



Use Tax and You

Originally issued December 5, 2012/Revised August 1, 2014
Wyoming Department of Revenue

What is Use Tax?

While sales tax is a tax imposed on the retail sales of goods and services which are subject to taxation within Wyoming, use tax is a complementary to our sales tax and imposes tax on purchases of tangible personal property made in another state and brought into Wyoming for storage, use, or consumption where no sales tax had been paid at the time of the purchase or where sales tax had been underpaid (paid a lower tax rate than was in effect in the county where the goods were stored, used, or consumed) at the time of the purchase. Use tax is equivalent to the sales tax rate in the county in which the tangible personal property is delivered or received by the end consumer.

Is Use Tax a New Tax?

No. Wyoming followed the lead of several other states in passing the Sales and Use Tax Act of 1937. Everyone is familiar with sales taxes, but many do not understand the use tax portion of this legislation. Use tax is often described as complementary to sales taxes and applies to purchases of goods from outside Wyoming for storage, use or consumption in Wyoming. This puts Wyoming vendors on equal footing with their out-of-state counterparts that are not required to collect Wyoming tax.

What Purchases Qualify?

Any items purchased that would be subject to Wyoming sales tax if purchased in state are subject to the use tax when purchased out-of-state and brought into Wyoming for storage, use, or consumption. Purchases may include (but are not limited to) the following: appliances, boats, building materials, clothing, furniture, office supplies, cigarettes, other tobacco products, etc. Wyoming imposes sales tax on all retail sales of tangible personal property. Furthermore, use tax does not differentiate by how the purchase is transacted. The purchase could have occurred from a visit to a bordering state, a mail order, or an internet purchase where the item was delivered or received by the purchaser in Wyoming or brought into the state by the purchaser. In any of these cases, if no sales tax had been charged or sales tax was under charged, use tax is due. For example, a consumer purchases two pair of shoes online and they are delivered to his/her home address in Wyoming. If the retailer did not collect Wyoming sales tax on the purchase, the consumer would owe use tax on the purchase since the shoes were brought into Wyoming for storage, use, or consumption. Use tax is equivalent to the sales tax rate of the county in which the tangible personal property is first stored, used, or consumed in Wyoming.

Who Pays Use Tax?

Anyone who purchases goods out of state, that did not pay, or under paid sales tax at the time of the purchase. Typically, the responsible party to remit the tax is determined by whether the out-of-state seller is a Wyoming licensed vendor. If the seller is a Wyoming licensed vendor, he/she would collect and remit the sales tax to the State of Wyoming. However, if the seller is not a licensed vendor and/or does not collect the sales tax, generally the tax responsibility shifts to the purchaser (end consumer) to remit the tax. In example, a Wyoming consumer purchases a computer from a company located in another state where the vendor is not a licensed Wyoming vendor and has the item shipped to his/her home address. Since the purchaser took receipt of the computer in Wyoming and the vendor had not collected sales tax, the purchaser has a use tax liability equivalent to the sales tax rate in the county where the computer was delivered.

Do Businesses or Contractors Pay Use Tax?

It is important to recognize that the use tax statute applies equally to businesses or contractor purchases as well as those made by a private consumer. If a business orders business supplies from an out-of-state vendor and was not charged tax or was undercharged tax, and has those supplies delivered to Wyoming, then that transaction is subject to use tax. For instance, a business purchases common supplies; such as copy paper, toner, and light bulbs from an out-of-state supplier who does not charge sales tax at the time of the purchase. In this instance, as the supplies are delivered to the Wyoming business, the business would owe use tax on the purchase

since these items would be subject to sales tax had they been purchased within the borders of Wyoming. In a contractor example, a contractor purchases roofing materials from an out-of-state supply company which are materials needed to reroof its customer's home residence. Since the contractor is the end consumer of all supplies and materials they use in the construction of real property, if the contractor did not pay sales tax at the time of the purchase, the contractor would owe use tax.

