



## WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** May 26, 2017

**TO** Members, Select Committee on School Finance Recalibration  
Members, Joint Revenue Committee

**FROM** Don Richards, Budget and Fiscal Administrator

**SUBJECT** Revenue Increase / Diversion Options

This memorandum and accompanying attachments offer an outline of (i) major revenue raising options previously considered by the Legislature, (ii) sales and use tax exemptions, (iii) services excluded from sales and use tax in Wyoming, (iv) fees and “other” revenue directed to the General Fund, and (v) mineral revenue distribution models. The general framework of options has been developed based upon historic LSO materials and specific requests from legislators, primarily but not exclusively members of the Joint Revenue Committee and Select Committee on School Finance Recalibration. Notably, while ad valorem tax and severance tax increases and redistributions are included, at this time discussion of tax exemptions are limited to sales and use taxes. The following is a brief description and caveats regarding each of the attachments.

**Attachment 1. Major Revenue Options (“Enhanced Pink Report”):** This attachment provides an outline of major revenue options previously considered or discussed by policymakers. Approximate estimates for revenue increases (where available) per unit of good, service, asset, or activity, as well as timing considerations are included.

**Attachment 2. Sales and Use Tax Exemptions:** This attachment provides a listing of current statutory sales and use tax exemptions. The first seven exemptions include an estimate of the foregone revenue, chiefly based upon a comparative, per capita analysis from South Dakota prepared by the Department of Revenue and submitted to the Joint Revenue Committee in May 2016. For a number of the exemptions, the State does not collect information that would inform the amount of foregone revenue. The last column provides the statutory rationale for the exemption.

**Attachment 3A. Sales and Use Tax Excluded Services, By Occupational Category:** This attachment provides a list of services, by occupation category, which are excluded from statutory sales and use taxes. The estimated revenue generation is derived from the same submission to the Joint Revenue Committee by the Department of Revenue in May 2016.

In particular, W.S. 39-15-103(a)(i)(J) imposes an excise tax on the repair, alteration or improvement of tangible personal property. (A similar, though not identical use tax is provided under W.S. 39-16-

103(a)(ii)). Professional services that do not include any sales or repairs, alterations or improvements to tangible property or have specific exclusions (oil and gas services), are not subject to excise tax.

**Attachments 3B and 3C. Background Information:** For background and additional explanation as to taxation of services in Wyoming, Attachments 3B and 3C are included as a primer on excise taxation of professional services and excise taxation of towing services, as an instructive example of taxable and non-taxable services.

**Attachment 4: Major Other Sources (Fees) Deposited to the General Fund:** Many fees in Wyoming are either dedicated for a specific purpose, e.g., occupational licensing fees, state fair entrance fees, or are not deposited into the General Fund for general operations of state government. Four major areas generating sizeable revenue are outliers: corporation taxes, insurance premium taxes, insurance agent licenses and profit remitted from the Liquor Division of the Department of Revenue in its role as the exclusive wholesale distributor and seller of alcoholic liquor within Wyoming. In these four instances, fees (or in the case of the Liquor Division a profit margin) are established in statute and generated revenues are deposited into the General Fund.

Two anomalies are worthy of notation. First, Wyoming's insurance premium tax applies to a small number of companies domiciled in Wyoming. For all other companies, the tax is the greater of Wyoming's tax or the tax in the home state of the insurance company. Since Wyoming's insurance premium tax is comparatively low, modest increases would not apply to most companies as many are already subject to the higher rates established by the domicile of the insurance company, other than Wyoming. Second, the profit remitted by the Liquor Division is not a strict tax or a fee. Rather, it is a statutory profit margin (not to exceed 17.6 percent) the Liquor Division collects through the conduct as the State's liquor wholesaler.

**Attachment 5: Current Distribution Formula for Federal Mineral Royalties (FMRs):** This attachment provides a visual illustration of the current distribution of federal mineral royalties. Implemented as a result of the work of the Select Committee on De-earmarking, this general framework has been in existence since FY 2002, though there have been modest, temporary adjustments, e.g., diversion of FMRs to the General Fund instead of the Highway Fund during FY 2017-2018 biennium.

**Attachment 6: Current Distribution Formula for Severance Taxes:** This attachment provides a visual illustration of the current distribution of severance taxes. This framework has also been in existence since FY 2002, with modest permanent and temporary adjustments, e.g., creation of the Water Development III account in FY 2006 and diversion of severance taxes to the General Fund instead of the Highway Fund during FY 2017-2018 biennium.

In conclusion, these attachments summarize mechanisms for increases in revenue through taxes, fees, state profits, or re-distribution of major revenue streams. In the event the Legislature elects to advance legislation regarding any of the above options, the approximate estimates will be revisited through the formal fiscal note process and updated with any newly identified information, if necessary.

For purposes of context and as requested by legislators, in the event the entire shortfall for FY 2019-2020 biennium of \$363 million per year for both K-12 operations and school facilities identified in the May 26,

2017 memo from Matt Willmarth<sup>1</sup> is considered, the following taxes would be required, if imposed in an exclusive, independent, revenue-only approach without the use of savings or additional budget reductions:

- 2.3 percent statewide sales tax increase;
- 4 percent severance tax increase on all minerals; or
- 18 statewide mills.

It is possible that non-profiled, realized capital gains, additional enrollment declines, or revenues in excess of the January 2017 CREG estimate could also reduce the magnitude of the shortfall. Additionally, the magnitude of any shortfall is dependent upon the level of appropriation for statewide major maintenance (assumed at \$130 million and \$140 million the next two biennia) and new construction (\$80 million per biennium).

