DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Sales and use tax reorganization.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

AN ACT relating to sales and use tax; revising the sales tax chapter to include the administration of the use tax; repealing duplicative provisions; making conforming changes; and providing for an effective date.

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

Section 1. W.S. 39-15-101(a)(vii)(intro), (xv), (xxii), (xxxix)(U)(VII) and by creating new paragraphs (xlviii) through (xlx), 39-15-102(a) and by creating a new subsection (g), 39-15-103(a)(i)(A) and (K), (b)(i), (ii) and (iii) and (c)(ii) and (iii), 39-15-104(a), (b) and (f)(intro), 39-15-105(a)(intro) and (vi) by creating a new

subparagraph (F), 39-15-106(a), 39-15-107(a)(i), (b)(intro), (i) and (vi), 39-15-109(d) by creating a new paragraph (v), 39-15-110 by creating a new subsection (c), 39-15-111(b)(iii)(intro) and by creating a new subsection (s), 39-15-202(a) and 39-15-306(b)(v) are amended to read:

CHAPTER 15 – SALES AND USE TAX

ARTICLE 1 - STATE SALES AND USE TAX

39-15-101. Definitions.

(a) As used in this article:

(vii) "Sale" means any transfer of title or possession in this state for a consideration. ~~Including~~ "Sale" includes a purchase by a person for storage, use or consumption in this state and includes the fabrication of tangible personal property when the materials are furnished by the purchaser. ~~but excluding~~ "Sale" does not include an exchange or transfer of tangible personal property upon which the seller or lessor has directly or indirectly paid sales or use tax incidental to:

(xv) "Vendor" means any person engaged in the business of selling at retail or wholesale tangible personal property, admissions or services which are subject to taxation under this article. "Vendor" includes a vehicle dealer as defined by W.S. 31-16-101(a)(xviii), a remote seller to the extent provided by W.S. 39-15-501 and a marketplace facilitator to the extent provided by W.S. 39-15-502. A person is not in the business of selling if selling tangible personal property, admissions or services which are subject to taxation under this article is not a habitual or regular activity of the person;

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STAFF COMMENT

The definition of "vendor" in the use tax chapter is somewhat different from the definition above. A copy of the definition is included here for Committee discussion:

"Vendor" means any person engaged in the business of selling at retail or wholesale tangible personal property, having or maintaining within this state, directly or by any subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agents operating or soliciting sales or advertising within this state under the authority of the vendor or its subsidiary, regardless of whether the place of business or agent is located in the state permanently or temporarily or whether the vendor or subsidiary is qualified to do business within this state. A person is not in the business of selling tangible personal property that is subject to taxation

under this article if selling tangible personal property is not a habitual or regular activity of the person. Agents acting under the authority of the vendor include but are not limited to truckers, peddlers, canvassers, salespersons, representatives, employees, supervisors, distributors, delivery persons or any other persons performing services in this state. "Vendor" also includes every person who engages in regular or systematic solicitation by three (3) or more separate transmittances of an advertisement or advertisements in any twelve (12) month period in a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio, television or other electronic media, by mail, telegraph, telephone, computer data base, cable, optic, microwave, satellite or other communication system for the purpose of effecting retail sales of tangible personal property;

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(xxii) "NAICS" means the Northern American Industry Classification System manual of 2002 that organizes establishments into industries on the basis of the activity in which they are primarily engaged;

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STAFF COMMENT

The definition above for "NAICS" matches the definition in the Use Tax statutes that is being repealed, see W.S. 39-16-101(a)(xvi). However the Committee may want to consider revising to a more recent edition of the NAICS code.

