

CHAPTER 2

SALES AND USE TAX

Section 1. Authority. These rules are adopted under the authority of W.S. 39-11-102.

Section 2. Purpose. These rules are intended to provide guidance to taxpayers regarding the Department's administration of W.S. 39-15-101 through W.S. 39-16-311.

(a.) Sales Tax/Use Tax Complementary. The Sales and Use Tax laws are complementary.

(b.) Application of Regulations. The regulations contained within Chapter 2 apply to the state sales tax, use tax and county option sales and use taxes imposed by any county under Wyoming Statutes, Title 39, Chapters 15 and 16.

Section 3. Definitions.

(a.) "Abandonment" means all work performed within a well site to cease producing oil and gas from a well when it becomes unprofitable. Such work includes removal of production equipment, permanent sealing of the wellbore and well site reclamation. Such work does not include temporary shut ins of an oil or gas well. Work to shut in oil or gas wells is taxable, and is not an abandonment of a well site.

(b.) "Activities Sequentially required" means services in an oil or gas well site that occur in the following order: Exploration, drilling, completion, production, maintenance and abandonment of the well site. This order is maintained for taxability regardless of the chronological order of occurrences.

(c.) "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 deliveries in this state.

(d.) "Agriculture" means the science or art of cultivating the soil, producing crops or raising livestock.

(e.) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(f.) "Assistive Device" means any item, piece of equipment or product system used to increase, maintain or improve the functional capabilities of an individual with a permanent disability. Such devices include but are not limited to computers used to replicate speech, wheelchair lifts and pedal extensions used to assist in mobility and other devices which allow the disabled person to lead a more normal lifestyle. These devices shall not include any medical device, surgical device or organ implanted or transplanted into or attached directly to an individual.

(g.) "Business entity" means and includes an individual, partnership, corporation,

corporate division, joint stock company or any other association or entity, public or private, or separate business unit thereof.

(h.) “Certified Automated System (CAS)” means Software certified under the Streamlined Sales Tax Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(i.) “Certified Service Provider (CSP)” means an agent certified under the Streamlined Sales Tax Agreement to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(j.) “Completion” means all work performed within a well site to complete an oil or gas well for production. This phase begins with the decision by the oil or gas production company to produce the well and includes the setting and cementing of production casing or when production casing is not set as in the case of an open hole completion, the completion of under-reaming or the attainment of total depth of the well. It includes all services performed at the well site to equip the well for production and ends with the production of the first barrel of oil or the first MCF of gas for market.

(k.) “Computer hardware” means the physical computer assembly and peripherals including, but not limited to: the central processing unit, keyboard, console, monitor, memory board, disk and tape drive, printer, modem, and optical reader.

(l.) “Computer software” means the set of instructions necessary to the operation of a computer.

(i.) “Canned computer software” means pre-written computer software offered for sale, lease, or rental to consumers on an off-the-shelf basis.

(ii.) “Custom computer software” means computer software specially designed and created for a specific consumer.

(m.) “Consideration” means recompense or payment which includes anything of value to the parties to a sale. Consideration is not limited to cash. Assumption of debt is a form of consideration.

(n.) “Consumer” means any person exercising any right of ownership over tangible personal property or taxable services or admissions unless the property, admissions, or services are purchased for resale in the normal course of business.

(o.) “Contractor” The definitions contained in W.S. 39-15-301(a)(i-iv) and (vi) and W.S. 39-16-301(a)(i-iv) and (vi) are hereby adopted. Please note that a landowner developing his/her own real property will be considered a general or prime contractor unless he subordinates those duties by contract. See also Section 12 of these rules.

(p.) “Dietary Supplement” means any product, other than “tobacco” intended to supplement the diet that:

(i.) Contains one or more of the following dietary ingredients:

(A.) A vitamin;

(B.) A mineral;

(C.) An herb or other botanical;

(D.) An amino acid;

(E.) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F.) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in above; and is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

(q.) "Drilling" means the act of boring a hole through which oil and/or gas may be produced or encountered in commercial quantities. The activities associated with the drilling process include placement of the rig and setting up of the well site, boring of the hole and placement and cementing of casing to protect the aquifers and removal of the rig upon attainment of the appropriate depth.

(r.) "Dunning" means to ask insistently or repeatedly for payment.

(s.) "Entity based exemption" means an exemption based on who purchases the product or who sells the product.

(t.) "Exploration" means all work performed to reveal the existence of geologic conditions favorable to the accumulation of oil or gas.

(u.) "Fixtures" means tangible personal property which are appurtenances to a building/structure and do not lose their identity as appurtenances, but due to the owner's intentions, the fixtures become a permanent part of the real property. This may include, but is not limited to: lighting fixtures; plumbing fixtures; hot water heaters; furnaces; boilers; central heating units; elevators; hoists; burglar and fire alarms which are wired into the structure; central air conditioning and built-in refrigeration units; built-in ovens, ranges, and dishwashers; and wall to wall carpeting which is glued down or otherwise permanently attached to the floor of the structure.