Attachments (8)

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<sup>1</sup> K-12 School Operations and Construction Historical Revenues and Appropriations and Projected Shortfall for Estimated FY 2019-2020 and FY 2021-2022, Matt Willmarth, Senior School Finance Analyst, May 26, 2017.

# ATTACHMENT 1: Revenue Enhancement Options ("Enhanced Pink Report")

Revenue Raising Measure	FY 19 Estimate (in millions \$)	FY 20 Estimate (in millions \$)	Implementation to Revenue Collection Timing
<b>Sales and Use Taxes</b>			
1 1% Sales & Use Tax - all revenue directed to State	154.5	156.1	following fiscal year
2 1% Sales & Use Tax - distributed through existing State/local percentage	106.6	107.7	following fiscal year
3 Subject food for domestic consumption to all statewide sales & use tax; traditional split	28.8	28.8	following fiscal year
4 Assumption of internet sales tax collections - voluntary (adopted, not profiled)	5.1	5.1	NA
5 Statewide 1% lodging tax - all revenue directed to State	6.4	6.4	following fiscal year
<b>Fuel taxes</b>			
6 \$0.01/gal Gas & Special Fuels, no exemptions	10.8	11.0	following fiscal year
7 \$0.01/gal Gas & Special Fuels, with exemptions	7.0	7.1	following fiscal year
<b>Cigarette Taxes</b>			
8 \$0.001 Per Cigarette (\$.02 per pack)	0.6	0.6	following fiscal year
<b>Liquor Taxes</b>			
9 \$0.02/gal Malt Beverage	0.3	0.3	following fiscal year
10 \$0.94/gal Spirits	1.3	1.3	following fiscal year
11 \$0.28/gal Wine	0.4	0.4	following fiscal year
<b>Property Taxes</b>			
12 1 Statewide Mill Levy	0.0	20.1	2 fiscal years
13 Increase In Assessment Ratio - 1% on 9.5% (residential/commercial)	0.0	49.8	2 fiscal years
14 Increase In Assessment Ratio - 1% on 11.5% (industrial)	0.0	22.9	2 fiscal years
<b>Severance Taxes</b>			
15 1% Minerals Severance	91.2	91.3	following fiscal year
<b>Pari-mutuel events</b>			
16 1/10 of 1% of total amount wagered	0.4	0.4	following fiscal year
<b>Lottery</b>			
17 Divert a percentage (0-100%) profits, currently directed to municipalities (could be as high as \$4.5)	2.4	2.4	following fiscal year
18 Limit administrative costs, current statute has no limit; FY 2016 was 11.9%	0.4	0.4	following fiscal year
19 Expand gaming to keno products (\$1.6M - \$2M)	1.6	1.6	2 fiscal years
20 Expand gaming to scratch ticket products (\$3.9M - \$4.5M)	3.9	3.9	2 fiscal years
<b>Other</b>			
21 Real Estate Transfer Tax	NA	NA	complexity dependent
22 Gross Receipts Tax	NA	NA	complexity dependent
23 Corporate Income Tax	NA	NA	complexity dependent
24 Individual Income Tax	NA	NA	complexity dependent

**TOTAL Estimated, Annual Collections:**

**Explanatory Notes**

Item #	Explanation
1	This figure represents the total revenue from an additional 1% sales and use tax, not just the GF 69% share.
2	This figure represents the total revenue from an additional 1% sales and use tax, distributed 31%/69% (local/state) as under other statewide sales and use tax collections under current statute.
3	This estimate is based upon proportional estimate of South Dakota sales and use taxes, per capita, on food for domestic home consumption. The State of Wyoming does not collect data on transactions currently exempt from sales and use taxes.
4	A portion of the \$5.1 million annual state share is already incorporated into January 2017 CREG estimates; a portion is not yet incorporated. An additional, estimated \$18 million total sales and use taxes (\$9 million traditional state share) could be generated if 2017 Laws, Ch. 85 (2017 HB 19) is challenged, upheld by the courts, and all eligible vendors begin remittance. This estimate is highly uncertain as Wyoming has sparse information on remote sellers not currently remitting taxes and limited information regarding firms voluntarily remitting sales and use taxes. The estimated total, potential collections are based upon a 2009 University of Tennessee study on the revenue losses attributable to ecommerce. This estimate is subject to change; including with October 2018 CREG
5	Estimate based upon current collections.
6, 7	Estimated fuel tax from \$0.01/gallon increase provided by WYDOT.
8	This figure represents the total revenue from an additional tax of \$0.001 per cigarette (\$0.02 per pack), not just the current state General Fund share. No estimate of decreased consumption is included.
9, 10, 11	Liquor taxes listed are roughly equivalent to the current taxes in place. No estimate of decreased consumption is included.
12	This estimate uses the total statewide assessed valuation, as estimated by CREG.
13, 14	This estimate assumes a 2% annual growth rate for FY 18 through FY 20 in non-mineral assessed valuations and a statewide average mill levy of 67 mills.
15	This estimate is based upon January 2017 CREG price and production estimates for a 1% severance tax on all minerals. No estimate of decreased production is included.
16	This figure represents an estimate of revenue generated if the Pari-Mutuel Commission was required to pay one-half of one percent of the total amount wagered attributable to historic and live pari-mutuel events to the State.
17	Proceeds are currently directed to local governments. Due to timing of the payments, the most recent fiscal year payments were \$2.6 million, though the amount could increase over time to \$4.5 million as the line of credit for start-up expenses has been fully paid.
18	The estimate reflects a 10 percent reduction in administrative costs.
19, 20	This estimate is based upon initial projections by the Wyoming Lottery Corporation. For keno the annual estimate ranges from \$1.6 million to \$2 million; for scratch tickets, the annual estimate for the transfer to the State ranges from \$3.9 million to \$4.5 million.
	Tax Reform 2000 Committee considered and recommended implementation of a Real Estate Transfer Tax. The Committee was unable to provide an estimate of anticipated revenue from such a tax due to the lack of a centralized database of sale information. At present, the State does not have such a comprehensive database.
21	
22	For comparison, a 0.26% gross receipts tax in Ohio may raise \$90 million to \$100 million, if imposed without any exemptions.
23, 24	Article 15, Section 18 of the Wyoming Constitution states, "No tax shall be imposed upon income without allowing full credit against such tax liability for all sales, use, and ad valorem taxes paid in the taxable year by the same taxpayer to any taxing authority in Wyoming." As a result, the tax rate would need to be sufficiently high to generate revenue in excess of the constitutional credits in order to generate substantial revenue. The impact of the credit would vary for each taxpayer's circumstances.

