

Excise Tax Division Newsletter
Herschler Building
122 W. 25th Street
Cheyenne, WY 82002-0110

Director
Edmund J. Schmidt

Staff
Daniel W. Noble, Administrator
Donna Campbell, Vendor Operations Manager
Robert Tompkins, Education/Taxability Manager

Phone (307) 777-5200

FAX (307) 777-3632

Internet Address:

<http://revenue.state.wy.us>

In This Issue:

- *Interest Rate Change*
- *Attention Out of State Vendors*
- *Tax Rate Changes*
- *Taxability of Fuel Tax Surcharges*
- *More on Exemption Certificates*
- *Taxability of Internet Access Fees & Voice over Internet Protocol (VoIP)*
- *Web Resources*
- *Free Oil & Gas Seminar in Casper*
- *Wyoming Excise Tax Division Field Offices*

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. Or e-mail your inquiry to: Robert.Tompkins@wy.gov Please be sure to include all pertinent facts in your inquiry. We will respond with written guidance for your particular business transactions.

Interest Rate Change: Effective January 1, 2006 our interest rate for delinquent accounts increases to an annual percentage rate of 9.1791%. The equivalent daily interest rate is .02515%. Annually the State Treasurer establishes this rate according to a statutory formula.

Attention Out of State Vendors: Effective January 1, 2006 we are phasing out form 10 tax returns for out of state vendors. All out of state vendors will complete a form 11 to report Wyoming sales/use tax. This change permits vendors to report both sales and use tax in any county on one return. *Please note that the form 11 is substantially different from the form 10 in how tax is reported. For example, Form 11 Column 4A asks for "Sales Tax Collected" and Column 4B asks for "Use Tax owed on Vendor's Purchases."* For a website example of our Form 11, click on "Forms" in the red banner of our main web page and scroll to the heading Excise (Sales, Use, Cigarette and Estate Tax). Then click on "Sales/Use Tax Returns (Forms, Worksheets and Examples)." Follow that with a click on "ETS Form 11 Example." Please call (307)777-3745 if you have any questions.

Tax Rate Changes:

Past: Effective October 1, 2005 the sales/use tax rate for Campbell County increased from 5% to 5.25%.

Present: There are not any sales, use or lodging tax rate changes for the tax return quarter beginning January 1, 2006.

Future: Effective with the tax return quarter beginning April 1, 2006 the sales/use tax rate for Sweetwater County increases from 5% to 6%. See tax rate charts 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."

Taxability of Fuel Surcharges: In 2005 we all witnessed unprecedented high fuel prices. As a result, many vendors opted to add a fuel surcharge to their retail sales of goods or services. Vendors and purchasers alike have asked us about the taxability of such surcharges.

We view fuel surcharges as part of a vendor's costs and included in the taxable retail sales price of goods or services sold. The statutory definition of what is included in "Sales price" is found at W.S. 39-15-101(a)(viii)(A)(I-VI). Conversely, that which is not included in "Sales price" is defined at W.S. 39-15-101(a)(viii)(B)(I-III). After considering both the inclusion and exclusion aspects of the "Sales price" definition, we concluded that fuel surcharges are to be included in the retail sales price of goods or services sold. Such surcharges are taxable when the goods or services are subject to Wyoming sales tax. Similarly, such surcharges are not taxable when the goods or services are exempt or otherwise not subject to Wyoming sales tax. Whether goods or services are subject to Wyoming sales tax or not is based on application of our statutes found at W.S. 39-15-103 and W.S. 39-15-105.

More on Exemption Certificates:

Previous articles in *Taxing Issues* have addressed Wyoming's recognition of either our ETS Form 101 Exemption Certificate or the Streamlined Sales Tax Project (SSTP) Exemption Certificate through June 30, 2006. [Vol. 8 Qtr. 2. (June 05) and Vol. 8 Qtr. 3 (September 05)] These same articles pointed out that beginning

July 1, 2006 Wyoming will recognize only the SSTP Exemption Certificate. This does not mean that vendors must replace retained copies of the ETS Form 101 Exemption Certificates with the SSTP version as of July 1, 2006. If a purchaser submits a fully completed ETS Form 101 Exemption Certificate prior to July 1, 2006 that form remains valid for future purchases.

