

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Sales tax revisions.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to sales and use taxes; providing that the
2 sales tax shall apply to sales of specified services;
3 repealing the sales and use tax exemption on food for
4 domestic home consumption; repealing additional sales and
5 use tax exemptions as specified; 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. 39-15-101(a) by creating a new
11 paragraph (xlviii) and 39-15-103(a)(i) by creating a new
12 subparagraph (Q) are amended to read:

13

1 **39-15-101. Definitions.**

2

3 (a) As used in this article:

4

5 (xlviii) "Service" means the activities
6 specified under this paragraph provided to other persons
7 for a fee, retainer, commission or other consideration and
8 which activities involve predominately the performance of
9 an act other than the selling of tangible property.
10 "Service" does not include the acts performed by an
11 employee for his employer. "Service" includes the following
12 activities:

13

14 (A) Agricultural services including
15 landscape consulting and planning, lawn and garden
16 services, other agricultural services that are not
17 otherwise classified and veterinary services except
18 veterinary services provided for farm or ranch livestock;

19

20 (B) Personal services including beauty
21 shops, barber shops, tax return preparation services and
22 other personal services that are not otherwise classified,

1 provided that personal services shall not include funeral
2 or crematory services;

3
4 (C) Business services including commercial
5 art and graphic design, court reporting services,
6 disinfecting and pest control services, building
7 maintenance services, computer programming services, data
8 processing services and other business services that are
9 not otherwise classified, provided that business services
10 shall not include legal services or banking services;

11
12 (D) Amusement and recreation services
13 including dance studios, dance schools, dance halls,
14 bowling centers, physical fitness centers, public golf
15 courses, membership sports clubs and other amusement and
16 recreation services that are not otherwise classified; and

17
18 (E) Engineering and management services
19 including engineering services, architectural services,
20 surveying services, accounting, auditing, bookkeeping,
21 commercial research, testing laboratories, management
22 services, management consulting services, facilities

1 support services and services of real estate agents and
2 managers.

3

4 **39-15-103. Imposition.**

5

6 (a) Taxable event. The following shall apply:

7

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

10

11 (Q) The sales price paid for engaging in or
12 rendering any service as defined in W.S.
13 39-15-101(a)(xlviii).

14

15 **Section 2.** W.S. 39-15-101(a)(xix), (xx), (xli),
16 (xlv), and (xlvi), 39-15-105(a)(vi)(E), (viii)(O), (S),
17 39-16-101(a)(xiii),(xiv), (xviii) and (xix) and
18 39-16-105(a)(vi)(E), (viii)(D) and (H) are repealed.

19

20 ***** STAFF COMMENTS *****

21 **Below is the text of the sales tax statutes that are**
22 **repealed above, note that this text will not appear in**
23 **the final version of this bill. Also note that the**

1 text of the identical use tax provisions is not
2 included but those sections are repealed above:

3
4 **39-15-101. Definitions.**

5
6 (a) As used in this article:

7
8 (xix) "Directly and predominantly in
9 manufacturing" means an item manufactured from inventoried
10 raw or prepared material beginning at the point at which
11 raw or prepared material is moved from plant inventory on a
12 contiguous plant site and ending at a point at which
13 manufacturing has altered the raw or prepared material to
14 its completed form, including packaging, if required.
15 Machinery used during the manufacturing process to move
16 material from one direct production step to another in a
17 continuous flow and machinery used in testing during the
18 manufacturing process shall be deemed to be used directly
19 and predominantly in manufacturing;

20
21 (xx) "Machinery" means all tangible personal
22 property eligible for a sales tax exemption pursuant to
23 W.S. 39-15-105(a)(viii)(O), used to produce an article of
24 tangible personal property. The term includes both the
25 basic unit and any adjunct or attachment necessary for the
26 basic unit to accomplish its intended function, the
27 materials for the construction or repair of machinery, and
28 machine tools;

29
30 (xli) "Food for domestic home consumption" means
31 substances whether in liquid, concentrated, solid, frozen,
32 dried or dehydrated form that are sold for ingestion or
33 chewing by humans and are consumed for their taste or
34 nutritional value. "Food for domestic home consumption"
35 does not include alcoholic beverages, tobacco or prepared
36 foods;

37
38 (xlv) "Qualifying computer equipment" means
39 tangible personal property eligible for the exemption
40 provided by W.S. 39-15-105(a)(viii)(S). The term shall
41 include computers, servers, monitors, keyboards, storage
42 devices and other peripherals, racking systems, cabling and

1 trays necessary for the operation of the data processing
2 services center;

3
4 (xlvi) "Prepared food":

5
6 (A) Includes:

7
8 (I) Food sold in a heated state or
9 heated by the seller;

10
11 (II) Two (2) or more food ingredients
12 mixed or combined by the seller for sale as a single item;
13 or

14
15 (III) Food sold with eating utensils
16 provided by the seller including plates, knives, forks,
17 spoons, glasses, cups, napkins or straws. A container or
18 package used to transport the food is not an eating
19 utensil.

