

Chapter 147

UNIFORM SALES & USE TAX ADMINISTRATION ACT

Original House Bill No. 259

AN ACT relating to taxation and revenue; providing for the Uniform Sales and Use Tax Administration Act as specified; providing authorization to enter into an agreement for the administration and enforcement of sales and use tax collections as specified; amending and conforming definitions; and providing for effective dates.

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

Section 1. W.S. 39-15-401 through 39-15-408 are created to read:

ARTICLE 4

UNIFORM SALES AND USE TAX ADMINISTRATION ACT

39-15-401. Title.

This act shall be known and may be cited as the "Uniform Sales and Use Tax Administration Act."

39-15-402. Definitions.

(a) As used in this article:

(i) "Agreement" means the streamlined sales and use tax agreement;

(ii) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction;

(iii) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions;

(iv) "Department" means the department of revenue;

(v) "Director" means the director of the department of revenue;

(vi) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity;

(vii) "Sales tax" means the tax levied under W.S. 39-15-101 through 39-15-311;

(viii) "Seller" means any person making sales, leases, or rentals of personal property or services;

(ix) "State" means any state of the United States and includes the District of Columbia;

(x) "Use tax" means the tax levied under W.S. 39-16-101 through 39-16-311.

39-15-403. Authority to enter agreement.

(a) The department of revenue is authorized and directed to enter into the streamlined sales and use tax agreement with one (1) or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

(b) The department of revenue is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this section include, but are not limited to, the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(c) The director of the department or the director's designee is authorized to represent this state before the other states that are signatories to the agreement.

39-15-404. Relationship to state law.

No provision of the agreement authorized by this article in whole or part shall invalidate or amend any provision of the law of this state. Adoption of the agreement by this state shall not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at or after membership of this state in the agreement, shall be by action of the legislature.

39-15-405. Agreement requirements.

(a) The department of revenue shall not enter into the streamlined sales and use tax agreement unless the agreement requires that as a condition of participation each state shall abide by the following requirements:

(i) Uniform state rate. The agreement shall set restrictions to achieve over time more uniform state rates through the following:

- (A) Limiting the number of state rates;
- (B) Limiting the application of maximums on the amount of state tax that is due on a transaction;
- (C) Limiting the application of thresholds on the application of state tax.

(ii) Uniform standards. The agreement shall establish uniform standards for the following:

- (A) The sourcing of transactions to taxing jurisdictions;
- (B) The administration of exempt sales;
- (C) The allowances a seller can take for bad debts;
- (D) Sales and use tax returns and remittances.

(iii) Uniform definitions. The agreement shall require states to develop and adopt uniform definitions of sales and use tax terms. The definitions shall enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions;

(iv) Central registration. The agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states;

(v) No nexus attribution. The agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax;

(vi) Local sales and use taxes. The agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(A) Restricting and eliminating variances between the state and local tax bases;

(B) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting the taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes;

(D) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(vii) Monetary allowances. The agreement shall outline any monetary allowances that are to be provided by the states to sellers or certified service providers;

(viii) State compliance. The agreement shall require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(ix) Consumer privacy. The agreement shall require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information;

(x) Advisory councils. The agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

39-15-406. Cooperating sovereigns.

The agreement authorized by this article is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

39-15-407. Limited binding and beneficial effect.

(a) The agreement authorized by this act shall bind and inure only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a) of this section, no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, shall be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

39-15-408. Seller and third party liability.

(a) A certified service provider shall be deemed the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider shall be liable for any sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

(b) A seller that contracts with a certified service provider shall not be liable to the state for sales or use tax due on any transaction processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller shall not be subject to any audit on the transaction processed by the certified service provider. A seller shall be subject to audit for any transaction not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(c) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system shall remain responsible and is liable to the state for reporting and remitting tax.

(d) A seller that has a proprietary system for determining the amount of tax due on a transaction and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Section 2. W.S. 39-15-101(a)(vi), (viii) and by creating a new paragraph (xvii), 39-15-104 by creating a new subsection (f), 39-15-105(a) by creating a new paragraph (ix), 39-15-106(a), 39-15-207, 39-16-101(a) by creating a new paragraph (xii), 39-16-104 by creating a new subsection (e), 39-16-105(a) by creating a new paragraph (ix), 39-16-106(a) and 39-16-207 are amended to read:

39-15-101. Definitions.

(a) As used in this article:

(vi) "Retail sale" means ~~the sale of tangible personal property to a person for use and not for subsequent resale any sale, lease or rental for any purpose other than for resale, sublease or subrent;~~

(viii) "Sales price": ~~means the consideration paid by the purchaser of tangible personal property excluding the actual trade-in value allowed on tangible personal property and manufacturer rebates for motor vehicles exchanged at the time of transaction, admissions or services which are subject to taxation as provided by this article and excluding any taxes imposed by the federal government or this article;~~

(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) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(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 separately 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.

