

HOUSE BILL NO. HB0220

National Retail Fairness Act.

Sponsored by: Representative(s) Obermueller, Barlow, Blackburn, Burkhart, Connolly, Harshman, Lindholm, Nicholas, Schwartz, Sommers, Walters and Zwonitzer and Senator(s) Bebout, Case, Coe, Driskill, Kost, Nethercott, Pappas, Perkins, Rothfuss and Von Flatern

A BILL

for

1 AN ACT relating to taxation; creating the National Retail
2 Fairness Act; imposing an income tax on businesses as
3 specified; providing for administration of the tax; providing
4 penalties; authorizing rulemaking; and providing for
5 effective dates.

6

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

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9 **Section 1.** W.S. 39-12-102 through 39-12-111 are created
10 to read:

11

12 **39-12-102. Administration; confidentiality.**

13

1 (a) This chapter is known and may be cited as the
2 "National Retail Fairness Act".

3

4 (b) The administration of this chapter is vested in the
5 department of revenue. The department shall administer this
6 chapter in accordance with the multistate tax compact to the
7 extent that the compact does not conflict with this chapter
8 or Wyoming law.

9

10 (c) The department shall, to the extent practical,
11 obtain information from the federal internal revenue service
12 to verify taxable income under this chapter. The department
13 shall adopt rules and regulations necessary to efficiently
14 secure the payment, collection and accounting for taxes
15 imposed by this chapter.

16

17 (d) Notices required to be mailed by the department
18 under this chapter if mailed to the address shown on the
19 records of the department shall be sufficient for the purposes
20 of this chapter.

21

22 (e) No state employee or other person who by his
23 employment has knowledge of the business affairs of any person

1 filing or required to file any tax returns under this chapter
2 shall make known their contents in any manner or permit any
3 person to have access to any returns or information contained
4 therein except as provided by law. The department may also
5 allow the following:

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7 (i) The delivery to the taxpayer or his legal
8 representatives upon written request of a copy of any return
9 or report in connection with the tax imposed by this chapter;

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11 (ii) The publication of statistics formatted to
12 prevent the identification of particular returns or reports;

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14 (iii) The inspection by the attorney general of
15 the state of the report or return of any person who brings an
16 action against the state relating to the report or return, or
17 against whom an action is contemplated or has been instituted;

18

19 (iv) The introduction into evidence of any report
20 or return or information therefrom in any administrative or
21 court proceeding relating to the report or return and to which
22 the person making the report or return is a party;

23

1 (v) The furnishing of any information to the
2 United States government and its territories, the District of
3 Columbia, any state allowing similar privileges to the
4 department or to the multistate tax commission for relay to
5 tax officials of cooperating states. Information furnished
6 shall be only for tax purposes;

7

8 (vi) The inspection of tax returns and records by
9 the state department of audit;

10

11 (vii) The sharing of information with local
12 governmental entities and other state agencies, provided a
13 written request is made to the department and the governmental
14 entity or agency demonstrates sufficient reason to obtain the
15 information for official business purposes. Information
16 furnished shall be used for official business purposes only.

17

18 (f) The district court of the county in which
19 violations of this subsection occur shall have jurisdiction
20 over those violations. No person shall:

21

22 (i) Fail or refuse to make any return or payment
23 required by this chapter;

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2 (ii) Make any false return or statement;

3

4 (iii) Evade the payment of any tax due;

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6 (iv) Aid or abet another in any attempt to evade
7 payment of the tax due;

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9 (v) Knowingly attest by signature to a false or
10 fraudulent return.

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12 **39-12-103. Imposition.**

13

14 (a) Taxable event. There is levied an income tax upon
15 the taxable income of each taxpayer in this state as defined
16 in W.S. 39-12-101(b)(iii).

