



Sales Tax Guidelines for Public and Private Elementary and Secondary Schools

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Wyoming Department of Revenue

This publication is intended for those employed with schools and school districts as well as those who do business with these organizations to better understand how the Statutes apply to their sales and purchases. Tax impositions and exemptions exist not only for purchases made by the school/school district but they also exist for sales made by the school/school district.

In Wyoming all sales of tangible personal property, admissions and certain enumerated services are subject to Wyoming sales tax unless an exemption applies. The sales tax is collected from the purchaser and remitted by the vendor (seller) to the Wyoming Department of Revenue on a periodic sales/use tax return. Typical transactions include the sale of school annuals, fundraising activities, cafeteria sales, bookstore sales, photography fees, sports fees, library fines, etc. Outside of the teaching environment, schools often find themselves the purchaser of travel and meals, construction and maintenance, and a host of others.

Purchases

Wyoming Public Schools – Wyoming law provides for sales tax exemption on sales or rentals of tangible personal property made to the State of Wyoming and its political subdivisions. As such, a Wyoming public kindergarten through twelfth grade school or

similarly situated public school district within the State of Wyoming is an exempt organization as part of a political subdivision of the State of Wyoming. The University of Wyoming and state sponsored community colleges also fall within this category.

In order to avail themselves of the exemption two conditions must be met. First, the school/school district claiming exemption from Wyoming sales tax is required to provide the vendor with a properly completed Streamlined Sales and Use Tax Agreement (SSUTA) Certificate of Exemption. Second is that the purchase be made by and billed to the exempt party directly. Any person making payment with personal funds, even when the person will later be reimbursed by the organization, cannot utilize the exemption afforded to the exempt entity. Personal payment establishes that the party is acting on their own behalf.

Out of State Public Schools

Wyoming does not extend sales tax exemption to out-of-state public schools, even when paid for by the school or school district directly. Wyoming does not recognize sales tax exemption for other state governments or their political subdivisions. Further we do not administer sales tax exemptions to in-state or out-of-state private

schools, unless they qualify as religious or charitable organizations.

In-State and Out of State Private Schools

Certain private schools may be sales tax exempt on their Wyoming purchases, not as an educational facility, but rather as a religious or charitable organization. The Department grants sales tax exemptions to religious and charitable organizations that qualify under our Statutes and Rules. Although not statutorily required to do so, these organizations may present documentation of their religious or charitable status to our office to support their claim for exemption in lieu of making self-determination. A detailed discussion on the exemption as well as the documents to be submitted to our office for entities wishing to provide documentation is available in our Religious and Charitable Organization's Bulletin. Entities obtaining approval will be issued a Letter of Authority from our office containing their Wyoming Revenue Identification (RID) number. This RID number, if obtained, would be indicated on the SSUTA form under the heading Purchasers Tax Identification Number.

Again, as noted previously, in order for a religious or charitable organization to properly document their exempt purchase they must provide the vendor with a properly completed SSUTA form in the name of the organization and payment must be billed to and paid by the organization. Payment by an employee or other person pending reimbursement establishes that the person is acting on their own behalf and voids any claim of exemption.

Parent Teacher Organizations and Booster Clubs

These organizations are private entities and are not part of the school or school district

they are affiliated with. As a result they are not automatically granted sales tax exemption on their purchases as a political subdivision of our state. In order to be considered sales tax exempt on their purchases they must individually qualify as a non-profit charitable organization. Please see our discussion above regarding private schools as religious or charitable organizations or our Religious and Charitable Entities Bulletin for further discussion on the requirements. And as always, the organization must provide the vendor with a properly completed SSUTA form in the name of the organization and payment must be billed to and paid by the organization. Payment by an employee, volunteer or other person pending reimbursement establishes that the person is acting on their own behalf and voids any claim of exemption.

