National corporate tax recapture.

Sponsored by: Representative(s) Obermueller

A BILL

for

AN ACT relating to taxation; creating the National Corporate Tax Recapture Act; imposing a tax on businesses as specified; providing for administration of the tax; providing penalties; authorizing rulemaking; requiring a report; and providing for effective dates.

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

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

39-12-102. Administration; confidentiality.
(a) This chapter is known and may be cited as the "National Corporate Tax Recapture Act".

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

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

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

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

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

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

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

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

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

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

(vii) The sharing of information with local
governmental entities and other state agencies, provided a
written request is made to the department and the
governmental entity or agency demonstrates sufficient
reason to obtain the information for official business
purposes. Information furnished shall be used for official
business purposes only.
(f) The district court of the county in which violations of this subsection occur shall have jurisdiction over those violations. No person shall:

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

   (ii) Make any false return or statement;

   (iii) Evade the payment of any tax due;

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

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

39-12-103. Imposition.

(a) Taxable event. There is levied a franchise tax upon the taxable income of each taxpayer in this state as defined in W.S. 39-12-101(b)(iv).
(b) A taxpayer having income from business activity in Wyoming shall allocate and apportion the taxable income of the taxpayer as provided in this subsection for the purposes of W.S. 39-12-101(b)(iv)(F). Allocation and apportionment of taxable business income shall be as follows:

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

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

(iii) Income is taxable in another state if:

(A) In that other state, the income is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax or any similar tax; or
(B) That other state has jurisdiction to subject the income to a net income tax regardless of whether, in fact, the state subjects the taxpayer to such tax.

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

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

(i) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period;
(ii) Property owned by the taxpayer shall be valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. As used in this paragraph, "net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals;

(iii) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the director of the department of revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

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

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

(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) 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

(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) Receipts, other than receipts described in subparagraph (A) are in this state if the taxpayer's market for the sales is in this state. The taxpayer's market for sales is in this state:

(I) In the case of sale, rental, lease or license of real property, if and to the extent the property is located in this state;

(II) In the case of rental, lease or license of tangible personal property, if and to the extent the property is located in this state;

(III) In the case of sale of a service, if and to the extent the benefit of the service is received in this state;
(IV) In the case of intangible property that is rented, leased or licensed, if and to the extent the property is used in this state, provided that intangible property used in marketing a good or service to a consumer is "used in this state" if that good or service is purchased by a consumer who is in this state; and

(V) In the case of intangible property that is sold, if and to the extent the property is used in this state, provided that:

(1) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is "used in this state" if the geographic area includes all or part of this state;

(2) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as receipts from the rental, lease or licensing of the intangible property under subdivision (IV) of this subparagraph; and
(3) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the receipts factor.

(C) If the state or states of attribution under subparagraph (B) of this paragraph cannot be determined, the state or states of attribution shall be determined by the state or states in which the delivery of the service occurs.

(D) If the state of attribution cannot be determined under subparagraph (B) or (C) of this paragraph, the receipt shall be excluded from the denominator of the receipts factor.

(f) Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent they constitute nonbusiness income, shall be allocated, net of related expenses, as provided in this section.
(g) 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.

(h) If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the director of the department of revenue may require any or all of the following, if reasonable:

(i) A separate accounting of all or a part of the business activity of the taxpayer;

(ii) The exclusion of one (1) or more of the apportionment factors;

(iii) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state;
(iv) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

39-12-104. Taxation rate.

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

39-12-105. Exemptions.

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

39-12-106. Licenses and permits.