(v.) "Food for domestic home consumption" means substances, whether liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food for domestic home consumption

includes dietary supplements and does not include alcoholic beverages, tobacco, prepared foods or food sold through vending machines.

(i.) “Prepared foods” are foods generally intended for, and which are ready for immediate consumption.

(A.) “Prepared food” means food sold in a heated state or heated by the seller; two or more food ingredients mixed or combined by the seller for sale as a single item; or food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(B.) “Prepared food” does not include:

(1.) Food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.

(2.) Food sold in an unheated state by weight or volume as a single item;

(3.) Food sold by a seller whose proper primary NAICS classification is food manufacturing; or

(4.) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies or tortillas which are sold for other than immediate consumption.

(5.) “Dietary Supplements” including vitamins, minerals, botanicals, amino acids and other substances used to enhance dietary health.

(w.) “Gross rental paid as a component of sales price” means the total consideration to enjoy and maintain temporary possession of tangible personal property. Gross rental does not include any tax legally imposed directly on the consumer, which is separately stated on the invoice, bill of sale or similar document given to the purchaser.

(x.) “Intangible Personal Property” The definition contained in W.S. 39-11-101(a)(vii) is hereby adopted.

(y.) “Intrastate telephone services” means the intrastate two-way transmission of sound, data, or other forms of information by any means from one point to another within this state.

(z.) “Livestock” means animals kept for agricultural use or to resell for profit as an agricultural product. This includes, but is not limited to: horses, cattle, mules, asses, sheep, swine, goats, llamas, bison, ostrich, emu, poultry, fish, and bees.

(aa.) “Maintenance” means any and all work performed at the well site to maintain production of the oil or gas well. This work includes but is not limited to, repairs made to equipment at the well site, the monitoring of activity at the well site and all other activities to maintain production. This definition as stated applies only in taxation of oil or gas operations.

(bb.) “Manufacturing” means a transformation or conversion of material or things into a different state or form from that in which they originally existed, and the actual operation incident to changing them into marketable products. The change in form, composition, or character must be a substantial change and it must result in a transformation of the property into a different product having a distinctive name, nature and use.

(cc.) “Materials” means tangible personal property used for the construction, alteration, improvement or repair of real property in this state. This includes but is not limited to: brick, builder's hardware, cement, gravel, sand, asphalt, lumber, electrical wiring, wall board, roofing, siding, doors, windows, and cabinets.

(dd.) “Model 1 Seller” means a seller that has selected a Certified Service Provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(ee.) “Model 2 Seller” means a seller that has selected a Certified Automated System to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(ff.) “Model 3 Seller” means a seller that has sales in at least five (5) member states, has total annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(gg.) “Newspaper” means a publication that is printed on newsprint and is distributed daily, weekly, or at other intervals and is used to disseminate news of a general character and of a general interest. This includes magazines, handbills, circulars, advertising flyers, sales catalogs, or other such printed materials when they are distributed within the newspaper.

(hh.) “Occasional Sale” as used in Section 9 means a single event occurring four or fewer times in a calendar year.

(ii.) “Open hole completion” means the completion of that portion of an oil or gas well bore without casing.

(jj.) “Permanent Disability” means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairment; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following major life activities: self-care, receptive and expressive language learning, mobility, self-direction, capacity for independent living, and/or economic self-sufficiency.

(kk.) "Principal Residence" as used in Section 13 means a person's true, fixed and permanent physical Wyoming address to which a person intends to return.

(ll.) "Processing" means the transformation of tangible personal property into a different state or form from which it originally existed

(mm.) "Production" means all work performed within a well site to produce an oil or gas well. This phase begins with the production of the first barrel of oil or the first MCF of gas for market and ends once the well is abandoned. This definition as stated applies only in the taxation of oil or gas operations for sales and use tax purposes.

(nn.) "Product-based Exemption" means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

(oo.) "Production Casing" means the series of steel pipe lengths, screwed or welded together through which oil and gas flows to the surface.

(pp.) "Prosthetic device" means any item which replaces a missing body part or supports the function of the human body, and which is specifically designed, manufactured, or otherwise created or adjusted for use by a particular patient.

(qq.) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(rr.) "Real Property" The definition contained in W.S. 39-15-101(a)(v) is hereby adopted.

(ss.) "Recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of an oil or gas well in any geological interval not currently completed or producing which has been approved as a recompletion by the Wyoming Oil and Gas Conservation Commission.

(tt.) "Seller" means a person making sales, leases, or rentals of personal property or services.

(uu.) "Tangible Personal Property" means property which is neither intangible nor real property. Personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.

(vv.) "Taxpayer" The definitions contained in W.S. 39-15-101(a)(x) and W.S. 39-16-101(a)(vii) are hereby adopted. For sales/use tax purposes the taxpayer is the consumer of taxable admissions, goods or services.

