

The State



of Wyoming

DEPARTMENT OF REVENUE

122 W. 25th ST STE E301
HERSCHLER BUILDING EAST
CHEYENNE WY 82002-0110
E-Mail: dor@wy.gov
Web: <http://revenue@state.wy.us>

MARK GORDON, *Governor*
BRENDA HENSON, *Director*

Telephone (307) 777-7961
DOR Director (307) 777-5287
Property Tax (307) 777-5235
Excise (307) 777-5200
Mineral (307) 777-5237
Liquor (307) 777-5275

MEMORANDUM

TO: JOINT REVENUE COMMITTEE

FROM: TERRI LUCERO, ADMINISTRATOR, EXCISE TAX DIVISION

DATE: SEPTEMBER 23, 2021

SUBJECT: LIST OF CURRENT SALES TAX EXEMPTIONS

39-15-105. Exemptions.

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

(i) For the purpose of exempting sales of services and tangible personal property which are protected by the United States constitution and the Wyoming constitution, the following are exempt:

(A) Sales which the state of Wyoming is prohibited from taxing under the laws or constitutions of the United States or Wyoming.

(ii) For the purpose of exempting sales of services and tangible personal property protected by federal law, the following are exempt:

(A) Interstate transportation of freight or passengers;

(B) Sales of railroad rolling stock including locomotives purchased by interstate railroads, aircraft purchased by interstate air carriers which are holders of valid United States civil aeronautics board permits or authorities, and trucks, truck-tractors, trailers, semitrailers and passenger buses in excess of ten thousand (10,000) pounds gross vehicle weight which are purchased by common or contract interstate carriers or which are operating in interstate commerce under exemption clauses in federal law if they are to be used in interstate commerce;

(C) Leases of motor vehicles with or without trailers when the lease rental is computed from the gross receipts of the operation, if the operator is operating under a valid interstate authority or permit;

(D) Sales to Wyoming joint apprenticeship and training programs approved by the United States department of labor;

(E) To comply with the Food and Nutrition Act of 2008, sales of food purchased with supplemental nutrition assistance benefits.

(iii) For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(A) Sales of tangible personal property to a person engaged in the business of manufacturing, processing or compounding when the tangible personal property purchased becomes an ingredient or component of the tangible personal property manufactured, processed or compounded for sale or use and sales of containers, labels or shipping cases used for the tangible personal property so manufactured, processed or compounded. This subparagraph shall apply to chemicals and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process;

(B) Sales of livestock, feeds for use in feeding livestock or poultry for marketing purposes and seeds, roots, bulbs, small plants and fertilizer planted or applied to land, the products of which are to be sold. This exemption applies to, but is not limited to, sales of seeds, roots, bulbs, small plants and fertilizer planted or applied to land subject to a state or federal crop set aside program;

(C) Intrastate transportation by public utility or others of raw farm products to processing or manufacturing plants;

(D) Sales of power or fuel to a person engaged in the business of manufacturing, processing or agriculture when the same is consumed directly in manufacturing, processing or agriculture;

(E) Sales of power or fuel to a person engaged in the transportation business when the same is consumed directly in generating motive power for actual transportation purposes, except power or fuel which is not taxed as gasoline or gasohol under W.S. 39-17-101 through 39-17-111 or as diesel fuel under W.S. 39-17-201 through 39-17-211 and which is used to propel a motor vehicle upon the highway as defined in W.S.39-17-201(a)(xii);

(F) Wholesale sales excluding sales of controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

(G) Sales of fuel for use as boiler fuel in the production of electricity;

(H) Repealed By Laws 2000, Ch. 4, § 2.

(J) The cost of food or meals furnished by a food establishment licensed under W.S. 35-7-124 without charge to an employee for consumption on the premises is not taxable either to the establishment or the employee.

(iv) For the purpose of exempting sales of services and tangible personal property sold to government, charitable and nonprofit organizations, irrigation districts and weed and pest control districts, the following are exempt:

(A) Sales to the state of Wyoming or its political subdivisions;

(B) Sales made to religious or charitable organizations including nonprofit organizations providing meals or services to senior citizens as certified to the department of revenue by the department of health in or for the conduct of the regular religious, charitable or senior citizen functions and activities and sales of meals made to senior citizens, guests of seniors and meals delivered to the homebound in regular conduct of senior citizen centers functions and activities;

(C) Occasional sales made by religious or charitable organizations for fund raising purposes for the conduct of regular religious or charitable functions and activities, and not in the course of any regular business. For the purposes of this subparagraph, "regular business" means the habitual or regular activity of the organization excluding any incidental or occasional operation;

(D) Sales to a joint powers board organized under the Wyoming Joint Powers Act;

(E) Sales price of admission to and user fees for county or municipal owned recreation facilities such as swimming pools, athletic facilities and recreation centers;

(F) Labor or service charges, including transportation and travel, for the repair, alteration or improvement of real property or tangible personal property owned by, or incorporated in projects under contract to the state of Wyoming or any of its political subdivisions, including an irrigation district created under W.S. 41-7-201 through 41-7-210, and a weed and pest control district created under W.S. 11-5-101 et seq.;

(G) Sales to an irrigation district created under W.S. 41-7-201 through 41-7-210;

(H) Sales to a weed and pest control district created under W.S. 11-5-101 et seq.;

(J) Intrastate transit of persons services by a government, charitable or nonprofit organization.

