

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Sales tax payment.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; providing a method
2 for a taxpayer to finance the payment of sales and use tax
3 as specified; and providing for an effective date.

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

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7 **Section 1.** W.S. 39-15-107.4 and 39-16-107.1 are
8 created to read:

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10 **39-15-107.4. Financing of sales tax payments.**

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12 (a) Notwithstanding any other provision of this
13 article, upon request by a taxpayer the department of
14 revenue shall authorize the state treasurer to pay any

1 sales tax due under this article on behalf of the taxpayer
2 related to the construction of any industrial or commercial
3 facility in this state with an estimated construction cost
4 of not less than one million dollars (\$1,000,000.00).
5 Exempt activities shall not be included in the estimated
6 construction cost of the facility. Sales tax paid by the
7 state treasurer pursuant to this subsection shall be paid
8 from the general fund and distributed as if the sales tax
9 were paid by the taxpayer and any sales tax due under this
10 article shall be deemed to have been fully paid for the
11 purposes of this article.

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***** STAFF COMMENTS *****

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At the September 22 Subcommittee meeting there was some discussion of setting the construction value at the level of an industrial facility as defined by the industrial siting council. "Industrial facility" is defined in W.S. 35-12-102(a)(vii) and the level is set in statute at ninety-six million nine hundred thousand dollars as adjusted by the council. The current amount used by the council as noted on their website is \$176.6 million or a wind project with 30 or more towers.

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(b) Prior to the payment of the sales tax of a taxpayer under subsection (a) of this section, the taxpayer shall agree with the department of revenue to a tax repayment schedule. The repayment schedule shall provide

1 for repayment of the sales tax paid under subsection (a) of
2 this section and any related use tax paid under W.S.
3 39-16-107.1(a) over a period of not more than ten (10)
4 years with interest at an annual rate equal to the average
5 prime interest rate as determined by the state treasurer
6 during the preceding fiscal year plus four percent (4%).
7 To determine the average prime interest rate, the state
8 treasurer shall average the prime interest rate for at
9 least seventy-five percent (75%) of the thirty (30) largest
10 banks in the United States. The interest rate for
11 repayment under this subsection shall be adjusted on
12 January 1 of each year.

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14 (c) Notwithstanding W.S. 39-15-108(d), any tax paid
15 pursuant to this section constitutes a debt to the state,
16 and is a lien from the date the tax is due on all the real
17 and personal property of the taxpayer. Notice of the lien
18 shall be filed with the county clerk of the county in which
19 the facility was constructed. Any lien arising under this
20 subsection is superior and paramount to all other liens,
21 claims, mortgages or any other encumbrance of any kind
22 except a lien, claim, mortgage or other encumbrance of
23 record held by a bona fide creditor and properly perfected,

1 filed or recorded under Wyoming law prior to the filing of
2 a lien as provided in this subsection. The department
3 shall cancel lien statements within sixty (60) days after
4 the amount paid under subsection (a) of this section has
5 been fully repaid as provided in subsection (b) of this
6 section. No other action by the department is required to
7 perfect a lien under this paragraph regardless of the type
8 of property involved.

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10 **39-16-107.1. Financing of use tax payments.**

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12 (a) Notwithstanding any other provision of this
13 article, upon request by a taxpayer the department of
14 revenue shall authorize the state treasurer to pay any use
15 tax due under this article on behalf of the taxpayer
16 related to the construction of any industrial or commercial
17 facility in this state with an estimated construction cost
18 of not less than one million dollars (\$1,000,000.00).
19 Exempt activities shall not be included in the estimated
20 construction cost of the facility. Use tax paid by the
21 state treasurer pursuant to this subsection shall be paid
22 from the general fund and distributed as if the use tax
23 were paid by the taxpayer and any use tax due under this

1 article shall be deemed to have been fully paid for the
2 purposes of this article.

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4 (b) Prior to the payment of the use tax of a taxpayer
5 under subsection (a) of this section, the taxpayer shall
6 agree with the department of revenue to a tax repayment
7 schedule as provided in W.S. 39-15-107.4(b).

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9 (c) Notwithstanding W.S. 39-16-108(d), any tax paid
10 pursuant to this section constitutes a debt to the state,
11 and is a lien from the date the tax is due on all the real
12 and personal property of the taxpayer. Notice of the lien
13 shall be filed with the county clerk of the county in which
14 the facility was constructed. Any lien arising under this
15 subsection is superior and paramount to all other liens,
16 claims, mortgages or any other encumbrance of any kind
17 except a lien, claim, mortgage or other encumbrance of
18 record held by a bona fide creditor and properly perfected,
19 filed or recorded under Wyoming law prior to the filing of
20 a lien as provided in this subsection. The department
21 shall cancel lien statements within sixty (60) days after
22 the amount paid under subsection (a) of this section has
23 been fully repaid as provided in subsection (b) of this

1 section. No other action by the department is required to
2 perfect a lien under this paragraph regardless of the type
3 of property involved.

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5 **Section 2.** W.S. 39-15-108(d)(i) and 39-16-108(d)(i)
6 are amended to read:

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8 **39-15-108. Enforcement.**

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10 (d) Liens. The following shall apply:

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12 (i) Except as otherwise provided in W.S.
13 39-15-107.4(c), any tax due under this article constitutes
14 a debt to the state from the persons who are parties to the
15 transaction, other than any vendor or other seller who is
16 prohibited or not authorized by law to collect any tax
17 under this article, and is a lien from the date the tax is
18 due on all the real and personal property of those persons.
19 The lien does not apply to purchasers who paid the tax to
20 the vendor. Notice of the lien shall be filed with the
21 county clerk of the county in which the persons who are
22 parties to the transaction reside or in which the vendor
23 conducts business. The lien does not have preference over

1 preexisting indebtedness but shall have priority from and
2 after the date of filing or recording. The department shall
3 cancel lien statements within sixty (60) days after taxes
4 due are paid or collected. No other action by the
5 department is required to perfect a lien under this
6 paragraph regardless of the type of property involved;

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8 **39-16-108. Enforcement.**

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10 (d) Liens. The following shall apply:

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12 (i) Except as otherwise provided in W.S.
13 39-16-107.1(c), any tax due under this article constitutes
14 a debt to the state from the persons who are parties to the
15 transaction and is a lien from the date due on all the
16 property of those persons. The tax lien shall have
17 preference over all liens except any valid mortgage or
18 other liens of record filed or recorded prior to the date
19 the tax became due. When the tax is collected by a
20 retailer or his agent, the tax lien has the same status as
21 sales tax liens under W.S. 39-15-108(d)(i);

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23 **Section 3.** This act is effective July 1, 2011.

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(END)