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

39-12-107. Compliance; collection procedures.
(a) Returns and reports. Except as otherwise provided in this subsection, each taxpayer shall report their total taxable income and the portion of the income that is apportioned to Wyoming as provided in W.S. 39-12-103 to the department not more than thirty (30) days after the date the taxpayer is required to file a federal income tax return under the provisions of the Internal Revenue Code including any extensions authorized for filing of the federal income tax return. The following shall apply to affiliated groups:

(i) An affiliated group of corporations may make or the director of the department of revenue may require them to make a consolidated return for the tax year in place of separate returns using the combined method of accounting. For purposes of calculating the amount of tax payable by the group under a consolidated filing, the provisions of 26 U.S.C. Section 1552 shall apply;

(ii) A corporation that is a member of an affiliated group shall file a return using the water's edge reporting method. A return under this section shall include
the following corporations that are part of an affiliated
group with the filing corporation:

(A) An affiliated corporation that is
eligible to be included in a federal consolidated return
under 26 U.S.C. Section 1501 through 1505 if the
corporation's property, payroll and sale factors in the
United States average twenty percent (20%) or more or
average under twenty percent (20%) if the corporation does
not meet the requirements of 26 U.S.C. Section 861(c);

(B) A domestic international sales
corporation as defined in 26 U.S.C. Section 992(a);

(C) A foreign sales corporation or FSC as
defined in 26 U.S.C. Section 922(a);

(D) A corporation, regardless of the place
where the corporation was incorporated, if the
corporation's property, payroll and sales factors in the
United States average twenty percent (20%) or more.

(iii) As used in this section:
(A) "Affiliated corporation" means a member of an affiliated group to which the taxpayer filing a return under this section belongs;

(B) "Affiliated group" means a group of two or more corporations in which fifty percent (50%) or more of the voting stock of each member of the group is directly or indirectly owned by one (1) or more corporate or noncorporate owners or by one (1) or more of the members of the group;

(C) "Foreign corporation" means a corporation created or organized outside of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a possession of the United States;

(D) "Water's edge reporting method" means a reporting method in which the only corporations besides the taxpayer that may be included in the return are corporations listed in paragraph (a)(ii) of this section.
(b) Payment. Any taxpayer owing a tax under this chapter shall pay the tax once each year at the same time the report under subsection (a) is provided. The tax shall be collected by the department.

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

39-12-108. Enforcement.

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

(i) Audits shall commence when the taxpayer receives written notice of the engagement of the audit. The issuance of the written notice of the audit shall toll the statute of limitations provided in W.S. 39-12-110 for the audit period specified in this subsection;
(ii) After receiving notice of an audit under this subsection, the taxpayer shall preserve all records and books necessary to determine the amount of tax due for the time period that is being audited;

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

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

(v) The department of audit may contract with or employ auditors or other technical assistance necessary to determine whether the taxes imposed by this chapter have been properly reported and paid;
(vi) Audits under this subsection are subject to the authority and procedures provided in W.S. 9-2-2003.

(b) Interest. The following shall apply:

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

(ii) The department may credit or waive interest imposed by this subsection as part of a settlement or for any other good cause.
(c) Penalties. The following shall apply:

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

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

(iii) Any person who files a false or fraudulent return is subject to the provisions of W.S. 6-5-303;
(iv) Any person who violates any provision of this chapter for which there are no specific penalties is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars ($1,000.00). Each violation is a separate offense;

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

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

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

(e) Tax sales. The following shall apply:

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

39-12-109. Taxpayer remedies.

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

(b) Appeals. Except as provided by this subsection,
no person aggrieved by the payment of the taxes, penalty
and interest imposed by this chapter may appeal a decision
of the state board of equalization until all taxes, penalty
and interest have been paid. For good cause shown, the court to which the decision of the board is appealed may stay enforcement of the tax during the pendency of the appeal. The court's stay of enforcement shall not affect the accruing of interest upon any assessment and levy.

(c) Refunds. The following shall apply:

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

(d) Credits. The following shall apply:
(i) Each taxpayer is entitled to a credit against tax liability under this chapter for all excise, sales, use, severance and ad valorem taxes paid in the tax year by the same taxpayer to any taxing authority in Wyoming. No credit shall be allowed for any tax collected or remitted by the taxpayer on behalf of another person including property taxes paid by the taxpayer on property that is not owned by the taxpayer. The taxpayer shall report the credit to the department on the return filed under W.S. 39-12-107. The department may require supporting documentation on the credit claimed under this paragraph. In no case shall any refund be due or payable if the amount of the credit claimed by any taxpayer under this paragraph exceeds the amount of tax due under this chapter. False claims are punishable as provided by W.S. 6-5-303;

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

(e) Redemption. There are no specific applicable provisions for redemption for this chapter.
(f) Escrow. There are no specific applicable provisions for escrow for this chapter.