(v) For the purpose of exempting sales of services and tangible personal property which are alternatively taxed, the following are exempt:

(A) Repealed By Laws 1999, ch. 165, § 1.

(B) Sales of transportable homes after the tax has been once paid;

(C) Sales of gasoline or gasohol taxed under W.S. 39-17-101 through 39-17-111 and of diesel fuels taxed under W.S. 39-17-201 through 39-17-211. The exemption provided by this subparagraph shall not apply to gasoline or gasohol taxed under W.S. 39-17-104(a)(iii) or to diesel fuel taxed under W.S. 39-17-204(a)(ii);

(D) Gratuities or tips which are offered to tipped employees as specified in W.S. 27-4-202(b) are exempt from the tax whether offered by the consumer or separately invoiced by the seller.

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

(A) Intrastate transportation by public utility or others of sick, injured or deceased persons by ambulance or hearse;

(B) Sales of the following tangible personal property sold under a prescription: drugs for human relief excluding over-the-counter-drugs, insulin for human relief and any syringe, needle or other device necessary for the administration thereof, oxygen for medical use, blood plasma, prosthetic devices, hearing aids, eyeglasses, contact lenses, mobility enhancing equipment, durable medical equipment and any assistive device. As used in this subparagraph, "assistive device" means any item, piece of equipment or product system, as defined by department rule, which is used to increase, maintain or improve the functional capabilities of an individual with a permanent disability, excluding any medical device, surgical device or organ implanted or transplanted into or attached directly to an individual;

(C) Sales of all noncapitalized equipment and disposable supplies which are used in the direct medical or dental care of a patient. The exemption in this subparagraph shall not include capitalized equipment or office supplies used in the normal course of business;

(D) Sales of water delivered by pipeline or truck;

(E) Sales of food for domestic home consumption.

(vii) For the purpose of exempting sales of services provided primarily to businesses, the following are exempt:

(A) Interstate or intrastate transportation of drilling rigs, including charges for the movement or conveyance of the drilling rig to or away from the well site and the loading, unloading, assembly or disassembly of the drilling rig;

(B) A person regularly engaged in the business of making loans or a supervised financial institution, as defined in W.S. 40-14-140(a)(xix), that forecloses a lien or repossesses a motor vehicle on which it has filed a lien shall not be liable for payment of sales or use tax, penalties or interest due under this section or W.S. 39-16-108 for that vehicle.

(viii) For the purpose of exempting sales of services and tangible personal property as an economic incentive, the following are exempt:

(A) Intrastate transportation of:

(I) Employees to or from work when paid or contracted for by the employee or employer;

(II) Freight and property including oil and gas by pipeline.

(B) Sales of the services of professional engineers, geologists or members of similar professions including the sales price paid for all services to real or tangible personal property leading to building location, drilling and all related activities that must be completed prior to setting the production casing, including coring, logging and testing done prior to the setting of production casing for the drilling of any oil or gas well or for the deepening or extending of any well previously drilled for oil or gas beyond the maximum point to which they were initially drilled. The exemption in this subparagraph shall also apply to any and all seismographic and geophysical surveying, stratigraphic testing, coring, logging and testing calculated to reveal the existence of geologic conditions favorable to the accumulation of oil or gas;

(C) Sales of school annuals;

(D) Sales of newspapers;

(E) Repealed By Laws 2000, Ch. 47, § 1.

(F) Sales of carbon dioxide and other gases used in tertiary production;

(G) Sales of lodging services provided by a person known to the trade and public as a guide or outfitter, including but not limited to sleeping accommodations, placement of tents, snow shelters, base camps, temporary structures which are dismantled or abandoned after use and all other forms of temporary shelter are exempt from the excise tax imposed by W.S.39-15-204(a)(ii) as distributed by W.S. 39-15-211(a)(ii);

(H) The sale of farm implements. For purposes of this subparagraph, "farm implements" means any tractor or other machinery designed or adapted and used exclusively for agricultural operations and specifically excludes any vehicle titled under chapter 2 of title 31, snowmobiles, lawn tractors, all-terrain vehicles and repair or replacement parts;

(J) The sale of aircraft repair, remodeling or maintenance services at a federal aviation administration certified repair station including, but not limited to, repair or replacement materials or parts;

(K) The sale of the service of transmitting radio waves to a one-way paging unit owned or rented by a service subscriber, where messages received are displayed or played on a paging unit as voice, tone and voice, numeric or alphanumeric, including mail services purchased with the pager;

(M) Sales of goods or services made for the purpose of raising money or charges for admission to any amusement, entertainment, recreation, game or athletic event for any kindergarten through grade twelve (12) public school located in this state;

(N) Repealed by Laws 2017, ch. 41, § 2.