**ATTACHMENT 2: Current Sales and Use Tax Exemptions and Related Estimates of Foregone Revenue**

Excise tax exemptions	FY 19 Estimate (in millions \$)	FY 20 Estimate (in millions \$)	Citation	Statutory rationale
1 Subject sales of food for domestic consumption to all statewide sales & use tax; traditional split	28.8	28.8	W.S. 39-15-105(a)(vi)(E)	Essential human goods and services
2 Subject newspaper sales to all statewide sales & use tax; traditional split	0.5	0.5	W.S. 39-15-105(a)(viii)(D)	Economic incentive
3 Subject farm implements (machinery) to all statewide sales & use tax; traditional split	0.4	0.4	W.S. 39-15-105(a)(viii)(H)	Economic incentive
4 Subject religious & charitable institutions to all statewide sales & use tax; traditional split	0.2	0.2	W.S. 39-15-105(a)(iv)(B) & (C)	Sales to government, charitable and nonprofit organizations
5 Subject manufacturing machinery (averaged over 7 years) to all statewide sales & use tax; traditional	9.4	9.4	W.S. 39-15-105(a)(viii)(O)	Economic incentive
6 Subject repair of railroad rolling stock to all statewide sales & use tax; traditional split	0.7	0.7	W.S. 39-15-105(a)(viii)(Q)	Economic incentive
7 Subject data centers to all statewide sales & use tax; traditional split	8.7	8.7	W.S. 39-15-105(a)(viii)(S)	Economic incentive
<b>The following sales and use tax exemptions are specifically provided for in statute, though no estimate of the fiscal impact currently exist:</b>				
8 Interstate transportation of freight	NA	NA	W.S. 39-15-105(a)(ii)(A)	Protected by federal law
9 Interstate commerce railroad rolling stock, aircraft, trucks, trailers, buses	NA	NA	W.S. 39-15-105(a)(ii)(B)	Protected by federal law
10 Motor vehicle leases	NA	NA	W.S. 39-15-105(a)(ii)(C)	Protected by federal law
11 Sales to Wyoming joint apprenticeship and training programs	NA	NA	W.S. 39-15-105(a)(ii)(D)	Protected by federal law
12 Food purchased with supplemental nutrition assistance	NA	NA	W.S. 39-15-105(a)(ii)(E)	Protected by federal law
13 Sales of tangible personal property to a person engaged in business of manufacturing	NA	NA	W.S. 39-15-105(a)(iii)(A)	Property consumed in production
14 Livestock, feeds, seeds, roots bulbs, small plants and fertilizer for products to be sold	NA	NA	W.S. 39-15-105(a)(iii)(B)	Property consumed in production
15 Intrastate transportation of raw farm products to processing or manufacturing plants	NA	NA	W.S. 39-15-105(a)(iii)(C)	Property consumed in production
16 Sales of power or fuel to manufacturing, processing or agriculture	NA	NA	W.S. 39-15-105(a)(iii)(D)	Property consumed in production
17 Sales of power or fuel to a person engaged in the transportation business	NA	NA	W.S. 39-15-105(a)(iii)(E)	Property consumed in production
18 Wholesale sales	NA	NA	W.S. 39-15-105(a)(iii)(F)	Property consumed in production
19 Sales for use as boiler fuel	NA	NA	W.S. 39-15-105(a)(iii)(G)	Property consumed in production
Cost of food or meals by a food establishment without charge to an employee for consumption on				
20 premises	NA	NA	W.S. 39-15-105(a)(iii)(J)	Property consumed in production
21 Sales to the state of Wyoming or its political subdivisions	NA	NA	W.S. 39-15-105(a)(iv)(A)	Sales to government, charitable and nonprofit organizations
22 Sales to joint powers boards	NA	NA	W.S. 39-15-105(a)(iv)(D)	Sales to government, charitable and nonprofit organizations
23 Admission to county or municipal recreations facilities	NA	NA	W.S. 39-15-105(a)(iv)(E)	Sales to government, charitable and nonprofit organizations
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			W.S. 39-15-105(a)(iv)(F)	
24 under contract to the state of Wyoming or political subdivisions	NA	NA		Sales to government, charitable and nonprofit organizations
25 Sales to irrigation districts	NA	NA	W.S. 39-15-105(a)(iv)(G)	Sales to government, charitable and nonprofit organizations
26 Sales to weed and pest districts	NA	NA	W.S. 39-15-105(a)(iv)(H)	Sales to government, charitable and nonprofit organizations
27 Intrastate transit of persons services by a government, charitable or nonprofit organization	NA	NA	W.S. 39-15-105(a)(iv)(J)	Sales to government, charitable and nonprofit organizations
28 Sales of transportable homes after the tax has been once paid	NA	NA	W.S. 39-15-105(a)(v)(B)	Alternatively taxed
29 Sales of gasoline or diesel fuels otherwise taxed	NA	NA	W.S. 39-15-105(a)(v)(C)	Alternatively taxed
30 Gratuities or tips	NA	NA	W.S. 39-15-105(a)(v)(D)	Alternatively taxed
31 Ambulance and hearse transportation	NA	NA	W.S. 39-15-105(a)(vi)(A)	Essential human goods and services
32 Prescriptions, including medical devices	NA	NA	W.S. 39-15-105(a)(vi)(B)	Essential human goods and services
33 Medical or dental equipment and supplies	NA	NA	W.S. 39-15-105(a)(vi)(C)	Essential human goods and services
34 Water delivered by pipeline or truck	NA	NA	W.S. 39-15-105(a)(vi)(D)	Essential human goods and services
35 Transportation, assembly and disassembly of drilling rigs	NA	NA	W.S. 39-15-105(a)(vii)(A)	Services provided primarily to businesses
36 Financial institutions' repossession of a motor vehicle	NA	NA	W.S. 39-15-105(a)(vii)(B)	Services provided primarily to businesses
37 Interstate transportation of employees or freight and property including oil and gas by pipeline	NA	NA	W.S. 39-15-105(a)(viii)(A)	Economic incentive
Sales and services of professional engineers, geologists or similar professions, including sales price				
paid for all services to real or tangible personal property leading to building location, drilling and all			W.S. 39-15-105(a)(viii)(B)	
38 related activities that must be completed prior to setting the producing casing	NA	NA		Economic incentive
39 School annuals	NA	NA	W.S. 39-15-105(a)(viii)(C)	Economic incentive
40 Carbon dioxide and other gases used in tertiary production	NA	NA	W.S. 39-15-105(a)(viii)(F)	Economic incentive
41 Sales of lodging services provided by a person known to the trade and public as a guide or outfitter	NA	NA	W.S. 39-15-105(a)(viii)(G)	Economic incentive
42 Aircraft repair, remodeling or maintenance services	NA	NA	W.S. 39-15-105(a)(viii)(J)	Economic incentive
43 Sale or service of transmitting radio waves to a one-way paging unit owned or rented by a service su	NA	NA	W.S. 39-15-105(a)(viii)(K)	Economic incentive
44 Admission to K-12 event for amusement, entertainment, recreation, game or athletic event	NA	NA	W.S. 39-15-105(a)(viii)(M)	Economic incentive
45 Equipment used to generate electricity from renewable resources	NA	NA	W.S. 39-15-105(a)(viii)(N)	Economic incentive
46 Sale or lease of any aircraft used in FAA commercial operation, including repair and remodeling	NA	NA	W.S. 39-15-105(a)(viii)(P)	Economic incentive
47 Sale of equipment used to construct a new coal gasification or coal liquefaction facility	NA	NA	W.S. 39-15-105(a)(viii)(R)	Economic incentive
48 Trade-in value shall be excluded from the sales price of new personal property in one transaction	NA	NA	W.S. 39-15-105(a)(ix)(A)	Avoiding application of the sales tax more than once
Sales price paid for a motor vehicle, house trailer, trailer coach, trailer or semitrailer if purchased				
49 by a nonresident of Wyoming and the vehicle is to be removed from Wyoming within 30 days of	NA	NA	W.S. 39-15-105(a)(ix)(B)	Avoiding application of the sales tax more than once