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(xxxix) Telecommunications definitions:

(U) "Telecommunications service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points. The term telecommunications service includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunications service shall not include:

(VII) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of the services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

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STAFF COMMENT
This definition is slightly different in the use tax chapter, the change above is included for Committee discussion.
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(xlviii) "Purchase price" means the sales price paid for property purchased for storage, use or consumption in this state;

(xlix) "Storage" means the keeping or retention in this state of tangible personal property purchased from a vendor for any purpose except for sale in the course of business or subsequent use outside the state;

(xlx) "Use" means the exercise of any right or power over tangible personal property incident to ownership or by any transaction where possession is given by lease or contract.

39-15-102. Administration; confidentiality.

(a) This article is known and may be cited as the ~~"Selective Sales Tax Act of 1937"~~ "Sales and Use Tax Act".

(g) The state preempts the field of imposing tax upon sales and purchases of tangible personal property and storage, use and consumption of tangible personal property as provided by this article. No county, city, town or other political subdivision may impose, levy or collect taxes upon sales or storage, use or consumption of tangible personal property except as provided in this section.

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STAFF COMMENT

W.S. 39-16-102(e) is included below for Committee discussion. I am not sure of the intent of that subsection so it is not included above as an addition to chapter 15.

"(e) Revenue collected pursuant to this section shall be administered in accordance with W.S. 39-16-202(c) and distributed in accordance with W.S. 39-16-211."

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39-15-103. Imposition.

(a) Taxable event. The following shall apply:

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

(A) The sales price of every retail sale of tangible personal property within the state and upon the purchase price of persons making first use of taxable services or storing, using or consuming taxable personal property or specified digital products in this state;

(K) The sales price paid for all services and tangible personal property used in rendering services to real or tangible personal property within an oil or gas well site beginning with and including the setting and cementing of production casing, or if production casing is not set as in the case of an open hole completion, after the completion of the underreaming or the attainment of total depth of the oil or gas well and continuing with all activities sequentially required for the production of any oil or gas well regardless of the chronological occurrence of the activity. All services required during the entire productive life of the well, including recompletion, all the way through abandonment shall be subject to this subparagraph. The provisions of W.S. 39-15-301 through 39-

15-311 ~~and W.S. 39-16-301 through 39-16-311~~ shall not apply to this subparagraph;

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STAFF COMMENT

There are a number of conforming changes like the change above that will need to be made both within chapter 15 and in other sections of the Wyoming Statutes to address the repeal of Chapter 16. Those conforming changes are generally not included in this version of the draft to reduce the length of the document for consideration by the Committee. If the Committee determines to sponsor the draft, those provisions will be included in the version that is introduced in the Legislative session.

Note: The provisions of 39-16-301 through 39-16-311 referenced above are related to the contractor sales and use tax provisions.

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(b) Basis of tax. The following shall apply:

(i) Except as provided by W.S. 39-15-105, there is levied and shall be paid by the purchaser on all sales and purchases an excise tax upon all events as provided by subsection (a) of this section;

(ii) For purposes of W.S. 39-15-107(b)(i), the sales price of motor vehicles, house trailers, trailer coaches, trailers or semitrailers as defined by W.S. 31-1-

101 shall be declared by the purchaser upon a copy of the original invoice from the vendor or upon an affidavit furnished by the department if not purchased from a vendor and the tax collected shall be based upon the declaration or invoice;

(iii) Except for those vehicles specified under W.S. 39-15-107(b)(viii), the tax imposed by this article upon the sale of a motor vehicle, house trailer, trailer coach, trailer or semitrailer purchased inside or outside the state of Wyoming as a gift shall be collected from the donee prior to the first registration based upon the fair market value of the gift at the time of the gift;

(c) Taxpayer. The following shall apply:

(ii) Every person purchasing goods or services taxed by this article and every person making first use of taxable services or storing, using or consuming tangible personal property or specified digital products from a vendor who does not maintain a place of business in this state is liable for the taxes and shall pay any tax owed to the department unless the taxes have been paid to a vendor.