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

(I) Is to a manufacturer classified by the department under the NAICS code manufacturing sector 31 - 33; And

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

(III) Repealed By Laws 2010, Ch. 33, § 2.

(P) The sale or lease of any aircraft used in a federal aviation administration commercial operation including the sale of all:

(I) Tangible personal property permanently affixed or attached as a component part of the aircraft, including, but not limited to, repair or replacement materials or parts;

(II) Aircraft repair, remodeling and maintenance services performed on the aircraft, its engine or its component materials or parts.

(Q) Sales of tangible personal property or services performed for the repair, assembly, alteration or improvement of railroad rolling stock. This subparagraph is repealed effective July 1, 2021;

(R) The sale of equipment used to construct a new coal gasification or coal liquefaction facility. The exemption provided by this subparagraph shall be limited to the acquisition of equipment used in a project to make it operational. The exemption shall not apply to tools and other equipment used in construction of a new facility, contracted services required for construction and routine maintenance activities nor to equipment utilized or acquired after the facility is operational;

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

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

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

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

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

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

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

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

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

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

(5) Will accrue the excise tax on otherwise qualifying purchases where the applicable annual threshold was not met. The tax shall be remitted to the department not later than the end of January immediately following the end of the calendar year where the

threshold was not met to avoid the assessment of penalty and interest on any amount of tax due;

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

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

(T) Sales of and retail commissions on lottery tickets or shares and equipment necessary to operate a lottery under W.S. 9-17-101 through 9-17-128;

(U) Sales of equipment to a telecommunications service provider, video programming service provider or provider of internet access used to provide broadband internet service in an unserved area. The following shall apply:

(I) A telecommunications service provider, video programming service provider or provider of internet access may allocate the sales price of equipment using any reasonable method, instead of specific geographic accounting, if the method is consistently used by the provider and supported by verifiable data that reasonably reflects the location where the equipment is used;

(II) As used in this subparagraph:

(1) "Broadband internet service" means high speed internet access that in residential areas is capable of download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second or, in business corridors, as defined by rule of the Wyoming business council under W.S. 9-12-1501(g), is capable of download speeds of at least one (1) gigabit per second and upload speeds of at least one hundred (100) megabits per second;

(2) "Equipment" means tangible objects which are integral to the broadband internet service infrastructure of a telecommunications service provider, video programming service provider or provider

of internet access and shall exclude equipment sold or leased to a customer of a provider;

(3) "Provider of internet access" means a person, or any agent, contractor or subcontractor of the person, who in the course of business, provides a service that enables users to access content, information, electronic mail or other services offered over the internet and may also include access to proprietary content, information and other services as part of a package of services offered to consumers and does not include telecommunications services, except to the extent such services are purchased, used or sold by a provider of internet access to provide internet access;

(4) "Telecommunications service provider" means a person, or any agent, contractor or subcontractor of the person, who in the course of business, provides telecommunications services, as defined in W.S. 39-15-101(a)(xxxix)(U);

(5) "Video programming service provider" means a person, or any agent, contractor or subcontractor of the person, who in the course of business, provides programming from, or comparable to, a television broadcast station, including cable service as defined in 47 U.S.C. § 522(6);

(6) "Unserved area" means as defined in W.S. 9-12-1501(e).

(III) This subparagraph is repealed effective July 1, 2024.

(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; and

(B) The sales price paid for a motor vehicle, house trailer, trailer coach, trailer or semitrailer as defined in W.S. 31-1-101 if the vehicle is purchased by a nonresident of Wyoming and the vehicle is to be removed from the state of Wyoming within thirty (30) days of purchase. The purchaser shall declare under penalty of perjury on a form prescribed by the department that he is not a resident of Wyoming.

(x) Sales of lodging services offered by any county fair board during a county fair or other board authorized events.

(b) The Wyoming business council, the department of workforce services and the department of revenue shall jointly report to the joint revenue interim committee on or before December 1 of

each year that the exemption provided by subparagraph (a)(viii)(O), (Q), (R), (S) or (U) of this section is in effect. If requested by the department of revenue, any person utilizing the exemption under subparagraph (a)(viii)(O) of this section shall report to the department the amount of sales tax exempted, and the number of jobs created or impacted by the utilization of the exemption. The report shall evaluate the cumulative effects of each exemption that is in effect from initiation of the exemption and shall include:

- (i) A history of employment in terms of numbers of employees, full-time and part-time employees and rates of turnover classified by the 2007 edition, as amended, of the North American Industry Classification System (NAICS) code manufacturing section 31 – 33 from information collected by the department of workforce services;
- (ii) A history of wages and benefits disaggregated by gender for each job category; and
- (iii) A comprehensive history of taxes paid to the state of Wyoming.