



Sale and Use Tax Guidelines for the Mining Industry

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Wyoming Department of Revenue

The mining industry is a major business sector of Wyoming's economy. Wyoming leads the nation in the production of three minerals: coal, bentonite and trona. This publication was initially released in 2001 as a "Coal Mining Publication." Since then it has been revised and expanded to encompass mining activities generally. As such the entirety of this publication is not applicable to all mining activities; portions of the publication are geared to specific mining activities because of differences in the minerals being mined. Where there is variance, it will be noted.

Per the North American Industry Classification System, the Mining Sector comprises *establishments that extract naturally occurring mineral solids, such as coal and ores; liquid minerals, such as crude petroleum; and gases, such as natural gas. The term mining is used in the broad sense to include quarrying, well operations, beneficiating (e.g., crushing, screening, washing, and flotation), and other preparation customarily performed at the mine site, or as a part of mining activity.* [www.naics.gov] For the purpose of this publication we will omit discussion of oil, conventional natural gas and coal bed methane. The taxation of oil and gas services is discussed in a separate publication by the same name, available on our website, <http://revenue.wyo.gov>.

Establishments in the Mining Sector are classified according to the natural resource mined and are distinguished by two basic activities: mine operation and mining support activities. Mine operation includes establishments operating mines or quarries on their own account or for others on a contract or fee basis. Mining support activities include establishments that perform exploration and/or other mining services on a contract or fee basis.

Beneficiation is the process whereby the extracted material is reduced to particles that can be separated into mineral and waste, the former suitable for further processing or direct use. The operations that take place in beneficiation are primarily mechanical, such as grinding, washing, use chemical and electrochemical processes, such as electrolysis and distillation. However, some treatments, such as heat treatments, take place in both the beneficiation and the manufacturing (i.e., smelting/refining) stages. The range of preparation activities varies by mineral and the purity of any given ore deposit.

In a broad sense the act of removing ore from the earth is a service to real property and relates to the work of a contractor. This is because contractors are defined in the Wyoming statutes as those persons who perform services for the repair, alteration, improvement or construction of real property. Real property has a lengthy definition (noted in the supporting authority below) and specifically includes land. Those

persons hired by the mine operator, providing mining support activities that repair, alter or improve the land, are contractors and in certain cases may be subcontractors to the mine operator. As contractors performing services to real property, any materials, supplies or equipment purchased or rented by the contractor in order to perform their service are taxable to them as the consumer of the property and their service is not subject to tax. Below we will discuss mining in general terms before offering specific direction for coal, trona and uranium.

Shot Services

Third party shot services are a prime example of contractor services purchased by a mine operator. Shot services consist of the placement of explosives within the mineral formation and the detonation of those explosives. This service may also include drilling of holes into the formation into which the explosives are placed.

When shot services are performed by a third party contractor and that party also provides the “shot” materials, he is responsible for the sales or use tax on the tangible personal property furnished to perform the shot service. As far as his labor charge, this is not subject to tax to either the third party contractor or to the mine operator. The result to the mine operator is an invoice with tax (on the materials) built into the overall service price charged by the service provider but without a tax amount listed on the face of the invoice.

As an alternative the mine may purchase and place explosives and related supplies in their individual inventories prior to use, thereby hiring the third party contractor to perform only a labor service. Again the third party contractor does not list tax on his invoice,

because his labor is not subject to tax. But as far as the materials, in this case the mine is directly responsible for sales tax to their supplier(s) or the Department at the time of purchase. The subsequent drawing from inventory of the property is merely a step in providing the shot service and doesn't alter the fact that the taxable event occurred earlier in time.

Reclamation

Services to reclaim mine sites are also contractor work to real property and not subject to Wyoming sales tax. The materials and supplies, including seeds, grasses and other materials, used in reclamation work are tangible personal property and subject to Wyoming sales or use tax to the contractor. For example, a contractor's retail purchases of native grass seed used to reclaim mine sites are taxable to the contractor. The contractor embeds the tax in his service price and passes this through to the mine operator but does not list tax as an itemized charge on the face of the invoice.