**TOTAL Estimated, Annual Collections:**

## ATTACHMENT 3A: Sales and Use Tax Excluded Services, by Occupational Category

Excise tax exclusions on services	FY 19 Estimate (in millions \$) <sup>A</sup>	FY 20 Estimate (in millions \$) <sup>A</sup>
1 Veterinary Services	4.2	4.2
2 Landscape Counseling & Planning	0.1	0.1
3 Lawn and Garden Services	1.5	1.5
4 Beauty Shops	1.9	1.9
5 Barber Shops	0.1	0.1
6 Funeral Service & Crematories	0.9	0.9
7 Tax Return Preparation Services	0.1	0.1
8 Commercial Art and Graphic Design	0.1	0.1
9 Court Reporting Services	0.0	0.0
10 Disinfecting and Pest Control Services	0.2	0.2
11 Building Maintenance Services	1.3	1.3
12 Computer Programming Services	0.8	0.8
13 Data Processing Services	0.9	0.9
14 Business Services Not Elsewhere Classified	3.0	3.0
15 Dance Studios, Schools, & Halls	0.1	0.1
16 Bowling Centers	0.2	0.2
17 Physical Fitness Centers	0.6	0.6
18 Public Golf Courses	0.4	0.4
19 Membership Sports Clubs	0.7	0.7
20 Legal Services	4.2	4.2
21 Engineering Services	1.3	1.3
22 Architectural Services	0.4	0.4
23 Surveying Services	0.1	0.1
24 Accounting, Auditing & Bookkeeping	3.0	3.0
25 Commercial Research	0.3	0.3
26 Testing Laboratories	0.5	0.5
27 Management Services	1.1	1.1
28 Management Consulting Services	2.0	2.0
29 Facilities Support Services	0.3	0.3
30 Real Estate Agents and Managers	3.8	3.8
31 Cable & other Pay TV Services	7.3	7.3

<b>TOTAL Estimated, Annual Collections:</b>
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A Estimates are derived from May 12, 2016 submission by the Wyoming Department of Revenue on enhancing revenues through broadening the State sales tax (Appendix 7): <http://legisweb.state.wy.us/InterimCommittee/2016/03-0511APPENDIX7.PDF> The estimates are derived from conversion of services taxes in South Dakota, based upon relative populations. In the event the Legislature pursues any of the above options, more precise estimates may be developed through the fiscal impact statement process.



