

HOUSE BILL NO. _____

Streamlined Sales Tax

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; providing a source
2 at which the sales tax rate shall be imposed for
3 transactions subject to the act; and providing for an
4 effective date.

5

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

7

8 **Section 1.** W.S. 39-15-104(f) and 39-15-107(a)(x) are
9 amended to read:

10

11 **39-15-104. Taxation rate.**

12

13 (f) The tax rate imposed upon a transaction subject
14 to ~~the Uniform Sales and Use Tax Administration Act~~ this
15 act shall be ~~consistent with the uniform sourcing rule~~
16 ~~provided in the streamlined sales and use tax agreement~~

1 ~~adopted pursuant to that act, W.S. 39-15-401 et seq. and~~
2 ~~shall be consistent with state law.~~ sourced as follows:

3
4 (i) The retail sale, excluding lease or rental,
5 of a product shall be sourced as follows:

6
7 (A) When the product is received by the
8 purchaser at a business location of the seller, the sale is
9 sourced to that business location;

10
11 (B) When the product is not received by the
12 purchaser at a business location of the seller's, the sale
13 shall be sourced to the location where receipt by the
14 purchaser, or the purchaser's donee designated as such by
15 the purchaser, occurs, including the location indicated by
16 instruction for delivery to the purchaser or donee, known
17 to the seller;

18
19 (C) Then subparagraphs (A) and (B) of this
20 paragraph do not apply, the sale shall be sourced to the
21 location indicated by an address for the purchaser that is
22 available from the business records of the seller that are
23 maintained in the ordinary course of the seller's business
24 when use of this address does not constitute bad faith;

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(D) When subparagraphs (A thru (C) of this paragraph do not apply, the sale shall be sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(E) When none of the previous rules of subparagraphs (A) thru (D) of this paragraph apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(F) For the purposes of this paragraph the terms "receive" and "receipt" mean taking possession of tangible personal property, making first use of services or

1 taking possession or making first use of digital goods,
2 whichever comes first. The terms "receive" and "receipt"
3 do not include possession by a shipping company on behalf
4 of the purchaser.

5
6 (ii) The lease or rental of tangible personal
7 property, other than property identified in subparagraph
8 (C) or (D) or this paragraph, shall be sourced as follows:

9
10 (A) For a lease or rental that requires
11 recurring periodic payments, the first periodic payment
12 shall be sourced the same as a retail sale in accordance
13 with the provisions of paragraph (i) of this subsection.
14 Periodic payments made subsequently to the first payment
15 shall be sourced to the primary property location for each
16 period covered by the payment. The primary property
17 location shall be as indicated by an address for the
18 property provided by the lessee that is available to the
19 lessor from its records maintained in the ordinary course
20 of business, when use of this address does not constitute
21 bad faith. The property location shall not be altered by
22 intermittent use at different locations, such as use of the
23 business property that accompanies employees on business
24 trips and service calls;

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(B) For a lease or rental that does not require recurring periodic payments, the payment shall be sourced the same as a retail sale in accordance with the provisions of paragraph (i) of this subsection;

(C) This paragraph shall not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(ii) The lease or rental of a motor vehicle, trailer, semi-trailer or aircraft that does not qualify as transportation equipment, as defined in paragraph (iv) of this subsection shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payment, each periodic payment shall be sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not

1 constitute bad faith. This location shall not be altered
2 by intermittent use at different locations;

3

4 (B) For a lease or rental that does not
5 require recurring periodic payments, the payment shall be
6 sourced the same as a retail sale in accordance with the
7 provisions of paragraph (i) of this subsection.

8

9 (C) This paragraph shall not affect the
10 imposition or computation of sales or use tax on a lease or
11 rental based on a lump sum or accelerated basis, or on the
12 acquisition of property for lease.

