

HOUSE BILL NO. HB0014

Streamlined sales tax.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; providing
 2 amendments to the sales and use tax laws as specified;
 3 providing for voluntary licensing; providing definitions;
 4 providing for enforcement procedures; providing for bad
 5 debt procedures; providing timeline procedures for local
 6 optional taxes; providing conforming amendments; and
 7 providing for an effective date.

8

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

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11 **Section 1.** W.S. 39-15-107.3 is created to read:

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13 **39-15-107.3. Voluntary licensing and monetary**
 14 **allowances offered under the streamlined sales tax**
 15 **agreement.**

16

1 (a) Any vendor who licenses to collect and remit
2 applicable sales or use tax on sales made to purchasers in
3 this state in accordance with terms of the streamlined
4 sales and use tax agreement shall not be subject to audit
5 prior to the date of licensure provided the vendor was not
6 licensed in this state and licensing occurs within twelve
7 (12) months of the effective date of the streamlined sales
8 and use tax agreement. The vendor shall not be assessed
9 for uncollected sales or use tax together with penalty or
10 interest for sales made during the period the vendor was
11 not licensed in this state, provided licensing occurs
12 within twelve (12) months of the effective date of this
13 provision. This provision shall not apply to any vendor
14 who has received notice of the commencement of an audit and
15 the audit is not finally resolved including any
16 administrative and judicial processes. The voluntary
17 licensure provision shall not be available for sales or use
18 taxes already paid or remitted to the state or for taxes
19 collected by the vendor. The provisions of this section
20 shall be fully effective absent fraud or intentional
21 misrepresentation of a material fact so long as the vendor
22 continues to license and continues collection and
23 remittance of applicable sales or use taxes for a period of
24 not less than thirty-six (36) months following his initial

1 licensure as a vendor. The voluntary licensure provision
2 shall only apply to sales or use taxes due from a vendor
3 acting as a seller and not as a purchaser.

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5 (b) A certified service provider and user of any
6 technology model approved by the department who collects
7 the Wyoming sales and use taxes shall be granted a monetary
8 allowance for collecting the taxes as provided in the
9 streamlined sales and use tax agreement. Any allowance
10 shall be funded entirely from taxes collected under the
11 technology models and shall be based on the contracted
12 amount between the governing board and the service
13 providers.

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15 **Section 2.** W.S. 39-15-101(a)(ix) and by creating new
16 paragraphs (xxiii) through (xxxviii), 39-15-104 by creating
17 a new subsection (g), 39-15-105(a)(vi)(B), 39-15-109(c),
18 39-15-203(a)(i)(A), (ii)(B) and (iii)(C), 39-16-101(a)(vi),
19 39-16-104 by creating a new subsection (f),
20 39-16-105(a)(vi)(A) and 39-16-203(a)(i)(A) and (ii)(C) are
21 amended to read:

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23 **39-15-101. Definitions.**

24

1 (a) As used in this article:

2

3 (ix) "Tangible personal property" means ~~any~~all
4 personal property ~~not real or intangible~~ that can be seen,
5 weighed, measured, felt or touched, or that is in any other
6 manner perceptible to the senses. "Tangible personal
7 property" includes electricity, water, gas, steam and
8 prewritten computer software; and includes any controlled
9 substances as defined by W.S. 35-7-1002(a)(iv) which are
10 not sold pursuant to a written prescription of or through a
11 licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

12

13 (xxiii) "Certified automated system" means
14 software certified under the streamlined sales and use tax
15 agreement to calculate the tax imposed by each jurisdiction
16 on a transaction, determine the amount of tax to remit to
17 the appropriate state and maintain a record of the
18 transaction;

19

20 (xxiv) "Certified service provider" means an
21 agent certified under the streamlined sales and use tax
22 agreement to perform all the seller's sales and use tax
23 functions, other than the seller's obligation to remit tax
24 on its own purchases;

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(xxv) "Computer" means an electronic device that accepts information in a digital or similar form and manipulates it for a result based on a sequence of instructions;

(xxvi) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(xxvii) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(xxviii) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them;

1 (B) Intended for use in the diagnosis,
2 cure, mitigation, treatment or prevention of disease; or

3

4 (C) Intended to affect the structure or any
5 function of the body.

6

7 (xxix) "Durable medical equipment" means
8 equipment including its repair and replacement parts which:

9

10 (A) Can withstand repeated use;

11

12 (B) Is primarily and customarily used to
13 serve a medical purpose;

14

15 (C) Generally is not useful to a person in
16 the absence of illness or injury;

17

18 (D) Is not worn in or on the body;

19

20 (E) Does not include "mobility enhancing
21 equipment".