# Professional Services

Originally issued December 5, 2012/Revised August 1, 2014  
Wyoming Department of Revenue

In general, Wyoming currently has no statutory provisions to impose sales or use taxes on professional services provided that they do not include any sales of or repairs, alterations or improvements to tangible personal property in the scope of those services and/or certain oil and gas services. [W.S. 39-15-101(a)(ix),(xviii), W.S. 39-15-103(a)(i)(J),(K)] Professional services are non-enumerated in our statutes, meaning we do not have an imposition statute which imposes sales tax. In addition, as the services are not taxable, we do typically do not require professional persons to license for sales/use tax purposes.

## Types of professional services

Types of professional services performed include but are not limited to:

- Accountants
- Engineers
- Doctors
- Technical Writers
- Attorneys
- Tax Preparers
- Lawyers
- Consultants\*
- Teachers/Trainers/Instructors\*
- Inspectors\*

In addition, professional services that involve the creation of concepts are non-taxable. This includes the production of tangible personal property, i.e., blue prints, specifications, diagrams, designs, schematics, data sheets, etc. Such items are a byproduct of the creative process and are not

taxable. However, if the sales of such items occur beyond the professional/customer relationship then a retail sale occurs and is subject to Wyoming sales tax. Although professional services are not subject to sales tax, purchases of equipment, tools, and supplies purchased by the business in order to run the business are subject to sales/use tax.

## Consultants & Inspection Services

If providing consultant and/or inspection services, we strongly advise a department review to the specifics of the services performed.

While many consultant/inspection services are viewed as non-taxable professional services; others do have taxable elements within the service.

## Teachers/Trainers/Instructors

The professional services provided by a teacher, trainer and/or instructor are not subject to sales tax. In regards to training materials, if the cost of the training involves course materials, e.g., downloaded materials, manuals, etc. then no sales tax is due on the training package. If, however, the course materials are separate from any training activities, they are subject to sales tax per W.S. 39-15-103(a)(i)(A) which imposes sales tax on: "The sales price of every retail sale of tangible personal property within the state;" Furthermore, if the course materials are included in a single

package price for a training program then the materials are subject to sales/use tax when the trainer/teacher purchases them, e.g., downloaded material, CD version, and/or books. In this situation, the trainer/instructor is the end consumer/user of the materials in rendering his/her training program [WY Dept. of rev. Rules, Chap 2 Sec. 13(bb)]. As such, the trainer/instructor incurs the sales/use tax liability and then subsequently passes through the costs, including tax, as part of a training package to his/her clients.

Furthermore, if in the event professional services are provided within an oil/gas well site, we suggest you review our "Oil, Conventional Natural Gas and Coal Bed Methane Tax Publication #5" and/or contact our department for a determination. [W.S. 39-15-101(a)(xviii)] This publication can be reviewed from our website: <http://revenue.wyo.gov/>.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:  
DOR\_taxability@wyo.gov

#### Supporting Authority -

W.S. 39-15-101(a)(ix)

"Tangible personal property" means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten computer software; and includes any controlled substances as defined by W.S. 35-

7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S. 39-15-101(a)(xviii)

"Well site" means an area where production equipment is installed to store or prepare oil or gas for transportation off the well site. Production equipment includes, but is not limited to, wellheads, valves, tanks, dehydrators, heater-treaters, separators, flow lines, meters, flares, vapor recovery units and emission equipment. Except as provided in this paragraph, production equipment for purposes of defining a well site shall not include compressors, off well site gathering lines and processing facilities.

W.S. 39-15-103(a)(i)(A)

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price of every retail sale of tangible personal property within the state;

W.S. 39-15-103(a)(i)(J)

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

The sales price paid for services performed for the repair, alteration or improvement of tangible personal property;

W.S. 39-15-103(a)(i)(K)

there is levied an excise tax upon:

The sales price paid for all services and tangible personal property used in rendering services to real or tangible personal property within an oil or gas well site beginning with and including the setting and cementing of production casing, or if production casing is not set as in the case of an open hole completion, after the completion of the underreaming or the attainment of total depth of the oil or gas well and



continuing with all activities sequentially required for the production of any oil or gas well regardless of the chronological occurrence of the activity. All services required during the entire productive life of the well, including recompletion, all the way through abandonment shall be subject to this subparagraph. The provisions of W.S. 39-15-301 through 39-15-311 and W.S. 39-16-304 through 39-16-311 shall not apply to this subparagraph;

*WY Dept of Rev Rules, Chap 2, Sec 13(bb)*

Purchases by Businesses. Purchases by businesses and professional persons of equipment, tools and supplies for use in conducting their businesses or professions shall be subject to the sales or use tax.



# Towing Services

Issued May 5, 2017  
Wyoming Department of Revenue

There is often confusion with regard to towing services, a towing only service versus other work performed in conjunction with the tow service. This bulletin addresses the taxability of both situations.

## Towing

A tow service involves a vehicle that is being moved from one location to another, without any other service performed. Wyoming administers towing services to be synonymous with the transportation of freight and both intrastate and interstate transportation of freight are exempt from Wyoming sales tax. Therefore, when a service provider tows a vehicle for his customer, and provides no other service to the vehicle, the invoice to the customer would not include a charge for sales tax.

## Other Services

Services which repair, alter, and/or improve tangible personal property are subject to sales tax. For example, jump starts, lock outs, tire changes, adding water to a radiator, etc., are all taxable services. The sales price of the service (amount subject to sales tax) includes all materials, parts, and labor the service provider used in the repair.

## Examples

### *Nontaxable Example*

A customer calls for a tow service due to a bad transmission. The tow company goes to the customer's location and tows the

vehicle; therefore, the tow charge is not subject to sales tax as Wyoming does not tax transportation of freight.