(ww.) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(xx.) "Use-based Exemption" means an exemption based on the purchaser's use of the product.

(yy.) "Vendor" The definitions contained in W.S. 39-15-101(a)(xv) and W.S. 39-16-101(a)(x) are hereby adopted.

Section 4. Administrative Functions.

(a.) Sales/Use Tax Rate. The time and place of sale shall determine the applicable tax rate except for motor vehicles. See Sections 5 and 13 of these rules.

(i.) Leased/Rented Tangible Personal Property. The required sales tax rate for leased tangible personal property shall be source according to the provisions of section 5 of these rules. Any purchase option exercised at the end of the lease agreement is a separate transaction and will be taxed as a separate sale where the transaction occurs.

(ii.) Changes to tax rates shall be effective on the first day of the calendar quarter with sixty (60) days notice prior to the beginning of the calendar quarter for all local option rate changes. One exception to this general rule is for purchases made from printed catalogs. For local option rates on catalog purchases one hundred twenty (120) days notice must be given prior to the rate becoming effective on the first day of a calendar quarter.

(b.) Payments made for sales/use tax liabilities shall be applied in the following order: fees, interest, tax, penalty.

(c.) In all cases the burden of proof as to the point of delivery is upon the vendor. All delivery slips, freight bills, etc., shall be preserved for three (3) years along with all invoices and other business records.

(d.) Corrections to Assessments. Sales/use tax assessments issued by the Department which are later found to be in error may be amended. Such amendments do not change the date of the original assessment.

(e.) Local Option Sales/Use Tax. Sales/use tax regulations shall be applicable to county/local optional sales, or lodging tax imposed by Wyoming political subdivisions. These tax rates shall be determined by the date and location of sale.

(f.) The State of Wyoming will provide and maintain a database of sales and use tax rates

for all taxing jurisdictions residing within the boundaries of the state. For the identification of state and local jurisdictions the state will use Federal Information Processing Standards (FIPS) codes.

(g.) The state shall relieve sellers and Certified Service Providers (CSPs) from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the state on tax rates, boundaries, or taxing jurisdiction assignments.

(h.) Calculating the tax - rounding tax calculation shall be carried to the third decimal place, and shall be rounded to a whole cent using a method that rounds up to the next whole cent whenever the third decimal place is greater than four (4).

(i.) Use Tax

(i.) Transactions Subject to the Use Tax. The purchase or lease of all tangible personal property outside this state for use, storage, or consumption within this state shall be subject to the use tax, providing the same transaction would be subject to the sales tax if the transaction had occurred wholly within Wyoming.

(ii.) The use tax shall be determined by when tangible personal property is first stored, or first used or first consumed in Wyoming.

(iii.) Credit for Sales Tax Payments Made to Another State. The Department shall allow credit for sales tax legally imposed and paid to another state on a purchase equal to but not exceeding the Wyoming use tax liability on that purchase. Claims for the off-setting credit shall be substantiated with copies of invoices showing sales tax paid. No off-setting credit shall be granted for use tax paid to another state. Off-setting credits can only be used within statutory time frames.

(iv.) Storage of Property. The use tax shall not apply to tangible personal property held or stored in this state by a licensed vendor as defined by W.S. 39-16-101(a)(x) as inventory for resale. The use tax will not apply to tangible personal property purchased outside Wyoming for use in other states, but shipped to and temporarily stored in Wyoming pending shipment to another state.

(v.) Prior Use of Property Purchased Outside Wyoming. The use tax shall not apply to tangible personal property, which is purchased and used in the manner for which it was manufactured or assembled in another state, prior to its use in Wyoming. Application of the tax on motor vehicles is discussed at W.S. 39-15-107(b)(i) and W.S. 39-16-107(b)(ii).

Section 5. Sourcing Rules.

(a.) The retail Sale, excluding lease or rental, of a product shall be sourced as follows:

(i.) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(ii.) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee,

designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.

(iii.) When subsections (a)(i) and (a)(ii) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(iv.) When subsections (a)(i), (a)(ii) and (a)(iii) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(v.) When none of the previous rules of subsections (a)(i) through (a)(iv) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(b.) The lease or rental of tangible personal property, other than property identified in subsection (c) or subsection (d), shall be sourced as follows:

(i.) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of the business property that accompanies employees on business trips and service calls.

(ii.) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a).

(iii.) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c.) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (d), shall be sourced as follows:

(i.) For a lease or rental that requires recurring periodic payment, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its

records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(ii.) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a).

(iii.) This subsection does not affect the imposition or computation of sales or use tax on leases or rental based on lump sum or accelerated basis, or on the acquisition of property for lease.

(d.) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (a). "Transportation equipment" means any of the following:

(i.) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(ii.) Trucks and truck-tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

(A.) Registered through the International Registration Plan; and

(B.) Operated under authority of a carrier authorized and certified by the U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of personal or property in interstate or foreign commerce.

