013 gratuities charged on meals and cover charges were excluded from the taxable base of a retail sale. As a result both voluntary and mandatory gratuities were not subject to Wyoming sales tax as of July 1, 2013 when these charges are applied to meals and cover charges at any place where meals are regularly served to the public but were taxable when placed on an invoice for any other type of sale. However, in order for the gratuity to maintain its non-taxable quality, it has to be separately stated and distinguishable from the taxable meal or cover charge otherwise the entire bill of sale, invoice or similar is subject to Wyoming sales tax. It is not sufficient that those charges can be itemized internally; they must be evident on the transaction documents and also those documents available to an auditor in the event of an audit.

Gratuities for tipped employees

Effective July 1, 2014 this was expanded by the creation of W.S. 39-15-105(a)(v)(D) to exempt gratuities or tips which are offered to tipped employees as specified in W.S. 27-4-202(b) whether they are offered voluntarily by the consumer or invoiced by the seller. To clarify, W.S. 27-4-202(b) describes tipped employees as those who are paid a wage of not less than two dollars and thirteen cents (\$2.13) per hour. W.S. 27-4-202(b) goes on to say if the wage plus the tips received by the employee during a given pay period does not equal at least the applicable minimum wage as prescribed in subsection (a) of this section, the employer is required to pay the difference to the tipped employee. For the purposes of this act, all "tip" employees are required to furnish monthly to their respective employers the daily record of tips required to be kept by "tip" employees under the laws of the United States and upon the forms prescribed by the internal revenue service of the United States treasury department. The daily record of tips shall constitute prima facie proof of the amount of tips received by the employee. Proof of a customary tipping percentage of sales or service shall also be an admissible form of proof of the amount of tips. A "tip" employee is one who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips.

While this generally does still invoke the thought of a gratuities application to restaurant servers the exemption for

gratuities as it applies to meals and cover charges is still separate from the new statute that exempts gratuities offered to “tipped” employees. And the result is that it opens the exemption to gratuities offered to employees of other tipped employee occupations including valet or parking attendants, door persons and car wash attendants, to name a few.

Please note however that the exemption is for gratuities both for meals and cover charges as well as for tipped employees in other fields it does not exempt compulsory service charges, regardless of occupation. Service charges are considered part of an employer’s gross receipts, or part of the sales price of a product or service, and sums distributed to employees from service charges are not counted as tips received, even when they are partially or fully distributed to employees. Thus service charges, when applied to taxable sales and services, are subject to Wyoming sales tax.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:
DOR_taxability@wyo.gov

Supporting Authority -

W.S. 27-4-202(b)
Effective April 1, 2001 and thereafter, all employers who employ tipped employees shall not pay less than two dollars and thirteen cents (\$2.13) per hour to his tipped employees. Provided further, if the wage paid by the employer combined with the tips received by the employee during a given pay period does not equal at least the applicable

minimum wage as prescribed in subsection (a) of this section, the employer shall pay the difference to the tipped employee. For the purposes of this act, all "tip" employees shall furnish monthly to their respective employers the daily record of tips required to be kept by "tip" employees under the laws of the United States and upon the forms prescribed by the internal revenue service of the United States treasury department. The daily record of tips shall constitute prima facie proof of the amount of tips received by the employee. Proof of a customary tipping percentage of sales or service shall also be an admissible form of proof of the amount of tips. A "tip" employee is one who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips.

W.S. 39-15-101(a)(viii)

"Sales price":

(A) Shall apply to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property and services for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (I) The seller's cost of property sold;
- (II) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller and any other expense of the seller;
- (III) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges;
- (IV) Delivery charges;
- (V) Installation charges;
- (VI) Repealed by Laws 2007, Ch. 10, 2.

(B) Shall not include:

- (I) Discounts, including cash, terms or coupons which are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
- (II) Interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separate stated on the invoice, bill of sale or similar document given to the purchaser; and
- (III) Any tax legally imposed directly on the consumer which is separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

- (I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to the price reduction or discount on the sale;
- (II) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (IV) One (1) of the following criteria is met:

- (1) The purchaser presents a coupon, certificate or other

documentation to the seller to claim a price reduction or discount where the coupon certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(2) The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron shall not constitute membership in such a group; or

(3) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

W.S. 39-15-103(a)(i)(F)

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price paid for meals and cover charges, excluding all gratuities regardless of whether

offered by the customer or invoiced by the seller, at any place where meals are regularly served to the public;

W.S. 39-15-105(a)(v)(D)

For the purpose of exempting sales of services and tangible personal property which are alternatively taxed, the following are exempt:

Gratuities or tips which are offered to tipped employees as specified in W.S. 27-4-202(B) are exempt from the tax whether offered by the consumer or separately invoiced by the seller.

WY Dept of Rev Rules, Chap 2, Sec 7(a)

General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.