



Double Taxation Myths

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Wyoming Department of Revenue

Double taxation occurs when the same property is subject to the same kind of tax in the same year by the authority of the same taxing power. [*Corthell v. Board of Comm'rs of Albany County*, 8 P.2d 812, 815 (Wyo. 1932) 17] For example, purchasing a motorcycle and correctly paying sales tax to the Wyoming motorcycle dealer and also (incorrectly) paying sales tax to the County Treasurer for the same purchase at the time of registration would be an example of double taxation. However, just because an item of property is subject to multiple taxes does not mean it is being "double taxed". The following are examples of events where another tax is part of a taxable sale or lease:

County Property Tax and Wyoming Sales Tax on the Sale of Tangible Personal Property

AT ISSUE:

Is a taxpayer double taxed when they are required to pay both Wyoming sales tax on their purchase of a transportable home and their County's property tax on the home after it is placed?

No this is not double taxation. This issue has been previously answered by our State Board of Equalization in *In The Matter of the Appeal of Don and Yvonne Snider from a Sales Tax Refund Denial Decision of the Department of Revenue, Docket No. 98-158 (February 10, 2000)*. In pertinent part, the Wyoming State Board of Equalization stated: ["... 16. Petitioners base their double taxation claim on the fact that both sales and

property tax were assessed on their mobile home. Double taxation occurs when 'the same property is twice subject to the same kind of tax in the same year by authority of the same taxing power.' Sales tax and Property tax on the mobile home are not the same kind of taxes. Sales tax is an excise tax imposed on the transfer of possession of tangible personal property, in this instance the mobile home. Property tax is an ad valorem tax on the value of real property. Petitioners affixed the mobile home to land they owned. The Converse County assessor assessed Petitioners' mobile home as affixed to the land as real property. The sales tax was imposed on the transfer of ownership to Petitioner's which occurred upon date of sale. This is a one-time tax on the transfer of ownership based on the sales price. The ad valorem tax is assessed annually to the owner of real property of record and is imposed on the fair market value of real property, in this instance the fair market value of the mobile home as affixed to the land. Sales tax and ad valorem real property tax are distinct from each other, sales tax being a tax on the transfer of ownership, and ad valorem real property tax being an annual tax on real property value. For this reason there is no double taxation."]

Property Tax and Wyoming Sales Tax within the Gross Rental of Tangible Personal Property

AT ISSUE:

Is a taxpayer double taxed when they are required to pay sales tax on the rental of

tangible personal property and per the lease agreement the lessee is also responsible for property tax on the leased property?

Again, no this is not double taxation. As previously established property tax and sales tax are distinct taxes different from one another. Furthermore they are assessed by differing entities. When a lease states that the lessee will pay the lessor's property taxes for leased tangible personal property, the lessor would include the property tax in the gross rental subject to sales tax. The property tax is merely passed through to the taxpayer as part of the gross rental of tangible personal property. Unless an exemption applies W.S. 39-15-103(a)(i)(B) levies sales tax on "...the gross rental paid for the lease or contract transferring possession of tangible personal property if the transfer of possession would be taxable if a sale occurred;" The term gross rental is defined as "... the total consideration to enjoy and maintain temporary possession of tangible personal property" and is synonymous with the term sales price when applied to the sale of tangible personal property.

Certain State and Federal Excise Taxes and Wyoming Sales Tax

AT ISSUE:

Is the taxpayer double taxed when they are required to pay Wyoming sales tax on their purchase of cigarettes and other tobacco products and liquors when the price includes both state and federal excise taxes previously imposed?

This is also not a case of double taxation. Both the state and federal government impose excise taxes on certain products. In the case of cigarettes, tobacco products and liquor these taxes are imposed on the manufacturer, wholesaler or importer and

payable directly by that party to the taxing authority. This cost is passed on by the manufacturer, wholesale or importer as a component of the sales price paid by any further wholesalers, the retailer and final consumer. Because the tax is not imposed directly on the consumer, it is subject to Wyoming sales tax as part of the sales price of the product when sold at retail. Only when a tax is directly imposed on the consumer and it is separately stated and distinguishable from taxable charges subject to Wyoming sales tax on the same invoice would it be excluded from the tax base. [WY Dept of Rev Rules, Chap 2, Sec 7(a)]

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. 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 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)(A)

Except as provided by W.S. 39-15-105,
there is levied an excise tax upon:
The sales price of every retail sale of
tangible personal property within the state;

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

Except as provided by W.S. 39-15-105,
there is levied an excise tax upon:
The gross rental paid for the lease or
contract transferring possession of tangible
personal property if the transfer of
possession would be taxable if a sale
occurred;

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

Except as provided by W.S. 39-15-105,
there is levied an excise tax upon:
The sales price paid for alcoholic beverages;

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.