(iii.) Aircraft that are operated by air carriers authorized and certified by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate or foreign commerce.

(iv.) Containers designed for use on and component parts attached or secured on the items set forth in subsections (d)(i) through (d)(iii).

(e.) A business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact ("Multiple Points of Use or MPU" Exemption Form).

(i.) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

(ii.) A purchaser delivering the MPU exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(iii.) The MPU exemption form will remain in effect for all future sales by the seller to the purchaser (except as to the subsequent sale's specific apportionment that is governed by the principle of subsection (ii) and the facts existing at the time of the sale) until it is revoked in writing.

(iv.) A holder of a direct pay permit shall not be required to deliver a MPU exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection (ii) in apportioning the tax due on a digital good or service that will be concurrently available for use in more than one jurisdiction.

(f.) The purchaser of direct mail that is not a holder of a direct pay permit shall provide the seller in conjunction with the purchase either a Direct Mail Form or information to show the jurisdictions to which the direct mail is delivered to recipients.

(i.) Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(ii.) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(g.) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Form or delivery information, as required by subsection (f) of this section, the seller shall collect the tax according to (a)(v) of this section. Nothing in this paragraph shall limit a purchaser's obligation for sales and use tax to any state to which the direct mail is delivered.

(h.) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the seller.

(i.) Except for the defined telecommunication services in subsection (k), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(j.) Except for the defined telecommunication services in subsection (k), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(k.) The sales of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(i.) A sale of mobile telecommunications services other than air-to-ground radio telephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

(ii.) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(iii.) A sale of prepaid calling service is sourced in accordance with section (a). Provided however, in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in section (a)(v) shall include as an option the location associated with the mobile telephone number.

(iv.) A sale of a private communication service is sourced as follows:

(A.) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(B.) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(C.) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(D.) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(v.) For the purpose of sections (i) through (k) the following definitions apply:

(A.) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(B.) "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(C.) "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(D.) “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under sections (i) through (k). “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

(E.) “Customer Channel Termination Point” means the location where the customer either inputs or receives the communications.

(F.) “End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

(G.) “Home service provider” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(H.) “Mobile telecommunications service” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobil Telecommunications Sourcing Act).

(I.) “Place of primary use” means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” must be within the licensed service area of the home service provider.

(J.) “Post-paid calling service” means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service.

(K.) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(L.) “Private communications service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(M.) “Service address” means:

(1.) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(2.) If the location in subsection M1 is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3.) If the location in subsection M1 and subsection M2 are not known, the service address means the location of the customer's place of primary use.

Section 6. Licensing.

(a.) License Application and Registration. All vendors shall apply for a Wyoming sales/use tax license before commencing business in the state. Application and registration shall be completed through the Department's Excise Tax Division. Applicants shall complete an application, provide any necessary supporting documentation and pay a \$60.00 non-refundable license fee.

(b.) Non-nexus vendors that are participating in the Streamlined Sales Tax Agreement will be registered in all member states through use of the centralized registration process provided under the agreement. Under this process a seller registering under the agreement will not pay a fee for registration or licensing for any state where there is no legal requirement to register. No written signature of the licensing seller will be required. An agent may register a seller under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

(c.) Governmental Entities. The retail sale, lease, or rental of tangible personal property or taxable services by the State of Wyoming or its political subdivisions shall be subject to the sales/use tax. The governmental entity shall be considered a vendor and shall be licensed and collect tax on taxable transactions.

(d.) Tribal Members. Sales or Leases on the Wind River Indian Reservation. Persons on the Wind River Reservation who are engaged in selling or leasing tangible personal property or providing services subject to the sales or use tax shall become licensed as vendors. Vendors shall comply with all reporting requirements as directed by the Department for sales or leases occurring on the Reservation to any person who is not an enrolled member of the Northern Arapaho or Eastern Shoshone Tribes.

(e.) Farmers and Ranchers. Persons engaged in agriculture for the exclusive purpose of selling at wholesale shall not be required to obtain a Wyoming sales/use tax license.

(f.) Multiple Business Locations. Vendors who have more than one (1) location of business in Wyoming shall make separate application for each location to be licensed. The license fee shall be submitted along with the license application for each separate location.

(g.) Transfer of License. Sales/use tax licenses shall not be transferable. If there is a change from one form of legal entity to another, the new entity shall apply for a new sales/use tax

license under the new entity's legal name. Any such change shall be reported to the Department immediately. The license fee shall be imposed on each such change.

(h.) License Suspension. The Department may, after providing notice and an opportunity for a hearing pursuant to procedure provided by Section 16 of these rules, suspend the license of any vendor violating any provision of Wyoming Statutes, Title 39, Chapters 15 and 16.

(i.) License Cancellation. Vendors shall request cancellation of their sales/use tax license when no longer engaged in business activities which require the license. The vendor shall provide the Department with a written cancellation request and shall be in good standing with all sales/use tax requirements before the license may be canceled. All canceled licenses shall be surrendered to the Department upon request for cancellation.