39-12-110. Statute of limitations.

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

(b) The department may bring an action to recover any delinquent taxes, penalty or interest in any appropriate court within three (3) years following the delinquency. In the case of an assessment created by an audit, the delinquency period is deemed to start thirty (30) days after the date the assessment letter is sent. Any tax penalty and interest related to the audit assessment shall be calculated from the filing period during which the deficiency occurred. In any such action a certificate by the department is prima facie evidence of the amount due.
39-12-111. Distribution.

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

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

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

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

(b) To the extent they do not conflict with the provisions of this chapter, the terms and definitions of
the Internal Revenue Code shall apply to this chapter. As used in this chapter:

(i) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

(ii) "Nonbusiness income" means all income other than business income;

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

(iv) "Taxable income" means the federal taxable income of a taxpayer as computed under the Internal Revenue Code and reported by the taxpayer to the Internal Revenue Service on federal form 1120, adjusted as follows:
(A) Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation of taxable income on the federal tax return;

(B) Reduced by any other income included in taxable income or in the computation of taxable income which is exempt from taxation by this state because of the provisions of the Constitution of Wyoming or the Constitution of the United States;

(C) Increased by the amount of any income taxes, including income taxes of foreign countries, or franchise or privilege taxes measured by income, to the extent that the taxes were deducted to determine federal taxable income;

(D) Increased to remove any deductions taken for sales, use and ad valorem taxes paid in the tax year by the same taxpayer to any taxing authority in Wyoming;
(E) Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income;

(F) Reduced by the amount of income not allocated and apportioned to this state under the provisions of W.S. 39-12-103, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that section is not included in any adjustment made pursuant to the preceding subparagraphs of this paragraph;

(G) The total sum calculated pursuant to the preceding subparagraphs of this paragraph shall be reduced by the amount of any net operating loss that is attributable to Wyoming sources. If the net operating loss that is attributable to Wyoming sources exceeds the taxable income calculated pursuant to the preceding subparagraphs of this paragraph, the excess may be carried forward for the same time period than an identical federal net operating loss may be carried forward. If a corporation uses an apportionment formula to determine the amount of
income that is attributable to Wyoming, the corporation shall use the same formula to determine the amount of net operating loss that is attributable to Wyoming. No deduction may be taken for a carryforward when determining the amount of net operating loss that is attributable to Wyoming sources.

(v) "Taxpayer" means any person who has taxable income earned in Wyoming and who files or is required to file federal form 1120 with the internal revenue service if the corporation or the affiliated group as defined in W.S. 39-12-107(a)(iii)(B) has more than one hundred (100) shareholders. For purposes of this paragraph, an employee stock ownership plan shall count as one (1) shareholder regardless of the number of employees in the plan. "Taxpayer" shall not include any person who makes an election as an unincorporated entity and shall not include a limited liability company that makes an election to file taxes on federal form 1120 to the internal revenue service regardless of the number of members of the limited liability company.
Section 3. The department of revenue shall adopt rules under W.S. 39-11-102 as necessary to begin collection of the tax created by this act for tax years beginning in 2021.

Section 4. The department of revenue shall investigate the advisability of Wyoming becoming a member state of the multistate tax commission and the advisability of adopting all or a portion of the multistate tax compact. The investigation shall include a determination of what statutory changes would be required for Wyoming to become a member of the multistate tax commission and any other actions that would be necessary for membership. The department shall report the results of the investigation under this section to the joint revenue interim committee not later than September 1, 2020.

Section 5.

(a) Sections 3 through 5 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.
(b) Except as otherwise provided in subsection (a) of this section, this act is effective January 1, 2021.

(END)