



# Dyed Diesel Bulletin

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Wyoming Department of Revenue

Diesel fuel, clear or dyed, is tangible personal property and subject to Wyoming sales tax unless an exemption applies. Wyoming exempts clear diesel for highway use from sales tax because it is subject to fuel tax instead.

Diesel fuel that is not subject to fuel tax is dyed to distinguish it – this dyed fuel is subject to the sales tax unless there is a secondary exemption available to the purchaser.

## Clear Diesel – Fuel Tax

As a baseline, below is a sample invoice for the purchase of 200 gallons of clear diesel fuel at \$2.50/gallon.

|   |          |
|---|----------|
| Fuel  | \$500.00 |
| Federal Excise Tax, \$0.244/gallon              | \$48.80  |
| WY State Fuel Tax, \$0.23/gallon                | \$46.00  |
| Federal Oil Spill Recovery Fee, \$0.0012/gallon | \$0.24   |
| WY Additional License Tax, \$0.01/gallon        | \$2.00   |
| Final Price                                     | \$597.04 |

## Dyed Diesel – Sales Tax

In addition to being exempt from the Wyoming fuel tax, dyed diesel is exempt from the federal excise tax on fuel.

That said, dyed diesel is subject to the Federal Oil Spill Recovery Fee and is it subject to the Wyoming Additional License Tax. The first lacks authority as a tax and the second is a tax deemed to be imposed directly on the consumer and “pre-collected” at the wholesale level.

Applying these charges to a dyed diesel fuel invoice, the Federal Oil Spill Recovery Fee is part of the taxable price of the fuel but because the Wyoming Additional License Tax is a tax, that amount is not included in the amount subject to sales tax.

Below is a sample invoice expressing these charges visually, again using a purchase of 200 gallons at \$2.50/gallon but this time for dyed diesel fuel.

|   |          |
|---|----------|
| Fuel  | \$500.00 |
| Federal Oil Spill Recovery Fee, \$0.0012/gallon               | \$0.24   |
| WY Additional License Tax, \$0.01/gallon                      | \$2.00   |
| Subtotal  | \$502.24 |
| Sales Tax (presuming 5% for the illustration - \$500.24 X 5%) | \$25.01  |
| Final Price   | \$527.25 |

## Exemptions

In most cases the sale of dyed diesel is going to be subject to sales tax but there are four sales/use tax exemptions that are pertinent to dyed diesel purchases. The first three are specific to fuel used in manufacturing, processing and agriculture; in transportation; and as a boiler fuel. The last is for purchases made on the basis of resale.

### § Manufacturing, Processing or Agriculture

*W.S. 39-15-105(a)(iii)(D) exempts sales of power and/or fuel to a person engaged in manufacturing, processing or agriculture when the same is consumed directly in manufacturing, processing or agriculture.*

In order to be applicable the power or fuel purchased must be directly consumed in the exempt activity. According to Webster's New World College Dictionary, "directly" means "with nothing or no one between; exactly; completely." The Department administers this not only to include power/fuel consumed by the manufacturing machinery itself but also power/fuel used to light and or heat the facility where manufacturing is occurring.

Because the exemption is limited only to power and fuel that is directly consumed, it excludes power used for any other purpose. As a result the fuel must be separately stored, separately metered or distinguished through an engineered calculation.

### § Transportation

*W.S. 39-15-105(a)(iii)(E) exempts sales of power or fuel to a person engaged in the transportation business when the same is consumed directly in generating motive power for actual transportation purposes, except power or fuel which is not taxed as gasoline or gasohol under W.S. 39-17-101*

*through 39-17-111 or as diesel fuel under W.S. 39-17-201 through 39-17-211 and which is used to propel a motor vehicle upon the highway as defined in W.S. 39-17-201(a)(xii)*

In order for this exemption to apply the fuel must be directly consumed in generating motive power for actual transportation but it cannot be used to propel a vehicle on a highway.

Fuel consumed by locomotives or other self-propelled rolling stock that runs only on rails and which are being used for motive transportation purposes would qualify as exempt from sales tax.

### § Boiler Fuel

*W.S. 39-15-105(a)(iii)(G) exempts the sale of fuel for use as boiler fuel in the production of electricity.*

Dyed diesel fuel used in generators used to produce electricity would also be exempt.

### § Wholesale

While the previous exemptions pertain to fuel directly, the last exemption is available to all vendors.

*W.S. 39-15-105(a)(iii)(F) exempts wholesale sales.*

In Wyoming licensed vendors have the ability to purchase inventory held exclusively for resale on a tax-free basis with the expectation that they will collect sales tax when the item is resold in Wyoming. If the item is resold outside Wyoming, no liability would exist in this state but there may be liability in the state where the item is subsequently received by the customer.

Please note, in addition to possessing a Wyoming Sales/Use Tax License a wholesaler of fuels would also need to be in possession of a Motor Fuel Dealer's License issued by the Wyoming Department of Transportation.