(xvii) "Delivery charge" means a charge by the seller for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, handling, postage, crating and packing.

39-15-104. Taxation rate.

(f) The tax rate imposed upon a transaction subject to the Uniform Sales and Use Tax Administration Act shall be consistent with the uniform sourcing rule provided in the streamlined sales and use tax agreement adopted pursuant to that act, W.S. 39-15-401 et seq. and shall be consistent with state law.

39-15-105. Exemptions.

(a) The following sales or leases are exempt from the excise tax imposed by this article:

(ix) For the purpose of avoiding application of the sales tax more than once on the same article of tangible property for the same taxpayer:

(A) The trade-in value of tangible personal property shall be excluded from the sales price of new tangible personal property when trade-in and purchase occur in one (1) transaction.

39-15-106. Licenses; permits.

(a) Every vendor shall obtain from the department a sales tax license to conduct business in the state. Any out-of-state vendor not otherwise subject to this article may voluntarily apply for a license from the department and if licensed, shall collect and remit the state sales tax imposed by W.S. 39-15-103. The license shall be granted only upon application stating the name and address of the applicant, the character of the business in which the applicant proposes to engage, the location of the proposed business and other information as the department may require. Effective July 1, 1997, a license fee of sixty dollars (\$60.00) shall be required from each new vendor, except for any remote vendor who has no requirement to register in this state, and who is using one (1) of the technology models pursuant to W.S. 39-15-401, et seq. Failure of a vendor to timely file any return may result in forfeiture of the license granted under this section. The department shall charge sixty dollars (\$60.00) for reinstatement of any forfeited license.

39-15-207. Compliance; collection procedures.

(a) Returns, reports and preservation of records. There are no specific applicable provisions for ~~compliance and collection procedures~~ returns, reports and preservation of records for this article.

(b) Payment. There are no specific applicable provisions for payment for this article.

(c) Timelines. Local tax rates and boundary changes for purposes of this article shall be effective on the first day of a calendar quarter after sixty (60) days notice has been given to a vendor. In the case of a vendor selling from a printed catalog, the new tax rate shall take effect on the first day of the calendar quarter following one hundred twenty (120) days notice provided to the vendor.

39-16-101. Definitions.

(a) As used in this article:

(xii) "Purchase price" means "sales price" as defined under W.S. 39-15-101.

39-16-104. Taxation rate.

(e) The tax rate imposed upon a transaction subject to the Uniform Sales and Use Tax Administration Act shall be consistent with the uniform sourcing rule provided in the streamlined sales and use tax agreement adopted pursuant to that act, W.S. 39-15-401 et seq. and shall be consistent with state law.

39-16-105. Exemptions.

(a) The following purchases or leases are exempt from the excise tax imposed by this article:

(ix) For the purpose of avoiding application of the use tax more than once on the same article of tangible property for the same taxpayer:

(A) The trade-in value of tangible personal property shall be excluded from the sales price of new tangible personal property when trade-in and purchase occur in one (1) transaction.

39-16-106. Licenses; permits.

(a) Every vendor shall register with the department of revenue, giving the name and address of all agents operating in the state and the location of all places of business together with other information as required by the department. Effective July 1, 1997, a license fee of sixty dollars (\$60.00) shall be required from each new vendor, except for any remote vendor who has no requirement to register in this state, and who is using one (1) of the technology models pursuant to W.S. 39-15-401, et seq. Failure of a vendor to timely file any return may result in forfeiture of the license granted under this section. The department shall charge sixty dollars (\$60.00) for reinstatement of any forfeited license. Any out-of-state vendor not otherwise subject to this article may voluntarily register with the department and if registered, shall collect and remit the state use tax imposed by W.S. 39-16-104.

39-16-207. Compliance; collection procedures.

(a) Returns, reports and preservation of records. There are no specific applicable provisions for ~~compliance and collection procedures~~ returns, reports and preservation of records for this article.

(b) Payment. There are no specific applicable provisions for payment for this article.

(c) Timelines. Local tax rates and boundary changes for purposes of this article shall be effective on the first day of a calendar quarter after sixty (60) days notice has been given to a vendor. In the case of a vendor selling from a printed catalog, the new tax rate shall take effect on the first day of the calendar quarter following one hundred twenty (120) days notice provided to the vendor.

Section 3. W.S. 39-15-109(d)(ii) is repealed.

Section 4. The Wyoming legislature finds that this state should enter into an agreement with one (1) or more other states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

Section 5.

(a) Sections 1 and 4 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) The balance of this act is effective July 1, 2002.

Approved March 1, 2001.