What if I Paid Sales Tax in Another State?

Wyoming does allow an offsetting credit for any legally imposed sales/use tax paid to another state. For instance, if the consumer drives to a bordering state and purchases a computer where he paid a sales tax rate of four percent (4%) and then brings that computer into a Wyoming county for storage, use, or consumption which has a six percent (6%) sales/use tax rate, the consumer would owe an additional two percent (2%) use tax to the State of Wyoming. In another example, a Wyoming consumer purchases a television in another state and paid four percent (4%) sales tax at the time of the purchase. The consumer then brings that television into his/her home county to use for home entertainment where the tax rate is six percent (6%). As the consumer paid four percent (4%) legally to another state, the consumer would now owe two percent (2%) to the State of Wyoming. Please be aware that if the tax rate is a higher percentage in the bordering state than the consumer's home county sales tax rate, no additional tax is due. Take the same example above only the consumer paid eight percent (8%) sales tax in another state. Since his home county is only six percent (6%),

the consumer would not owe any additional tax to Wyoming nor would he/she be entitled a refund of sales tax paid to another state.

Are Services Subject to Use Tax?

Remember that use tax is complimentary to sales tax. Wyoming services which are subject to sales tax are taxable at the location where a customer first makes use of that service. The current tax rate of the county where the customer makes first use of that service is the applicable tax rate to charge. For example, a customer brings his vacuum to a repair shop in Natrona County and picks the vacuum up when the repair is completed. In this scenario, the vendor would charge Natrona County's current tax rate as this is where his customer makes first use of the repair service. Likewise, a customer located in Natrona County ships a vacuum to Campbell County for repair, and once the repair is completed the vendor ships the vacuum back to the customer's location. The vendor would charge his customer Natrona County's current tax rate since this is where the customer makes first use of that service.

Use tax comes into play when a service is rendered out-of-state but the customer makes first use of that service in Wyoming. The use tax rate to be applied is the current tax rate of the county where the customer will make first use of the repair service. For example, a customer is located in Natrona County and ships his vacuum to another state for repair and once repaired the vendor ships the vacuum back to the customer's location. In this instance, the repair is subject to use tax since the repair was purchased in another state and then brought

into Wyoming for storage, use, or consumption. The use tax rate to be applied is Natrona's current tax rate since this is where the customer makes first use of that repair service.

How do I Pay Use Tax?

Consumers may remit use tax due by submitting a Wyoming Consumer Use Tax Return – Form 44. This form is available on our website revenue.wyo.gov. In the left column "Home" select "Excise (Sales & Use) Tax Division" > "Forms" > Select "Sales & Use Tax>Returns" > "Consumers Non-Licensed Vendors (44)". Consumers may print a blank copy and complete the form, following the instructions and remit the return along with their payment directly to the Department. Use tax is due on or before the last day of the month following the month of purchase.

Consumers may also submit the Wyoming Consumer Use Tax Return – Form 44 via the internet using Wyoming Department of Revenue's Internet Filing System (WYIFS) at <https://excise-wyifs.wyo.gov/>. The first step in the process of applying on-line is to register for an electronic filing account. Once that process is complete you will receive an e-mail from the department with your PIN number, then you will be able to access the system to complete the return and pay the tax due. Current tax rates may be located on our website at revenue.wyo.gov where you may download relevant sales tax rate charts. In the left column "Home" select "Excise Tax Division" > "Publications" > Select "Sales & Use Tax Rate Charts" > Go to Master Rate Charts > Select the appropriate date. Please be aware that these rate charts are updated as changes occur.