Specified digital products are only subject to the tax imposed by this article as specified in subparagraph (a)(i)(P) of this section. The liability is not extinguished until the tax has been paid to the state except that a receipt given to the person by a registered vendor in accordance with paragraph (i) of this subsection is sufficient to relieve the purchaser from further liability;

(iii) Any tax due under this article constitutes a debt to the state from the persons who are parties to the transaction, other than any vendor or other seller who is prohibited or not authorized by law to collect any tax under this article, and is a lien from the date the tax is due on all the real and personal property of those persons;

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STAFF COMMENT

The use tax provision similar to the above also includes the following language:

The tax lien shall have preference over all liens except any valid mortgage or other liens of record filed or recorded prior to the date the tax became due. When the tax is collected by a retailer or his agent, the tax lien has the same status as sales tax liens under W.S. 39-15-108(d)(i).

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39-15-104. Taxation rate.

(a) Except as provided by W.S. 39-15-105 there is levied and shall be paid by the purchaser on all sales and purchases an excise tax of three percent (3%) upon all events as provided by W.S. 39-15-103(a).

(b) Effective July 1, 1993, in addition to the ~~sales~~ excise tax under subsection (a) of this section there is imposed an additional ~~sales~~ excise tax of one percent (1%) which shall be administered as if the ~~sales~~ tax rate under subsection (a) of this section was increased from three percent (3%) to four percent (4%). The revenue from these increases shall be distributed in the same manner as other ~~sales~~ excise tax revenue under those sections.

(f) The tax rate imposed upon a ~~transaction~~ sale or purchase subject to this chapter shall be sourced as follows:

39-15-105. Exemptions.

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

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

(F) Tangible personal property sold by any person for delivery in this state is deemed sold for storage, use or consumption herein and is subject to the tax imposed by this article unless the person selling the property has received from the purchaser a signed certificate stating the property was purchased for resale and showing his name and address;

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STAFF COMMENT

The language above is from 39-16-105(vi)(B) and is included here for Committee discussion. This subparagraph does not appear to be an exemption and if it were an exemption it may be in the wrong paragraph as it does not appear to be dealing with essential human goods or services. It may be advisable to revise this subparagraph so that it is an exemption, or to consider moving this provision to the imposition section.

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39-15-106. Licenses; permits.

(a) Every vendor shall obtain from the department a sales tax license to conduct business in the state. The license shall be granted only upon application stating the name and address of the applicant, the name and address of all agents operating in the state, the character of the business in which the applicant proposes to engage, the location of ~~the proposed business and~~ all places of business together with 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, or who is using one (1) of the technology models pursuant to the streamlined sales and use tax agreement. 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. The department shall send any vendor who reports no gross sales for three (3) consecutive years a form

prescribed by the department to show cause why the vendor's license should not be revoked. The vendor shall complete and file the report with the department within thirty (30) days of receipt of the form. If the department finds just cause for the vendor to retain the license, no further action shall be taken. If the department finds just cause to revoke the license, the vendor shall be notified of the revocation. Any vendor whose license is revoked under this subsection may appeal the decision to the state board of equalization as provided in subsection (g) of this section.

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STAFF COMMENT

The new language above is added to highlight the differences in the language in W.S. 39-16-106(a).

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39-15-107. Compliance; collection procedures.

(a) Returns, reports and preservation of records. The following shall apply:

(i) Each vendor shall on or before the last day of each month file a true return showing the preceding

month's gross sales and remit all taxes to the department. The returns shall contain such information and be made in the manner as the department by regulation prescribes. The department may provide an option for the return to be submitted and for any taxes to be remitted electronically. The department may allow extensions for filing returns and paying the taxes by regulation, but no extension may be for more than ninety (90) days. If the total tax to be remitted by a vendor during any month is less than one hundred fifty dollars ($150.00), a quarterly or annual return as authorized by the department, and remittance in lieu of the monthly return may be made on or before the last day of the month following the end of the quarter or year for which the tax is collected. If the accounting methods regularly used by any vendor are such that reports of sales made during a calendar month would impose unnecessary hardships, the department after receiving a formal request filed by the vendor may accept reports at intervals as would be more convenient to the taxpayer. Any vendor shall report whether the vendor sells nicotine products, as defined by W.S. 39-18-101(a)(xi), in this state to the department in the form and manner required by the department. The department may reject any report required under this paragraph of any