Once a mineral or ore is extracted, it is separated from the land and can no longer be considered real property. At this point the extracted material is defined as tangible personal property, or any property that is perceptible to the senses. All sales of tangible personal property or services for the repair, alteration or improvement of tangible personal property in Wyoming are subject to Wyoming sales tax unless protected by exemption. Unlike above, those persons who sell tangible personal property or perform taxable services are not contractors, they are vendors and must license with our office for sales tax purposes. Those persons who act as a vendor are required to obtain a Wyoming sales/use tax license from the Department prior to conducting business in our state. This applies both to the mine operator since

he will be selling the mined materials, either at wholesale or retail and the vendors hired by the operator to perform services for the repair, alteration or improvement of tangible personal property in our state. For assistance in obtaining a Wyoming Sales/Use Tax License please contact our Vendor Operations Section at (307) 777-5200. In addition, vendors are also required to collect and remit Wyoming sales/use tax on all of their taxable sales and purchases.

In addition to customary licensing, Wyoming does administer a Direct Pay Permit program. This option is available to purchasers making taxable purchases in this state totaling five million dollars (\$5,000,000) or more per calendar year. Such permits allow the purchaser to self-accrue and pay all applicable Wyoming sales tax directly to the Department by the end of the month following the month purchases are made instead of remitting sales tax to their vendors who in turn remit the tax to the department. The Direct Pay Permit option is attractive for a couple of reasons. First, it permits mining companies to float time on their taxable purchases before remittance since a purchase may be made at the beginning of the month but the tax remittance is delayed until the end of the month. It also removes conflicts with vendors over the taxability of individual purchases and places the onus of that determination with the mining company's tax department. Thus, for fiscal and pragmatic reasons many mining companies prefer the direct pay option. Interested parties may make an application for a Direct Pay Permit by completing a Direct Permit Application, available on our website.

Crushing Services

Third party crushing on a contract basis is a common example of a vendor service that a

mine operation may hire. Because the material has been removed from the land it is tangible personal property. The action of crushing the material and sizing it results in an alteration of the material (i.e. raw boulders/chunks becomes material of a uniform size) and would be a taxable service.

Unfortunately, not all services at a mine site can be labeled exclusively as work to real property or work to tangible personal property. For example, if a mine's lease includes the right to extract a specified tonnage of scoria for a price, the amount paid for this right is the sales price paid by the mine for the scoria and is a taxable retail sale of scoria to the mine. Whether the digging of the scoria is done by the mine operator or by a third party, the digging is not subject to Wyoming sales tax because it is work to real property. Like shot services above, any materials or supplies necessary to perform the service are taxable to the party making the purchase but the service is not taxable. Once dug, the scoria must be crushed to a uniform size for use on mine roads. As noted above the crushing service is subject to tax when performed by a third party. Lastly the crushed material is applied to the land and graded. This again is work to real property and the materials or supplies necessary to perform the service are taxable to the purchaser but the labor is not subject to Wyoming sales tax.

However, if we change this scenario slightly, the tax consequence also changes. For instance, a mine operator owns a gravel quarry to supply gravel to itself and the mine contracts with a third party miner to remove the gravel and deliver it to the mine. In this situation, since the mine operator already owned the mine there is no sale of tangible personal property. Again the mining of the gravel is nontaxable work to real property. Furthermore, if the mine operator crushes

their own gravel there is no sales tax since the mine is altering their own property; however, if the “contract miner” alters mined gravel per the mine’s size or uniformity specifications, this portion of the work is a taxable service. Lastly the delivery, spreading, and grading are not subject to tax.

Equipment Repair

Purchases and leases of drag lines, dozers, haul trucks, tubs, excavators, mills, trucks, utility equipment, generators, and various other machinery and equipment are subject to tax as are services performed for their repair, alteration or improvement. Labor or service charges for the repair, alteration or improvement of tangible personal property, as well as charges for materials, supplies and fabrication used in rendering such services are subject to sales tax.

Wyoming administers that repairs are taxable at the location where the customer receives or makes first use of that service after it is rendered. Our sourcing rules stipulate the terms “‘receive’ and ‘receipt’ and 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 and does not include possession by a shipping company on behalf of the purchaser. For instance, if equipment is repaired at the mine’s site, the service provider would collect sales tax based on the current tax rate in effect in the county where the service was rendered, since this is where the customer makes first use of that service.

