

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Income tax.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation; creating the Wyoming Income
2 Tax Act; imposing an income tax on taxpayers as specified;
3 providing for administration of the act; providing
4 penalties; requiring rulemaking; requiring a report; and
5 providing for effective dates.

6

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

8

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

11

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

13

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

3

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

9

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

16

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

21

22 (e) No state employee or other person who by his
23 employment in connection with the state gains knowledge of

1 the business affairs of any person filing or required to
2 file any tax returns under this chapter shall make known
3 their contents in any manner or permit any person to have
4 access to any returns or information contained therein
5 except as provided by law. The department may also allow
6 the following:

7

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

12

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

16

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

22

1 (iv) If otherwise admissible as evidence, the
2 introduction into evidence of any report or return or
3 information therefrom in any administrative or court
4 proceeding relating to the report or return and to which
5 the person making the report or 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.

23

1 (b) Apportionment of personal income shall be as
2 follows for the purposes of W.S. 39-12-101(b)(iii)(F):

3

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

7

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

12

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

14

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

19

20 (B) That other state has jurisdiction to
21 subject the income to a net income tax regardless of
22 whether, in fact, the state subjects the taxpayer to the
23 tax.

1

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

10

11 (c) A taxpayer having income from business activity
12 in Wyoming shall allocate and apportion the taxable income
13 of the taxpayer as provided in this subsection for the
14 purposes of W.S. 39-12-101(b)(iii)(F). Allocation and
15 apportionment of taxable business income shall be as
16 follows:

17

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

21

22 (ii) A taxpayer having income from activity that
23 is taxable both within and without Wyoming shall apportion

1 and allocate the taxable business income as provided in
2 this subsection;

3

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

5

6 (A) In that other state, the income is
7 subject to a net income tax, a franchise tax measured by
8 net income, a franchise tax for the privilege of doing
9 business, a corporate stock tax or any similar tax; or

10

11 (B) That other state has jurisdiction to
12 subject the income to a net income tax regardless of
13 whether, in fact, the state subjects the taxpayer to the
14 tax.

15

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

23

1 (d) For purposes of subsection (c) of this section,
2 the property factor shall be calculated as follows:

3

4 (i) The property factor is a fraction, the
5 numerator of which is the average value of the taxpayer's
6 real and tangible personal property owned or rented and
7 used in this state during the tax period and the
8 denominator of which is the average value of all the
9 taxpayer's real and tangible personal property owned or
10 rented and used during the tax period;

11

12 (ii) Property owned by the taxpayer shall be
13 valued at its original cost. Property rented by the
14 taxpayer shall be valued at eight (8) times the net annual
15 rental rate. As used in this paragraph, "net annual rental
16 rate" means the annual rental rate paid by the taxpayer
17 less any annual rental rate received by the taxpayer from
18 subrentals;

19

20 (iii) The average value of property shall be
21 determined by averaging the values at the beginning and
22 ending of the tax period but the director of the department
23 of revenue may require the averaging of monthly values

1 during the tax period if reasonably required to reflect
2 properly the average value of the taxpayer's property.

3

4 (e) For purposes of subsection (c) of this section,
5 the payroll factor shall be calculated as follows:

6

7 (i) The payroll factor is a fraction, the
8 numerator of which is the total amount paid in this state
9 during the tax period by the taxpayer for compensation and
10 the denominator of which is the total compensation paid
11 everywhere by the taxpayer during the tax period as
12 provided in this subsection;

13

14 (ii) Compensation is paid in this state if:

15

16 (A) The individual's service is performed
17 entirely within this state;

18

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

23

1 (C) Some of the individual's service is
2 performed in this state and:

3

4 (I) The base of operations for the
5 service or, if there is no base of operations, the place
6 from which the service is directed or controlled is in this
7 state; or

8

9 (II) The place from which the service
10 is directed or controlled is not in any state in which some
11 part of the service is performed, but the individual's
12 residence is in this state.

