

## HOUSE BILL NO. HB0182

Excise tax amendments.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; providing  
2 amendments to excise tax provisions as specified;  
3 clarifying the exemption for business personal property  
4 when a business is sold; clarifying the exemption for motor  
5 vehicles used in interstate commerce; imposing penalties  
6 for failure to remit collected excise taxes; requiring a  
7 nonresident contractor to register a construction project  
8 as specified; clarifying tax liability of a subcontractor  
9 hired to provide labor only to the improvement of real  
10 property; and providing for an effective date.

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12 *Be It Enacted by the Legislature of the State of Wyoming:*

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14 **Section 1.** W.S. 39-15-101(a)(vii)(M) and  
15 39-16-101(a)(iii)(M) are amended to read:

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17 **39-15-101. Definitions.**

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2 (a) As used in this article:

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4 (vii) "Sale" means any transfer of title or  
5 possession in this state for a consideration including the  
6 fabrication of tangible personal property when the  
7 materials are furnished by the purchaser but excluding an  
8 exchange or transfer of tangible personal property upon  
9 which the seller has directly or indirectly paid sales or  
10 use tax incidental to:

11

12 (M) The sale of a business entity when sold  
13 to a purchaser of all or ~~substantially~~ not less than eighty  
14 percent (80%) of the value of all of the assets which are  
15 located in this state of the business entity when the  
16 purchaser continues to use the tangible personal property  
17 in the operation of an ongoing business entity in this  
18 state. As used in this subparagraph, "business entity"  
19 means and includes an individual, partnership, corporation,  
20 corporate division, joint stock company or any other  
21 association or entity, public or private, or separate  
22 business unit thereof.

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24 **39-16-101. Definitions.**

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2 (a) As used in this article:

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4 (iii) "Sale" means the transfer of title or  
5 possession of tangible personal property from a vendor for  
6 a consideration for storage, use or other consumption in  
7 Wyoming excluding the exchange or transfer of tangible  
8 personal property upon which the seller has directly or  
9 indirectly paid sales or use tax incidental to:

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11 (M) The sale of a business entity when sold  
12 to a purchaser of all or ~~substantially~~ not less than eighty  
13 percent (80%) of the value of all of the assets which are  
14 located in this state of the business entity when the  
15 purchaser continues to use the tangible personal property  
16 in the operation of an ongoing business entity in this  
17 state. As used in this subparagraph, "business entity"  
18 means and includes an individual, partnership, corporation,  
19 corporate division, joint stock company or any other  
20 association or entity, public or private, or separate  
21 business unit thereof.

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23 **Section 2.** W.S. 39-15-105(a)(ii)(B) and  
24 39-16-105(a)(ii)(A) are amended to read:

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**39-15-105. Exemptions.**

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

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(ii) For the purpose of exempting sales of services and tangible personal property protected by federal law, the following are exempt:

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**39-16-105. Exemptions.**

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1           (a) The following purchases or leases are exempt from  
2 the excise tax imposed by this article:

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4           (ii) For the purpose of exempting sales of  
5 services and tangible personal property protected by  
6 federal law, the following are exempt:

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8           (A) Railroad rolling stock including  
9 locomotives purchased by interstate railroads, aircraft  
10 purchased by interstate air carriers which are holders of  
11 valid United States civil aeronautics board permits or  
12 authorities, and trucks, truck-tractors, trailers,  
13 semitrailers and passenger buses in excess of ten thousand  
14 (10,000) pounds gross vehicle weight which are purchased by  
15 common or contract interstate carriers or which are  
16 operating in interstate commerce under exemption clauses in  
17 federal law if they are to be ~~substantially~~ used in  
18 interstate commerce;

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20           **Section 3.** W.S. 39-15-108(c)(iv) and  
21 39-16-108(c)(xiv) are amended to read:

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23           **39-15-108. Enforcement.**

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1 (c) Penalties. The following shall apply:

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3 (iv) Any vendor who under the pretense of  
4 collecting the taxes imposed by this article collects and  
5 retains an excessive amount or who intentionally fails to  
6 remit to the department the full amount of taxes when due  
7 is guilty of:

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9 (A) A misdemeanor if the amount of taxes  
10 collected is five hundred dollars (\$500.00) or less  
11 punishable by a fine of not more than seven hundred fifty  
12 dollars (\$750.00), or imprisonment in the county jail for  
13 not more than six (6) months, or both; or

14

15 (B) A felony if the amount of taxes  
16 collected exceeds five hundred dollars (\$500.00) punishable  
17 by a fine of not more than five thousand dollars  
18 (\$5,000.00), or imprisonment for not to exceed three (3)  
19 years, or both.