In addition to sales tax, companies must also be aware of a use tax obligation when purchasing services out-of-state. Use tax comes into play when a service is rendered out-of-state but the customer makes first use

of that service in Wyoming. For example, a company in Wyoming ships equipment out-of-state to be repaired and once repaired the service provider ships the equipment back to Wyoming. Since the Wyoming company will make first use of that repair service in Wyoming, the repair is subject to Wyoming tax. When the out-of-state vendor is licensed to collect Wyoming sales, the vendor would collect sales tax based on the current rate in effect where the mine is located since this is where the mine is able to make first use of the service. However, when the out-of-state vendor is not licensed to collect Wyoming sales tax, the tax liability falls to the end consumer, in this case the mine, to remit use tax on the repair service. The use tax rate to be applied is the current tax rate of the county where the mine will make first use of the repair service.

Exemptions During Extraction

Wyoming does not administer any sales or use tax exemptions for machinery, equipment or supplies utilized during the extraction process. In addition, power and fuel consumed in the extraction process are likewise taxable. For example, the consumption of power or fuel consumed by fans used to ventilate an underground mine or elevators used to transport miners, materials, and equipment is subject to Wyoming sales tax. Such power consumption occurs during the extraction of the minerals. As it relates to dyed diesel, this product is not subject to the Wyoming Fuel Tax, currently \$0.24 per gallon but it is subject to sales tax. Excluded from the retail sales price of dyed diesel fuel is the one cent (\$.01) per gallon Additional License Tax imposed at W.S. 39-17-204(a)(ii). Please note that this tax must be separately stated on invoices to ensure its nontaxable treatment.

Power and Fuel

Once the extraction process is complete Wyoming does administer an exemption for power or fuel directly consumed in a manufacturing, processing or agricultural function. In a mining application, many aspects of the beneficiating process are considered processing, defined as the transformation of tangible personal property into a different state or form from which it originally existed.

Mines wishing to claim exemption for power or fuel consumed directly in processing activities must be able to distinguish taxable purchases from exempt purchases. In order to qualify for the exemption the power or fuel must be used “directly”, or “...with nothing or no one between; exactly; completely” [Webster’s New World College Dictionary, 4th Edition, 2004] in the exempt activity. In this light, power consumed by above ground crushers is exempt from Wyoming sales tax but power for administrative functions is not nor is power for material handling equipment transporting material from the mine face to a crusher. Many times power and fuel can be separately stored or separately metered. When this is not the case, an engineered calculation is required. Once distinguished the purchaser is required to provide a properly completed Streamlined Sales Tax Agreement Certificate of Exemption plus the engineered calculation, if used, to their power supplier indicating their Wyoming Sales/Use tax license number or Revenue Identification Number as issued by the department. The form with instructions is also available on our website.

Exempt Transportation of Employees

Wyoming administers an exemption for intrastate transportation of personnel to a

Wyoming mine if the mine as the employer contracts and pays for the transportation.

We will now turn our attention to specific mined products:

COAL Power and Fuel

To provide clarity on the power and fuel exemption noted above, we will presume that a customer contracts with a coal mine for coal of a specific size and composition. To achieve this product the mine must use a conveyor or haul truck carrying coal between the mine mouth and the first crusher. The conveyor or haul truck is aiding the extraction of the coal. As such, the power to the conveyor or the fuel consumed by the haul truck is being consumed before the point processing starts. Thus, such power consumption is subject to Wyoming sales tax.

The sizing of coal is accomplished through a network of crushers and conveyor systems where it is combined and blended to the customer’s specifications. For sales tax purposes, the extraction process ends and processing begins when the coal enters the first crusher. The movement of coal from crusher to crusher via a conveyor system is still within the context of processing for power or fuel exemption purposes. Processing ends when the coal is stockpiled.

A conveyor carrying coal from the market ready stockpile to a load-out facility and the load-out facility itself perform functions after processing is complete which also precludes them from consideration as processing for power or fuel exemption purposes.

**COAL
Dust Suppressant Sprays**

Dust suppressant sprays, whether applied as a foaming agent, topper agent or in another form is sales tax exempt. The coal mines purchase of this additive is sales tax exempt as an ingredient of the coal.

Although the cost of the spray itself purchased by the mine is exempt. This exemption itself does not impact tax on the cost of applying the dust suppressant spray to the coal if performed by others. The department views that the purchase of the application service will result in an alteration of the coal. Purchasing services which will repair, alter, or improve tangible personal property are generally subject to Wyoming sales tax unless protected by an exemption. However, the mine can purchase this service from the third party on a wholesale for resale basis per W.S. 39-15-105(a)(iii)(F) as the service is being resold as part of the coal sale. The result then is that both the dust suppressant spray and the charges to apply it to the coal before sale would both be exempt purchases for the coal mine so long as a properly completed exemption certificate is provided to the vendor providing the product and/or service.