To take advantage of one of these exemptions it is necessary for the purchaser to provide the seller with a properly completed Streamlined Sales and Use Tax Certificate of Exemption claiming the exemption. The exemption certificate and instructions for completing it are available on our website, under forms. In addition to the exemption certificate, if the purchaser has derived the amount of the exemption based on an engineered calculation, a copy of the engineering report supporting the calculation must also be provided to the power or fuel supplier.



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) states:

"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.

W.S. 39-15-101(a)(ix) states:

"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)(i)(A) states:

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. 39-15-105(a)(iii)(D) states:

For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt: Sales of power or fuel to a person engaged in the business of manufacturing, processing or agriculture when the same is consumed directly in manufacturing, processing or agriculture;

W.S. 39-15-105(a)(iii)(E) states:

For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt: Sales of power or fuel to a person engaged in the transportation business when the same is consumed directly in generating motive power for actual transportation purposes, except power or fuel which is not taxed as gasoline or gasohol under W.S. 39-17-101 through 39-17-111 or as diesel fuel under W.S. 39-17-201 through 39-17-211 and which is used to propel a motor vehicle upon the highway as defined in W.S. 39-17-201(a)(xii);

W.S. 39-15-105(a)(iii)(F) states:

For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt: Wholesale sales excluding sales of 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. 39-15-105(a)(iii)(G) states:

For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt: Sales of fuel for use as boiler fuel in the production of electricity;

W.S. 39-15-105(a)(v)(C) states:

For the purpose of exempting sales of services and tangible personal property which are alternatively taxed, the following are exempt: Sales of gasoline or gasohol taxed under W.S. 39-17-101 through 39-17-111 and of diesel fuels taxed under W.S. 39-17-201 through 39-17-211. The exemption provided by this subparagraph shall not apply to gasoline or gasohol taxed under W.S. 39-17-104(a)(iii) or to diesel fuel taxed under W.S. 39-17-204(a)(ii).

W.S. 39-17-201(ix) states:

"Dyed diesel fuel" means diesel fuel that is dyed pursuant to regulations issued by the United States internal revenue service or the department;

W.S. 39-17-201 (xxi) states:

"Diesel fuels" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than forty-six (46) degrees American petroleum industry gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles for operation upon public roads and highways. The term "diesel fuels" includes jet fuel which is the volatile substance produced from petroleum, natural gas, oil, shale or coal and sold under the name of jet fuel and kerosene and any type of additive when the

additive is mixed or blended into diesel fuel, excluding a pour point depressant. For the purposes of collecting the tax provided by W.S. 39-17-204(a)(ii) the term "diesel fuel" includes all diesel fuel consumed or purchased for any and all purposes;

W.S. 39-17-203(b)(ii) states:

The taxes imposed on diesel fuel shall be conclusively presumed to be a direct tax on the ultimate or retail consumer. When taxes are paid by any person other than the ultimate or retail consumer, the payment shall be considered as precollected and as an advance payment for the purpose of convenience and facility to the consumer and shall thereafter be added to the price of the diesel fuel and recovered from the ultimate or retail consumer, regardless of where or how the taxable fuel is ultimately consumed;

W.S. 39-17-204(a) states:

(a) Except as otherwise provided by this section and W.S. 39-17-205, the total tax on diesel fuels shall be twenty-four cents (\$.24) per gallon. The rate shall be imposed as follows:

(i) There is levied and shall be collected a license tax of twenty-three cents (\$.23) per gallon on all diesel fuels used, sold or distributed for sale or use in this state;

(ii) In addition to the tax collected pursuant to paragraph (i) of this subsection, there is levied and shall be collected a license tax of one cent (\$.01) per gallon on all diesel fuels used, sold or distributed for sale or use in this state except for those fuels exempted in W.S. 39-17-205(b) and (e);

(iii) Notwithstanding paragraph (i) of this subsection, jet fuel sold for use in aircraft shall be taxed at four cents (\$.04) per gallon.

W.S. 39-17-205(d) exempts:

Dyed diesel fuel as defined in W.S. 39-17-201(a)(ix) is exempt from the license tax under W.S. 39-17-204(a)(i).

*WY Dept of Rev Rules, Chap 2, Sec 7(b)(i)* states:

Vendors shall obtain completed exemption certificates for all sales transactions, other than those qualifying under section 6 of these rules, where sales tax is not collected from the purchaser at the time of sale. Purchasers shall file a single exemption certificate with each selling vendor for exempt purchases made. The certificates shall be in a format as prescribed by the Streamlined Sales and Use Tax Agreement and shall be retained in the selling vendor's records. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase. A purchaser is not required to provide a signature to claim an exemption from tax unless the paper exemption certificate is used. The seller shall use the standard format for claiming an exemption electronically when that format is adopted by the Governing Board of the Streamlined Sales Tax Project.

*WY Dept of Rev Rules, Chap 2, Sec 7(g)(i)* states: Manufacturing, Processing, Agriculture. Fuel and Power Purchases. Exempt Purchases of power or fuel shall be separately accounted for, by separate metering, storage, or engineered calculation as required by the Department, and distinguishable from taxable purchases of same.