20
21 (B) Does not include:

22
23 (I) Food that is only cut, repackaged
24 or pasteurized by the seller;

25
26 (II) Eggs, fish, meat, poultry or
27 foods containing raw animal foods and which are required or
28 recommended to be cooked by the consumer to prevent food
29 borne illness;

30
31 (III) Food sold by a seller whose
32 proper primary NAICS classification is manufacturing in
33 sector 311, except subsector 3118 dealing with bakeries;

34
35 (IV) Food sold in an unheated state by
36 weight or volume as a single item; or

37
38 (V) Bakery items including bread,
39 rolls, buns, biscuits, bagels, croissants, pastries,
40 donuts, danishes, cakes, tortes, pies, tarts, muffins,
41 bars, cookies, tortillas and other bakery goods unless the
42 item is sold as prepared food under subdivision
43 (xlvi)(A)(III) of this subsection.

44
45 **39-15-105. Exemptions.**

1
2 (a) The following sales or leases are exempt from the
3 excise tax imposed by this article:

4
5 (vi) For the purpose of exempting sales of
6 services and tangible personal property which are essential
7 human goods and services, the following are exempt:

8
9 (E) Sales of food for domestic home
10 consumption.

11
12 (viii) or the purpose of exempting sales of
13 services and tangible personal property as an economic
14 incentive, the following are exempt:

15
16 (O) Until December 31, 2027, the sale or
17 lease of machinery to be used in this state directly and
18 predominantly in manufacturing tangible personal property,
19 if the sale or lease:

20
21 (I) Is to a manufacturer classified by
22 the department under the NAICS code manufacturing sector 31
23 - 33; and

24
25 (II) Does not include noncapitalized
26 machinery except machinery expensed in accordance with
27 section 179 of the Internal Revenue Code.

28
29 (S) Subject to meeting the applicable
30 provisions of this subparagraph, the following purchases by
31 a data processing services center as defined in W.S. 39-15-
32 101(a)(xliv):

33
34 (I) The sales price paid for the
35 purchase or rental of qualifying prewritten and other
36 computer software, computer equipment including computers,
37 servers, monitors, keyboards, storage devices, containers
38 used to transport and house such computer equipment and
39 other peripherals, racking systems, cabling and trays that
40 are necessary for the operation of a data processing
41 services center when the aggregate purchase of the
42 qualifying equipment exceeds two million dollars
43 (\$2,000,000.00) in any calendar year;

44

1 (II) The sales price paid for the
2 purchase or rental of qualifying uninterruptable power
3 supplies, back-up power generators, specialized heating and
4 air conditioning equipment and air quality control
5 equipment used for controlling the computer environment
6 necessary for the operation of a data processing services
7 center when the aggregate purchase of the qualifying
8 equipment exceeds two million dollars (\$2,000,000.00) in
9 any calendar year;

10
11 (III) For the purpose of claiming the
12 exemptions in subdivisions (I) and (II) of this
13 subparagraph, the purchaser shall demonstrate to the
14 department that he:

15
16 (1) Has a physical location in
17 this state where the qualifying equipment purchased shall
18 be maintained and operated until the qualifying equipment
19 is scheduled for replacement or until it has reached the
20 end of its serviceable life;

21
22 (2) Shall make an initial total
23 capital asset investment in a physical location in this
24 state:

25
26 a. For the exemption in
27 subdivision (I) of this subparagraph, of not less than five
28 million dollars (\$5,000,000.00) or has made a capital
29 investment in a physical location in this state of not less
30 than five million dollars (\$5,000,000.00) in the five (5)
31 years immediately preceding March 5, 2010;

32
33 b. For the exemption in
34 subdivision (II) of this subparagraph, of not less than
35 fifty million dollars (\$50,000,000.00) or has made a
36 capital investment in a physical location in this state of
37 not less than fifty million dollars (\$50,000,000.00) in the
38 five (5) years immediately preceding April 1, 2011.

39
40 (3) Has retained adequate
41 documentation to demonstrate that the total qualifying
42 purchases exceed the applicable annual threshold for each
43 exemption claimed under this subparagraph;

44

1 (4) Has received certification
2 from the Wyoming business council that the purchaser has
3 created or will create a number of jobs in Wyoming that is
4 appropriate to the size and stage of development of the
5 data processing services center as determined by the
6 Wyoming business council;

7
8 (5) Will accrue the excise tax on
9 otherwise qualifying purchases where the applicable annual
10 threshold was not met. The tax shall be remitted to the
11 department not later than the end of January immediately
12 following the end of the calendar year where the threshold
13 was not met to avoid the assessment of penalty and interest
14 on any amount of tax due;

15
16 (6) Shall keep adequate written
17 records and documentation in accordance with department
18 rule and regulation to show compliance with the
19 requirements of this subparagraph. If the purchaser does
20 not meet all the requirements of this subparagraph, any tax
21 owed shall be remitted to the department not later than the
22 end of January immediately following the end of the
23 calendar year in which the requirements were not met.

24
25 (IV) For the purpose of claiming the
26 exemptions in subdivisions (I) and (II) of this
27 subparagraph, for data centers where one (1) or more
28 entities occupies the facility, the purchaser shall
29 demonstrate that all the requirements of subdivision (III)
30 are met in the aggregate by the entities occupying the
31 facility regardless of multiple ownerships of equipment and
32 buildings.

33

34 *****

35

36 **Section 3.** This act is effective July 1, 2021.

37

38 (END)