

ORIGINAL HOUSE
BILL NO. 0182

ENROLLED ACT NO. 26, HOUSE OF REPRESENTATIVES

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

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

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

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

39-15-101. Definitions.

(a) As used in this article:

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

(M) The sale of a business entity when sold to a purchaser of all or substantially not less than eighty percent (80%) of the value of all of the assets which are located in this state of the business entity when the purchaser continues to use the tangible personal property in the operation of an ongoing business entity in this state. As used in this subparagraph, "business entity"

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means and includes an individual, partnership, corporation, corporate division, joint stock company or any other association or entity, public or private, or separate business unit thereof.

39-16-101. Definitions.

(a) As used in this article:

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

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

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

39-15-105. Exemptions.

(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:

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

39-16-105. Exemptions.

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

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

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

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

39-15-108. Enforcement.

(c) Penalties. The following shall apply:

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

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

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

39-16-108. Enforcement.

(c) Penalties. The following shall apply:

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

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

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39-15-303. Imposition.

(b) Taxpayer. The following shall apply:

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

39-16-303. Imposition.

(b) Taxpayer. The following shall apply:

(iv) Any nonresident prime contractor and any resident prime contractor who hires a nonresident subcontractor shall register any project with the department of revenue not less than fifteen (15) days following the start of a project pursuant to a contract. The nonresident prime contractor shall provide a properly executed bond as required by paragraph (iii) of this subsection, or a cash deposit of not less than four percent (4%) of the total payments due under the contract. The cash deposit shall be refunded to the contractor upon the

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department's receipt of a properly executed surety bond or upon satisfactory completion of the project. Failure to register with the department within the time period required by this paragraph shall result in a penalty assessment of one percent (1%) of the total payments due under the contract.

Section 5. W.S. 39-15-303(b)(ii) and 39-16-303(b)(ii) are amended to read:

39-15-303. Imposition.

(b) Taxpayer. The following shall apply:

(ii) Any subcontractor who contracts with a general or prime contractor is liable for sales taxes as a general or prime contractor. The general or prime contractor shall withhold three percent (3%), plus the increased rate under W.S. 39-15-104(b) if the tax under that section is in effect, of the payments due a nonresident subcontractor arising out of the contract entered into between both contractors. The contractor shall withhold the payments until the subcontractor furnishes him with a certificate issued by the department showing all sales taxes accruing by reason of the contract between them have been paid. The department may demand the withholdings at any time to satisfy the sales tax liability of the subcontractor and any balance shall be released by the department to him. If a contractor fails to withhold payments or refuses to remit them upon demand by the department he is liable for any sales taxes due the state by the nonresident subcontractor. This paragraph shall not apply to any subcontractor hired to provide labor only to alter, construct, improve or repair real property;

39-16-303. Imposition.

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(b) Taxpayer. The following shall apply:

(ii) Any subcontractor who contracts with a general or prime contractor is liable for use taxes as a general or prime contractor. The general or prime contractor shall withhold three percent (3%), plus the increased rate under W.S. 39-16-104(b) if the tax under that section is in effect, of the payments due a nonresident subcontractor arising out of the contract entered into between both contractors. The contractor shall withhold the payments until the subcontractor furnishes him with a certificate issued by the department showing all use taxes accruing by reason of the contract between them have been paid. The department may demand the withholdings at any time to satisfy the use tax liability of the subcontractor and any balance shall be released by the department to him. If a contractor fails to withhold payments or refuses to remit them upon demand by the department he is liable for any use taxes due the state by the nonresident subcontractor. This paragraph shall not apply to any subcontractor hired to provide labor only to alter, construct, improve or repair real property;

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk