



Fees, Surcharges & Supplemental Costs Motor Vehicle Leases or Rentals

Originally issued October 25, 2004/Revised August 1, 2014
Wyoming Department of Revenue

In Wyoming a lease is defined as any transfer of possession or control of tangible personal property for consideration for a fixed or indeterminate period of time and does not include a transaction that requires the transfer of title upon completion of either the required payments or the payment of an option price that does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments, nor does it include the provision of tangible personal property along with an operator with the condition that the operator is necessary for the equipment to perform. In those cases where an operator is provided, in order to be termed a lease, the operator cannot do any more than maintain, inspect or set up the tangible personal property being rented/leased.

Occasionally, there are questions regarding the taxability of fees and surcharges added to the lease or rental of a motor vehicle. The following are a list of items questioned most frequently on bills or invoices and the taxability of each.

Fees and Surcharges

- *Cash down payment*

Taxable; a down payment is part of the total lease cost. Wyoming law imposes the sales tax upon the “gross rental paid for a 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)(B)]

- *Commissions*

Taxable; “Commissions paid to sales agents for their services in making sales shall not be deductible from the sales price of property or services sold.” [WY Dept. of Rev. Rules, Chap. 2, Sec. 5(g)(i)] This rule applies to leases the same as sales.

- *Disposition fee*

Taxable; this fee is part of the taxable gross rental of a lease. [W.S. 39-15-103(a)(i)(B)]

- *Document fee*

Taxable; any “fees” required of the lessee in order to obtain possession of the leased item are taxable as part of the gross rental. [WY Dept. of Rev. Rules, Chap. 2, Sec. 2(q)]

- *Early Termination fee*

Taxable; this fee is part of the taxable gross rental of a lease. [W.S. 39-15-103(a)(i)(B)]

- *Excess mileage damages*

Taxable; any events incurred during the life of the lease are subject to tax as part of “gross rental.” [W.S. 39-15-103(a)(i)(B)]

- *Federal Excise Tax*

Federal excise taxes imposed directly on the consumer are excluded from the definition of “sales price” per W.S. 39-15-101(a)(viii)(B)(III). As such they are not subject to Wyoming sales tax. However, federal excise taxes imposed on any person other than the final consumer (such as to the manufacturer, importer or seller) are not

excluded from the definition of “sales price” and are subject to Wyoming sales tax.

- *Late payment fees, assumption fees, bad check fees, liability insurance, traffic tickets/fines*

Non-taxable: Wyoming has no statutory provisions to tax these items.

- *Monthly payments*

Taxable; recurring payments made throughout the stream of a lease of tangible personal property are part of the gross rental paid for the lease. [WY Dept of Rev Rules, Chap 2, Sec. 13(cc)]

- *Optional vehicle service agreements*

Provided the charge is separately stated and distinguishable from any taxable charges on the invoice presented to the customer, the cost of an extended warranty, service contract or similar agreement is not subject to sales tax at the time it is contracted but any repairs, alterations or improvements performed under such agreement are subject to tax. The issuer of the agreement is liable for the sales tax on the charges covered by the agreement and the consumer is liable for the tax on those not covered by the agreement. For further information, see our other bulletin entitled Warranties. [WY Dept of Rev Rules, Chap 2, Sec 13(nn)]

- *Purchase option*

Taxable; the exercise of a purchase option as a lease buyout is subject to sales tax. [W.S. 39-15-103(a)(i)(A)]

- *Title/registration fee*

Non-taxable; this is a government fee that is for the purpose of recording ownership and is thus non-taxable.

- *Trade-in*

Non-taxable; “The trade-in value of tangible personal property shall be excluded from the

sales price of new tangible personal property when trade-in and purchase occur in one (1) transaction.” [W.S. 39-15-105(a)(ix)(A)] For example the exercise of a purchase option creates ownership in a motor vehicle that can be used as a trade-in for another transaction.

- *Rental vehicle surcharge*

Non-taxable; the Wyoming Department of Transportation (WYDOT) is authorized by the legislature to assess a four percent surcharge on all passenger cars or U-Hauls rented for less than thirty days. The rental company collects this legally imposed tax, and reports it to WYDOT once a year. WYDOT in turn gives the rental company an offsetting credit to apply to the registration fees for the rental vehicles. The controlling statute is W.S. 31-3-104(a-e), “Surcharge on rental of passenger and U-Drive-It Motor vehicles”. The surcharge paid under W.S. 31-3-104(a-e) is not subject to sales/use 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. 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.
membership in such a group; or

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

"Lease" or "rental" means any transfer of possession or control of tangible personal property for consideration for a fixed or indeterminate period of time. A lease or rental may include future options to purchase or extend the lease or rental. "Lease" or "rental" shall include any agreement covering a motor vehicle or trailer where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(l). The definitions in this paragraph shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other applicable provisions of federal, state or local law. "Lease" or "rental" shall not include:

- (A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- (B) A transfer of possession or control of property under an agreement that requires the transfer

of title upon completion of required payments and payment of an option price which does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments; or
(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time, with the condition that the operator is necessary for the equipment to perform as designed. For purposes of this subparagraph, an operator shall do more than maintain, inspect or set up the tangible personal property.

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. 39-15-105(a)(ix)(A)

For the purpose of avoiding application of the sales tax more than once on the same article of tangible property for the same taxpayer: The trade-in value of tangible personal property shall be excluded from the sales price of new tangible personal property when trade-in and purchase occur in one (1) transaction; and

WY Dept. of Rev. Rules, Chap. 2, Sec. 2(q)

“Gross rental paid as a component of sales price” means the total consideration to enjoy and maintain temporary possession of tangible personal property. Gross rental does not include any tax legally imposed directly on the consumer, which is separately stated on the invoice, bill of sale or similar document to given the purchaser

WY Dept. of Rev. Rules, Chap. 2, Sec. 5(g)(i)
Commissions Not Deductible. Commissions paid to sales agents for their services in making sales shall not be deductible from the sales price of property or services sold.

WY Dept. of Rev. Rules, Chap. 2, Sec. 13(cc)
Rentals or Leases. The gross rental paid for a lease or contract where possession of tangible personal property transfers, and the transfer would be taxable if a sale occurred, shall be subject to the sales tax. The owner of the property shall be considered the vendor and shall charge, collect and remit the sales tax on each rental or lease payment. The purchase of tangible personal property which shall be exclusively held for rental, lease or sale shall be considered a wholesale purchase and shall be exempt from the sales tax.

WY Dept. of Rev. Rules, Chap. 2, Sec. 13(nn)
Warranties.

(i) Standard or mandatory warranties and maintenance contracts provided with the purchase of tangible personal property by the manufacturer or vendor shall be included in the sales price of the tangible personal property.

(A) Repairs, alterations, or improvements performed upon tangible personal property under a

standard warranty shall not be subject to the sales tax.

(ii) Extended warranties, service and maintenance contracts or similar agreements which are sold for an additional and separate cost and provide additional services or extend the timeframe of service coverage shall not be subject to the sales tax.

(A) Repairs, alterations, or improvements performed upon tangible personal property under an extended warranty, service contract, or similar agreement shall be subject to the sales tax.

(I) The consumer shall be liable for the tax on repair services not covered by the agreement. The issuer of the agreement shall be liable for the sales tax on the repair charges covered by the extended warranty.

(iii) For the purpose of this section a “computer software maintenance contract” is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.