13

14 (iv) The retail sale, including lease or rental,
15 or transportation equipment shall be sourced the same as a
16 retail sale in accordance with the provisions of paragraph
17 (i) of this subsection. "Transportation equipment" means
18 any of the following:

19

20 (A) Locomotives and railcars that are
21 utilized for the carriage of persons or property in
22 interstate commerce;

23

1 (B) Trucks and truck-tractors with a Gross
2 Vehicle Weight Rating (GVWR) of 10,001 pounds or greater,
3 trailers, semi-trailers, or passenger buses that are:

4
5 (I) Registered through the
6 International Registration Plan; and

7
8 (II) Operated under authority of a
9 carrier authorized and certified by the U.S. Department of
10 Transportation or another federal or a foreign authority to
11 engage in the carriage of personnel or property in
12 interstate or foreign commerce.

13
14 (C) Aircraft that are operated by an air
15 carrier authorized and certified by the U.S. Department of
16 Transportation or another federal authority to engage in
17 the carriage of persons or property in interstate or
18 foreign commerce.

19
20 (D) Containers designed for use on and
21 component parts attached or secured on the items set forth
22 in subparagraphs (A) thru (C) of this paragraph.

23

1 (v) A business purchaser that is not a holder of
2 a direct pay permit who knows at the time of his purchase
3 of a digital good, computer software delivered
4 electronically, or a service that the digital good,
5 computer software delivered electronically, or service will
6 be concurrently available for use in more than one (1)
7 jurisdiction shall deliver to the seller in conjunction
8 with his purchase a form disclosing this fact to be know as
9 the "Multiple Point of Use or MPU" Exemption Form. The
10 following shall apply:

11

12 (A) Upon receipt of the MPU exemption form,
13 the seller shall be relieved of all obligation to collect,
14 pay or remit the applicable tax and the purchaser shall be
15 obligated to collect, pay or remit the applicable tax on a
16 direct pay basis;

17

18 (B) A purchaser delivering the MPU
19 exemption form may use any reasonable, but consistent and
20 uniform, method of apportionment that is supported by the
21 purchaser's business records as they exist at the time of
22 the consummation of the sale;

23

1 (C) The MPU exemption form shall remain in
2 effect for all future sales by the seller to the purchaser,
3 except as to the subsequent sale's specific apportionment
4 that is governed by the principle of subparagraph (B) of
5 this paragraph and the facts existing at the time of the
6 sale until it is revoked in writing;

7
8 (D) A holder of a direct pay permit shall
9 not be required to deliver a MPU exemption form to the
10 seller. A direct pay permit holder shall follow the
11 provisions of subparagraph (B) of this paragraph in
12 apportioning the tax due on a digital good or service that
13 will be concurrently available for use in more than one (1)
14 jurisdiction.

15
16 (vi) The purchaser of direct mail that is not a
17 holder of a direct pay permit shall provide the seller in
18 conjunction with the purchase either a Direct Mail Form or
19 information to show the jurisdictions to which the direct
20 mail is delivered to recipients. The follow shall apply:

21
22 (A) Upon receipt of the Direct Mail Form,
23 the seller shall be relieved of all obligations to collect,
24 pay or remit the applicable tax and the purchaser is

1 obligated to pay or remit the applicable tax on a direct
2 pay basis. A Direct Mail Form shall remain in effect for
3 all future sales of direct mail by the seller to the
4 purchaser until it is revoked in writing;

5
6 (B) Upon receipt of information from the
7 purchaser showing the jurisdictions to which the direct
8 mail is delivered to recipients, the seller shall collect
9 the tax according to the delivery information provided by
10 the purchaser. In the absence of bad faith, the seller
11 shall be relieved of any further obligation to collect tax
12 on any transaction where the seller has collected tax
13 pursuant to the delivery information provided by the
14 purchaser.

15
16 (vii) If the purchaser of direct mail does not
17 have a direct pay permit and does not provide the seller
18 with either a Direct Mail Form or delivery information, as
19 required by paragraph (vi) of this subsection, the seller
20 shall collect the tax according to paragraph (i)(E) of this
21 subsection. Nothing in this paragraph shall limit a
22 purchaser's obligation for sales and use tax to any state
23 to which the direct mail is delivered;

24

1 (viii) If a purchaser of direct mail provides
2 the seller with documentation of direct pay authority, the
3 purchaser shall not be required to provide a Direct Mail
4 Form or delivery information to the seller;

5
6 (ix) Except for the defined telecommunication
7 services in paragraph (xi) of this subsection, the sale of
8 telecommunication service sold on a call-by-call basis
9 shall be sourced to:

10
11 (A) each level of taxing jurisdiction where
12 the call originates and terminates in that jurisdiction; or

13
14 (B) each level of taxing jurisdiction where
15 the call either originates or terminates and in which the
16 service address is also located.

17
18 (x) Except for the defined telecommunication
19 services in paragraph (xi) of this subsection, a sale of
20 telecommunications services sold on a basis other than a
21 call-by-call basis, shall be sourced to the customer's
22 place of primary use;

23

1 (xi) The sales of the following
2 telecommunication services shall be sourced to each level
3 of taxing jurisdiction as follows:

4
5 (A) A sale of mobile telecommunications
6 services other than air-to-ground radio telephone service
7 and prepaid calling service, shall be sourced to the
8 customer's place of primary use as required by the Mobile
9 Telecommunications Sourcing Act;

10
11 (B) A sale of post-paid calling service
12 shall be sourced to the origination point of the
13 telecommunications signal as first identified by either:

14
15 (I) The seller's telecommunications
16 system; or

17 (II) information received by the
18 seller from its service provider, where the system used to
19 transport such signals is not that of the seller.

20
21 (C) A sale of prepaid calling service shall
22 be sourced in accordance with paragraph (i) of this
23 subsection. Provided however, in the case of a sale of
24 mobile telecommunications service that is a prepaid

1 telecommunications service, the rule provided in paragraph
2 (i)(E) of this subsection shall include as an option the
3 location associated with the mobile telephone number;

4
5 (D) A sale of a private communication
6 service shall be sourced as follows:

7
8 (I) Service for a separate charge
9 related to a customer channel termination point shall be
10 sourced to each level of jurisdiction in which the customer
11 channel termination point is located;

12
13 (II) Service where all customer
14 termination points are located entirely within one (1)
15 jurisdiction or levels of jurisdiction shall be sourced in
16 the jurisdiction in which the customer channel termination
17 points are located;

18
19 (III) Service for segments of a
20 channel between two (2) customer channel termination points
21 located in different jurisdictions and which segment of
22 channel are separately charged shall be sourced fifty
23 percent (50%) in each level of jurisdiction in which the
24 customer channel termination points are located;

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(IV) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(E) As used in this paragraph the following definitions apply:

(I) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(II) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

(III) "Communications channel" means a physical or virtual path of communications over which

1 signals are transmitted between or among customer channel
2 termination points;

3
4 (IV) "Customer" means the person or
5 entity that contracts with the seller of telecommunications
6 services. If the end user of telecommunications services
7 is not the contracting party, the end user of the
8 telecommunications service is the customer of the
9 telecommunication service, but this sentence only applies
10 for the purpose of sourcing sales of telecommunications
11 services under this paragraph. "Customer" does not include
12 a reseller of telecommunications service or for mobile
13 telecommunications service of a serving carrier under an
14 agreement to serve the customer outside the home service
15 provider's licensed service area;

16
17 (V) "Customer channel termination
18 point" means the location where the customer either inputs
19 or receives the communications;

20 (VI) "End user" means the person who
21 utilizes the telecommunication service. In the case of an
22 entity, "end user" means the individual who utilizes the
23 service on behalf of the entity;

24

1 (VII) "Home service provider" means
2 the same as that term is defined in Section 124(5) of
3 Public Law 106-252, Mobile Telecommunications Sourcing Act;

4
5 (VIII) "Mobile telecommunications
6 service" means the same as that term is defined in section
7 124(5) of Public Law 106-252, Mobil Telecommunications
8 Sourcing Act;

9
10 (IX) "Place of primary use" means the
11 street address representative of where the customer's use
12 of the telecommunications service primarily occurs, which
13 shall be the residential street address or the primary
14 business street address of the customer. In the case of
15 mobile telecommunications services, "place of primary use"
16 shall be within the licensed service area of the home
17 service provider;

18
19 (X) "Post-paid calling service" means
20 the telecommunications service obtained by making a payment
21 on a call-by-call basis either through the use of a credit
22 card or payment mechanism such as a bank card, travel card,
23 credit card, or debit card, or by charge made to which a
24 telephone number which is not associated with the

1 origination or termination of the telecommunications
2 service. A post-paid calling service includes a
3 telecommunications service that would be a prepaid calling
4 service except it is not exclusively a telecommunications
5 service;

6
7 (XI) "Prepaid calling service" means
8 the right to access exclusively telecommunications
9 services, which shall be paid for in advance and which
10 enables the origination of calls using an access number or
11 authorization code, whether manually or electronically
12 dialed, and that is sold in predetermined units or dollars
13 of which the number declines with use in a known amount;

14
15 (XII) Private communications service"
16 means a telecommunications service that entitles the
17 customer to exclusive or priority use of a communications
18 channel or group of channels between or among termination
19 points, regardless of the manner in which such channel or
20 channels are connected, and includes switching capacity,
21 extension lines, stations, and any other associated
22 services that are provided in connection with the use of
23 such channel or channels;

24

1 (XIII) "Service address" means:

2

3 (1) The location of the
4 telecommunications equipment to which a customer's call is
5 charged and from which the call originates or terminates,
6 regardless of where the call is billed or paid;

7

8 (2) If the location in section
9 (1) of this subdivision is not known, service address means
10 the origination point of the signal of the
11 telecommunications services first identified by either the
12 seller's telecommunications system or in information
13 received by the seller from its service provider, where the
14 system used to transport such signals is not that of the
15 seller;

16

17 (3) If the location in sections
18 (1) and (2) of this subdivision are not known, the service
19 address means the location of the customer's place of
20 primary use.

21

22 **39-15-107. Compliance; collection procedures.**

23

1 (a) Returns, reports and preservation of records.

2 The following shall apply:

3

4 (x) Taxes paid on gross receipts represented by
5 accounts found to be worthless may be credited against
6 subsequent liability of the vendor. The vendor shall not
7 take the credit for any bad debt until he has used the
8 customary debt collection procedures as documented in
9 writing by the vendor and has written off the debt; or
10 until the debt qualifies as a bad debt under 26 U.S.C.
11 section 166 excluding financing charges or interest, sales
12 or use taxes charged on the purchase price, uncollectible
13 amounts on property that remain in the possession of the
14 seller until the full purchase price is paid, any expenses
15 incurred in attempting to collect any debt, and repossessed
16 property. If any account is thereafter collected by the
17 vendor, a tax shall be paid upon the amount collected. The
18 amount collected shall be applied proportionally first to
19 the taxable price of the property or service and the sales
20 tax thereon, and then to interest, service charges and any
21 other charges. Should the bad debt exceed the taxable
22 sales for a subsequent period the vendor may request a
23 refund of the tax on the bad debt from the department so
24 long as the claim is made within three (3) years of the

1 date ~~of sale~~ of the return on which the bad debt could
2 first be claimed. A certified service provider under W.S.
3 39-15-401 through 39-15-408 acting on behalf of a vendor
4 may claim the bad debt allowance for the vendor and shall
5 remit the credit or refund received to the vendor. Should
6 the bad debt apply to more than one (1) state, the debt may
7 be allocated between the affected states.

8

9 **Section 2.** This act is effective July 1,
10 2006.

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(END)