17

18 (b) Apportionment of taxable income shall be as
19 follows:

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21 (i) If a taxpayer has no income from activity that
22 is taxable outside of Wyoming, the taxpayer's entire taxable
23 income shall be allocated to Wyoming;

1

2 (ii) A taxpayer having income from activity that
3 is taxable both within and without Wyoming shall apportion
4 and allocate the taxable income as provided in this section;

5

6 (iii) Income is taxable in another state if:

7

8 (A) In that other state, the income is
9 subject to a net income tax, a franchise tax measured by net
10 income, a franchise tax for the privilege of doing business,
11 a corporate stock tax or any similar tax; or

12

13 (B) That other state has jurisdiction to
14 subject the income to a net income tax regardless of whether,
15 in fact, the state subjects the taxpayer to such tax.

16

17 (iv) Taxable business income shall be apportioned
18 to Wyoming by multiplying the income by a fraction, the
19 numerator of which is the property factor as provided under
20 subsection (c) of this section plus the payroll factor under
21 subsection (d) of this section plus the sales factor under
22 subsection (e) of this section, and the denominator of which
23 is three (3).

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2 (c) The property factor shall be calculated as follows:

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4 (i) The property factor is a fraction, the
5 numerator of which is the average value of the taxpayer's
6 real and tangible personal property owned or rented and used
7 in this state during the tax period and the denominator of
8 which is the average value of all the taxpayer's real and
9 tangible personal property owned or rented and used during
10 the tax period;

11

12 (ii) Property owned by the taxpayer shall be
13 valued at its original cost. Property rented by the taxpayer
14 is valued at eight (8) times the net annual rental rate. As
15 used in this paragraph, "net annual rental rate" means the
16 annual rental rate paid by the taxpayer less any annual rental
17 rate received by the taxpayer from subrentals;

18

19 (iii) The average value of property shall be
20 determined by averaging the values at the beginning and ending
21 of the tax period but the tax administrator may require the
22 averaging of monthly values during the tax period if

1 reasonably required to reflect properly the average value of
2 the taxpayer's property.

3

4 (d) The payroll factor shall be calculated as follows:

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6 (i) The payroll factor is a fraction, the
7 numerator of which is the total amount paid in this state
8 during the tax period by the taxpayer for compensation and
9 the denominator of which is the total compensation paid
10 everywhere during the tax period;

11

12 (ii) Compensation is paid in this state if:

13

14 (A) The individual's service is performed
15 entirely within the state;

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17 (B) The individual's service is performed
18 both inside and outside the state, but the service performed
19 outside the state is incidental to the individual's service
20 within this state; or

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22 (C) Some of the individual's service is
23 performed in the state and the base of operations:

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(I) For the service or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(II) Or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(e) The sales factor shall be calculated as follows:

(i) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period;

(ii) Sales of tangible personal property are in this state if the property is:

(A) Delivered or shipped to a purchaser within this state regardless of the f.o.b. shipping point or other conditions of the sale; or

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(B) Shipped from an office, store, warehouse, factory or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(iii) Sales, other than sales of tangible personal property, are in this state if the income producing activity is performed:

(A) In this state; or

(B) Both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(f) The department may require taxpayers to provide additional information and documentation related to apportionment, allocation of income and the property factor, payroll factor and sales factor to support an income tax return under this chapter.

39-12-104. Taxation rate.

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2 There is levied and shall be paid by the taxpayer a tax on
3 that portion of adjusted federal taxable income of the
4 taxpayer that is apportioned to Wyoming at a rate of seven
5 percent (7%).

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7 **39-12-105. Exemptions.**

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9 There are no specific applicable provisions for exemptions
10 for this chapter.

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12 **39-12-106. Licenses and permits.**

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14 There are no specific applicable provisions for licenses and
15 permits for this chapter.

16

17 **39-12-107. Compliance; collection procedures.**

18

19 (a) Returns and reports. Except as otherwise provided
20 in this subsection, each taxpayer shall report their total
21 taxable income and the portion of the income that is
22 apportioned to Wyoming as provided in W.S. 39-12-103 to the
23 department not more than thirty (30) days after the date the

1 taxpayer is required to file a federal income tax return under
2 the provisions of the Internal Revenue Code including any
3 extensions authorized for filing of the federal income tax
4 return.