**COAL
Soda Ash**

When applied to the coal, soda ash augments the innate sodium and ash in the coal. Like dust suppressant sprays, the coal mine's purchase of this additive is sales tax exempt as an ingredient of the coal. Also like the dust suppressant spray the coal mine may purchase a third party application of soda ash to the coal on a wholesale for resale basis as the service is being resold as part of the sale of the coal again provided a properly completed exemption certificate is

provided to the vendor providing the product and/or service.

**COAL
Side Release Agents**

Agents applied to the inside of a rail car to prevent coal from freezing to the side of the car are taxable. Such agents do not become an ingredient of the coal. A coal mines retail purchases of such agents are subject to Wyoming sales/use tax. In addition any fees paid to a third party for application of the side release agent to the railcar are also subject to Wyoming sales tax as an alteration of tangible personal property.

TRONA

Trona mining differs from coal mining in many respects. For sales/use tax purposes a couple of key distinctions merit mention. First, trona mining occurs well over a thousand feet below the surface of the earth whereas coal mining in Wyoming is predominantly a surface mining activity. Moreover, where coal is only extracted and processed, trona ore is extracted, processed and also manufactured into soda ash a new product. Thus, the trona industry is characterized for our purposes as essentially two industries, mining and manufacturing. The Northern American Industry Classification System manual draws a distinction between trona mining (NAICS 212391) and soda ash manufacturing (NAICS 325181). Accordingly, companies comprising Wyoming's trona industry are dual NAICS coded with the Department of Revenue.

Per NAICS, trona mining is classified under sector 212391, or Potash, Soda, and Borate Mineral Mining. *This U.S. industry comprises establishments primarily engaged in developing the mine site, mining and/or*

milling, or otherwise beneficiating (i.e., preparing) natural potassium, sodium, or boron compounds. Dry lake brine operations are included in this industry, as well as establishments engaged in producing the specified minerals from underground and open pit mines. Regarding the manufacture of soda ash, NAICS 325181 – Alkalies and Chlorine Manufacturing, this U.S. industry comprises establishments primarily engaged in manufacturing chlorine, sodium hydroxide (i.e., caustic soda), and other alkalies often using an electrolysis process. [www.naics.gov]

In a general overview of trona mining, a continuous miner removes the trona from the formation and feeds the ore into a waiting shuttle car. The shuttle car then takes the ore to the feeder breaker. These steps all fall within the extraction phase of trona mining. There are no sales/use tax exemptions applicable to this phase of operations.

The processing phase begins when the trona ore is fed into the first crusher. It does not matter if the first crusher is below ground or above ground. It is our understanding that the initial sizing of trona ore typically occurs underground. The power or fuel exemption applies to power or fuel directly consumed in processing (e.g. sizing) of trona ore in crushers as outlined above. As with the coal mining industry, conveyor systems or like systems that move the crushed trona ore from one crusher to another are also within the scope of the power or fuel exemption. Exempt power or fuel must be separately stored, separately metered or determined through an engineered calculation. In order to avail themselves of the exemption the trona company must provide their power or fuel provider with a properly completed Streamlined Sales and Use Tax Agreement Certificate of Exemption, along with the

engineered calculation, if used, to document their exempt purchases.

Often trona ore undergoes final crushing steps at an above ground location. As noted in the preceding paragraph these final steps, along with conveyance systems, are within the scope of the power or fuel exemption for processing. From this point, the trona ore either goes into a stockpile for future use or it goes directly into the soda ash manufacturing plant. It is our determination that once the trona enters this split point processing has ended. It is also our determination that the manufacturing process does not begin until after the trona ore leaves this split-off point and enters the soda ash plant. At this point the trona ore is being removed from inventory for the express purpose of turning it into soda ash. This is the beginning of the manufacturing process.

We highlight this point because Wyoming administers exemptions that are unique to manufacturing. Once the trona ore enters the plant, it goes through a roll crusher, which crushes the ore into about one-inch pieces. At this point, qualified manufacturing machinery begins the operation of changing trona into a new product, article, substance or commodity, namely soda ash. In addition, the power or fuel exemption continues to apply to this phase of operations as it relates to not only processing but also to manufacturing. Thus, power or fuel consumed directly in the manufacturing phase is sales tax exempt.