13

14 (f) For purposes of subsection (c) of this section,
15 the sales factor shall be calculated as follows:

16

17 (i) The sales factor is a fraction, the
18 numerator of which is the total sales of the taxpayer in
19 this state during the tax period, and the denominator of
20 which is the total sales of the taxpayer everywhere during
21 the tax period;

22

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

3

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

7

8 (B) Shipped from an office, store,
9 warehouse, factory or other place of storage in this state
10 and the taxpayer is not taxable in the state of the
11 purchaser.

12

13 (iii) Sales, other than sales of tangible
14 personal property, are in this state if the income
15 producing activity is performed as follows:

16

17 (A) Receipts are in this state if the
18 taxpayer's market for the sales is in this state. The
19 taxpayer's market for sales is in this state:

20

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

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(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

1 geographic area is "used in this state" if the geographic
2 area includes all or part of this state;

3

4 (2) Receipts from intangible
5 property sales that are contingent on the productivity, use
6 or disposition of the intangible property shall be treated
7 as receipts from the rental, lease or licensing of the
8 intangible property under subdivision (IV) of this
9 subparagraph; and

10

11 (3) All other receipts from a
12 sale of intangible property shall be excluded from the
13 numerator and denominator of the sales factor.

14

15 (B) If the state or states of attribution
16 under subparagraph (A) of this paragraph cannot be
17 determined, the state or states of attribution shall be
18 determined by the state or states in which the delivery of
19 the service occurs;

20

21 (C) If the state of attribution cannot be
22 determined under subparagraph (A) or (B) of this paragraph,

1 the receipt shall be excluded from the denominator of the
2 sales factor.

3

4 (g) Rents and royalties from real or tangible
5 personal property, capital gains, interest, dividends or
6 patent or copyright royalties, to the extent they are not
7 considered business income, shall be allocated, net of
8 related expenses, as provided in this section.

9

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

16

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

19

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

22

1 (iii) The inclusion of one (1) or more
2 additional factors that will fairly represent the
3 taxpayer's business activity in this state;

4

5 (iv) The use of any other method to effectuate
6 an equitable allocation and apportionment of the taxpayer's
7 income.

8

9 (j) 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 (a) There is levied and shall be paid by the taxpayer
18 an annual income tax on that portion of taxable income of
19 the taxpayer that is allocated and apportioned to Wyoming
20 as follows:

21

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

1

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

4

5 **39-12-105. Exemptions.**

6

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

9

10 **39-12-106. Licenses and permits.**

11

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

14

15 **39-12-107. Compliance; collection procedures.**

16

17 (a) Returns and reports. Except as otherwise provided
18 in this subsection, each taxpayer shall report their total
19 taxable income and the portion of the income that is
20 apportioned to Wyoming as provided in W.S. 39-12-103 to the
21 department not more than thirty (30) days after the date
22 the taxpayer is required to file a federal income tax
23 return under the provisions of the Internal Revenue Code

1 including any extensions authorized for filing of the
2 federal income tax return. If the taxpayer files a return
3 indicating that the taxpayer has two hundred thousand
4 dollars (\$200,000.00) or less in taxable income in any tax
5 year, the department may waive the requirement for the
6 taxpayer to report in subsequent tax years provided that
7 the taxpayer shall be required to report in any year that
8 the taxable income of the taxpayer exceeds two hundred
9 thousand dollars (\$200,000.00). The following shall apply
10 to the returns and reports of affiliated groups:

11

12 (i) An affiliated group of corporations may
13 make, or the director of the department of revenue may
14 require them to make, a consolidated return for the tax
15 year in place of separate returns. For purposes of
16 calculating the amount of tax payable by the group under a
17 consolidated filing, the provisions of 26 U.S.C. § 1552
18 shall apply;

19

20 (ii) A corporation that is a member of an
21 affiliated group shall file a return using the water's edge
22 reporting method. A return under this section shall include

1 the following corporations that are part of an affiliated
2 group with the filing corporation:

3

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

11

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

14

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

17

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

23

1 (iii) As used in this section:

2

3 (A) "Affiliated corporation" means a member
4 of an affiliated group to which the taxpayer filing a
5 return under this section belongs;

6

7 (B) "Affiliated group" means a group of two
8 (2) or more corporations that are operating as a unitary
9 business operation and in which fifty percent (50%) or more
10 of the voting stock of each member of the group is directly
11 or indirectly owned by one (1) or more corporate or
12 noncorporate owners or by one (1) or more of the members of
13 the group;

14

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

19

20 (D) "Unitary business operation" means a
21 business operation in which:

22

1 (I) The business operations conducted
2 by the corporations in the affiliated group are
3 interrelated or interdependent to the extent that the net
4 income of one (1) corporation cannot reasonably be
5 determined without reference to the operations conducted by
6 the other corporations; or

7
8 (II) All of the corporations in the
9 affiliated group operate exclusively in Wyoming, are not
10 multistate corporations, and have filed a consolidated
11 federal return for the tax year.

12
13 (E) "Water's edge reporting method" means a
14 reporting method in which the only corporations besides the
15 taxpayer that may be included in the return are
16 corporations listed in paragraph (ii) of this subsection.

17
18 (b) Payment. Any taxpayer owing a tax under this
19 chapter shall pay the tax once each year at the same time
20 the report under subsection (a) of this section is
21 provided. The tax shall be collected by the department.

22

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

3

4 **39-12-108. Enforcement.**

5

6 (a) Audits. To assess credits and deficiencies
7 against taxpayers, the department is authorized to rely on
8 final audit findings made by the department of audit,
9 taxpayer information or information reported by the
10 taxpayer to the Internal Revenue Service or to the
11 department of revenue subject to the following conditions:

12

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

18

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

23

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

8

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

13

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

18

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

21

22 (b) Interest. The following shall apply:

23

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

14

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

18

19 (c) Penalties. The following shall apply:

20

21 (i) If any part of a deficiency is due to
22 negligence or intentional disregard of statute or rules and
23 regulations but without intent to defraud there shall be

1 added a penalty of ten percent (10%) of the amount of the
2 deficiency plus interest as provided by paragraph (b)(i) of
3 this section. The taxes, penalty and interest shall be paid
4 by the taxpayer within ten (10) days after notice and
5 demand is made by the department;

6

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

14

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

17

18 (iv) Any person who violates any provision of
19 this chapter for which there are no specific penalties is
20 guilty of a misdemeanor and upon conviction shall be fined
21 not more than one thousand dollars (\$1,000.00). Each
22 violation is a separate offense;

23

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

10

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

14

15 (d) Liens. The following shall apply:

16

17 (i) Any tax due under this chapter constitutes a
18 debt to the state from the taxpayer, and is a lien from the
19 date the tax is due on all the real and personal property
20 of the taxpayer. Notice of the lien shall be filed with the
21 county clerk of the county in which the taxpayer resides or
22 conducts business. The lien does not have preference over
23 preexisting secured indebtedness but shall have priority

1 from and after the date of filing or recording. The
2 department shall cancel lien statements within sixty (60)
3 days after taxes due are paid or collected. No other action
4 by the department is required to perfect a lien under this
5 paragraph regardless of the type of property involved.

6

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

8

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

19

20 **39-12-109. Taxpayer remedies.**

21

22 (a) Interpretation requests. A taxpayer may request
23 and the department shall provide written interpretations of

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

12

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

22

23 (c) Refunds. The following shall apply:

1

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

14

15 (d) Credits. The following shall apply:

16

17 (i) Each taxpayer is entitled to a credit
18 against tax liability under this chapter for all excise,
19 sales, use, severance and ad valorem taxes paid in the tax
20 year by the same taxpayer to any taxing authority in
21 Wyoming. No credit shall be allowed for any tax collected
22 or remitted by the taxpayer on behalf of another person
23 including property taxes paid by the taxpayer on property

1 that is not owned by the taxpayer. The taxpayer shall
2 report the credit to the department on the return filed
3 under W.S. 39-12-107. The department may require supporting
4 documentation on the credit claimed under this paragraph.
5 In no case shall any refund be due or payable if the amount
6 of the credit claimed by any taxpayer under this paragraph
7 exceeds the amount of tax due under this chapter. False
8 claims are punishable as provided by W.S. 6-5-303;

9

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

14

15 (e) Redemption. There are no specific applicable
16 provisions for redemption for this chapter.