### *Taxable Example*

A customer calls the tow company due to a flat tire. The service provider changes the flat tire at the customer's location instead of towing the vehicle to a repair shop. In this instance, the service provider is providing a taxable service. His labor and materials are taxable to the customer.

### *Taxable and Nontaxable Elements; Example*

A customer calls the tow company to jump start his vehicle. The tow service goes to the customer's location and jump starts the vehicle; however, the vehicle still does not start. The customer then opts to have the vehicle towed to the repair shop. The charge for the jump start is subject to sales tax while the charge for the tow is not subject to sales tax when the charges are separately stated on the invoice provided to the customer.

## Storage and other fees

Vehicle storage fees are not subject to sales tax since Wyoming does not impose tax on the rental or lease of real property.

Fees which are associated with a nontaxable tow service, such as hook-up, off-load, rough road, after hours, and trailer fees are not subject to sales tax. Fees associated with a taxable repair service, such as, a

minimum fee, after hours fee, waste disposal fee, or shop fees are subject to sales tax.

Regarding wreck and recovery services, the tow portion as well as the charge to load and clean-up cargo from a roadway are not subject to sales tax. Wyoming does not impose tax on transportation of freight or labor which affects real property.

### Billing & Sourcing

Wyoming law requires that when taxable charges (i.e., vehicle repair) and non-taxable charges (i.e., towing) are included on the same invoice, the charges must be separate and distinguishable or the entire invoice is subject to Wyoming sales tax. For example, a service provider would need to state the tow service and amount associated with the service separately from a taxable repair service charge or the entire invoice is taxable by default.

Regarding taxable services, the service provider should collect sales tax where the customer has the ability to make first use of that service after it is rendered. For instance, if the service provider changes a tire on a roadway located in Lincoln County, the service provider would charge the current sales/use tax in effect for Lincoln County. In another example, a service provider towed a vehicle from a roadside located in Laramie County to a shop located in Albany County for repair. Once repaired, the owner of the vehicle picks-up the vehicle at the garage located in Albany County. In this instance, the service provider would not charge sales tax on the tow, but the customer would owe sales tax on the repair service at the current rate for Albany County.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to:  
[DOR\\_taxability@wyo.gov](mailto:DOR_taxability@wyo.gov)

### Supporting Authority -

W.S. 39-15-101(a)(ix)

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

W.S. 39-15-103(a)(i)(A) states:

Taxable event. The following shall apply: Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(A) The sales price of every retail sale of tangible personal property within the state.

W.S. 39-15-103(a)(i)(J) states:

Taxable event. The following shall apply: Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(J) "The sales price paid for services performed for the repair, alteration or improvement of tangible personal property;"

W.S. 39-15-101(a)(v) states:

"Real property" means land and appurtenances, including structures affixed

thereto. An article shall be considered real property if:

- (A) It is buried or embedded; or
- (B) It is physically or constructively annexed to the real property; and
- (C) It is adapted to the use of the real property; and
- (D) Considering the purpose for which the annexation was made, one can reasonably infer that it was the intent of the annexing party to make the article a permanent part of the real property.

W.S. 39-15-105(a)(ii)(A)

For the purpose of exempting sales of services and tangible personal property protected by federal law, the following are exempt: Interstate transportation of freight or passengers;

W.S. 39-15-105(a)(viii)(A)

For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt: Intrastate transportation of:

- (I) Employees to or from work when paid or contracted for by the employee or employer;
- (II) Freight and property including oil and gas by pipeline.

W.S. 39-15-101(a)(viii) states:

"Sales price":

(A) Shall apply to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property and services for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (I) The seller's cost of property sold;
- (II) The cost of materials used, labor or service cost, interest, losses, all costs of

transportation to the seller and any other expense of the seller;

- (III) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges;
  - (IV) Delivery charges;
  - (V) Installation charges;
  - (VI) Repealed by Laws 2007, Ch. 10, 2.
- (B) Shall not include:

- (I) Discounts, including cash, terms or coupons which are not reimbursed by a third party, which are allowed by a seller and taken by a purchaser on a sale;
- (II) Interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separate stated on the invoice, bill of sale or similar document given to the purchaser; and
- (III) Any tax legally imposed directly on the consumer which is separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

- (I) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to the price reduction or discount on the sale;
- (II) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (III) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (IV) One (1) of the following criteria is met:

- (1) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon certificate or documentation is authorized, distributed or

granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(2) The purchaser identifies himself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron shall not constitute membership in such a group; or

(3) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

W.S. 39-15-104(f)(i) sources retail sale (excluding lease or rental) 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.

*WY Dept. of Rev Rules Chap 2, Sec 5(i)*

Transportation or freight charges are not taxable and shall not be included within the sales price of any retail sale. Transportation or freight charges in a wholesale transaction

are a component of cost of goods sold, like markup and overhead, and become part of the sales price paid by the consumer. The exemption availed to the wholesaler in the wholesale transaction cannot be passed through to the consumer in a retail transaction.

*WY Dept. of Rev Rules, Chap 2, Sec 10(c)*

Charges for labor to alter, improve, or construct real property are not subject to sales/use tax except where imposed by statute under W.S. 39-15-103(a)(i)(K).

*WY Dept. of Rev Rules, Chap 2, Sec 7(a)*

General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.

*WY Dept. of Rev Rules Chap 2, Sec. 13(dd)*

Repairs, Alterations and Improvements. Labor or service charges for the repair, alteration or improvement of tangible personal property, as well as charges for materials, supplies and fabrication used in rendering such services shall be subject to the sales tax. The purchase of materials, supplies and fabrication which become an ingredient of the repair, alteration or improvement of tangible personal property shall be considered wholesale sales as defined by W.S. 39-15-101(a)(xvi). Labor or service charges for repairs, alterations or improvements of real property are not subject to the sales tax.