<p style="text-align: center;">TRONA Ingredient or Component Exemption</p>
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Yet a third manufacturing related exemption applies as trona ore is being made into soda ash. Wyoming law exempts purchases of tangible personal property by manufacturers

when the tangible personal property purchased becomes an ingredient or component of the tangible personal property manufactured for sale. This exemption also includes a provision for manufacturer's purchases of single use containers, labels or shipping cases for the manufactured tangible personal property. As it would apply in this case, it would include bags, pallets and shrink wrap for manufactured soda ash in the automated packaging phase of manufacturing operations. Finally the exemption applies to chemicals or catalysts used directly in manufacturing which are consumed or destroyed during the process. Please note, exempt chemicals and catalysts must actually enter into the commodity, although they are not recognized in whole or part as being a visible part of the taxable commodity when finally sold. The exemption does not apply to material or substances that do not become a component part of the taxable article when sold. For example, oils or lubricants consumed by manufacturing machinery are subject to sales/use tax as these substances do not actually enter the commodity.

**TRONA
Manufacturing Machinery**

W.S. 39-15-105(a)(viii)(O) exempts until December 31, 2017, the sale or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease: (I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; and (II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

As conditioned, subsection (I) requires that the sale be made to a manufacturer classified by the Department under the NAICS code

manufacturing sector 31 – 33. Consistently the Department has held that the invoice for the sale of the qualifying machinery must be billed to the manufacturer and paid by the manufacturer directly and not through a consultant, contractor or third party hired by the manufacturer. The second requirement, Subsection (II), requires that the manufacturing machinery in question must be used in this state and not be non-capitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code. Rather than intervene within the federal expense requirement we have held that this must be a financial determination by the manufacturer himself. Lastly, the sale or lease must be completed before December 31, 2017, and this should be apparent by the date of the transaction on the bill of sale or similar documentation.

Once these conditions are met, we focus ourselves with the items purchased or leased to determine whether they qualify as “manufacturing machinery.” To that end, “*Machinery*” is defined in part as “...all tangible personal property ... used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function, the materials for the construction or repair of machinery, and machine tools.” “*Directly and predominantly in manufacturing*” is defined in part as “...an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production

step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominantly in manufacturing”

In short, this exemption provides for the basic unit, attachments and adjuncts necessary for the basic unit to accomplish its intended function, construction or repair materials for the aforementioned and machine tools. Please note, the Department has consistently held that in order for machine tools to qualify, they must be unique to the machinery; as such, common tools with a variety of applications or usable on a variety of machines does not qualify. The exemption also includes material handling equipment if used from one direct production step to another in a continuous flow and testing equipment utilized within the manufacturing process. However, absent from this exemption is labor for the construction, installation or repair of the qualifying machinery and any maintenance (materials or labor) necessary during the machinery’s useful life. Please review our Manufacturing Machinery bulletin available on our website for further details.

URANIUM

Uranium mining differs from coal and trona mining in most aspects. In Wyoming, uranium is extracted by in-situ leaching, also known as solution mining. Chemicals are pumped down well shafts where they act on to dissolve the uranium. These solutions, now pregnant with raw uranium are then are pumped back to the surface through a system of recovery wells. Once at the surface the uranium is extracted from the solution, purified, concentrated and dried to produce “yellowcake”. The “yellowcake” is then packaged for transport to a uranium conversion facility for further processing.

Like trona, uranium benefits from a dual classification in the North American Industry Classification System as it is both mined/extracted and manufactured into a new product, “yellowcake”. Per NAICS, uranium mining is classified under sector 212291, or Uranium-Radium-Vanadium Ore Mining. *This U.S. industry comprises establishments primarily engaged in developing the mine site, mining, and/or beneficiating (i.e. preparing) uranium-radium-vanadium ores.* Regarding the enrichment of uranium into yellowcake, this activity is classified under sector 325180, other basic inorganic chemical manufacturing. *This U.S. industry comprises establishments primarily engaged in manufacturing basic inorganic chemicals (except industrial gases and synthetic dyes and pigments) and provides as an example, radioactive isotopes manufacturing.* [www.naics.gov]

In a general overview of uranium mining, we view mining operations as all operations that occur up to the point that the pregnant solution has reached the surface and enters an on-site processing facility. It is at that point that the mining activity concludes and the processing/manufacturing phase begins. As a result there are no available sales/use tax exemptions available prior to the solution entering the processing facility. Any services performed for the drilling of injection well shafts, monitoring wells, recovery wells and related services that must be performed downhole are subject to the laws affecting contractors, who provide services to real property.

