

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. \_\_\_\_\_

Sales and use tax revisions.

Sponsored by: Representative(s) Wallis

A BILL

for

1 AN ACT relating to taxation and revenue; providing  
2 definitions; establishing the sales and use tax rate as  
3 specified; requiring a public hearing as specified;  
4 imposing an excise tax on services as specified; repealing  
5 certain sales and use tax exemptions; and providing for an  
6 effective date.

7

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

9

10 **Section 1.** W.S. 39-15-101(a) by creating a new  
11 paragraph (xliv), 39-15-103(a)(i) by creating a new  
12 subparagraph (P), 39-15-104(a) and (b), 39-15-105(a)(intro)  
13 and (iv)(F), 39-15-204, 39-15-303(b)(ii) and (iii),  
14 39-15-306(b)(i), 39-16-103(a) by creating a new paragraph

1 (iv), 39-16-104(a) and (b), 39-16-105(a)(intro) and  
 2 (iv)(D), 39-16-204, 39-16-303(b)(ii) and (iii) and  
 3 39-16-306(b)(i) are amended to read:

4

5 **39-15-101. Definitions.**

6

7 (a) As used in this article:

8

9 (xiv) The following definitions apply to the  
 10 sales tax on services imposed under W.S.39-15-103(a)(i)(P)  
 11 and use tax on services imposed under W.S.  
 12 39-16-103(a)(iv):

13

14 (A) "Sales price for services" means a fee,  
 15 retainer, commission or other monetary charge for a  
 16 service, but excludes charges to the purchaser, which the  
 17 service provider separately identifies to the purchaser,  
 18 for:

19

20 (I) Tangible personal property used in  
 21 providing the service; and

22

1                   (II) A service provided by another  
2 service provider.

3  
4                   (B) "Service" means all activities engaged  
5 in for other persons for a fee, retainer, commission, or  
6 other monetary charge, which activities involve  
7 predominantly the performance of a service as distinguished  
8 from selling property. In determining what is a service,  
9 the intended use, principal objective or ultimate objective  
10 of the contracting parties shall not be controlling. For  
11 the purposes of this definition, "service" shall not  
12 include any service rendered by an employee for his  
13 employer or any service taxable under W.S.  
14 39-15-103(a)(i)(A) through (O) or 39-16-103(a)(i) through  
15 (iii);

16  
17                   (C) "Service provider" means any person  
18 engaged in the business of selling at retail or wholesale  
19 services which are subject to taxation under W.S.  
20 39-15-103(a)(i)(P). For the purpose of this article, and  
21 unless otherwise specifically provided, a service provider  
22 is deemed to be a vendor. A person who is both a vendor and  
23 service provider under this article, or article 16 of this

1 title, shall only be required to obtain one (1) sales tax  
2 license under this article, or article 16 of this title as  
3 applicable.

4  
5 **39-15-103. Imposition.**

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

8  
9 (i) Except as provided by W.S. 39-15-105, there  
10 is levied an excise tax upon:

11  
12 (P) The sales price for services provided  
13 by a service provider not otherwise subject to tax under  
14 subparagraphs (A) through (O) of this paragraph.

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

17  
18 (a) Effective until June 30, 2010, except as provided  
19 by W.S. 39-15-105 there is levied and shall be paid by the  
20 purchaser on all sales an excise tax of three percent (3%)  
21 upon all events as provided by W.S. 39-15-103(a).

22

1           (b) Effective July 1, 1993 until June 30, 2010, in  
2 addition to the sales tax under subsection (a) of this  
3 section there is imposed an additional sales tax of one  
4 percent (1%) which shall be administered as if the sales  
5 tax rate under subsection (a) of this section was increased  
6 from three percent (3%) to four percent (4%). The revenue  
7 from these increases shall be distributed in the same  
8 manner as other sales tax revenue under those sections.

9  
10           (h) Effective July 1, 2010 except as provided by W.S.  
11 39-15-105 there is levied and shall be paid by the  
12 purchaser on all sales an excise tax at a rate determined  
13 by the department of revenue on July 1 of each year. The  
14 rate determined by the department under this section shall  
15 not exceed the rate necessary to generate the amount of  
16 revenue generated from the excise tax in the immediately  
17 preceding year plus an amount for inflation equal to one-  
18 half (1/2) of the average annual rate of inflation for the  
19 state for the immediately preceding three (3) years as  
20 determined by the department of administration and  
21 information. The rate shall at no time exceed the rate  
22 specified in subsections (a) and (b) of this section. If  
23 the department determines under this subsection that any

1 increase to the rate is required, the department shall  
2 recommend legislation to set the rate to the joint revenue  
3 interim committee.

4  
5 **39-15-105. Exemptions.**

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

10  
11 (iv) For the purpose of exempting sales of  
12 services and tangible personal property sold to government,  
13 ~~charitable and nonprofit~~ organizations, ~~irrigation~~  
14 ~~districts and weed and pest control districts,~~ the  
15 following are exempt:

16  
17 (F) Labor or service charges, including  
18 transportation and travel, for the repair, alteration or  
19 improvement of real property or tangible personal property  
20 owned by, or incorporated in projects under contract to the  
21 state of Wyoming or any of its political subdivisions,  
22 ~~including an irrigation district created under W.S.~~

1 ~~41-7-201 through 41-7-210, and a weed and pest control~~  
2 ~~district created under W.S. 11-5-101 et seq.;~~

3  
4 **39-15-204. Taxation rate.**

5  
6 (a) Effective until June 30, 2010, in addition to the  
7 state tax imposed under W.S. 39-15-101 through 39-15-111  
8 any county of the state may impose the following excise  
9 taxes and any city or town may impose the tax authorized by  
10 paragraph (ii) of this subsection and any resort district  
11 may impose the tax authorized by paragraph (v) of this  
12 subsection:

13  
14 (b) Effective July 1, 2010, in addition to the state  
15 tax imposed under W.S. 39-15-101 through 39-15-111 and any  
16 tax imposed by a vote of the people in accordance with  
17 state law, any county of the state and any city, town and  
18 resort district may impose an excise tax at a rate  
19 determined by the county, city, town or resort district on  
20 July 1 of each year. The rate determined by the county,  
21 city, town or resort district under this section shall be  
22 calculated in accordance with rules and regulations of the  
23 department of revenue and shall not exceed the rate

1 necessary to generate the amount of revenue generated from  
2 the excise tax imposed by the county, city, town or resort  
3 district in the immediately preceding year plus an amount  
4 for inflation equal to one-half (1/2) of the average annual  
5 rate of inflation for that region for the immediately  
6 preceding three (3) years as determined by the department  
7 of administration and information. The rate shall at no  
8 time exceed the rate specified under subsection (a) of this  
9 section. If the county, city, town or resort district  
10 determines to raise the rate pursuant to this subsection,  
11 the county, city, town or resort district shall hold a  
12 public hearing prior to formal adoption of the rate under  
13 this subsection.

14

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

16

17 (b) Taxpayer. The following shall apply:

18

19 (ii) Any subcontractor who contracts with a  
20 general or prime contractor is liable for sales taxes as a  
21 general or prime contractor. The general or prime  
22 contractor shall withhold ~~three percent (3%), plus the~~  
23 ~~increased rate under W.S. 39-15-104(b) if the tax under~~



1 ~~that section is in effect,~~ a percentage equal to the rate  
2 applied under W.S. 39-15-104 of the payments due a  
3 nonresident subcontractor arising out of the contract  
4 entered into between both contractors. The contractor shall  
5 withhold the payments until the subcontractor furnishes him  
6 with a certificate issued by the department showing all  
7 sales taxes accruing by reason of the contract between them  
8 have been paid. The department may demand the withholdings  
9 at any time to satisfy the sales tax liability of the  
10 subcontractor and any balance shall be released by the  
11 department to him. If a contractor fails to withhold  
12 payments or refuses to remit them upon demand by the  
13 department he is liable for any sales taxes due the state  
14 by the nonresident subcontractor. This paragraph shall not  
15 apply to any subcontractor hired to provide labor only to  
16 alter, construct, improve or repair real property;

17

18 (iii) To secure payment of sales taxes by  
19 nonresident prime contractors, each nonresident contractor  
20 shall file with the department of revenue a surety bond or  
21 legal security ~~equal to three percent (3%), plus the~~  
22 ~~increased rate under W.S. 39-15-104(b) if the tax under~~  
23 ~~that section is in effect,~~ in an amount determined by a

1 percentage equal to the rate applied under W.S. 39-15-104  
2 of the payments due under the contract or an amount  
3 determined by the department. The bond shall be conditioned  
4 upon the payment of all sales taxes which become due and  
5 payable to this state under the contract or in the real  
6 property development. This bond requirement does not apply  
7 for a nonresident contractor who has furnished a surety  
8 bond as provided by W.S. 39-15-306(b)(v);

9

10 **39-15-306. Licenses; permits; bonding.**

11

12 (b) Bonding. The following shall apply:

13

14 (i) To secure payment of sales taxes by  
15 nonresident prime contractors, each nonresident contractor  
16 shall file with the department of revenue a surety bond or  
17 legal security ~~equal to three percent (3%), plus the~~  
18 ~~increased rate under W.S. 39-15-104(b) if the tax under~~  
19 ~~that section is in effect,~~ in an amount determined by a  
20 percentage equal to the rate applied under W.S. 39-15-104  
21 of the payments due under the contract or an amount  
22 determined by the department. The bond shall be conditioned  
23 upon the payment of all sales taxes which become due and

1 payable to this state under the contract or in the real  
2 property development. This bond requirement does not apply  
3 for a nonresident contractor who has furnished a surety  
4 bond as provided by paragraph (v) of this subsection;

5  
6 **39-16-103. Imposition.**

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

9  
10 (iv) There is levied an excise tax upon the  
11 sales price for services provided by a service provider not  
12 otherwise subject to tax under paragraphs (i) through (iii)  
13 of this subsection.

14  
15 **39-16-104. Taxation rate.**

16  
17 (a) Effective until June 30, 2010, except as  
18 otherwise provided, there is levied and shall be paid by  
19 the purchaser an excise tax at the same rate applied under  
20 W.S. 39-15-104 upon sales in Wyoming.

21  
22 (b) Effective July 1, 1993, until June 30, 2010, in  
23 addition to the use tax under subsection (a) of this

1 section, there is imposed an additional use tax of one  
2 percent (1%) which shall be administered as if the use tax  
3 rates under subsection (a) of this section were increased  
4 from three percent (3%) to four percent (4%). The revenue  
5 from these increases shall be distributed in the same  
6 manner as other use tax revenue under that subsection.

7  
8 (g) Effective July 1, 2010 except as otherwise  
9 provided there is levied and shall be paid by the purchaser  
10 on all sales an excise tax at a rate determined by the  
11 department of revenue on July 1 of each year. The rate  
12 determined by the department under this section shall not  
13 exceed the rate necessary to generate the amount of revenue  
14 generated from the excise tax in the immediately preceding  
15 year plus an amount for inflation equal to one-half (1/2)  
16 of the average annual rate of inflation for the state for  
17 the immediately preceding three (3) years as determined by  
18 the department of administration and information. The rate  
19 shall at no time exceed the rate specified in subsections  
20 (a) and (b) of this section. If the department determines  
21 under this subsection that any increase to the rate is  
22 required, the department shall recommend legislation to set  
23 the rate to the joint revenue interim committee.

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

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

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(iv) For the purpose of exempting sales of services and tangible personal property sold to government, ~~charitable and nonprofit~~ organizations, ~~irrigation districts and weed and pest control districts,~~ the following are exempt:

(D) Labor or service charges, including transportation and travel, for the repair, alteration or improvement of real property or tangible personal property owned by, or incorporated in projects under contract to the state of Wyoming or any of its political subdivisions, ~~including an irrigation district created under W.S. 41-7-201 through 41-7-210, and a weed and pest control district created under W.S. 11-5-101 et seq.;~~

**39-16-204. Taxation rate.**

1

2 (a) Effective until June 30, 2010, in addition to the  
3 state tax imposed under W.S. 39-16-101 through 39-16-111  
4 any county of the state may impose the following excise  
5 taxes and any resort district may impose the tax authorized  
6 by paragraph (iv) of this subsection:

7

8 (b) Effective July 1, 2010, in addition to the state  
9 tax imposed under W.S. 39-15-101 through 39-15-111 and any  
10 tax imposed by a vote of the people in accordance with  
11 state law, any county of the state and any resort district  
12 may impose an excise tax at a rate determined by the county  
13 or resort district on July 1 of each year. The rate  
14 determined by the county or resort district under this  
15 section shall be calculated in accordance with rules and  
16 regulations of the department of revenue and shall not  
17 exceed the rate necessary to generate the amount of revenue  
18 generated from the excise tax imposed by the county or  
19 resort district in the immediately preceding year plus an  
20 amount for inflation equal to one-half (1/2) of the average  
21 annual rate of inflation for that region for the  
22 immediately preceding three (3) years as determined by the  
23 department of administration and information. The rate

1 shall at no time exceed the rate specified under subsection  
2 (a) of this section. If the county or resort district  
3 determines to raise the rate pursuant to this subsection,  
4 the county or resort district shall hold a public hearing  
5 prior to formal adoption of the rate under this subsection.

6  
7 **39-16-303. Imposition.**

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

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

1 at any time to satisfy the sales tax liability of the  
2 subcontractor and any balance shall be released by the  
3 department to him. If a contractor fails to withhold  
4 payments or refuses to remit them upon demand by the  
5 department he is liable for any sales taxes due the state  
6 by the nonresident subcontractor. This paragraph shall not  
7 apply to any subcontractor hired to provide labor only to  
8 alter, construct, improve or repair real property;

9  
10 (iii) To secure payment of use taxes by  
11 nonresident prime contractors, each nonresident contractor  
12 shall file with the department of revenue a surety bond or  
13 legal security ~~equal to 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, in an amount determined by a~~  
16 ~~percentage equal to the rate applied under W.S. 39-16-104~~  
17 of the payments due under the contract or an amount  
18 determined by the department. The bond shall be conditioned  
19 upon the payment of all use taxes which become due and  
20 payable to this state under the contract or in the real  
21 property development. This bond requirement does not apply  
22 for a nonresident contractor who has furnished a surety  
23 bond as provided by W.S. 39-16-306(b)(v);



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**39-16-306. Licenses; permits; bonding.**

3

4

(b) Bonding. The following shall apply:

5

6

(i) To secure payment of use taxes by nonresident prime contractors, each nonresident contractor shall file with the department of revenue a surety bond or legal security ~~equal to three percent (3%), plus the increased rate under W.S. 39-16-104(b) if the tax under that section is in effect,~~ in an amount determined by a percentage equal to the rate applied under W.S. 39-16-104 of the payments due under the contract or an amount determined by the department. The bond shall be conditioned upon the payment of all use taxes which become due and payable to this state under the contract or in the real property development. This bond requirement does not apply for a nonresident contractor who has furnished a surety bond as provided by paragraph (v) of this subsection;

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**Section 2.** W.S. 39-15-105(a)(iii), (iv)(B) through (E), (G) through (J), (v) through (viii),

1 39-16-105(a)(iii), (iv)(B) and (C), (E) and (F) and (v)  
2 through (viii) are repealed.

3

4

**\*\*\* STAFF COMMENTS \*\*\***

5

6 **W.S. 39-15-105(a)(i) and (ii) are not included because**  
7 **those paragraphs include taxes which are constitutionally**  
8 **or federally protected. W.S. 39-15-105(a)(ix) is not**  
9 **included because its stated purpose is to prevent double**  
10 **taxation on the same article paid by the same person. The**  
11 **equivalent paragraphs from W.S. 39-16-105 are also not**  
12 **included in the repeal section.**

13

14 **Section 3.** This act is effective immediately upon  
15 completion of all acts necessary for a bill to become law  
16 as provided by Article 4, Section 8 of the Wyoming  
17 Constitution.

18

19

(END)