22

1 (xxx) "Electronic" means relating to technology
2 having electrical, digital, magnetic, wireless, optical,
3 electromagnetic or similar capabilities;

4
5 (xxxi) "Intangible personal property" includes:

6
7 (A) Money and cash on hand including
8 currency, gold, silver and other coin, bank drafts,
9 certified checks and cashier's checks;

10

11 (B) Money on deposit;

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13 (C) Accounts receivable and other credits;

14

15 (D) Bonds, promissory notes, debentures and
16 other evidences of debt;

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18 (E) Shares of stock or other written
19 evidence of ownership;

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21 (F) Judgments for the payment of money;

22

23 (G) Annuities and annuity contracts.

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1 (xxxii) "Lease" or "rental" means any transfer
2 of possession or control of tangible personal property for
3 consideration for a fixed or indeterminate period of time.
4 A lease or rental may include future options to purchase or
5 extend the lease or rental. "Lease" or "rental" shall
6 include any agreement covering a motor vehicle or trailer
7 where the amount of consideration may be increased or
8 decreased by reference to the amount realized upon sale or
9 disposition of the property as defined in 26 U.S.C. §
10 7701(h)(1). The definitions in this paragraph shall be
11 used for sales and use tax purposes regardless of whether a
12 transaction is characterized as a lease or rental under
13 generally accepted accounting principles, the Internal
14 Revenue Code, the Uniform Commercial Code, or other
15 applicable provisions of federal, state or local law.
16 "Lease" or "rental" shall not include:

17

18 (A) A transfer of possession or control of
19 property under a security agreement or deferred payment
20 plan that requires the transfer of title upon completion of
21 the required payments;

22

23 (B) A transfer of possession or control of
24 property under an agreement that requires the transfer of

1 title upon completion of required payments and payment of
2 an option price which does not exceed the greater of one
3 hundred dollars (\$100.00) or one percent (1%) of the total
4 required payments; or

5
6 (C) Providing tangible personal property
7 along with an operator for a fixed or indeterminate period
8 of time, with the condition that the operator is necessary
9 for the equipment to perform as designed. For purposes of
10 this subparagraph, an operator shall do more than maintain,
11 inspect or set up the tangible personal property.

12
13 (xxxiii) "Load and leave" means delivery to the
14 purchaser by use of a tangible storage media where the
15 tangible storage media is not physically transferred to the
16 purchaser;

17
18 (xxxiv) "Mobility enhancing equipment" means
19 equipment including its repair and replacement parts which:

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21 (A) Is primarily and customarily used to
22 provide or increase the ability to move from one (1) place
23 to another and which is appropriate for use either in a
24 home or a motor vehicle;

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2

(B) Is not generally used by persons with normal mobility;

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(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

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(D) Does not include "durable medical equipment".

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(xxxv) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter-drug" label includes:

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(A) A drug facts panel; or

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19

(B) A statement of any active ingredient with a list of the ingredient contained in the compound, substance or preparation.

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(xxxvi) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic

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1 or other means of transmission by a duly licensed
2 practitioner as defined by W.S. 35-7-1002(a) (xx);

3
4 (xxxvii) "Prewritten computer software" means
5 computer software including any prewritten upgrade, which
6 is not designed and developed by the author or other
7 creator to the specifications of a specific purchaser. The
8 combining of two (2) or more prewritten computer software
9 programs or prewritten portions thereof does not cause the
10 combination to be other than prewritten computer software.
11 Prewritten computer software includes software designed and
12 developed by the author or other creator to the
13 specifications of a specific purchaser when it is sold to a
14 person other than the specific purchaser. Where a person
15 modifies or enhances computer software of which the person
16 is not the author or creator, the person shall be deemed to
17 be the author or creator only of such person's
18 modifications or enhancements. Prewritten computer
19 software or a prewritten portion thereof that is modified
20 or enhanced to any degree, where such modification or
21 enhancement is designed and developed to the specifications
22 of a specific purchaser remains prewritten computer
23 software. However, where there is a reasonable, separately
24 stated charge or an invoice or other statement of the price

1 given to the purchaser for such modification or
2 enhancement, such modification or enhancement shall not
3 constitute prewritten computer software;

4
5 (xxxviii) "Prosthetic device" means a
6 replacement, corrective or supportive device including
7 repair and replacement parts for the device, worn on or in
8 the body to:

9
10 (A) Artificially replace a missing portion
11 of the body;

12
13 (B) Prevent or correct physical deformity
14 or malfunction; or

15
16 (C) Support a weak or deformed portion of
17 the body.

18
19 **39-15-104. Taxation rate.**

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21 (g) Any vendor or certified service provider relying
22 on an incorrect rate, boundary or jurisdictional
23 information provided by the department in its tax rate
24 database required under the streamlined sales and use tax

1 agreement shall not be held liable for any under collection
2 of tax caused by the department's error.