5

6 (b) Payment. Any taxpayer owing a tax under this
7 chapter shall pay the tax once each year at the same time the
8 report under subsection (a) is provided. The tax shall be
9 collected by the department.

10

11 (c) Timelines. There are no specific applicable
12 provisions for timelines for this chapter.

13

14 **39-12-108. Enforcement.**

15

16 (a) Audits. To assess credits and deficiencies against
17 taxpayers, the department is authorized to rely on final audit
18 findings made by the department of audit, taxpayer
19 information or information reported by the taxpayer to the
20 internal revenue service or to the department of revenue
21 subject to the following conditions:

22

1 (i) Audits shall commence when the taxpayer
2 receives written notice of the engagement of the audit. The
3 issuance of the written notice of the audit shall toll the
4 statute of limitations provided in W.S. 39-12-110 for the
5 audit period specified in this subsection;

6

7 (ii) After receiving notice of an audit under this
8 subsection, the taxpayer shall preserve all records and books
9 necessary to determine the amount of tax due for the time
10 period that is being audited;

11

12 (iii) Except as otherwise provided in this
13 paragraph, audits shall encompass a time period not to exceed
14 three (3) years immediately preceding the reporting period
15 when the audit is engaged. The three (3) year limit shall not
16 apply to an audit if there is evidence of gross negligence or
17 intent to evade by the taxpayer in reporting or remitting
18 taxes for the reporting period being audited;

19

20 (iv) If a taxpayer is not willing or able to
21 produce adequate records to demonstrate taxes due, the
22 department or the department of audit may project taxes based
23 on the best information available;

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2 (v) The department of audit may contract with or
3 employ auditors or other technical assistance necessary to
4 determine whether the taxes imposed by this chapter have been
5 properly reported and paid;

6

7 (vi) Audits under this subsection are subject to
8 the authority and procedures provided in W.S. 9-2-2003.

9

10 (b) Interest. The following shall apply:

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12 (i) Interest at an annual rate equal to the
13 average prime interest as determined by the state treasurer
14 during the preceding fiscal year, plus four percent (4%),
15 shall be added to all delinquent taxes under this chapter. To
16 determine the average prime interest rate, the state
17 treasurer shall average the prime interest for at least
18 seventy-five percent (75%) of the thirty (30) largest banks
19 in the United States. The interest rate on delinquent taxes
20 shall be adjusted on January 1 of each year following the
21 year in which the taxes first became delinquent. In no
22 instance shall the delinquent interest rate be less than
23 twelve percent (12%) nor greater than eighteen percent (18%);

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2 (ii) The department may credit or waive interest
3 imposed by this subsection as part of a settlement or for any
4 other good cause.

5

6 (c) Penalties. The following shall apply:

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8 (i) If any part of a deficiency is due to
9 negligence or intentional disregard of rules and regulations
10 but without intent to defraud there shall be added a penalty
11 of ten percent (10%) of the amount of the deficiency plus
12 interest as provided by paragraph (b)(i) of this section. The
13 taxes, penalty and interest shall be paid by the taxpayer
14 within ten (10) days after notice and demand is made by the
15 department;

16

17 (ii) If any part of the deficiency is due to fraud
18 with intent to evade there shall be added a penalty of
19 twenty-five percent (25%) of the amount of the deficiency
20 plus interest as provided by paragraph (b)(i) of this section.
21 The taxes, penalty and interest shall be paid by the taxpayer
22 within ten (10) days after notice and demand is made by the
23 department;

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2 (iii) Any person who files a false or fraudulent
3 return is subject to the provisions of W.S. 6-5-303;

4

5 (iv) Any person who violates any provision of this
6 chapter for which there are no specific penalties is guilty
7 of a misdemeanor and upon conviction shall be fined not more
8 than one thousand dollars (\$1,000.00). Each violation is a
9 separate offense;

10

11 (v) If a taxpayer fails to file a return as
12 required by this chapter, the department shall give written
13 notice by mail to the taxpayer to file a return on or before
14 the last day of the month following the notice of delinquency.
15 If a taxpayer then fails to file a return the department shall
16 make a return from the best information available which will
17 be prima facie correct and the tax due therein is a deficiency
18 and subject to penalties and interest as provided by this
19 chapter;

20

21 (vi) The department may credit or waive penalties
22 imposed by this subsection as part of a settlement or for any
23 other good cause.