17

18 (f) Escrow. There are no specific applicable
19 provisions for escrow for this chapter.

20

21 **39-12-110. Statute of limitations.**

22

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

6

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

18

19 **39-12-111. Distribution.**

20

21 Revenues collected under W.S. 39-12-104 during each fiscal
22 year shall be recognized as revenue during that fiscal year
23 for accounting purposes. For all revenue collected by the

1 department under W.S. 39-12-104 the department shall
2 transfer the funds to the state treasurer for credit to
3 _____.

4
5

6 *****

7 *****

8 **STAFF COMMENT**

9

10 The distribution is left blank for Committee discussion.

11 *****

12 *****

13

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

15

16 **39-12-101. Preemption by state; definitions.**

17

18 (a) The state of Wyoming does hereby preempt for
19 itself the field of imposing and levying income taxes,
20 earning taxes, or any other form of tax based on wages or
21 other income and no county, city, town or other political
22 subdivision shall have the right to impose, levy or collect
23 such taxes.

24

25 (b) To the extent they do not conflict with the
26 provisions of this chapter, the terms and definitions of

1 the Internal Revenue Code shall apply to this chapter. As
2 used in this chapter:

3
4 (i) "Business income" means income arising from
5 transactions and activity in the regular course of the
6 taxpayer's trade or business and includes income from
7 tangible and intangible property if the acquisition,
8 management and disposition of the property constitute
9 integral parts of the taxpayer's regular trade or business
10 operations;

11
12 (ii) "Tax year" means the taxable year used by
13 the taxpayer for purposes of the federal income tax;

14
15 (iii) "Taxable income" means the federal taxable
16 income of a taxpayer as computed under the Internal Revenue
17 Code and reported by the taxpayer to the Internal Revenue
18 Service, adjusted as follows:

19
20 (A) Reduced by any interest received from
21 obligations of the United States that is included in
22 taxable income or in the computation of taxable income on
23 the federal tax return;

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(B) Reduced by any other income included in the 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, provided that this subparagraph shall not apply to any credit taken under W.S. 39-12-109(d)(i);

(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;

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(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) For business income, 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 that 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.

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2 (iv) "Taxpayer" means any person who has taxable
3 income earned in Wyoming and who files or is required to
4 file federal income taxes with the Internal Revenue
5 Service. "Taxpayer" includes a married couple filing
6 jointly if the married couple files jointly for purposes of
7 the federal income tax.

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9 **Section 3.** The department of revenue shall adopt
10 rules under W.S. 39-11-102 as necessary to begin collection
11 of the tax created by this act for tax years beginning on
12 or after January 1, 2022.

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14 **Section 4.** The department of revenue shall
15 investigate the advisability of Wyoming becoming a member
16 state of the multistate tax commission and the advisability
17 of adopting all or a portion of the multistate tax compact.
18 The investigation shall include a determination of what
19 statutory changes would be required for Wyoming to become a
20 member of the multistate tax commission and any other
21 actions that would be necessary for membership. The
22 department shall report the results of the investigation

1 under this section to the joint revenue interim committee
2 not later than September 1, 2021.

3

4 **Section 5.**

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6 (a) Sections 3 through 5 of this act are effective
7 immediately upon completion of all acts necessary for a
8 bill to become law as provided by Article 4, Section 8 of
9 the Wyoming Constitution.

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11 (b) Except as otherwise provided in subsection (a) of
12 this section, this act is effective January 1, 2022.

13

14 (END)