3

4 **39-15-105. Exemptions.**

5

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

8

9 (vi) For the purpose of exempting sales of
10 services and tangible personal property which are essential
11 human goods and services, the following are exempt:

12

13 (B) Sales of the following tangible
14 personal property sold under a prescription: drugs for
15 human relief excluding over-the-counter-drugs, insulin for
16 human relief and any syringe, needle or other device
17 necessary for the administration thereof, oxygen ~~and oxygen~~
18 ~~concentrators~~ for medical use, blood plasma, prosthetic
19 devices, hearing aids, ~~crutches, wheelchairs,~~ eyeglasses,
20 contact lenses, mobility enhancing equipment, durable
21 medical equipment and any assistive device. As used in
22 this subparagraph, "assistive device" means any item, piece
23 of equipment or product system, as defined by department
24 rule, which is used to increase, maintain or improve the

1 functional capabilities of an individual with a permanent
2 disability, excluding any medical device, surgical device
3 or organ implanted or transplanted into or attached
4 directly to an individual.

5

6 **39-15-109. Taxpayer remedies.**

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8 (c) Refunds. The following shall apply:

9

10 (i) Any tax, penalty or interest which has been
11 erroneously paid, collected or computed shall either be
12 credited against any subsequent tax liability of the vendor
13 or refunded. No credit or refund shall be allowed after
14 three (3) years from the date of overpayment. The receipt
15 of a claim for a refund by the department shall toll the
16 statute of limitations. All refund requests received by the
17 department shall be approved or denied within ninety (90)
18 days of receipt. Any refund or credit erroneously made or
19 allowed may be recovered in an action brought by the
20 attorney general in any court of competent jurisdiction. ;

21

22 (ii) Any tax erroneously paid by a taxpayer
23 shall be refunded by the vendor who originally collected
24 the tax. No cause of action shall lie against the vendor

1 by the taxpayer until not less than sixty (60) days elapse
2 following a request by the taxpayer for a refund from the
3 vendor.

4
5 **39-15-203. Imposition.**

6
7 (a) Taxable event. The following shall apply:

8
9 (i) The following provisions apply to imposition
10 of the general purpose excise tax under W.S.
11 39-15-204(a)(i):

12
13 (A) Except as provided by subparagraph (F)
14 of this paragraph, no tax shall be imposed under W.S.
15 39-15-204(a)(i) until the proposition to impose the taxes
16 is submitted to the vote of the qualified electors of the
17 county, and a majority of those casting their ballots vote
18 in favor of imposing the taxes. A county may impose both
19 taxes authorized in W.S. 39-15-204(a)(i) and (ii), but the
20 proposition to impose each tax shall be individually stated
21 and voted upon. Except as otherwise provided, excise taxes
22 imposed under this paragraph shall commence ~~on the first~~
23 ~~day of the second month~~ as provided by W.S. 39-15-207(c)
24 following the election approving the imposition of the tax;

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2 (ii) The following provisions apply to
3 imposition of the lodging excise tax under W.S.
4 39-15-204(a)(ii):

5

6 (B) No tax shall be imposed under W.S.
7 39-15-204(a)(ii) until the proposition to impose the taxes
8 is submitted to the vote of the qualified electors of the
9 county or of a city or town if the proposition is to impose
10 the tax only city wide or town wide, and a majority of
11 those casting their ballots vote in favor of imposing the
12 taxes. A county may impose both taxes authorized in W.S.
13 39-15-204(a)(i) and (ii), but the proposition to impose
14 each tax shall be individually stated and voted upon.
15 Except as otherwise provided, excise taxes imposed under
16 this paragraph shall commence ~~on the first day of the~~
17 ~~second month~~ as provided by W.S. 39-15-207(c) following the
18 election approving the imposition of the tax;

19

20 (iii) The following provisions apply to
21 imposition of the specific purpose excise tax under W.S.
22 39-15-204(a)(iii):

23

1 (C) No tax shall be imposed under this
2 paragraph until the proposition to impose the tax for
3 specific purposes in specific amounts is approved by the
4 vote of the majority of the qualified electors voting on
5 the proposition. The amount of revenue to be collected and
6 the purpose or purposes for which it is proposed to be used
7 shall be specified in the proposition. The election shall
8 be held in accordance with W.S. 22-21-101 through
9 22-21-112. Any debt created may also be repaid, in whole or
10 in part, by a property tax levy if general obligation bonds
11 are authorized by the electors. Any excise tax imposed
12 under this subsection shall commence ~~on the first day of~~
13 ~~the second month~~ as provided by W.S. 39-15-207(c) following
14 the election approving the imposition of the tax, except
15 that it shall commence on the first day of any subsequent
16 month following the receipt of tax funds in the approved
17 amount by any tax previously imposed under this subsection
18 as provided by subparagraph (E) of this paragraph. Unless
19 terminated earlier by the sponsoring entities pursuant to
20 subparagraph (G) of this paragraph, the tax shall terminate
21 ~~on the last day of the month following the month in which~~
22 as provided by W.S. 39-15-207(c) when the amount approved
23 by the electors is collected;