(j.) License Revocation. The Department may, after providing notice and an opportunity for a hearing pursuant to procedure provided by Section 16 of these rules, revoke the license of any vendor violating any provision of Wyoming Statutes, Title 39, Chapters 15 and 16.

(k.) Inactive License Revocation. Any vendor reporting no gross sales for three (3) consecutive years shall be considered inactive by the department. For purposes of this paragraph "gross sales" means any sales of any tangible personal property or services by a Wyoming vendor to any purchaser either domestic or foreign. The department shall notify the inactive vendor of their status and request justification for retaining the license. The vendor has thirty (30) days from the date of the notice to file a response to the department demonstrating their need for retaining their sales tax license. Should the vendor not demonstrate a need for a license the department shall revoke the license. The vendor has the right to appeal the department's decision with the State Board of Equalization.

Section 7. Reporting/Filing Sales/Use Tax Returns.

(a.) Reporting Frequency. The Department shall assign vendors a filing frequency at the time of licensing. Filing frequency may be changed by the Department based on the volume of sales/use tax collected and other criteria as established in policy and procedure guidelines. Filing frequency assigned by the Department shall be monthly, or quarterly.

(b.) Reporting Forms. Vendors shall file sales/use tax data on sales/use tax returns provided by the Department or in other format or media as approved by the Department. Returns will be rejected if not completed in accordance with the instructions provided. A vendor will have 15 calendar days from the date of notification to submit a corrected report without incurring late filing penalties, as long as the original report was filed on time.

(c.) Due Date. Vendors shall submit sales/use tax returns and remit sales and use tax on or before the last day of the month following the last month in the reporting period in which the sale occurred. For example, monthly filers shall submit returns and tax on or before the last day of the month following the month in which the sales occurred; quarterly filers shall submit returns and tax on or before January 31, April 30, July 31 and October 31 of each calendar year. If a due date falls on a weekend or Federal or Wyoming state holiday the next business day serves as the new due date.

(i.) Consumers, including contractors, remitting sales or use tax not paid to vendors shall remit the tax on or before the last day of the month following the month of purchase.

(ii.) The postmark date recorded by the Department shall be deemed the date of filing. Consumers remitting tax and/or tax returns in person shall receive a receipt indicating the amount of tax paid and the date received. Hand delivered returns shall be date stamped by the Department at the time received. The date stamped by the Department shall serve as the filing date.

(d.) Extension. The Department may grant extensions of filing due date under limitations specified in statutes W.S. 39-15-107(a)(i) and W.S. 39-16-107(a)(iii) if extenuating circumstances exist which prevent the filer from filing in a timely manner. Requests for extension shall be made in writing to the Excise Division Administrator and shall thoroughly explain the reason for the request.

(e.) Returned Tangible Personal Property. Vendors shall refund the sales tax paid by the purchaser on any sale which is rescinded in its entirety. Vendors may claim a deduction from gross sales for the amount of the rescinded sale.

(f.) Deductions. Vendors are entitled to claim a deduction from gross receipts on the tax return for refunds.

(i.) Commissions Not Deductible. Commissions paid to sales agents for their services in making sales shall not be deductible from the sales price of property or services sold.

(ii.) Discounts. Discounts allowed at the time of sale shall be deducted from the taxable sales price. Discounts offered at the time of sale as incentive for prompt payment shall be deducted from the sales price only upon acceptance of the discount. Tax at the time of the sale shall be calculated on the undiscounted amount and if the discount is subsequently taken shall be credited against future tax liability.

(g.) Merchandise Used or Consumed by Vendors. Tangible personal property removed from inventory by the vendor for business or personal consumption shall be subject to sales/use tax. The purchase price of the property shall be deemed as the tax basis.

(h.) Transportation/Freight Charges. Transportation or freight charges are not taxable and shall not be included within the sales price of any retail sale. Transportation or freight charges in a wholesale transaction are a component of cost of goods sold, like markup and overhead, and become part of the sales price paid by the consumer. What this means is that the exemption availed to the wholesaler in the wholesale transaction cannot be passed through to the consumer in a retail transaction.

(i.) Invoices, Bills of Sale, and Receipts. Each vendor of tangible personal property or services upon which a sales or use tax is imposed shall provide a receipt to the purchaser, except as stated in (j) which follows. The vendor must retain copies of all such receipts containing the following:

(i.) Vendor's name and address;

(ii.) Full and accurate description of the property or service sold (make, model, year, serial number);

(iii.) Date of sale;

(iv.) Discounts, trade-in allowances, and manufacturers' rebates for motor vehicles;

(v.) Net sales price; and

(vi.) Sales/use tax paid by the purchaser.