vendor who does not comply with the nicotine sales reporting requirements. Every person purchasing goods or services taxable by this article who does not pay the tax owed to a vendor and every person storing, using or consuming tangible personal property purchased from a vendor who does not maintain a place of business in this state is liable for the tax imposed by this article and shall, on or before the last day of each month, file a return showing the gross purchases made during the preceding month and remit all taxes due to the department as provided in this paragraph. The return shall contain such information and be made in the manner as the department shall prescribe by rule and regulation. The department, by rule and regulation, may allow an extension for filing a return and paying any tax due, but no extension shall be granted for more than ninety (90) days;

(b) Payment. Except as otherwise provided in this chapter, there is levied and shall be paid by the purchaser an excise tax at the rate applied under W.S. 39-15-104 upon sales and purchases in Wyoming. The vendor shall collect the tax and give the purchaser a receipt therefor

displaying the tax paid separately. The following shall apply:

(i) Except as provided by paragraph (viii) of this subsection, no vendor shall collect taxes imposed by this article upon the sale of motor vehicles, house trailers, trailer coaches, trailers or semitrailers. The taxes imposed shall be collected by the county treasurer prior to the first registration in Wyoming and not upon subsequent registration by the same applicant. The county treasurer may allow the taxes to be paid electronically after the amount of sales tax has been determined by the county treasurer. The county treasurer may charge a fee of not more than the costs of processing the transaction but not to exceed a fee of three percent (3%) as necessary to recoup fees incurred due to electronic payments. The county treasurer shall provide the applicant a receipt specifying the amount of sales tax collected and noting any valid exemption from sales tax. The county treasurer shall collect and remit to the department the tax in effect in the county of the owner's principal residence as indicated on the owner's driver's license or other government issued identification. The tax shall not be collected if the

vehicle was previously registered by the same nonresident owner in another state. The county treasurer may collect the tax due and any interest, penalties or costs of collection through the use of a collection agency or by the filing of a civil action;

(vi) ~~The~~ If any vendor discontinues his business or sells his stock of goods he shall ~~file a return within thirty (30) days after discontinuing or selling his business~~ make a final return and payment within thirty (30) days thereafter. His successor in business shall withhold from the purchase price an amount equal to any taxes, penalty or interest due until the time the former owner produces a receipt from the department showing that all amounts due have been paid or a certificate that no taxes are due. If the successor fails to withhold from the purchase price the amount due the successor is liable for same;

39-15-109. Taxpayer remedies.

(d) Credits. The following shall apply:

(v) The department shall allow a credit for sales tax legally imposed and paid to another state on a purchase equal to but not exceeding the liability for use tax under this article on that purchase. The department may require that any claim for a credit be substantiated in writing showing the sales tax paid.

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STAFF COMMENT
The language above is from W.S. 39-15-109(d)(iii)
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39-15-110. Statute of limitations.

(c) Every vendor and person storing, using or consuming tangible personal property in this state shall preserve within this state for three (3) years suitable records and books as may be necessary to determine the amount of tax for which the vendor or person is liable under the provisions of this article, together with invoices and books showing all merchandise purchased. All records, books and invoices shall be available for examination by the department during regular business hours except as arranged by mutual consent.

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STAFF COMMENT

The above language is from W.S. 39-16-110(a). This may be covered by W.S. 39-15-107(a)(ii) but is included here for Committee discussion.

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39-15-111. Distribution.