24

1 **39-16-101. Definitions.**

2

3 (a) As used in this article:

4

5 (vi) "Tangible personal property" means all
6 personal property ~~not real or intangible~~ that can be seen,
7 weighed, measured, felt or touched, or that is in any other
8 manner perceptible to the senses. "Tangible personal
9 property" includes electricity, water, gas, steam and
10 prewritten computer software and includes any controlled
11 substance as defined by W.S. 35-7-1002(a)(iv) which is not
12 sold pursuant to a written prescription of or through a
13 licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

14

15 **39-16-104. Taxation rate.**

16

17 (f) Any vendor or certified service provider relying
18 on an incorrect rate, boundary or jurisdictional
19 information provided by the department in its tax rate
20 database required under the streamlined sales and use tax
21 agreement shall not be held liable for any under collection
22 of tax caused by the department's error.

23

24 **39-16-105. Exemptions.**

1

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

4

5 (vi) For the purpose of exempting sales of
6 services and tangible personal property and services which
7 are essential human goods and services, the following are
8 exempt:

9

10 (A) Purchases of the following tangible
11 personal property sold under a prescription: drugs for
12 human relief excluding "over-the-counter-drugs", insulin
13 for human relief and any syringe, needle or other device
14 necessary for the administration thereof, oxygen ~~and oxygen~~
15 ~~concentrators~~ for medical use, blood plasma, prosthetic
16 devices, hearing aids, ~~crutches, wheelchairs,~~ eyeglasses,
17 contact lenses, mobility enhancing equipment, durable
18 medical equipment and any assistive device. As used in
19 this subparagraph, "assistive device" means any item, piece
20 of equipment or product system, as defined by department
21 rule, which is used to increase, maintain or improve the
22 functional capabilities of an individual with a permanent
23 disability, excluding any medical device, surgical device

1 or organ implanted or transplanted into or attached
2 directly to an individual.

3

4 **39-16-203. Imposition.**

5

6 (a) Taxable event. The following shall apply:

7

8 (i) The following provisions apply to imposition
9 of the general purpose excise tax under W.S.
10 39-16-204(a)(i):

11

12 (A) Except as provided by subparagraph (F)
13 of this paragraph, no tax shall be imposed under W.S.
14 39-16-204(a)(i) until the proposition to impose the taxes
15 is submitted to the vote of the qualified electors of the
16 county, and a majority of those casting their ballots vote
17 in favor of imposing the taxes. A county may impose both
18 taxes authorized in W.S. 39-16-204(a)(i) and (ii), but the
19 proposition to impose each tax shall be individually stated
20 and voted upon. Except as otherwise provided, excise taxes
21 imposed under this paragraph shall commence ~~on the first~~
22 ~~day of the second month~~ as provided by W.S. 39-16-207(c)
23 following the election approving the imposition of the tax;

24

1 (ii) The following provisions apply to
2 imposition of the specific purpose excise tax under W.S.
3 39-16-204(a)(ii):

4
5 (C) No tax shall be imposed under this
6 subsection until the proposition to impose the tax for
7 specific purposes in specific amounts is approved by the
8 vote of the majority of the qualified electors voting on
9 the proposition. The amount of revenue to be collected and
10 the purpose or purposes for which it is proposed to be used
11 shall be specified in the proposition. The election shall
12 be held in accordance with W.S. 22-21-101 through
13 22-21-112. Any debt created may also be repaid, in whole or
14 in part, by a property tax levy if general obligation bonds
15 are authorized by the electors. Provided, any excise tax
16 imposed under this subsection shall commence ~~on the first~~
17 ~~day of the second month~~ as provided by W.S. 39-16-207(c)
18 following the election approving the imposition of the tax,
19 except that it shall commence on the first day of any
20 subsequent month following the receipt of tax funds in the
21 approved amount by any tax previously imposed under this
22 subsection as provided by subparagraph (E) of this
23 paragraph. Unless terminated earlier by the sponsoring
24 entities pursuant to subparagraph (G) of this paragraph,

1 the tax shall terminate ~~on the last day of the month~~
2 ~~following the month in which~~ as provided by W.S.
3 39-16-207(c) when the amount approved by the electors is
4 collected;

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6 **Section 2.** This act is effective July 1, 2005.

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(END)