(j.) Taxes Calculated on Gross Receipts. Where receipts do not normally accompany each sale e.g. (coin operated vending, bars, movie theaters) vendors must maintain records of tax calculated on the following formula:

$$\text{Tax} = \text{Gross Receipts} - (\text{Gross Receipts} \div (1 + \text{Tax Rate}))$$

Example Gross Receipts = \$1,000

Tax Rate = 6%

$$\text{Tax} = \$1,000 - (\$1,000 \div (1 + .06))$$

Tax = \$1,000 - 943.40

Tax = 56.60

(k.) Excess Tax Collected. Excess tax collected shall be returned to the purchaser or, if the purchaser is unknown or cannot be ascertained, remitted to the Department. Vendors shall not be entitled to retain excess taxes collected. Due date of the remittance is the same as provided in Paragraph (c) of this section.

(l.) Estimated Tax Returns. A party liable for sales or use tax who is unable to file a tax return containing sales amounts by the due date of the return may file an estimated tax return and make an estimated tax payment prior to the due date of the tax return. Subsequent submission of the tax return and payment of the actual amount of tax due shall be subject to interest and penalty provisions. Estimated tax returns shall be clearly marked and identified as an "Estimated Tax Return." Subsequently submitted "returns shall be clearly marked as an "Amended Tax Return." Additional reporting forms may be obtained from the Department.

Section 8. Direct Pay Permits.

(a.) General. Purchasers making taxable purchases in this state totaling \$5,000,000 or more per calendar year may apply to the Department for a direct pay permit. Such permits shall allow the purchaser to pay applicable Wyoming sales tax directly to the Department rather than to the selling vendor from whom purchases are made.

(b.) Permitting Process.

(i.) Purchasers shall apply to the Department for direct pay permits. Application shall be made on the form and in a manner prescribed by the Department.

(ii.) The director or the director's designee shall review all permit applications and determine if the applicant shall be granted direct pay authority. Application reviews shall be conducted in a timely manner so that applicants receive notification of authorization or denial within thirty (30) days of the date the Department receives the completed application and any necessary supporting documentation.

(iii.) Once approved, the Department shall assign a direct pay permit number and provide the permittee with a printed "Direct Pay Permit" document.

(c.) Using the Direct Pay Permit. Direct pay permit holders shall furnish each vendor with a copy of their direct pay permit. Vendors shall retain a copy of the pay permit in their files.

(d.) Reporting.

(i.) Purchasers authorized to make direct payment of Wyoming sales tax shall report tax owed in a format as prescribed by the Department. Such reports shall be made by the end of the month following the month purchases are made.

(ii.) Late filing of reporting forms and remittance of tax due shall result in the assessment of interest and penalty.

(e.) Any direct pay permit authorized by Section 8 may be revoked by the Department of Revenue at any time upon ninety (90) days written notice to the permittee. The specific procedure for the revocation is provided for in Section 16 of these rules.

Section 9. Non-Taxable Transactions.

(a.) General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the exempt charges are not separately shown and distinguishable from taxable charges.

(b.) Certificates of Exemption. Vendors shall obtain completed exemption certificates for all sales transactions, other than those qualifying under Section 8 of these rules, where sales tax is not collected from the purchaser at the time of sale. Purchasers shall file a single exemption certificate with each selling vendor for exempt purchases made. Such certificates shall be in a format as prescribed by the Streamlined Sales and Use Tax Agreement of November 12, 2002, as adopted by the department and shall be retained in the selling vendor's records. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase. A purchaser is not required to provide a signature to claim an exemption from tax unless the a paper exemption certificate is used. The seller shall use the standard format for claiming an exemption electronically when that format is adopted by the Governing Board of the Streamlined Sales Tax Project. Sellers are relieved of liability from the tax owed upon obtaining a properly completed exemption certificate from the purchaser.

(c.) Religious and Charitable Organizations. Organizations operated primarily for religious or charitable purposes shall be exempt from sales and use tax on their purchases.

Organizations verifying federal 501(c)(3) status with our agency will be issued an exemption approval letter on this documentation alone. All other organizations must furnish the documents set forth in the following subsection. Such organizations shall apply to the Department in writing for exemption approval and registration.

(i.) The Department shall consider the following documentation to determine whether the organization is primarily engaged in charitable or religious activities:

- (A.) Articles of Incorporation
- (B.) Organizational Charter or Constitution
- (C.) Mission Statement
- (D.) Budget
- (E.) Income and Expense Statements
- (F.) Evidence of federal tax exempt status

(ii.) To be considered primarily organized and operated for charitable or religious activities, an organization shall establish that:

(A.) The organization is organized and operated for a purpose designed to benefit an indefinite number of persons in an educational, moral, physical, or social manner; and

(B.) The organization's assets are completely and permanently pledged to that same charitable or religious purpose; and

(C.) No part of the net earnings of the organization will be distributed to the organization's members, trustees, officers, or other similarly situated persons as salary or profit earned from organizational activities; and

(D.) The organization is a non-profit organization, and has expended at least sixty five percent (65%) of its annual income for the prior three (3) years on programs, other organizations, foundations, or similar groups and/or activities directly related to its charitable purposes.

