

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 the department at the address or fax number listed above. Or e-mail your inquiry to: dor@wy.gov. Please be sure to include all pertinent facts in your inquiry. We will respond with written guidance for your particular business transactions.

Tax Rate Changes:

Effective with the tax return quarter beginning October 1, 2009 there will be two (2) sales, use and lodging tax rate changes.

- ➔ Effective October 1, 2009 Hot Springs County's lodging tax rate will be 4%.
- ➔ Park County's sales tax rate will decrease to 4%.

** Effective October 1, 2009 the combined sales and lodging tax rates for Hot Springs County will be 9%.

Future Tax Rate Changes:
Pursuant to W.S. 39-15-207(c) and 39-16-207(c) notice is given of the following future tax rate changes.

Effective with the tax return quarter beginning January 1, 2010 there will be the following sales, use, and lodging tax rate changes in Wyoming.

➤ The sales, use tax rates for Sheridan County will remain at 6%. The Specific Purpose County Option tax currently in effect will be terminated December 31, 2009, and the voter approved new Specific Purpose County Option Tax Will be effective January 1, 2010.

➤ The lodging tax rate for the Town of Guernsey will be 2%.

** Effective January 1, 2010 the combined sales and lodging tax rate for lodging services in the Town of Guernsey will be 8%.

It is prudent to periodically check our website for notices of tax rate changes. It is possible that there will be additional changes effective January 1, 2010 that the department has not been notified of to date. You can access our tax rate charts online at <http://revenue.wy.gov> by clicking on the "Publications" tab in the red banner. Then scroll to "Sales and Use Tax Rates." We also have added a Zip Code Directory which combines a listing of all zip codes in Wyoming with the associated sales tax rates. This document is in an Excel format.

Renewable Energy Exemption:

Effective January 1, 2010 renewable energy projects with a net rating of more than twenty-five kilowatts

require approval from the department for the exemption. The department will provide the developer with a written response to any request for exemption on these projects. We anticipate reviewing any permits required for the construction of the facility, the written contract with the landowner (for those projects where the developer is not the landowner), as well as any other pertinent information about the project. To be eligible for the exemption the statute requires the contract with the landowner to describe the specific project, which we anticipate to include such information as;

- Number and size of turbines or cells to be erected or constructed:
- Number of buildings to be constructed for the project:
- Other equipment necessary for the project:
- Payment terms of the contract with the landowner.

Statute requires that the developer has prior to January 1, 2010 entered into a contract with the landowner and has made payments to the landowner under the contract prior to this date. For those qualifying purchases of equipment under this exemption, the purchase must be made and the equipment must be delivered into the State of Wyoming on or before December 31, 2011. You may view the full text of this exemption on our website at <http://revenue.state.wy.us> in the red banner at the top of the page click on the "Publications" tab, and scroll down to "Statutes / Rules and Regulations," followed by a click on "Statutes – Taxation and Revenue," then click on the link to the 2006 Wyoming Statutes, click on Title 39 – Taxation and Revenue. The exemption can be found under 39-15-105(a)(viii)(N)(I)

New programs offered by motor vehicle manufacturers:

It has come to our attention that at least one of the motor vehicle manufacturers is offering a new program titled 60 Day Satisfaction Guarantee. This program allows a purchaser to return a new vehicle to the dealer within sixty (60) days of delivery date of the vehicle. What this means for sales tax purposes is, if the Wyoming customer has already paid the sales tax to the county on the purchase of the qualifying vehicle a refund will be due to the customer upon proof that the sale has been rescinded.

Towing Companies:

There seems to be some confusion on the taxability of services towing companies may perform. Towing a vehicle from point A to point B is not taxable. This is merely a transportation charge and Wyoming specifically exempts from sales tax transportation and freight charges. If the towing company performs repairs on the vehicle, the repairs are taxable. Tax would be charged on any materials/parts as well as the labor used to perform the repair. These repairs/services could include jump starting a vehicle, changing a tire, and or replacing a headlight. All of these repairs/services are taxable. If the towing company attempts to jump start a vehicle but the vehicle still doesn't start so it must be towed, the charge for the jump start is taxable and the towing is not. These charges must be separately stated on the invoice, to make it clear to the customer what charge they are paying tax on and what charge they are not. Please keep in mind that if an invoice includes taxable and non taxable items and they are not separately stated the entire invoice is subject to tax.

When is tax due:

Wyoming Statutes do not allow for a cash basis for payment of tax. Cash basis payment of tax would mean that the vendor pays the tax to the department when the vendor gets paid for the taxable item or service. Wyoming Statutes require the sales tax to be paid the month following the

month of sale. For example: An auto mechanic repairs a vehicle (taxable service) in August 2009, and allows his customer sixty (60) days to pay the invoice. Regardless of the payment terms offered the sales tax must be remitted on the August 2009 return, which must be postmarked on or before the last day of September 2009. Essentially, offering your customer payment terms does not delay the date of the sale. The sale is recorded in the period it transpired and tax is due corresponding to that period, even if you (the vendor) are not paid until a future date.

Lodging Vendors

Lodging vendors purchase disposable and consumable items to be placed in the guest rooms without the payment of tax, as tax is collected on the sales price paid for the lodging services which includes the tax on these disposable items. When the hotelier offers a room to a tour operator, travel agent, or other guest without charge (complimentary room) the hotelier does not receive taxable consideration for the lodging service provided. In this case the hotelier is responsible to pay the sales tax on those disposable items placed in the room that were removed from an untaxed inventory. The tax is only for such items which are placed in the room, and for which tax was not previously paid. These items may include but are not limited to: Shampoo/conditioner, lotion, bar soap, and coffee/tea.

If the hotelier offers a room as part of a contract for service or a product, the product or service received is considered payment for the room. The lodging vendor would then owe sales tax as well as any local option tax (including lodging tax) based on the typical charge for the room. An example might be: A hotelier hires a band to play in their lounge, and as a part of the payment to the band the hotelier offers a room(s) at no charge. In this case the lodging establishment would owe sales and lodging tax (if locally enacted) on the typical charge for the room.

Tobacco Wholesalers & Retailers:

The Federal Food, Drug and Cosmetic Act (FFDCA) established a tobacco product standard special rule for cigarettes that states in part: ...a cigarette or any of its component parts (including the tobacco, filter, or paper) shall not contain as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, coca, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or tobacco smoke. This standard applies to all tobacco products that meet the definition of a "cigarette" in section 900(3) of the Act even if they are not labeled as "cigarettes" or are labeled as cigars or as some other product. As of September 22, 2009, cigarettes and their component parts that fail to comply with the special rule established under section 907 are deemed adulterated under section 902 of the Act. Under the Act, adulterated products sold or held for sale in the United States may be subject to seizure under section 304 of the Act. For more information concerning this Act please e-mail Tobacco2@fda.hhs.gov.

Rules:

Chapter 4 Rules for Cigarette, Moist Snuff and Other Tobacco Taxes are in the final stages of approval. These rules can be viewed online at <http://revenue.state.wy.us>, click on the "Publications" tab, scroll down to Statutes/Rules and Regulation, then click on Chapter 4 – Cigarette, Moist Snuff and Other Tobacco Taxes.