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21 **39-16-108. Enforcement.**

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23 (c) Penalties. The following shall apply:

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1 (xiv) W.S. 39-15-108(b)(ii), (c)(iv) and  
2 39-15-107(b)(iv) apply to use taxes under this article;

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4 **Section 4.** W.S. 39-15-303(b) by creating a new  
5 paragraph (iv) and 39-16-303(b) by creating a new paragraph  
6 (iv) are amended to read:

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8 **39-15-303. Imposition.**

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10 (b) Taxpayer. The following shall apply:

11

12 (iv) Any nonresident prime contractor and any  
13 resident prime contractor who hires a nonresident  
14 subcontractor shall register any project with the  
15 department of revenue not less than fifteen (15) days  
16 following the start of a project pursuant to a contract.  
17 The nonresident prime contractor shall provide a properly  
18 executed bond as required by paragraph (iii) of this  
19 subsection, or a cash deposit of not less than four percent  
20 (4%) of the total payments due under the contract. The  
21 cash deposit shall be refunded to the contractor upon the  
22 department's receipt of a properly executed surety bond or  
23 upon satisfactory completion of the project. Failure to  
24 register with the department within the time period

1 required by this paragraph shall result in a penalty  
2 assessment of one percent (1%) of the total payments due  
3 under the contract.

4  
5 **39-16-303. Imposition.**

6  
7 (b) Taxpayer. The following shall apply:

8  
9 (iv) Any nonresident prime contractor and any  
10 resident prime contractor who hires a nonresident  
11 subcontractor shall register any project with the  
12 department of revenue not less than fifteen (15) days  
13 following the start of a project pursuant to a contract.  
14 The nonresident prime contractor shall provide a properly  
15 executed bond as required by paragraph (iii) of this  
16 subsection, or a cash deposit of not less than four percent  
17 (4%) of the total payments due under the contract. The cash  
18 deposit shall be refunded to the contractor upon the  
19 department's receipt of a properly executed surety bond or  
20 upon satisfactory completion of the project. Failure to  
21 register with the department within the time period  
22 required by this paragraph shall result in a penalty  
23 assessment of one percent (1%) of the total payments due  
24 under the contract.

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2           **Section 5.** W.S. 39-15-303(b)(ii) and 39-16-303(b)(ii)

3 are amended to read:

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5           **39-15-303. Imposition.**

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7           (b) Taxpayer. The following shall apply:

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9                   (ii) Any subcontractor who contracts with a  
10 general or prime contractor is liable for sales taxes as a  
11 general or prime contractor. The general or prime  
12 contractor shall withhold three percent (3%), plus the  
13 increased rate under W.S. 39-15-104(b) if the tax under  
14 that section is in effect, of the payments due a  
15 nonresident subcontractor arising out of the contract  
16 entered into between both contractors. The contractor shall  
17 withhold the payments until the subcontractor furnishes him  
18 with a certificate issued by the department showing all  
19 sales taxes accruing by reason of the contract between them  
20 have been paid. The department may demand the withholdings  
21 at any time to satisfy the sales tax liability of the  
22 subcontractor and any balance shall be released by the  
23 department to him. If a contractor fails to withhold  
24 payments or refuses to remit them upon demand by the

1 department he is liable for any sales taxes due the state  
2 by the nonresident subcontractor. This paragraph shall not  
3 apply to any subcontractor hired to provide labor only to  
4 alter, construct, improve or repair real property;  
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6 **39-16-303. Imposition.**  
7

8 (b) Taxpayer. The following shall apply:  
9

10 (ii) Any subcontractor who contracts with a  
11 general or prime contractor is liable for use taxes as a  
12 general or prime contractor. The general or prime  
13 contractor shall withhold three percent (3%), plus the  
14 increased rate under W.S. 39-16-104(b) if the tax under  
15 that section is in effect, of the payments due a  
16 nonresident subcontractor arising out of the contract  
17 entered into between both contractors. The contractor shall  
18 withhold the payments until the subcontractor furnishes him  
19 with a certificate issued by the department showing all use  
20 taxes accruing by reason of the contract between them have  
21 been paid. The department may demand the withholdings at  
22 any time to satisfy the use tax liability of the  
23 subcontractor and any balance shall be released by the  
24 department to him. If a contractor fails to withhold

1 payments or refuses to remit them upon demand by the  
2 department he is liable for any use taxes due the state by  
3 the nonresident subcontractor. This paragraph shall not  
4 apply to any subcontractor hired to provide labor only to  
5 alter, construct, improve or repair real property;

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7 **Section 6.** This act is effective July 1, 2002.

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(END)