Remember, fully completed exemption certificates must be retained by vendors as part of their record retention requirements for audit purposes. [W.S. 39-15-107(a)(ii), W.S. 39-16-110(a) and *Taxing Issues*, Vol. 8 Qtr. 2 (June 05)]

Taxability of Internet Access Fees & Voice Over Internet Protocol (VoIP):

The Internet Tax Freedom Act is a federal moratorium that prohibits state taxation of certain internet access fees, primarily dial-up internet access. **Effective November 1, 2005 the federal moratorium was extended to broadband and DSL internet access fees.** In other words, all separately stated internet access fees, be they DSL, dial-up or broadband, are exempt from Wyoming sales tax.

The current moratorium defines "internet access" as not including "telecommunications services, except to the extent such services are purchased, used, or sold by a provider of internet access to provide internet access." Thus, while the internet access fee is exempt the local telephone connection remains subject to Wyoming sales tax. [W.S. 39-15-103(a)(i)(C)] This statute imposes Wyoming sales tax on intrastate telecommunications services.

Voice over Internet Protocol (VoIP) is a service that enables subscribers to send and receive telephone messages using the internet. With VoIP, voice messages are converted into a "packetized data" format and then delivered over a data network such as

the public internet or a privately managed IP network and reassembled into a voice message at the destination.

For sales tax purposes in Wyoming the taxability of VoIP hinges on whether it is viewed as an intrastate telephone service or strictly a data service. Wyoming views VoIP as an intrastate telephone service. By rule we define "Intrastate telephone services" as "the intrastate two-way transmission of sound, data, or other forms of information by any means from one point to another within this state." [Wy Dept of Rev Rules, Chap 2, Sec. 3(t)] Thus, where DSL internet access fees became exempt as of November 1, 2005 intrastate VoIP services remain taxable in Wyoming.

Remember, nontaxable and taxable charges appearing on the same invoice must be separately stated. Failure to do so renders the entire invoice subject to Wyoming sales tax. [Wy Dept of Rev Rules, Chap 2, Sec. 9(a)]

Web Resources: We realize that our web resources are only as good as your ability to find them. To that end, here are some tips on where we have placed some of our most frequently asked for items.

* Contact information for the Excise Tax Division's functional work groups is found by clicking on "About Us" in the red banner of our website's main page. Follow that by scrolling to the Excise Tax Division heading.

* A click in the red banner on "Forms" takes you to our license application, worksheets, sample returns, exemption certificates and our power of attorney form.

* A click in the red banner on "Publications" takes you to past issues of this newsletter, statutes, rules, tax rate charts, publications, bulletins and much more! Check it out!

Free Oil & Gas Seminar in Casper: Merit Energy Company has graciously offered to host a sales/use tax seminar

for the oil and gas services industry. We will be presenting this seminar on January 18, 2006 at the Holiday Inn – On the River in Casper, Wyoming. The seminar is scheduled for 9am – 4pm. Lunch is on your own. The seminar will cover a wide range of sales/use tax issues for the oil and gas services industry in Wyoming. For more information concerning this seminar see the announcement under "What's New?" on the main page of our website. We are handling the registrations for this seminar. To register, please contact Shanda Palochak by telephone at (307)777-7615 or e-mail her at: Shanda.Palochak@wy.gov

Wyoming Excise Tax Division Field Offices:

Casper	307-266-3621*
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

* Our Casper field office has moved to 800 Werner Court, Suite 145.

The Budget Session of the 58th Wyoming Legislature convenes in Cheyenne on February 13, 2006. To track legislation throughout the session we suggest the Legislative Service Office website at: <http://legisweb.state.wy.us>

In our March 2006 Taxing Issues we will summarize new excise tax laws. Best wishes for a safe and prosperous 2006! We look forward to another year of serving you!