HOUSE BILL NO. HB0098

Sales tax amendments.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

AN ACT relating to taxation and revenue; providing a source at which the sales tax rate shall be imposed for transactions subject to sales and use tax collections in this state; and providing for an effective date.

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

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

39-15-104. Taxation rate.

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

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

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

(A) When the product is received by the purchaser at a business location of the seller, the sale shall be sourced to that business location;

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

(C) If it is undeterminable by the seller whether the product was received by the purchaser at a business location of the seller, the sale shall be sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) When subparagraphs (A) through (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) through (D) of this paragraph apply, including the circumstance in which the seller is without sufficient information to apply any of 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 taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(ii) The lease or rental of tangible personal property, other than property identified in paragraph (iii) or (iv) of this subsection, shall be sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment shall be sourced the same as a retail sale in accordance with the provisions of paragraph (i) of this subsection. Periodic payments made subsequently to the first payment shall be sourced to the primary property location for each period covered by the payment. 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 constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of the business property that accompanies employees on business trips and service calls;

(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.

(iii) 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 constitute bad faith. This location shall not be altered by intermittent use at different locations;

(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 a lease or rental based on a lump sum or accelerated basis, or on the acquisition of property for lease.

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

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

(B) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of greater than ten thousand (10,000) pounds, trailers, semi-trailers or passenger buses that are:

(I) Registered through the international registration plan; and

(II) Operated under authority of a carrier authorized and certified by the United States department of transportation or another federal or a foreign authority to engage in the carriage of personnel or property in interstate or foreign commerce.

(C) Aircraft that are operated by an air carrier authorized and certified by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate or foreign commerce;

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

(v) A business purchaser who is not a holder of a direct payment permit as provided by W.S. 39-15-102.1 who knows at the time of his purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one (1) jurisdiction shall deliver to the seller in conjunction with his purchase a form disclosing this fact to be known as the "multiple point of use or MPU" exemption form. The following shall apply:

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

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

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

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

(vi) The direct mail purchaser who is not a holder of a direct payment permit shall provide the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients. The following shall apply:

(A) Upon receipt of the direct mail form, the seller shall be relieved of all obligations to collect, pay or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing;

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

(vii) If the direct mail purchaser does not have a direct payment permit and does not provide the seller with either a direct mail form or delivery information as required by paragraph (vi) of this subsection, the seller shall collect the tax according to subparagraph (i)(E) of this subsection. Nothing in this paragraph shall limit a purchaser's obligation for sales and use tax to any state to which the direct mail is delivered;

(viii) If the direct mail purchaser provides the seller with documentation of direct payment authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller;

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

(A) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or

(B) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

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

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

(A) A sale of mobile telecommunications services other than air-to-ground radio telephone service and prepaid calling service, shall be sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, P.L. 106-252;

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

(I) The seller's telecommunications system; or

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

(C) A sale of prepaid calling service shall be sourced in accordance with paragraph (i) of this subsection. Provided however, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in subparagraph (i)(E) of this subsection shall include as an option the location associated with the mobile telephone number;

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

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

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

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

(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 paragraphs (ix) through (xi) of this subsection, the following definitions apply:

(I) "Air-to-ground radio/telephone service" means a radio service, as that term is defined in 47 C.F.R. 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 signals are transmitted between or among customer channel termination points;

(IV) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under paragraphs (ix) through (xi) of this subsection. "Customer" does not include a reseller of telecommunications service or the mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

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

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

(VII) "Home service provider" means the same as that term is defined in § 124(5) of P. L. 106-252, Mobile Telecommunications Sourcing Act;

(VIII) "Mobile telecommunications service" means the same as that term is defined in § 124(5) of P. L. 106-252, Mobile Telecommunications Sourcing Act;

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

(X) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service;

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

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

(XIII) "Service address" means:

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

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

(3) If neither location specified in section (1) or (2) of this subdivision is known, the service address means the location of the customer's place of primary use.

39-15-107. Compliance; collection procedures.

(a) Returns, reports and preservation of records. The following shall apply:

(x) Taxes paid on gross receipts represented by accounts found to be worthless may be credited against subsequent liability of the vendor. The vendor shall not take the credit for any bad debt until he has used the customary debt collection procedures as documented in writing by the vendor and has written off the debt; or until the debt qualifies as a bad debt under 26 U.S.C. section 166 excluding financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, any expenses incurred in attempting to collect any debt, and repossessed property. If any account is thereafter collected by the vendor, a tax shall be paid upon the amount collected. The amount collected shall be applied proportionally first to the taxable price of the property or service and the sales tax thereon, and then to interest, service charges and any other charges. Should the bad debt exceed the taxable sales for a subsequent period the vendor may request a refund of the tax on the bad debt from the department so long as the claim is made within three (3) years of the date of ~~sale~~ the return on which the bad debt could first be claimed. A certified service provider under W.S. 39-15-401 through 39-15-408 acting on behalf of a vendor may claim the bad debt allowance for the vendor and shall remit the credit or refund received to the vendor. Should the bad debt apply to more than one (1) state, the debt may be allocated between the affected states.

Section 2. This act is effective July 1, 2006.

(END)