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)(ix)

“Tangible personal property means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam and prewritten computer software; and includes any controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S. 39-15-103(a) Taxable event. The following shall apply:

(i) Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

A) The sales price of every retail sale of tangible personal property within the state;

(B) 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;

(C) The sales price paid for Intrastate

Telecommunications services including the consideration paid for the sale, rental or leasing of any equipment or ancillary services incidental thereto, and the sales price paid for intrastate calls which originate and terminate in a single state and are billed to a customer with a place of primary use in this state from mobile telecommunications services as provided by the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 through 126. The definitions and provisions of the Mobile Telecommunications

Sourcing Act shall apply to this article;

(D) The sales price paid to carriers for intrastate transportation of passengers;

(E) The sales price paid to public utilities as defined in W.S. 37-1-101 through 37-3-114 and to persons furnishing gas, electricity or heat for domestic, industrial or commercial consumption;

(F) The sales price paid for meals and cover charges, excluding all gratuities regardless of whether offered by the customer or invoiced by the seller, at any place where meals are regularly served to the public;

(G) The sales price paid for living quarters in hotels, motels, tourist courts and

similar establishments providing lodging service for transient guests;

(H) The sales price paid for each admission to any place of amusement, entertainment, recreation, games or athletic event. If any persons other than employees, officers of the law or official business or children under twelve (12) years of age are admitted free or at reduced rates to any such place when an admission charge is made to other persons, an equivalent tax shall be paid by these persons based on the price charged to other persons;

(J) The sales price paid for services performed for the repair, alteration or improvement of tangible personal property;

(K) The sales price paid for all services and tangible personal property used in rendering services to real or tangible personal property within an oil or gas well site beginning with and including the setting and cementing of production casing, or if production casing is not set as in the case of an open hole completion, after the completion of the underreaming or the attainment of total depth of the oil or gas well and continuing with all activities sequentially required for the production of any oil or gas

well regardless of the chronological occurrence of the activity. All services required during the entire productive life of the well, including recompletion, all the way through abandonment shall be subject to this subparagraph. The provisions of W.S. 39-15-301 through 39-15-311 and W.S. 39-16-301 through 39-16-311 shall not apply to this subparagraph;

(M) The sales price paid for motor vehicles, house trailers, trailer coaches, trailers or semitrailers as defined by W.S. 31-1-101;

(N) The sales price paid for alcoholic beverages;

(O) The sales price paid for computer hardware including the basic set of operating instructions called system software which is necessary to the basic operation of the computer hardware and the sales price paid for the hardware media used to transfer computer software programs;

(P) Except as otherwise provided in this subparagraph, the sales price of every retail sale of specified digital products within the state. A sale of specified digital products is only subject to the tax under this section if the purchaser has permanent use of the specified digital product. A vendor who purchases

specified digital products for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition in whole or in part to another person shall be considered a wholesaler and not subject to the tax imposed by this article. Those services provided by a trade association as part of a member benefit are not subject to the tax imposed by this subparagraph.

W.S. 39-15-104(f)(i) sources services and retail sales (excluding lease or rental) as follows:

- (A) When the product is received by The purchaser at a business location of The seller, the sale shall be sourced to that business location;
- (B) When the product is not received by the purchaser at a business location of the seller's, the sale shall be sourced to the location where receipt by the purchaser, or the purchaser's agent designated as such by the purchaser, occurs, including the location indicated by instruction for delivery to the purchaser or donee, known to the seller;
- (C) If it is undeterminable by the seller whether the product was received by the purchaser at a business location of the seller, the sale shall be sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraphs (A) through (C) of this paragraph do not apply, the sale shall be sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When none of the previous rules of subparagraphs (A) through (D) of this paragraph apply, including the circumstance in which the seller is without sufficient information to apply any of the previous rules, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(F) For the purposes of this paragraph the terms "receive" and "receipt" mean taking possession of tangible personal property, making first use of services or taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

W.S. 39-15-103(c)(i)(ii)

- (i) Except as otherwise provided every vendor shall collect the tax imposed by this article and is liable for the entire amount of taxes imposed;
- (ii) Every person purchasing goods or services taxed by this article is liable for the taxes and shall pay tax owed to the

department unless the taxes have been paid to a vendor:

(iii) Any tax due under this article constitutes a debt to the state from the persons who are parties to the transaction, other than any vendor or other seller who is prohibited or not authorized by law to collect any tax under this article, and is a lien from the date the tax is due on all the real and personal property of those persons;

W.S. 39-16-103(a)

“(i) Persons making first use of taxable services or storing, using or consuming tangible personal property or specified digital products, except as otherwise provided in this paragraph, are liable for the tax imposed by this article. Specified digital products are only subject to the tax imposed by this article if the purchaser has permanent use of the specified digital product. A vendor who purchases specified digital products for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition in whole or in part to another person shall be considered a wholesaler and not subject to the tax imposed by this article. Those services provided by a trade association as part of a member benefit are not subject to the tax imposed by this subparagraph. The liability is not extinguished until the tax has been paid to the state but a receipt given to the person by a registered vendor in accordance with paragraph (c)(i) of this section is sufficient to relieve the purchaser from further liability;

(ii) Specified digital products sold, services to repair, alter or improve tangible personal property sold and tangible personal property sold by any person for delivery in this state or where first use of the service occurs in

this state is deemed sold for storage, use or consumption herein and is subject to the tax imposed by this article unless the person selling the property has received from the purchaser a signed certificate stating the property service was purchased for resale and showing his name and address. Specified digital products are only subject to the tax imposed by this article as specified in paragraph (i) of this subsection

(iii) Computer hardware, including the basic set of operating instructions called system software which is necessary to the basic operation of the computer hardware and hardware media used to transfer computer software programs are subject to the provisions of paragraphs (i) and (ii) of this subsection.

W.S. 39-16-103(b)(i) Basis of tax. The following shall apply:

“Specified digital products sold, services to repair, alter or improve tangible personal property sold and tangible personal property sold by any person for delivery in this state or where first use of the service occurs in this state is deemed sold for storage, use or consumption herein and is subject to the tax imposed by this article unless the person selling the property has received from the purchaser a signed certificate stating the property was purchased for resale and showing his name and address. Specified digital products are only subject to the tax imposed by this article as specified in paragraph (a)(i) of this section;”

W.S. 39-16-103(c)(ii) Taxpayer. The following shall apply:

“Persons making first use of taxable services or storing, using or consuming tangible personal property or specified digital products are liable for the tax imposed by this article. Specified digital products are only subject to the tax imposed by this article as specified in paragraph (a)(i) of this section. The liability is not extinguished until the tax has been paid to the state but a receipt given to the person by a registered vendor in accordance with paragraph (i) of this subsection is sufficient to relieve the purchaser from further liability;”

W.S. 39-16-103 (c)(iv)

“Except for those vehicles specified under W.S. 39-16-107 (b)(iv), the use tax imposed by this article upon a motor vehicle, house trailer, trailer coach, trailer or semitrailer purchased outside the state of Wyoming as a gift shall be collected from the donee prior to the first registration based upon the fair market value of the gift at the time of the gift;”

W.S. 39-16-103 (c)(vi)

“Every person making first use of taxable services or storing, using or consuming tangible personal property or specified digital products purchased from a vendor who does not maintain a place of business in this state is liable for the tax imposed by this article. Specified digital products are only subject to the tax imposed by this article as specified in paragraph (a)(i) of this section;”

WY Dept. of Rev Rules, Chap 2, Sec. 3(h)

Use Tax

(i) The use tax shall be determined by when tangible personal property is first stored, or first used or first consumed in Wyoming.

(ii) Credit for Sales or Use Tax Payments Made to Another State. The Department shall allow credit for sales or use tax legally imposed and paid to another state on a purchase equal to but not exceeding the Wyoming use tax liability on that purchase. Claims for the off-setting credit shall be substantiated with copies of invoices showing sales or use tax paid. Offsetting credits can only be used within statutory time frames.

WY Dept. of Rev. Rules, Chap. 2, Sec. 5(c)(i)

“Consumers, including contractors, remitting sales or use tax not paid to vendors shall remit the tax on or before the last day of the month following the month of purchase.”