



## Business Asset Transfers

Originally issued October 5, 2005 / Revised April 12, 2018  
Wyoming Department of Revenue

W.S. 39-15-101(a)(vii) states in part "Sale" means "any transfer of possession in this state for a consideration including the fabrication of tangible personal property when the materials are furnished by the purchaser but excluding an exchange or transfer of tangible personal property upon which the seller has directly or indirectly paid sales or use tax incidental to..."

The statutory language is clear that, in order to qualify for any sales exclusion, sales/use tax must have been directly or indirectly paid by the seller. Without a full scale audit, the Department cannot confirm that a seller has paid tax on all assets acquired in a transfer so we do not issue general letters of release of successor liability. However the Department does become involved when there are motor vehicles and other titled assets in need of re-titling at the County. For motor vehicles this is determined through review of current Motor Vehicle Registrations (in the name of the seller) or Motor Vehicle Sales/Use Tax Receipts issued by the County Treasurer at the time of purchase/registration by the seller. If the seller is unable to document the same due to the age of the assets, the seller must be able to prove that the assets in question were purchased more than three (3) years prior to the business transfer transaction. We are limited to the three (3) year "look back" period under our business records retention statutes. [W.S. 39-15-107 and W.S. 39-16-110] We are guided in this by *In the Matter of the Appeal of Caza Drilling, Inc. from Sales and Use Tax Audit Assessment Decisions of the Department of Revenue,*

*[State Board of Equalization] Docket No. 98-157 & Docket No. 99-149.* After its review, the Department of Revenue will, for a qualifying exclusion, provide the purchaser a letter to give to the appropriate county treasurer at the time of the vehicle(s) registration in Wyoming. This letter will document that we have reviewed the transaction and have concluded that it qualifies for the business transfer exclusion contained within W.S. 39-15-101(a)(vii)(A–N) and the purchase of the vehicles are not subject to sales tax.

Simply put a sale occurs when there is an exchange of tangible personal property or taxable service for consideration, where consideration is defined as anything of value to the parties and even includes the assumption of debt. However there are certain acts and transfers that are excluded from the application of sales tax. It is not that such events are sales tax exempt; rather it is that they are excluded from our statutory definition of a "Sale." This document focuses on the twelve (12) acts and transfers that are specifically excluded from the definition of "Sale" and outlines the information needed by our department to make a determination to that effect.

Five (5) of the exclusions deal with the formation or dissolution of a corporation, professional corporation or partnership. They read,

- *The formation of a corporation by the owners of a business and the transfer of*

*their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to assets contributed;*

- *The dissolution and the pro rata distribution of the corporation's assets to its stockholders;*
- *The transfer of assets of shareholders in the formation or dissolution of professional corporations;*
- *The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;*
- *A division of partnership assets among the partners according to their interests in the partnership. As used in this subparagraph, "partnership" includes a limited partnership;*

The common element in these acts is that the assets are placed into or taken from the entity in exchange for the investor's interest in the entity. It also recognizes that the assets are integral to the company as without them the organization does not exist.

In order for our Department to confirm that the transfer meets one of the conditions for exclusion based on the formation or dissolution of the entity, in addition to the vehicle sales tax information we must review the formation or dissolution documents of the entities involved and the asset allocation as reflected in and by the ownership interest. This may include the Articles of Incorporation or Organization, Corporate Minutes, Assignment agreement, etc.

Three (3) additional exclusions pertain to transfers between related companies:

- *The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;*
- *The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;*
- *The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between affiliated companies, partnerships and corporations which are owned in similar percentages by the same persons. "Closely held subsidiary corporation" means a corporation in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock;*

Notice that in all three of these cases, the parent corporation must own at least eighty percent (80%) of the subsidiary corporation or own at least eighty percent (80%) of each of the two subsidiary corporations. It is also important to note that the exchange is for stock or securities (again an ownership interest) in the entity receiving the property.

When assets are transferred between related entities, we require a fully executed copy of the Asset Transfer Agreement, including all

exhibits and appendixes, and proof of ownership interest between the two entities either as parent and subsidiary or mutual subsidiaries of the same parent. For example, the Articles of Incorporation or Organization may name the shareholders, stakeholders, members and their number of shares/percentage of ownership. In cases where the interest has changed we would find it necessary to review the entity's supplemental records of ownership. These records are in addition to the proof of taxes paid as noted in the preceding discussion.

- *A transfer of a partnership interest;*

An additional exclusion is for an asset transfer that results in a transfer of a partnership interest. For example, when one of two partners makes an additional contribution to the partnership and the percentage of interest in the partnership changes, those assets contributed are excluded from the definition of a sale. In order to review the transaction the Department would again review the partnership documents recognizing the original interest, the additional contribution and resulting change in interest.

- *The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;*

The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder is not a sale. The mortgage/lien holder is not buying the property from the owner; rather they already have a security interest in the property and are taking title pursuant to a breach of contract. It is evidenced by providing the Department with a Copy of the Contract and a Repossession Affidavit executed by the mortgage/lien holder.