In the processing/manufacturing facility, the pregnant solution passes through ion exchangers in order to extract the uranium onto a resin. The resin is a new substance that is crucial for further enrichment of the

uranium into yellowcake. As such the resin may be purchased by the mine without the payment of sales tax under the ingredient and component exemption as it applies not only to ingredients and components for sale or use by the final product but also to chemicals and catalysts consumed or destroyed as part the manufacturing process. Also within the processing/manufacturing facility, power and fuel consumed directly in the manufacturing phase is sales tax exempt. Finally, qualified manufacturing machinery purchased by the mine in order to manufacture yellowcake is also exempt from Wyoming sales tax so long as the exemption's conditions above are met. In all cases an exempt purchase must be supported by a properly completed Streamlined Sales and Use Tax Agreement Certificate of Exemption.

Please note that the Excise Tax Division publishes a quarterly newsletter titled "Taxing Issues." This publication is mailed to all licensed vendors and contains items of general interest such as common taxability issues, forthcoming tax rate changes, and legislative changes. Current and past issues of this publication are available on our website: <http://revenue.wyo.gov>.

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)(v) states:
"Real property" means land and appurtenances, including structures affixed

thereto. An article shall be considered real property if:

- (A) It is buried or embedded; or
- (B) It is physically or constructively annexed to the real property; and
- (C) It is adapted to the use of the real property; and
- (D) Considering the purpose for which the annexation was made, one can reasonably infer that it was the intent of the annexing party to make the article a permanent part of the real property.

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

"Retail sale" means any sale, lease or rental for any purpose other than for resale, sublease or subrent;

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)(J) states:

Taxable event. The following shall apply: Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

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

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

"Directly and predominantly in manufacturing" means an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved

from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominantly in manufacturing;

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

"Machinery" means all tangible personal property eligible for a sales tax exemption pursuant to W.S. 39-15-105(a)(viii)(O), used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function, the materials for the construction or repair of machinery, and machine tools;

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

"Manufacturing" means the operation of producing a new product, article, substance or commodity different from and having a distinctive nature, character or use from the raw or prepared material;

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

"NAICS" means the Northern American Industry Classification System manual of 2002 that organizes establishments into industries on the basis of the activity in which they are primarily engaged;

W.S. 39-15-103(a)(i)(A) states:

Taxable event. The following shall apply: 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;

W.S. 39-15-103(a)(i)(B) states:

Taxable event. The following shall apply: Except as provided by W.S. 39-15-105,

there is levied an excise tax upon:

(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;

W.S. 39-15-103(b)(i) states:

Basis of tax. The following shall apply:

(i) Except as provided by W.S. 39-15-105, there is levied and shall be paid by the purchaser on all sales an excise tax upon all events as provided by subsection (a) of this section;

W.S. 39-15-103(c)(i) states:

Taxpayer. The following shall apply:

(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;

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

The following sales or leases are exempt from the excise tax imposed by this article:

For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(A) Sales of tangible personal property to a person engaged in the business of manufacturing, processing or compounding when the tangible personal property purchased becomes an ingredient or component of the tangible personal property manufactured, processed or compounded for sale or use and sales of containers, labels or shipping cases used for the tangible personal property so manufactured, processed or compounded. This subparagraph

shall apply to chemicals and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process;

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

The following sales or leases are exempt from the excise tax imposed by this article: For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(D) 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)(F) states:

The following sales or leases are exempt from the excise tax imposed by this article: For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(F) 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)(viii)(A) states:

The following sales or leases are exempt from the excise tax imposed by this article: For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt:

(viii) Intrastate transportation of:

(I) Employees to or from work when paid or contracted for by the employee or employer;

(II) Freight and property including oil and gas by pipeline.

W.S. 39-15-105(a)(viii)(O) states:

The following sales or leases are exempt from the excise tax imposed by this article:

For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt:

Until December 31, 2017, the sale or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease:

(I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; and

(II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

W.S. 39-15-106(a) states:

Every vendor shall obtain from the department a sales tax license to conduct business in the state. Any out-of-state vendor not otherwise subject to this article may voluntarily apply for a license from the department and if licensed, shall collect and remit the state sales tax imposed by W.S. 39-15-104. The license shall be granted only upon application stating the name and address of the applicant, the character of the business in which the applicant proposes to engage, the location of the proposed business and other information as the department may require. Effective July 1, 1997, a license fee of sixty dollars (\$60.00) shall be required from each new vendor, except for any remote vendor who has no

requirement to register in this state, or who is using one (1) of the technology models pursuant to the streamlined sales and use tax agreement. Failure of a vendor to timely file any return may result in forfeiture of the license granted under this section. The department shall charge sixty dollars (\$60.00) for reinstatement of any forfeited license. The department shall send any vendor who reports no gross sales for three (3) consecutive years a form prescribed by the department to show cause why the vendor's license should not be revoked. The vendor shall complete and file the report with the department within thirty (30) days of receipt of the form. If the department finds just cause for the vendor to retain the license, no further action shall be taken. If the department finds just cause to revoke the license, the vendor shall be notified of the revocation. Any vendor whose license is revoked under this subsection may appeal the decision to the state board of equalization.

W.S. 39-15-107(a)(i) states:

Each vendor shall on or before the last day of each month file a true return showing the preceding month's gross sales and remit all taxes to the department. The returns shall contain such information and be made in the manner as the department by regulation prescribes. The department may allow extensions for filing returns and paying the taxes by regulation, but no extension may be for more than ninety (90) days. If the total tax to be remitted by a vendor during any month is less than one hundred fifty dollars (\$150.00), a quarterly or annual return as authorized by the department, and remittance in lieu of the monthly return may be made on or before the last day of the month following the end of the quarter or year for which the tax is collected. If the accounting methods regularly used by any vendor are such that reports of sales made

during a calendar month would impose unnecessary hardships, the department after receiving a formal request filed by the vendor may accept reports at intervals as would be more convenient to the taxpayer. Any vendor shall report whether the vendor sells cigarettes, cigars, snuff or other tobacco products in this state to the department in the form and manner required by the department. The department may reject any report required under this paragraph of any vendor who does not comply with the tobacco sales reporting requirements. Every person purchasing goods or services taxable by this article who does not pay the tax owed to a vendor shall, on or before the last day of each month, file a return showing the gross purchases made during the preceding month and remit all taxes due to the department. The return shall contain such information and be made in the manner as the department shall prescribe by rule and regulation. The department, by rule and regulation, may allow an extension for filing a return and paying any tax due, but no extension shall be granted for more than ninety (90) days;

W.S. 39-15-107.1(c) states:

Receiving proof of the direct payment permit under subsection (b) of this section shall discharge the vendor furnishing or supplying goods or services to the applicant from any duty to collect or liability for sales taxes owed by the applicant. Any person holding a direct payment permit may be audited by the department of audit once in each calendar year.

W.S. 39-15-107.1(a) states:

Upon application by any person liable for the payment of sales tax under this article or a licensed vendor, the director of the department of revenue, in his sole discretion, may issue to the applicant a permit to be known as a direct payment permit

authorizing the applicant to make direct payment to the department of revenue of any sales tax imposed under this article. The decision of the director shall not be appealable. The direct payment permit shall be signed by an authorized representative of the department. Any direct payment permit issued under this section may be revoked by the department of revenue at any time upon ninety (90) days written notice to the permittee.

W.S. 39-15-107.1(b) states:

Any applicant issued a direct payment permit authorized by subsection (a) of this section shall pay any sales tax authorized by this article directly to the department of revenue. The applicant shall issue to each vendor furnishing or supplying any goods or services subject to Wyoming sales tax proof that the applicant has a direct payment permit in the form prescribed by the department. The proof of the direct payment permit shall indicate that the applicant assumes all obligations to pay any sales tax due under this article directly to the department of revenue.

W.S. 39-15-301(a)(i) states:

"Contractor" means any general or prime contractor or subcontractor;

W.S. 39-15-301(a)(ii) states:

"General or prime contractor" means:

- (A) Any person who agrees with the owner or lessee of real property in this state to perform services or furnish materials and services for the construction, alteration, improvement or repair of real property in this state; or
- (B) Any person who acts in behalf of the owner or lessee of real property in this state to arrange for the furnishing of services or the furnishing of materials and services for the construction,

alteration, improvement or repair of real property in this state; or

(C) Any person who owns or leases real property in this state for the purpose of developing that property and in the development thereof alters or makes improvements to the property or contracts for the alteration or improvement of the property.