## ATTACHMENT 4: Major Other Sources (Fees) Deposited to the General Fund

Excise tax exemptions	FY 19 Estimate (in millions \$) <sup>A</sup>	FY 20 Estimate (in millions \$) <sup>A</sup>	Implementation to Revenue Collection Timing	Comments
1 Corporate Tax - Domestic	13.6	13.6	following fiscal year	Current license tax is based upon the sum of a corporate or LLC capital, property and assets reported, of fifty dollars (\$50.00) or \$0.0002 on the reported assets, whichever is greater. (W.S. 17-16-1630(a))
2 Insurance Premium Tax	17.5	17.5	following fiscal year	Current tax rate is 0.75% of premium income; the tax rate for annuity considerations is 1% (W.S. 26-4-103(b)(i)). However, the vast majority of companies operating in Wyoming are not domiciled in Wyoming and subject to the taxes of the insurer's state or country pursuant to the retaliatory provisions in W.S. 26-3-130. As a result, increasing the premium tax will not generate a proportional increase in revenue.
3 Insurance Agent License	6.8	6.8	following fiscal year	Schedule of fees in W.S. 26-4-101(a)
4 Liquor Sales - Profit Remitted	14.5	14.5	following fiscal year	With an exception for overstocked items, Wyoming liquor division makes sales at prices sufficient to return the cost of merchandise and ll expenses of operation together with a profit, not to exceed 17.6% above the cost of the merchandise. (W.S. 12-2-303)

**TOTAL Estimated, Annual Collections:**

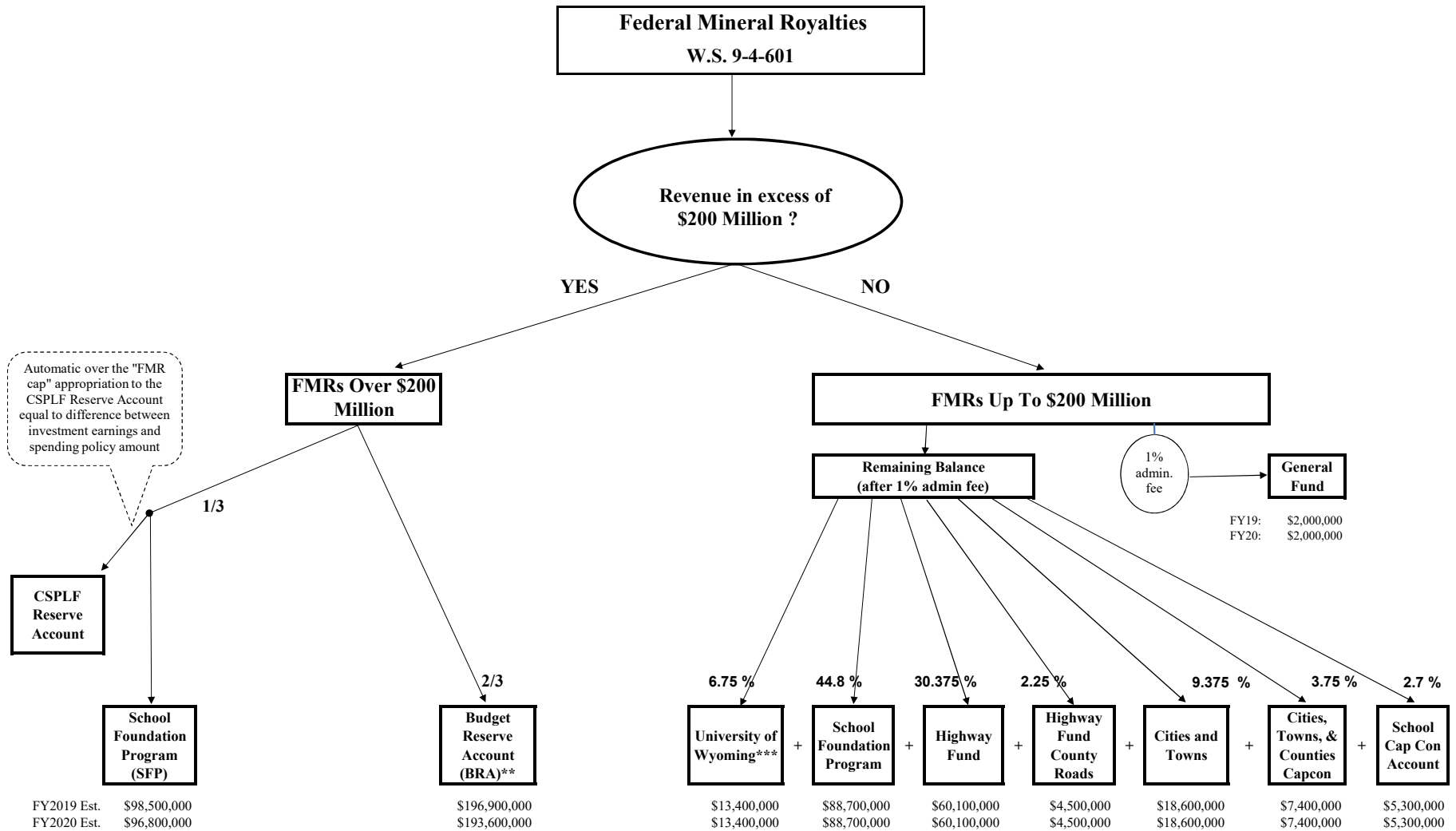
### Explanatory Notes

1, 3, 4 These estimates are derived from recent collections.