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2 (d) Liens. The following shall apply:

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4 (i) Any tax due under this chapter constitutes a
5 debt to the state from the taxpayer, and is a lien from the
6 date the tax is due on all the real and personal property of
7 the taxpayer. Notice of the lien shall be filed with the
8 county clerk of the county in which the taxpayer resides or
9 conducts business. The lien does not have preference over
10 preexisting secured indebtedness but shall have priority from
11 and after the date of filing or recording. The department
12 shall cancel lien statements within sixty (60) days after
13 taxes due are paid or collected. No other action by the
14 department is required to perfect a lien under this paragraph
15 regardless of the type of property involved.

16

17 (e) Tax sales. The following shall apply:

18

19 (i) The tax due together with interest, penalties
20 and costs may be collected by appropriate judicial
21 proceedings or the department, with board approval, or its
22 representative, may seize and sell at public auction so much
23 of the taxpayer's property as will pay all the tax then due

1 plus interest, penalties and costs. Notice of the auction
2 must be published for four (4) weeks in a newspaper published
3 in the resident county of the taxpayer or the county in which
4 the majority of the property is located.

5

6 **39-12-109. Taxpayer remedies.**

7

8 (a) Interpretation requests. A taxpayer may request and
9 the department shall provide written interpretations of these
10 statutes and rules adopted by the department. When requesting
11 an interpretation, a taxpayer shall set forth the facts and
12 circumstances pertinent to the issue. If the department deems
13 the facts and circumstances provided to be insufficient, it
14 may request additional information. A taxpayer may act in
15 reliance upon a written interpretation through the end of the
16 calendar year in which the interpretation was issued, or until
17 revoked by the department, whichever occurs last if the
18 pertinent facts and circumstances were substantially correct
19 and fully disclosed.

20

21 (b) Appeals. Except as provided by this subsection, no
22 person aggrieved by the payment of the taxes, penalty and
23 interest imposed by this chapter may appeal a decision of the

1 state board of equalization until all taxes, penalty and
2 interest have been paid. For good cause shown, the court to
3 which the decision of the board is appealed may stay
4 enforcement of the tax during the pendency of the appeal. The
5 court's stay of enforcement shall not affect the accruing of
6 interest upon any assessment and levy.

7

8 (c) Refunds. The following shall apply:

9

10 (i) Any tax, penalty or interest which has been
11 erroneously paid, computed or remitted to the department by
12 a taxpayer shall either be credited against any subsequent
13 tax liability of the taxpayer or refunded. No credit or refund
14 shall be allowed after three (3) years from the date of
15 overpayment. The receipt of a claim for a refund by the
16 department shall toll the statute of limitations under W.S.
17 39-12-110. All refund requests received by the department
18 shall be approved or denied within ninety (90) days of
19 receipt. Any refund or credit erroneously made or allowed may
20 be recovered in an action brought by the attorney general in
21 any court of competent jurisdiction.