(iii.) Organizations shall notify the Department if the conditions allowing exempt status change.

(A.) Organizations which have existed for less than three (3) years and which have insufficient history to comply with Section 9(c)(ii)(D), as determined by the Department, may be issued exemption approval for one (1) year.

(iv.) Occasional sales of tangible personal property or services by religious or charitable organizations for fund raising purposes for the conduct of their regular religious or

charitable functions and activities shall be exempt from the sales tax.

(v.) Purchases made by religious or charitable organizations in or for their regular religious or charitable functions and activities shall be exempt from the sales and use tax. Purchases made by members or employees of religious or charitable organizations shall be subject to the sales or use tax if not paid directly by the organization.

(vi.) For the purpose of this rule, construction contractors shall be considered self-employed and not employees of religious or charitable organizations. Therefore contractors shall be subject to the sales and use tax on all equipment, materials, fixtures and supplies purchased by the contractor to perform under the contract.

(d.) Employees of Exempt Agencies. Sales to employees of exempt agencies or organizations shall be taxable, even when the employee is reimbursed by the exempt employer. Payment by the employee shall establish that the employee is acting in his own behalf.

(e.) Sales of Food for domestic home consumption. Sales of food for domestic home consumption are generally exempt from sales tax. This exemption does not include the sale of alcohol, tobacco products, prepared foods and foods sold through vending machines.

(f.) Interstate Commerce. Trucks, truck-tractors, trailers, semitrailers and passenger buses in excess of ten thousand (10,000 pounds gross vehicle weight purchased or leased by common or contract interstate carriers shall be exempt from the sales and use tax provided that the vehicles are used in interstate commerce. Purchasers and lessees of such vehicles shall hold valid U.S. Department of Transportation (USDOT) permit or authority as follows to qualify for exemption:

(i.) Common or contract for hire interstate carriers must document their USDOT number, permit and insurance requirements to qualify for exemption.

(ii.) Private carriers not subject to federal regulation shall be subject to the sales or use tax on the purchase or lease of such vehicles.

(g.) Containers. Sales of containers and packing, when sold to persons who resell the containers together with their contents, shall be exempt from the sales and use tax. Disposable items purchased by restaurants, drive-ins, lunch counters, motels, hotels, and similar retailers, for their customers' consumption shall be exempt from the sales and use tax. All purchases of reusable products used or directly consumed by vendors shall be subject to sales and use tax at the time of purchase.

(h.) Manufacturing, Processing, Agriculture.

(i.) Fuel and Power Purchases. Exempt Purchases of power or fuel as stated in W.S. 39-15-105(a)(iii)(D), shall be separately accounted for, by separate metering, storage, or engineered calculation as required by the Department, and distinguishable from taxable purchases of same. Purchasers shall provide their power or fuel vendor with an exemption certificate or a direct pay permit, in a form prescribed by the Department.

(ii.) Ingredients or Components. Tangible personal property which is necessarily used or consumed in manufacturing, processing or compounding operations by a person engaged in the operations, shall be exempt from the sales and use tax, if that property becomes an ingredient or component of the final product. This exemption applies to chemical and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process. The act of extracting a mineral or other substance from the earth shall not be considered manufacturing or processing. Sales of containers, labels or shipping cases used for tangible property so manufactured or processed are exempt. To be considered exempt the shipping materials must be unique to the property and consumed as part of the shipping. Shipping materials which are reusable are not exempt under this exemption clause.

(i.) School fundraising activities. School fundraising activities for public schools as stated in W.S.39-15-105(a)(viii)(M) are sales tax exempt. Such fundraising activities must be recognized by the school district receiving the funds as an appropriate activity. Sales made by private vendors on school grounds, not associated with fundraising activity for the school, are considered taxable sales.

(j.) Prescription drugs and other devices used for human relief as set forth in W.S. 39-15-105(a)(vi)(B) shall be exempt from sales and use tax.

Section 10. Refunds and Credits.

(a.) General. The Department shall issue refunds or credits to the vendor (seller) or taxpayer (purchaser) from whom the original tax payment was received by the department. Vendors are entitled to claim a refund or credit.

(b.) Credit. The Department shall credit accounts for any overpayment of fees, tax, penalty or interest. Credits shall automatically be applied against the next appropriate liability on the account.

(c.) Refunds. Refund claims shall be initiated by the vendor or taxpayer that made the overpayment to the department. The refund request shall be made in writing to the Department and shall explain the basis of the refund request. Supporting documentation evidencing the overpayment must be retained by the vendor. Postmarks shall serve as the date of refund request and shall begin tolling the statute of limitations. The Department shall refund or deny all refund claims within ninety (90) days of the date adequate supporting documentation is received.

