



TAXING ISSUES

WYOMING DEPARTMENT OF REVENUE

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Excise Tax Division

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Excise Tax Division Newsletter
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This publication is not an official taxability ruling. Your specific facts must be reviewed in detail before we can make official taxability rulings. Please direct your written inquiries for such rulings to Robert Tompkins at the address or fax number listed above. Be sure to include all pertinent facts in your inquiry. Or e-mail your

inquiry

Robert.Tompkins@wy.gov

to:

We will respond with written guidance for your particular business transactions.

New Sales/Use Tax Laws: In our March 2005 *Taxing Issues* we summarized eight new sales/use tax laws. Two of these laws were effective in February 2005. One of those laws is revisited in this issue. Of the remaining six new sales/use tax laws, two are revisited in this issue. For a copy of our March *Taxing Issues* go to our Internet address. In the red banner of our home page click on "Publications" and scroll to the heading for "Newsletters." Click on the "Excise" option followed by a click on "Taxing Issues" for March 2005. For text of these new laws in bill form and/or codified in statute please go to the Internet address for our state's legislative website:
<http://legisweb.state.wy.us>

House Bill 14 (Enrolled Act 3) – Effective February 15, 2005

This law incorporates requirements of the Streamlined Sales Tax Project (SSTP). Highlights of the law include the benefits of voluntary licensing per SSTP, new definitions, expanded bad debt procedures and elimination of a conflict in law related to when tax rates change.

House Bill 24 (Enrolled Act 76) – Effective July 1, 2005

This law amends aircraft related sales/use tax exemptions at W.S. 39-15-105(a)(viii)(J) and W.S. 39-16-105(a)(viii)(B). Succinctly, exempt aircraft repairs are listed separately from exempt aircraft sales and leases.

The new language also expands sales and lease exemptions to "aircraft used in a federal aviation administration commercial operation." Previously, this exemption for sales and leases of aircraft was limited to "aircraft used in a scheduled interstate federal aviation administration air carrier operation."

House Bill 93 (Enrolled Act 116) – Effective July 1, 2005

This law marks the return of a services related sales tax exemption for railroad rolling stock. Previously, in 2000 the legislature repealed this exemption. Consistent with its previous text, the law exempts "Sales of tangible personal property or services performed for the repair, assembly, alteration or improvement of railroad rolling stock."

Tax Rate Changes:

Past: Effective April 1, 2005 the *sales/use tax rates* increased to 6% for Crook County and to 5% for both Goshen and Washakie counties. Also effective April 1, 2005 the *lodging tax rates* for Hot Springs and Weston counties and the City of Sheridan in Sheridan County increased to 4%.

Present: The 2% *lodging tax rate* is repealed for the City of Gillette in Campbell County effective July 1, 2005.

Future: Pursuant to W.S. 39-15-207(c) and W.S. 39-16-207(c) *notice is given of a future tax rate change.* Effective October 1, 2005 the *sales/use tax rate* for Campbell County increases from 5% to 5.25%. These tax rate charts are on our website. Click on "Publications" in the

red banner. Scroll to “Sales and Use Tax Materials” followed by a click on “Sales and Use Tax Rates.”

Emergency Rules/Notice of Intent to

Promulgate Rules: Effective April 19, 2005 through September 8, 2005 emergency sales and use tax rules are in effect. The changes associated with our emergency rules are also being considered for permanent adoption. We are currently receiving public comments on our proposed rules. Comments and suggestions on the proposed rules must be received by our agency no later than 5:00pm July 12, 2005.

The rationale for changes in our proposed rules is set forth on our website. See “Notice of Intent to Adopt Rules and Regulations.” For a copy of this notice or our proposed rules changes go to the category “What’s New?” on our website’s home page.

Use of New Exemption Certificate

Authorized: Effective July 1, 2005 our state will begin accepting the exemption certificate approved by the Streamlined Sales Tax Agreement. We will also continue to permit use of our ETS Form 101 Exemption Certificate for the period July 1, 2005 through June 30, 2006. Please cease use of our ETS 101 Exemption Certificate effective July 1, 2006. In the interim, both exemption certificates are available on our web site. Click on “Forms” in the red banner. Scroll to the heading “Excise” and click on “Exemption/Power of Attorney Forms.”

Wyoming’s Business Records

Retention Law: Wyoming law requires vendors to preserve for three years at their principal place of business “suitable records and books” to determine tax liability. Included within this requirement are invoices and books showing “all merchandise

purchased for resale.” [W.S. 39-15-107(a)(ii) and W.S. 39-16-110(a)] The preservation of such records is vital for audit purposes.

Please note that Wyoming accepts electronic imaged records for excise tax audit compliance purposes. [Bulletin #1, October 27, 2003] This bulletin is on our website. Click on “Publications” and scroll to the heading “Sales and Use Tax Materials.” Click on “Sales & Use Tax Bulletins” followed by a click on Bulletin #1.

Taxability of Certain Fees Charged by Lodging Vendors:

Several lodging vendors have asked us if guaranteed no-show fees, cancellation fees and attrition fees are subject to Wyoming sales tax.

A guaranteed no-show fee is a charge for reserving a room and the guest does not occupy the room. The charge is equivalent to the agreed upon charge for the room. In exchange for the fee, the lodging vendor will not rent the room to another guest.

It is our position that guaranteed no-show fees are subject to Wyoming sales tax. [W.S. 39-15-103(a)(i)(G)] Payment of money by a taxpayer to a lodging vendor for living quarters held by the vendor for taxpayer’s exclusive use is subject to sales tax. There is no requirement in our statute that the taxpayer must physically occupy the living quarters.

A cancellation fee is a charge for canceling a reservation prior to the scheduled reservation time. After the reservation is canceled, the lodging vendor is free to rent the room to another guest.

It is our position that cancellation fees are not subject to Wyoming sales tax. In this case the cancellation fee is

better described as a penalty for lost rental opportunity while the quarters were reserved, and not as the sales price paid for living quarters.

Attrition fees typically arise in the context of a group contract with a lodging vendor for a block of sleeping rooms for a meeting. In our experience some lodging vendors reserve the room for the exclusive use of a guest but others do not. In the latter case, those lodging vendors free up the room(s) to be rented to another guest(s).

As for attrition fees the taxability depends on how the lodging vendor treats the issue. If the lodging vendor holds the room for exclusive use per the group contract the fee is subject to sales tax. If the group contract frees up the lodging vendor to rent the room to another guest the fee is not subject to sales tax.

Tax Education Seminars:

We conduct tax education seminars in Wyoming. To request a seminar, please submit to us a completed “Seminar Request Form.” Go to our website’s main page and click on “Forms” in the red banner. Scroll to “Excise” and click on “Taxpayer Education Forms.” In the drop down menu click on “Seminar Request Form (ETS Form 126).” We encourage questions and we strive to tailor our seminars to fit our audience.

Wyoming Excise Tax Division Field Offices:

Casper	Unavailable*
Cheyenne	307-777-5211
Gillette	307-682-6061
Lander	307-332-3370
Laramie	307-742-4207
Powell	307-754-2686
Rock Springs	307-382-4531
Sheridan	307-674-8559
Thayne	307-883-2934
Torrington	307-532-5566

* The Casper Field Office is temporarily closed due to the sudden and untimely death of Jim Crouch. Please direct Casper Field Office issues to our Cheyenne Administrative Office at (307)777-5322. Jim's sense of humor and his commitment to public service will be missed by all who knew him.