- *The lease or rental of tangible personal property for consideration between parent and closely held subsidiary corporations, between subsidiary corporations closely held by the same parent corporation, or between affiliated companies, partnerships, corporations or other business entities which are owned in similar percentages by the same persons. As used in this subparagraph, "closely held subsidiary corporation" means a corporation in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock;*

This exclusion is not for the transfer of assets between two related companies, it is for the lease or rental of one company's assets for consideration by a related company. This often occurs when one entity is a "holding" company, having title to the assets and a second "operating" company takes possession for use. Note, this exclusion is limited to a lease/rental of assets and does not provide any exclusion should one company provide taxable services to or for a relative company.

In order to confirm this exclusion, the Department would review the agreement between the related companies setting forth the terms and conditions. This is often manifested through an Operating Agreement or Rental/Lease Contract. In addition we would require proof of ownership/relationship and the percentage of ownership which may be evidenced in the Articles of Incorporation or Organization. In cases where the interest has changed after formation, we would find it necessary to

review the entity's supplemental records of ownership.

- *The sale of a business entity when sold to a purchaser of all or not less than eighty percent (80%) of the value of all of the assets which are located in this state of the business entity when the purchaser continues to use the tangible personal property in the operation of an ongoing business entity in this state. As used in subparagraph "business entity" means and includes an individual, partnership, corporation, corporate division, joint stock company or any other association or entity, public or private, or separate business unit thereof.*

The last exclusion is by far, more frequently questioned than the others. This exclusion involves the sale of all or not less than eighty percent (80%) of the value of all of the entity's assets located in Wyoming. In addition, the purchaser must continue to use the acquired tangible personal property assets in the operation of an ongoing business entity in Wyoming. And just like the previous requirements, the seller must have paid sales tax directly or indirectly on the tangible personal property included in the sale of the business.

The relevant exclusion language looks at "...the value of all of the assets..." In Webster's New World College Dictionary, Fourth Edition, (2000), the word "asset" is defined as "3 [pl.] Accounting all of the entries on a balance sheet showing the entire resources of a person or business, tangible and intangible, including accounts and notes receivable, cash, inventory, equipment, real estate, goodwill, etc." A similar definition for the word "asset" is found in Black's Law Dictionary, Eighth Edition, (2004). In it, the relevant definition for the word "asset" is "2.

(pl) The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill."

As a result, we require:

- A copy of the balance sheet for the business dated as close as possible prior to the sale, reflecting the value of all of the assets of the business entity sold in whole or part. The balance sheet should include values for cash, receivables, fixed assets, equipment, and intangibles and other such asset types as are appropriate for the business; and
- An executed copy of the Asset Purchase Agreement with exhibits and appendixes showing the sale/purchase price as well as other transaction related documents to establish the conditions of the sale (e.g. non-compete agreements, escrow, etc.) and schedules of the assets sold and retained. This is done so that we can establish the proper percentages when compared to the balance sheet previously noted.

Once we have established that the transaction meets the sales threshold requirements, we move to the issue of the purchaser's use of the tangible personal property in an ongoing business entity in Wyoming. That is done internally via confirmation with Wyoming's Office of the Secretary of State that the purchaser's business entity is registered with their office as well as investigation of the Department's own records if the business is required to also hold a Wyoming sales/use tax license.

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)(vii) states:

"Sale" means any transfer of possession in this state for a consideration including the fabrication of tangible personal property when the materials are furnished by the purchaser but excluding an exchange or transfer of tangible personal property upon which the seller has directly or indirectly paid sales or use tax incidental to:

(A) A division of partnership assets among the partners according to their interests in the partnership. As used in this subparagraph, "partnership" includes a limited partnership;

(B) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to assets contributed;

(C) The transfer of assets of shareholders in the formation or dissolution of professional corporations;

(D) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

(E) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(F) The transfer of assets from a subsidiary corporation which is owned at least eighty

percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(G) A transfer of a partnership interest;

(H) The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;

(J) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(K) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between affiliated companies, partnerships and corporations which are owned in similar percentages by the same persons. "Closely held subsidiary corporation" means a corporation in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock;

(M) The lease or rental of tangible personal property for consideration between parent and closely held subsidiary corporations, between subsidiary corporations closely held by the same parent corporation, or between affiliated companies, partnerships, corporations or other business entities which are owned in similar percentages by the same persons. As used in this subparagraph, "closely held subsidiary corporation" means a corporation in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent

(80%) of the total number of shares of all other classes of stock;

(N) The sale of a business entity when sold to a purchaser of all or not less than eighty percent (80%) of the value of all of the assets which are located in this state of the business entity when the purchaser continues to use the tangible personal property in the operation of an ongoing business entity in this state. As used in subparagraphs (M) and (N) of this section, "business entity" means and includes an individual, partnership, corporation, corporate division, joint stock company or any other association or entity, public or private, or separate business unit thereof.

*WY Dept of Rev Rules, Chap 2, Sec 2(i)* states:

“Consideration” means recompense or payment which includes anything of value to the parties to a sale. Consideration is not limited to cash. Assumption of debt is a form of consideration.