2 The estimate for increasing this fee is based upon remittances from four (4) Wyoming domestic insurance companies only.

A Estimates are derived from May 12, 2016 submission by the Wyoming Department of Revenue on enhancing revenues through broadening the State sales tax (Appendix 7): <http://legisweb.state.wy.us/InterimCommittee/2016/03-0511APPENDIX7.PDF> The estimates are derived from conversion of services taxes in South Dakota, based upon relative populations. In the event the Legislature pursues any of the above options, more precise estimates may be developed through the fiscal impact statement process.

# ATTACHMENT 5: Federal Mineral Royalty (FMR) Distribution, FY2019, FY2020

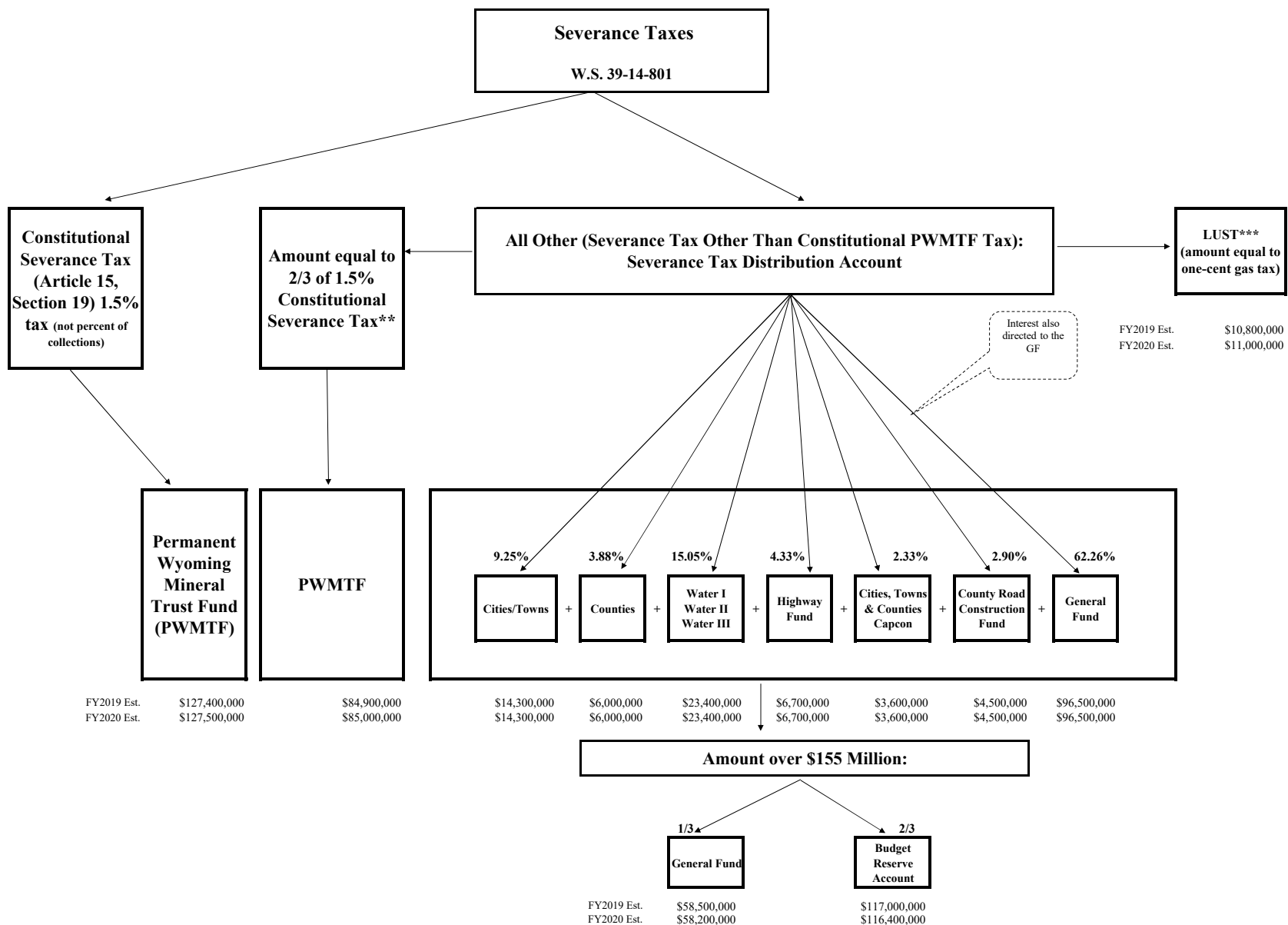


**Notes:**

- \* Current statute for distributions for FY 2019 and thereafter.
- \*\* From amounts directed to the Budget Reserve Account, up to \$18,000,000 annually may be used to service revenue bond payments pursuant to 9-4-1003(d).
- \*\*\* This revenue stream is either expended on or pledged against payment of principal and interest to finance or refinance projects authorized by the legislature or for maintenance.
- \*\*\*\* Totals for FY2019 = \$495,400,000; FY2020 = \$490,400,000



# ATTACHMENT 6: Severance Tax Distribution, FY2019-2020



**Notes:**  
 \* Current statute for distributions for FY 2019 and thereafter.  
 \*\* The "2/3 equivalent" of the Constitutional Severance Tax diversion references severance tax amounts received from surface and underground coal (39-14-104(a)(i) and (b)(i)) and from oil and gas (35-14-204(a)(i)).  
 \*\*\* LUST-Leaking Underground Storage Tank Program.  
 \*\*\*\* Totals for FY2019 = \$553,600,000; FY2020 = \$553,100,000