Construction

The State of Wyoming and its political subdivisions as well as qualifying religious and charitable organizations are exempt from Wyoming sales tax on their purchases of tangible personal property and enumerated services. This means that if an exempt organization were to purchase materials and supplies for the repair, alteration, improvement or construction of real property and then provide those materials and supplies to a contractor to perform a labor only service, the exempt organization can avoid sales tax. However, a contractor cannot use the exemption afforded to the organization when he purchases the materials from his suppliers since he is not the exempt entity and Wyoming does not allow a pass through of the exemption. Furthermore Wyoming considers contractors final consumers meaning he also cannot purchase the materials and supplies on the basis of resale

and then sell them to the entity and accept an exemption certificate to avoid tax.

Because contractors are not vendors, they are not allowed to purchase materials on the basis of resale and they are not allowed to charge their customer sales tax. A contractor is the responsible party for sales tax on any materials and supplies he purchases/rents in order to perform the contract. In practicality a contractor recovers the tax as part of his bid price, similar to overhead, insurance and other business costs. For example, if a contractor purchases \$100 worth of material to patch the roof of a school, he would be responsible for tax and would mark up that material cost to cover the tax and other expenses, to say \$110. That would then be combined with his labor charge, another \$100, and the entity would be invoiced for a total of \$210. If the organization purchased the materials from an unrelated third party (using their exemption) they would pay \$100 to the materials supplier and another \$100 to the contractor, for a total of \$200. Please note, a contractor cannot write one agreement with the exempt entity for the materials and a second for the labor. The fact exists that the objective was for the contractor to provide both the materials and the labor and the courts have viewed the two agreements as one in the past.

Sales

Not only can elementary and secondary schools, school districts and auxiliaries act as purchasers, they also act as sellers (vendors). Public as well as private schools and school districts, booster clubs, parent teacher organizations and similar entities that make regular sales of tangible personal property, admissions or services that are subject to tax are vendors and are responsible to license with our department for the collection and remittance of Wyoming sales tax. For example, a school

bookstore making regular sales of pens, pencils, paper, book covers, etc. to students not for fundraising purposes must collect and remit Wyoming sales tax on those sales. For further licensing discussion and assistance in obtaining a Wyoming Sales/Use Tax License please contact our Vendor Operations Section at (307) 777-5200. For those organizations that make occasional sales, defined as four or fewer events per calendar year, licensure is not required but sales tax may be due even without licensure. A discussion on the taxability of typical sales follows.

Cafeteria Meals

Meals sold by schools to students and staff are not subject to Wyoming sales tax so long as the establishment does not hold themselves out as selling to the public at large. However, meals sold to visitors are subject to Wyoming sales tax per W.S. 39-15-103(a)(i)(H) which imposes tax on prepared meals.

Yearbooks and Yearbook Advertising

Sales of school annuals are specifically exempt from Wyoming sales tax. In addition, charges for advertising in the annual, either to persons or businesses, are not subject to tax. Wyoming does not have any statutory provision to impose tax on advertising fees.

School Pictures

Generally an outside photographer contracts with the school in order to take photographs of students. The photographer sells the picture packages and collects the payment. The photographer is the responsible party to collect and remit sale tax on these transactions.

Book Sales

Common to these transactions, a book vendor provides book information and order forms to

teachers who in turn distribute the materials to their students. The students return checks for a stated amount, including the sales tax, to the teacher, who forwards the checks to the book vendor. In this case, the book vendor is required to remit the sales tax to the department on their book sales.

Fundraisers

Occasional sales made by religious or charitable organizations for fundraising purposes and not in the course of any regular business are exempt from Wyoming sales tax. In addition, sales of goods or services made for the purpose of raising money for any kindergarten through grade twelve public school located in this state is also exempt from Wyoming sales tax as are charges for admission to any amusement, entertainment, recreation, game or athletic event for any kindergarten through grade twelve public school located in this state. Such fundraising activities must be recognized by the school district receiving the funds as an appropriate activity. Sales made by private vendors on school grounds, not associated with fundraising activity for the school, are considered taxable sales.

