

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

National corporate tax recapture.

Sponsored by: Representative(s) Obermueller

A BILL

for

1 AN ACT relating to taxation; creating the National  
2 Corporate Tax Recapture Act; imposing an income tax on  
3 businesses as specified; providing for administration of  
4 the tax; providing penalties; authorizing rulemaking; and  
5 providing for effective dates; 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. 39-12-102 through 39-12-111 are  
11 created to read:

12

13 **39-12-102. Administration; confidentiality.**

1

2 (a) This chapter is known and may be cited as the  
3 "National Corporate Tax Recapture Act".

4

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

10

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

17

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

22

1           (e) No state employee or other person who by his  
2 employment has knowledge of the business affairs of any  
3 person filing or required to file any tax returns under  
4 this chapter shall make known their contents in any manner  
5 or permit any person to have access to any returns or  
6 information contained therein except as provided by law.  
7 The department may also allow the following:

8

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

13

14           (ii) The publication of statistics formatted to  
15 prevent the identification of particular returns or  
16 reports;

17

18           (iii) The inspection by the attorney general of  
19 the state of the report or return of any person who brings  
20 an action against the state relating to the report or  
21 return, or against whom an action is contemplated or has  
22 been instituted;

23

1           (iv) The introduction into evidence of any  
2 report or return or information therefrom in any  
3 administrative or court proceeding relating to the report  
4 or return and to which the person making the report or  
5 return is a party;

6

7           (v) The furnishing of any information to the  
8 United States government and its territories, the District  
9 of Columbia, any state allowing similar privileges to the  
10 department or to the multistate tax commission for relay to  
11 tax officials of cooperating states. Information furnished  
12 shall be only for tax purposes;

13

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

16

17           (vii) The sharing of information with local  
18 governmental entities and other state agencies, provided a  
19 written request is made to the department and the  
20 governmental entity or agency demonstrates sufficient  
21 reason to obtain the information for official business  
22 purposes. Information furnished shall be used for official  
23 business purposes only.

1

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

5

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

8

9 (ii) Make any false return or statement;

10

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

12

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

15

16 (v) Knowingly attest by signature to a false or  
17 fraudulent return.

18

19 **39-12-103. Imposition.**

20

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

1

2 (b) Apportionment of taxable income shall be as  
3 follows:

4

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

8

9 (ii) A taxpayer having income from activity that  
10 is taxable both within and without Wyoming shall apportion  
11 and allocate the taxable income as provided in this  
12 section;

13

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

15

16 (A) In that other state, the income is  
17 subject to a net income tax, a franchise tax measured by  
18 net income, a franchise tax for the privilege of doing  
19 business, a corporate stock tax or any similar tax; or

20

21 (B) That other state has jurisdiction to  
22 subject the income to a net income tax regardless of

1 whether, in fact, the state subjects the taxpayer to such  
2 tax.

3

4 (iv) Taxable business income shall be  
5 apportioned to Wyoming by multiplying the income by a  
6 fraction, the numerator of which is the property factor as  
7 provided under subsection (c) of this section plus the  
8 payroll factor under subsection (d) of this section plus  
9 the sales factor under subsection (e) of this section, and  
10 the denominator of which is three (3).

11

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

14

15 (i) The property factor is a fraction, the  
16 numerator of which is the average value of the taxpayer's  
17 real and tangible personal property owned or rented and  
18 used in this state during the tax period and the  
19 denominator of which is the average value of all the  
20 taxpayer's real and tangible personal property owned or  
21 rented and used during the tax period;

22

1           (ii) Property owned by the taxpayer shall be  
2 valued at its original cost. Property rented by the  
3 taxpayer is valued at eight (8) times the net annual rental  
4 rate. As used in this paragraph, "net annual rental rate"  
5 means the annual rental rate paid by the taxpayer less any  
6 annual rental rate received by the taxpayer from  
7 subrentals;

8  
9           (iii) The average value of property shall be  
10 determined by averaging the values at the beginning and  
11 ending of the tax period but the tax administrator may  
12 require the averaging of monthly values during the tax  
13 period if reasonably required to reflect properly the  
14 average value of the taxpayer's property.

15  
16           (d) The payroll factor shall be calculated as  
17 follows:

18  
19           (i) The payroll factor is a fraction, the  
20 numerator of which is the total amount paid in this state  
21 during the tax period by the taxpayer for compensation and  
22 the denominator of which is the total compensation paid  
23 everywhere during the tax period;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

(ii) Compensation is paid in this state if:

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

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

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

(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.

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

2

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

8

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

11

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

15

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

20

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

1

2 (A) In this state; or

3

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

8

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

14

15 **39-12-104. Taxation rate.**

16

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

21

22 **39-12-105. Exemptions.**

23

1 There are no specific applicable provisions for exemptions  
2 for this chapter.

3

4 **39-12-106. Licenses and permits.**

5

6 There are no specific applicable provisions for licenses  
7 and permits for this chapter.

8

9 **39-12-107. Compliance; collection procedures.**

10

11 (a) Returns and reports. Except as otherwise provided  
12 in this subsection, each taxpayer shall report their total  
13 taxable income and the portion of the income that is  
14 apportioned to Wyoming as provided in W.S. 39-12-103 to the  
15 department not more than thirty (30) days after the date  
16 the taxpayer is required to file a federal income tax  
17 return under the provisions of the Internal Revenue Code  
18 including any extensions authorized for filing of the  
19 federal income tax return.

20

21 (b) Payment. Any taxpayer owing a tax under this  
22 chapter shall pay the tax once each year at the same time

1 the report under subsection (a) is provided. The tax shall  
2 be collected by the department.

3

4 (c) Timelines. There are no specific applicable  
5 provisions for timelines for this chapter.

6

7 **39-12-108. Enforcement.**

8

9 (a) Audits. To assess credits and deficiencies  
10 against taxpayers, the department is authorized to rely on  
11 final audit findings made by the department of audit,  
12 taxpayer information or information reported by the  
13 taxpayer to the internal revenue service or to the  
14 department of revenue subject to the following conditions:

15

16 (i) Audits shall commence when the taxpayer  
17 receives written notice of the engagement of the audit. The  
18 issuance of the written notice of the audit shall toll the  
19 statute of limitations provided in W.S. 39-12-110 for the  
20 audit period specified in this subsection;

21

22 (ii) After receiving notice of an audit under  
23 this subsection, the taxpayer shall preserve all records

1 and books necessary to determine the amount of tax due for  
2 the time period that is being audited;

3

4 (iii) Except as otherwise provided in this  
5 paragraph, audits shall encompass a time period not to  
6 exceed three (3) years immediately preceding the reporting  
7 period when the audit is engaged. The three (3) year limit  
8 shall not apply to an audit if there is evidence of gross  
9 negligence or intent to evade by the taxpayer in reporting  
10 or remitting taxes for the reporting period being audited;

11

12 (iv) If a taxpayer is not willing or able to  
13 produce adequate records to demonstrate taxes due, the  
14 department or the department of audit may project taxes  
15 based on the best information available;

16

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

21

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

1

2 (b) Interest. The following shall apply:

3

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

17

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

21

22 (c) Penalties. The following shall apply:

23

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

9

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

17

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

20

21           (iv) Any person who violates any provision of  
22 this chapter for which there are no specific penalties is  
23 guilty of a misdemeanor and upon conviction shall be fined



1 not more than one thousand dollars (\$1,000.00). Each  
2 violation is a separate offense;

3

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

13

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

17

18 (d) Liens. The following shall apply:

19

20 (i) Any tax due under this chapter constitutes a  
21 debt to the state from the taxpayer, and is a lien from the  
22 date the tax is due on all the real and personal property  
23 of the taxpayer. Notice of the lien shall be filed with the

1 county clerk of the county in which the taxpayer resides or  
2 conducts business. The lien does not have preference over  
3 preexisting secured indebtedness but shall have priority  
4 from and after the date of filing or recording. The  
5 department shall cancel lien statements within sixty (60)  
6 days after taxes due are paid or collected. No other action  
7 by the department is required to perfect a lien under this  
8 paragraph regardless of the type of property involved.

9

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

11

12 (i) The tax due together with interest,  
13 penalties and costs may be collected by appropriate  
14 judicial proceedings or the department, with board  
15 approval, or its representative, may seize and sell at  
16 public auction so much of the taxpayer's property as will  
17 pay all the tax then due plus interest, penalties and  
18 costs. Notice of the auction must be published for four (4)  
19 weeks in a newspaper published in the resident county of  
20 the taxpayer or the county in which the majority of the  
21 property is located.

22

23 **39-12-109. Taxpayer remedies.**

1

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

15

16           (b) Appeals. Except as provided by this subsection,  
17 no person aggrieved by the payment of the taxes, penalty  
18 and interest imposed by this chapter may appeal a decision  
19 of the state board of equalization until all taxes, penalty  
20 and interest have been paid. For good cause shown, the  
21 court to which the decision of the board is appealed may  
22 stay enforcement of the tax during the pendency of the

1 appeal. The court's stay of enforcement shall not affect  
2 the accruing of interest upon any assessment and levy.

3

4 (c) Refunds. The following shall apply:

5

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

18

19 (d) Credits. The following shall apply:

20

21 (i) Each taxpayer is entitled to a credit  
22 against tax liability under this chapter for all excise,  
23 sales, use, severance and ad valorem taxes paid in the

1 taxable year by the same taxpayer to any taxing authority  
2 in Wyoming. No credit shall be allowed for any tax  
3 collected or remitted by the taxpayer on behalf of another  
4 person including property taxes paid by the taxpayer on  
5 property that is not owned by the taxpayer. The taxpayer  
6 shall report the credit to the department on the return  
7 filed under W.S. 39-12-107. The department may require  
8 supporting documentation on the credit claimed under this  
9 paragraph. In no case shall any refund be due or payable if  
10 the amount of the credit claimed by any taxpayer under this  
11 paragraph exceeds the amount of tax due under this chapter.  
12 False claims are punishable as provided by W.S. 6-5-303;

13

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

18

19 (e) Redemption. There are no specific applicable  
20 provisions for redemption for this chapter.

21

22 (f) Escrow. There are no specific applicable  
23 provisions for escrow for this chapter.

1

2           **39-12-110. Statute of limitations.**

3

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

9

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

20

21           **39-12-111. Distribution.**

22

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

18

19 (b) As used in this chapter:

20

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

23

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

7  
8           (iii) "Taxpayer" means any person who has  
9 taxable income earned in Wyoming and who files or is  
10 required to file federal form 1120 with the internal  
11 revenue service if the corporation or the affiliated group  
12 as defined in 26 U.S.C. § 1504 has more than one hundred  
13 (100) shareholders. For purposes of this paragraph, an  
14 employee stock ownership plan shall count as one (1)  
15 shareholder regardless of the number of employees in the  
16 plan. "Taxpayer" shall not include any person who makes an  
17 election as an unincorporated entity and shall not include  
18 a limited liability company that makes an election to file  
19 taxes on federal form 1120 to the internal revenue service  
20 regardless of the number of members of the limited  
21 liability company.

22



1           **Section 3.** The department of revenue shall adopt  
2 rules under W.S. 39-11-102 as necessary to begin collection  
3 of the tax created by this act for tax years beginning in  
4 2021.

5

6           **Section 4.**

7

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

12

13           (b) Except as otherwise provided in subsection (a) of  
14 this section, this act is effective January 1, 2021.

15

16

(END)