

HOUSE BILL NO. HB0233

Income tax.

Sponsored by: Representative(s) Connolly and Senator(s) Rothfuss

A BILL

for

1 AN ACT relating to income tax; imposing a tax on income as
2 specified; providing for administration of the tax; providing
3 applicability; and providing for an effective date.

4

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

6

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

9

10 **39-12-102. Administration; confidentiality.**

11

12 (a) This chapter is known and may be cited as the
13 "Wyoming Income Tax Act".

14

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

6

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

13

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

18

19 (e) No state employee or other person who by his
20 employment has knowledge of the business affairs of any person
21 filing or required to file any tax returns under this chapter
22 shall make known their contents in any manner or permit any
23 person to have access to any returns or information contained

1 therein except as provided by law. The department may also
2 allow the following:

3

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

7

8 (ii) Publication of statistics formatted to
9 prevent the identification of particular returns or reports;

10

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

15

16 (iv) Introduction into evidence of any report or
17 return or information therefrom in any administrative or
18 court proceeding relating to the report or return and to which
19 the person making the report or return is a party;

20

21 (v) Furnishing of any information to the United
22 States government and its territories, the District of
23 Columbia, any state allowing similar privileges to the

1 department or to the multistate tax commission for relay to
2 tax officials of cooperating states. Information furnished
3 shall be only for tax purposes;

4

5 (vi) Inspection of tax returns and records by the
6 state department of audit;

7

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

14

15 (f) No person shall fail or refuse to make any return
16 or payment required by this chapter or shall make any false
17 return or statement or shall evade the payment of any tax
18 due. No person shall aid or abet another in any attempt to
19 evade payment of the tax due. No person shall knowingly attest
20 by signature to a false or fraudulent return. The district
21 court of the county in which violations of this subsection
22 occur shall have jurisdiction over those violations.

23

1 **39-12-103. Imposition.**

2

3 (a) Taxable event. There is levied an income tax upon
4 the taxable income of each taxpayer in this state.

5

6 (b) Apportionment of taxable income shall be as
7 follows:

8

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

12

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

16

17 (iii) Income is taxable outside of Wyoming if:

18

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

23

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

4
5 (iv) Taxable income shall be apportioned to
6 Wyoming by multiplying the income by a fraction, the numerator
7 of which is the total income earned in Wyoming during the tax
8 period and the denominator of which is the income of the
9 taxpayer everywhere during the tax period. To the extent
10 necessary, the department shall by rule and regulation
11 determine whether income was earned in Wyoming or elsewhere;

12
13 (v) The department may require taxpayers to
14 provide additional information related to apportionment and
15 allocation of income to support an income tax return under
16 this chapter.

17

18 **39-12-104. Taxation rate.**

19

20 (a) There is levied and shall be paid by the taxpayer
21 an income tax on taxable income apportioned to Wyoming as
22 provided in W.S. 39-12-103 as follows:

23

1 (i) Zero percent (0%) on the first two hundred
2 thousand dollars (\$200,000.00) of taxable income; and

3

4 (ii) Four percent (4%) upon all taxable income
5 over two hundred thousand dollars (\$200,000.00).

6

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

8

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

11

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

13

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

16

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

18

19 (a) Returns and reports. Except as otherwise provided
20 in this subsection, each taxpayer shall report their total
21 taxable income and the portion of the income that is
22 apportioned to Wyoming as provided in W.S. 39-12-103 to the
23 department thirty (30) days following the date the taxpayer

1 is required to file a federal income tax return under the
2 provisions of section 6012 of the Internal Revenue Code. If
3 a taxpayer has two hundred thousand dollars (\$200,000.00) or
4 less in taxable income for the applicable tax year, the
5 taxpayer shall not be required to file a return or report
6 under this subsection.

7

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

12

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

15

16 **39-12-108. Enforcement.**

17

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

1

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

7

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

12

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

20

21 (iv) If a taxpayer is not willing or able to
22 produce adequate records to demonstrate taxes due, the

1 department or the department of audit may project taxes based
2 on the best information available;

3

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

8

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

11

12 (b) Interest. The following shall apply:

13

14 (i) If the amount of tax paid is less than the
15 amount due, interest at an annual rate equal to the average
16 prime interest rate as determined by the state treasurer
17 during the preceding fiscal year plus four percent (4%) shall
18 be added to the delinquent tax. To determine the average prime
19 interest rate, the state treasurer shall average the prime
20 interest rate for at least seventy-five percent (75%) of the
21 thirty (30) largest banks in the United States. The interest
22 rate on delinquent taxes shall be adjusted on January 1 of
23 each year following the year in which the taxes first became

1 delinquent. In no instance shall the delinquent tax rate be
2 greater than eighteen percent (18%);

3

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

7

8 (c) Penalties. The following shall apply:

9

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

17

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

1 within ten (10) days after notice and demand is made by the
2 department;

3

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

6

7 (iv) Any person who violates any provision of this
8 chapter for which there are no specific penalties is guilty
9 of a misdemeanor. Each violation is a separate offense;

10

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

20

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

1

2 (d) Liens. The following shall apply:

3

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

16

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

18

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

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

5

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

7

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

20

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

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

7

8 (c) Refunds. The following shall apply:

9

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

22

23 (d) Credits. The following shall apply:

1

2 (i) Each taxpayer is entitled to a credit against
3 tax liability under this chapter for all sales, use and ad
4 valorem taxes paid in the taxable year by the same taxpayer
5 to any taxing authority in Wyoming. The taxpayer shall report
6 the credit to the department on the return filed under W.S.
7 39-12-107. The department may require supporting
8 documentation on the credit claimed under this paragraph. In
9 no case shall any refund be due or payable if the amount of
10 the credit claimed by any taxpayer under this paragraph
11 exceeds the amount of tax due under this chapter. False claims
12 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 audit
16 that is within the scope of the audit period, without regard
17 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 provisions
23 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 from
6 the date of overpayment. The receipt of a claim for a refund
7 by the department shall toll the statute of limitations.

8

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

19

20 **39-12-111. Distribution.**

21

22 The proceeds from the tax imposed by this chapter shall be
23 deposited in the school foundation program account.

1

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

3

4 **39-12-101. Preemption by state; definitions.**

5

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

12

13 (b) As used in this chapter:

14

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

17

18 (ii) "Taxable income" means the adjusted gross
19 income reported by the taxpayer to the internal revenue
20 service;

21

22 (iii) "Taxpayer" means any person, including
23 individuals and corporations, who is subject to the federal

1 income tax administered by the internal revenue service.
2 "Taxpayer" includes a married couple filing jointly if the
3 married couple files jointly for purposes of the federal
4 income tax.

5

6 **Section 3.** The income tax imposed under W.S. 39-12-101
7 through 39-12-111 as created and amended by sections 1 and 2
8 of this act shall be collected beginning in calendar year
9 2021 for income earned in the 2020 tax year.

10

11 **Section 4.** This act is effective July 1, 2019.

12

13

(END)