Student Fees

Fees charged to participate in a clinic (academic or athletic) are not subject to Wyoming sales tax. In essence the fee is being paid for the skill and direction being provided by the instructor. Similar participation or sign up fees for scholastic and athletic clubs and/or teams are also not subject to Wyoming sale tax. However a tax obligation will exist if the fee also covers the student's purchaser or rental of non-exempt clothing or equipment as those sales and rentals are subject to tax. In those cases where the fee covers both the non-taxable clinic/participation fee and taxable sales or rentals, the taxable portion of the fee must

be separately stated and distinguishable from the non-taxable charges otherwise the entire fee will be subject to tax. It is not sufficient that these charges can be broken down internally; they must be evident on the bill of sale, invoice, receipt, or similar documents exchanged between buyer and seller.

Fees charged for unreturned school materials (i.e. lost or stolen books) is subject to Wyoming sales tax as retail sales of tangible personal property. But library fines for overdue materials that are returned to the school are not subject to tax. A library fine is not a fee to extend the length of time a student is allowed to be in possession of loaned materials, it represents a penalty for non-adherence to the terms of the rental/loan agreement. Wyoming has no statutory provision to impose tax on these fees.

Charges for parking permits and class change fees are also not subject to Wyoming sales tax. Parking permits authorize a student or staff member to park in a designated area or parking spot. This could be represented as a fee for authorized use or the rental of a particular real property location. Wyoming does not impose Wyoming sales tax on user fees nor is tax imposed on the rental of real property outside the lodging industry. Class change fees are administrative fees that are also not enumerated in the statutes because they do not represent the sale or lease of tangible personal property or a service that is subject to tax

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)(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. 39-15-101(a)(xv) states:

"Vendor" means any person engaged in the business of selling at retail or wholesale tangible personal property, admissions or services which are subject to taxation under this article. "Vendor" includes a vehicle dealer as defined by W.S. 31-16-101(a)(xviii);

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

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

- (A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- (B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price which does not exceed the greater of one hundred dollars (\$100.00) or one percent (1%) of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time, with the condition that the operator is necessary for the equipment to perform as designed. For purposes of this subparagraph, an operator shall do more than maintain, inspect or set up the tangible personal property.

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

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

(F) The sales price paid for meals and cover charges at any place where meals are regularly served to the public;

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

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

(H) The sales price paid for each admission to any place of

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

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. 39-15-105(a)(i)(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 which are protected by the United States constitution and the Wyoming constitution, the following are exempt:

(A) Sales which the state of Wyoming is prohibited from taxing under the laws or constitutions of the United States or Wyoming.

W.S. 39-15-105(a)(iv)(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 sold to government, charitable and nonprofit organizations, irrigation districts and weed and pest control districts, the following are exempt:

(A) Sales to the state of Wyoming or its political subdivisions;

W.S. 39-15-105(a)(iv)(B) 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 sold to government, charitable and nonprofit organizations, irrigation districts and weed and pest control districts, the following are exempt:

(B) Sales made to religious or charitable organizations including nonprofit organizations providing meals or services to senior citizens as certified to the department of revenue by the department of health in or for the conduct of the regular religious, charitable or senior citizen functions and activities and sales of meals made to persons in regular conduct of senior citizen centers functions and activities;

W.S. 39-15-105(a)(iv)(C) 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 sold to government, charitable and nonprofit organizations, irrigation districts and weed and pest control districts, the following are exempt:

(C) Occasional sales made by religious or charitable organizations for fund raising purposes for the conduct of regular religious or charitable functions and activities, and not in the course of any regular business. For the purposes of this subparagraph, "regular business" means the habitual or regular activity of the organization excluding any incidental or occasional operation;

W.S. 39-15-105(a)(iv)(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 sold to government, charitable and nonprofit organizations, irrigation districts and weed and pest control districts, the following are exempt:

(F) Labor or service charges, including transportation and travel, for the repair, alteration or improvement of real property or tangible personal property owned by, or incorporated in projects under contract to the state of Wyoming or any of its political subdivisions, including an irrigation district created under W.S. 41-7-201 through 41-7-210, and a weed and pest control district created under W.S. 11-5-101 et seq.;

W.S. 39-15-105(a)(iv)(J) 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 sold to government, charitable and nonprofit organizations, irrigation districts and weed and pest control districts, the following are exempt:

(J) Intrastate transit of persons services by a government, charitable or nonprofit organization.