W.S. 39-15-303(b)(i) states:

Taxpayer. The following shall apply:

- (i) Any contractor who furnishes tangible personal property under contract or in the development of real property is the consumer or user of the tangible personal property within the meaning of the sales tax laws of Wyoming;

W.S. 39-16-101(a)(xiii) states:

"Directly and predominantly in manufacturing" means an item manufactured from inventoried raw or prepared material beginning at the point at which raw or prepared material is moved from plant inventory on a contiguous plant site and ending at a point at which manufacturing has altered the raw or prepared material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process shall be deemed to be used directly and predominantly in manufacturing;

W.S. 39-16-101(a)(xiv) states:

"Machinery" means all tangible personal property eligible for a use tax exemption pursuant to W.S. 39-16-105(a)(viii)(D), used to produce an article of tangible personal property. The term includes both the basic

unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function, the materials for the construction or repair of machinery, and machine tools;

W.S. 39-16-101(a)(xv) states:

"Manufacturing" means the operation of producing a new product, article, substance or commodity different from and having a distinctive nature, character or use from the raw or prepared material;

W.S. 39-16-101(a)(xvi) states:

"NAICS" means the Northern American Industry Classification System manual of 2002 that organizes establishments into industries on the basis of the activity in which they are primarily engaged;

W.S. 39-16-105(a)(iii)(A) states:

The following purchases or leases are exempt from the excise tax imposed by this article:

For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(A) Purchases of tangible personal property by a person engaged in the business of manufacturing, processing or compounding when the tangible personal property purchased becomes an ingredient or component of the tangible personal property manufactured, processed or compounded for sale or use and purchases of containers, labels or shipping cases used for the tangible personal property so manufactured, processed or compounded. This subparagraph shall apply to chemicals and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process;

W.S. 39-16-105(a)(viii)(D) states:

The following purchases or leases are exempt from the excise tax imposed by this article:

For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt:

(D) Until December 31, 2017, the purchase or lease of machinery to be used in this state directly and predominantly in manufacturing tangible personal property, if the sale or lease:

(I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; and

(II) Does not include noncapitalized machinery except machinery expensed in accordance with section 179 of the Internal Revenue Code.

W.S. 39-15-104(f)(i) states:

The tax rate imposed upon a transaction subject to this chapter shall be sourced as follows:

The retail sale, excluding lease or rental, of a product shall be sourced 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 (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 address does not constitute bad faith;

(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

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

Taxable event. The following shall apply:

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) states:

Basis of tax. The following shall apply:

(i) "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) states:

Taxpayer. The following shall apply:

(ii) "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)(vi) states:

Taxpayer. The following shall apply:

(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 7(a) states:

General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.

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

Certificates of Exemption

(i) "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. Such 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.

(ii) Vendors shall be relieved of the tax otherwise due if the seller obtains a fully completed exemption certificate or captures the relevant data elements listed in subsection (i) above within ninety (90) days of the date of the sale.

(iii) Should the vendor not obtain an exemption certificate or the required relevant information the vendor shall be allowed 120 days subsequent to a request for substantiation: (A) To obtain a fully completed exemption certificate from the purchaser taken in good faith which means that the vendor obtains a certificate that claims an jurisdiction where the transaction is sourced, could be applicable to the item being purchased, and is reasonable for the purchaser's type of business; or

(B) To obtain other information establishing that the transaction was not subject to the tax."

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

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 7(g)(i) states:

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.

WY Dept. of Rev Rules, Chap 2, Sec 10(c) states:

Charges for labor to alter, improve, or construct real property are not subject to sales/use tax except where imposed by statute under W.S. 39-15-103(a)(i)(K).

WY Dept. of Rev. Rules, Chap. 2, Sec. 10(d) states:

"Sales of tangible personal property to be used in the repair, alteration, improvement or construction of real property shall be considered taxable sales, whether sold to the owner of real property or to a contractor or subcontractor."

WY Dept. of Rev Rules, Chap 2, Sec 13(bb)
states:

Purchases by Businesses. Purchases by businesses and professional persons of equipment, tools and supplies for use in conducting their businesses or professions shall be subject to the sales or use tax.

WY Dept of Rev Rules, Chap 2, Sec 13(dd)
states:

Repairs, Alterations and Improvements. Labor or service charges for the repair, alteration or improvement of tangible personal property, as well as charges for materials, supplies and fabrication used in rendering such services shall be subject to the sales tax. The purchase of materials, supplies and fabrication which become an ingredient of the repair, alteration or improvement of tangible personal property shall be considered wholesale sales Labor or service charges for repairs, alterations or improvements of real property are not subject to the sales tax.