(b) Revenues earned under W.S. 39-15-104 during each fiscal year shall be recognized as revenue during that fiscal year for accounting purposes. Except as otherwise provided in subsection (p) of this section, for all revenue collected by the department under W.S. 39-15-104 the department shall:

(iii) From the remaining share, ~~until June 30, 2004, deduct an amount equivalent to one-half percent (0.5%) and thereafter~~ deduct an amount equivalent to one percent (1%) of the tax collected under W.S. 39-15-104. From this amount, the department shall distribute ~~until June 30, 2004, twenty thousand dollars ($20,000.00) and thereafter~~ forty thousand dollars ($40,000.00) of sales tax and ten thousand dollars ($10,000.00) of use tax annually

to each county in equal monthly installments and then distribute the remainder to each county in the proportion that the total population of the county bears to the total population of the state. The balance shall then be paid monthly to the treasurers of the counties, cities and towns for payment into their respective general funds. The percentage of the balance that will be distributed to each county and its cities and towns will be determined by computing the percentage that net sales taxes collected attributable to vendors in each county including its cities and towns bear to total net sales taxes collected of vendors in all counties including their cities and towns. Subject to subsection (h) of this section, this percentage of the balance shall be distributed within each county as follows:

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STAFF COMMENT

In W.S. 39-16-111(b)(iii), the department is required to distribute ten thousand dollars ($10,000.00) to each county in monthly installments. The Committee could consider combining this to $50,000.00 of either sales or use taxes, but combining these amounts may require additional programming by the Department of Revenue.

The stricken language referencing the June 30, 2004 date is also in chapter 16 but is deleted above because the dates have expired.

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(s) Taxes collected under subsections W.S. 39-15-107(a)(i) and (ii) shall be remitted in full by the county treasurer to the department monthly or as required by the department together with reports as required by the department. County treasurers shall be reimbursed monthly in an amount equal to five percent (5%) of the amount remitted to the department in the preceding month for deposit into the county general fund.

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STAFF COMMENT
The above language is added from W.S. 39-16-111(h)

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ARTICLE 2 - LOCAL SALES AND USE TAX

39-15-202. Administration.

(a) The state preempts the field of imposing tax upon retail sales of tangible personal property, admissions and services and purchases for storage, use or consumption in

this state as provided by this article and no county, city, town or other political subdivision may impose, levy or collect taxes upon retail sales, admissions and services or purchases for storage, use or consumption in this state except as provided in this article. Any tax imposed under this article on retail sales of tangible personal property, admissions and services shall also impose an excise tax at the same rate on purchases for storage, use or consumption in this state as provided in this article.

39-15-306. Licenses; permits; bonding.

(b) Bonding. The following shall apply:

(v) Whenever a nonresident general or prime contractor or nonresident subcontractor furnishes a surety bond for the faithful performance of his contract or subcontract there is imposed an additional obligation upon the surety company to the state of Wyoming and the department as its agent that the nonresident contractor shall pay all sales taxes which become due in the performance of the contract. In the case of a nonresident general or prime contractor this additional obligation

includes liability to pay the department all sales taxes which have not been paid to a licensed vendor or the department by the nonresident contractor. The nonresident general or prime contractor or his surety company is authorized to recover from the nonresident subcontractor the amount of sales taxes accruing with respect to purchases made by the nonresident subcontractor which were paid to the department by the nonresident contractor or the surety company, or an amount equal to the sales taxes so paid by the nonresident contractor may be withheld from payments made under the contract. The liability of the surety company under this section is limited to three percent (3%), plus the increased rate under ~~W.S. 39-16-104(b)~~ W.S. 39-15-104(b) if the tax under that section is in effect, of the contract price;

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STAFF COMMENT

As noted above, this draft generally does not include conforming changes to decrease the length of the bill. The above change is included for committee discussion. An alternative option would be to remove the statutory reference and set the rate at four percent (4%) to simplify these provisions.

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Section 2. W.S. 39-16-101 through 39-16-111, 39-16-201 through 39-16-211 and 39-16-301 through 39-16-311 are repealed.

Section 3. This act is effective July 1, 2026.

(END)