22

23 (d) Credits. The following shall apply:

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2 (i) Each taxpayer is entitled to a credit against
3 tax liability under this chapter for all excise, sales, use,
4 severance and ad valorem taxes paid in the taxable year by
5 the same taxpayer to any taxing authority in Wyoming. No
6 credit shall be allowed for any tax collected or remitted by
7 the taxpayer on behalf of another person. The taxpayer shall
8 report the credit to the department on the return filed under
9 W.S. 39-12-107. The department may require supporting
10 documentation on the credit claimed under this paragraph. In
11 no case shall any refund be due or payable if the amount of
12 the credit claimed by any taxpayer under this paragraph
13 exceeds the amount of tax due under this chapter. False claims
14 are punishable as provided by W.S. 6-5-303;

15

16 (ii) The taxpayer is entitled to receive an
17 offsetting credit for any overpaid tax identified by an audit
18 that is within the scope of the audit period, without regard
19 to the limitation period for requesting refunds.

20

21 (e) Redemption. There are no specific applicable
22 provisions for redemption for this chapter.

23

1 (f) Escrow. There are no specific applicable provisions
2 for escrow for this chapter.

3

4 **39-12-110. Statute of limitations.**

5

6 (a) Except as otherwise provided in this chapter, no
7 credit or refund shall be allowed after three (3) years from
8 the date of overpayment. The receipt of a claim for a refund
9 by the department shall toll the statute of limitations.

10

11 (b) The department may bring an action to recover any
12 delinquent taxes, penalty or interest in any appropriate
13 court within three (3) years following the delinquency. In
14 the case of an assessment created by an audit, the delinquency
15 period is deemed to start thirty (30) days after the date the
16 assessment letter is sent. Any tax penalty and interest
17 related to the audit assessment shall be calculated from the
18 filing period during which the deficiency occurred. In any
19 such action a certificate by the department is prima facie
20 evidence of the amount due.

21

22 **39-12-111. Distribution.**

23

1 Revenues collected under W.S. 39-12-104 during each fiscal
2 year shall be recognized as revenue during that fiscal year
3 for accounting purposes. For all revenue collected by the
4 department under W.S. 39-12-104 the department shall credit
5 one hundred percent (100%) to the school foundation program
6 account.

7

8 **Section 2.** W.S. 39-12-101 is amended to read:

9

10 **39-12-101. Preemption by state; definitions.**

11

12 (a) The state of Wyoming does hereby preempt for itself
13 the field of imposing and levying income taxes, earning taxes,
14 or any other form of tax based on wages or other income and
15 no county, city, town or other political subdivision shall
16 have the right to impose, levy or collect such taxes except
17 as provided in this chapter.

18

19 (b) As used in this chapter:

20

21 (i) "Tax year" means the taxable year used by the
22 taxpayer for purposes of the federal income tax;

23

1 (ii) "Taxable income" means the net taxable income
2 reported by the taxpayer to the Internal Revenue Service on
3 federal form 1120, adjusted to remove any deductions taken
4 for sales, use and ad valorem taxes paid in the taxable year
5 by the same taxpayer to any taxing authority in Wyoming;

6
7 (iii) "Taxpayer" means any person who:

8
9 (A) Has taxable income earned in Wyoming;

10
11 (B) Is a vendor with a North American
12 Industry Classification System (NAICS) classification in the
13 sector of retail trade, sector 44 or 45 or in the sector of
14 accommodation and food services, sector 72. This
15 subparagraph includes a person who is a franchisor that
16 collects franchise fees in Wyoming from a vendor in NAICS
17 sector 44, 45 or 72; and

18
19 (C) Files or is required to file federal form
20 1120 to the internal revenue service if the corporation or
21 the affiliated group as defined in 26 U.S.C. § 1504 has more
22 than one hundred (100) shareholders unless the person makes
23 an election as an unincorporated entity.

1

2 **Section 3.** The department of revenue shall adopt rules
3 under W.S. 39-11-102 as necessary to begin collection of the
4 community impact tax created by this act for tax years
5 beginning in tax year 2020.

6

7 **Section 4.**

8

9 (a) Section 3 of this act is effective immediately upon
10 completion of all acts necessary for a bill to become law as
11 provided by Article 4, Section 8 of the Wyoming Constitution.

12

13 (b) Except as otherwise provided in subsection (a) of
14 this section, this act is effective January 1, 2020.

15

16

(END)