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

(C) Sales of school annuals;

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

(M) Sales of goods or services made for the purpose of raising money or charges for admission to any amusement, entertainment, recreation, game or athletic event for any kindergarten through grade twelve (12) public school located in this state;

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. 39-15-301(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. 39-15-301(a)(vi) states:

"Subcontractor" means any person who agrees with another contractor to perform any part of that contractor's obligation for furnishing services or furnishing materials and services for the construction, alteration,

improvement or repair of real property in this state;

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

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. 39-16-303(b)(i) states:

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 use tax laws of Wyoming;

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

“Occasional Sale” as used in Section 9 means a single event occurring four or fewer times in a calendar year.

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

“Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

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

“Seller” means a person making sales, leases, or rentals of personal property or services.

WY Dept. of Rev. Rules, Chap 2, Sec 4(b) states:

Governmental Entities. The retail sale, lease, or rental of tangible personal property or taxable services by the State of Wyoming or its political subdivisions shall be subject to the sales/use tax. The governmental entity shall be considered a vendor and shall be licensed and collect tax on taxable transactions.

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)(i) states:

Certificates of Exemption.

Vendors shall obtain completed exemption certificates for all sales transactions, other than those qualifying under Section 8 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 a 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(c) states:

Religious and Charitable Organizations. Organizations operated primarily for religious or charitable purposes shall be exempt from sales and use tax on their purchases. Organizations verifying federal 501(c)(3) status with our agency will be issued an exemption approval letter on this documentation alone. All other

organizations must furnish the documents set forth in the following subsection. Such organizations shall apply to the Department in writing for exemption approval and registration.

(i) The Department shall consider the following documentation to determine whether the organization is primarily engaged in charitable or religious activities:

- (A) Articles of incorporation;
- (B) Organizational charter or constitution.
- (C) Mission statement;
- (D) Budget;
- (E) Income and expense statements; and
- (F) Evidence of federal tax exempt status;

(ii) To be considered primarily organized and operated for charitable or religious activities, an organization shall establish that:

- (A) The organization is organized and operated for a purpose designed to benefit the indefinite number of persons in an educational, moral, physical, or social manner; and
- (B) The organization's assets are completely and permanently pledged to that same charitable or religious purpose; and
- (C) No part of the net earnings of the organization shall be distributed to the organization's members, trustees, officers, or other similarly situated persons as salary or profit earned from organizational activities; and
- (D) The organization is a non-profit organization, and has expended at least sixty

five percent (65%) of its annual income for the prior three (3) years on programs, other organizations, foundations, or similar groups and/or activities directly related to its charitable purposes.

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

Employees of Exempt Agencies. Sales to employees of exempt agencies or organizations shall be taxable, even when the employee is reimbursed by the exempt employer. Payment by the employee shall establish that the employee is acting in his own behalf.

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

School fundraising activities. School fundraising activities for public schools shall be sales tax exempt. The fundraising activities shall be recognized by the school district receiving the funds as an appropriate activity. Sales made by private vendors on school grounds, not associated with fundraising activity for the school, are considered taxable sales.

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 10(e)
states:

Work Performed for Exempt Entities. Contractors performing for exempt entities (such as the State of Wyoming, its political subdivisions or a religious or charitable organization) shall be subject to the sales and use tax on all equipment, materials, fixtures, and supplies purchased by the contractor to perform under the contract.

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

Meals. Meals sold or furnished by hospitals to patients and staff, by schools to students and staff, and nursing homes to occupants and staff shall not be subject to the sales tax if such establishments do not hold themselves out as selling to the public at large. Such establishments shall be considered to be purchasers of the food and shall pay sales or use tax on those purchases, unless otherwise exempt. Meals sold by senior citizen centers shall not be subject to the sales tax.

(i) All establishments of any nature which sell and serve food and meals to the general public shall collect tax on the amount charged for all meals sold. Tax shall not be collected on food or meals furnished without charge to employees. Napkins, disposable food containers, and similar consumable items sold with the food at no additional charge to the customer shall be considered to be wholesale purchases for resale and exempt from the tax.