(d.) Statute of Limitation. Requests for refund or credit of sales or use tax shall be made within thirty six (36) months of the date of overpayment.

(e.) Repossession. No refund of sales or use tax shall be made as a result of repossession of tangible personal property.

Section 11. Collection and Enforcement.

(a.) Untimely Payment. Persons remitting tax after the due date shall be assessed interest at the current rate computed in accordance with W.S. 39-15-108(b)(i) and W.S. 39-16-108(b)(i).

(b.) Waiver of Penalty. Penalties may be waived by the Department Director and Excise Division Administrator if the taxpayer can demonstrate that the Department's billing is in error or that other extenuating circumstances existed to cause delinquency. Late mailing shall not be considered just cause for waiver. Requests for waiver shall be in writing and shall evidence the reason for waiver.

(c.) Non-remittance of tax. Any vendor who makes taxable sales, collects sales tax and who intentionally fails to remit to the department the full amount of taxes collected is guilty of a misdemeanor if the amount of tax is five hundred dollars (\$500.00) or less, or a felony if the tax exceeds five hundred dollars (\$500.00).

(d.) Liquor Sale Advisory. Pursuant to W.S. 12-2-306 the Excise Tax Division shall notify the Liquor Division and request that liquor sales cease when any vendor holding a liquor license becomes sixty (60) or more days delinquent in paying sales or use tax. The Excise Division shall promptly notify the Liquor Division when the delinquent sales or use tax account is brought current.

(e.) Installment Payment Agreements. Per W.S. 39-11-102(a)(i)(E), taxpayers may request in writing an installment payment agreement to pay sales or use tax, penalty, and interest on payment terms and conditions the Department may require. The agreement shall be on a form provided by the Department and shall be signed by the Department Director or Excise Division Administrator and the taxpayer. Taxpayer violation of an installment agreement shall cause the total liability to accelerate and become due.

(f.) Collection through Offset. Taxes and other fees due and payable under Wyoming Statutes, Title 39, Chapter 15 and 16, may be recovered and paid through offset against any funds due a vendor or taxpayer by the state or any political subdivision.

(g.) Dishonored Checks. The Department shall present checks for payment twice before assessing civil liability for unpaid checks under W.S. 1-1-115. The Department shall return dishonored checks only after payment in full is received and only if requested by the taxpayer.

(h.) Delinquent Vendor or Taxpayer Accounts Status. To be considered timely, and avoid delinquent vendor status, sales and use tax returns and full remittances of the tax due must be postmarked by the last day of the month following the end of the designated reporting period (month, quarter, year).

(i.) Public Notice. The Department may periodically publish a list of license revocations, liens placed, and other public information pertaining to delinquent accounts.

Section 12. Contractor Procedure.

(a.) "Construction project" is the set of all agreements to perform repairs, improvements, alterations, or constructions which is to be done contemporaneously on real property. When repair,

alteration, improvement, or new construction agreements are contingent upon one another or are made dependent upon the happening of one another, such agreements shall be considered part of the same construction project. A construction project may consist of a single agreement to repair, alter, improve, or construct a single item of real property.

(b.) Notification requirements, Non-Resident General or Prime Contractors and Resident General or Prime Contractors who hire non-resident subcontractors. In addition to all other requirements under Wyoming law, upon being awarded a construction project, a non-resident general or prime contractor shall:

(i.) Register the project with the Department within 15 calendar days following the start of a project pursuant to the contract, and;

(ii.) Report all labor and material subcontractors hired within 15 calendar days of subcontract award notification;

(iii.) The non-resident general or prime contractor shall post a bond pursuant to W.S. 39-15-306(b)(i); Non-Resident General or Prime Contractor Bonding Requirements: W.S. 39-15-301-39-15-311 and 39-16-301-39-16-311: Any non-resident general or prime contractor awarded a construction project in Wyoming must post a bond or other acceptable security with the department within 15 days following the start of a project. The bond or acceptable security must be for 4% of the total contract amount for the project. Any contractor who is required to post a bond or other acceptable security may satisfy their requirement using any of the following methods:

(A.) Surety Bond

(B.) Cashier Check

(C.) Certificate of Deposit.

(1.) The CD must be issued by an FDIC insured bank with its main office or any branch located in Wyoming.

(2.) The CD must be payable in current funds or such other manner as the department may determine at a bank located in the State of Wyoming.

(3.) The CD must be issued for an initial term of not less than one year and automatically renewable from year to year.

(4.) The contractor must execute a valid, binding, first priority pledge agreement as to the certificate of deposits, which agreement shall be on the current form approved by the department from time to time.

(5.) The originals of both the CD and fully executed pledged agreement must be delivered to the department at the same time.

(6.) If a CD is accepted and retained by the department under this

section, and if the contractor has not deposited an acceptable replacement bond or other acceptable security within 30 days before the CD's maturity date, then the contractor will be deemed to have authorized and directed the department to demand immediate payment on the CD and upon receipt of the proceeds, retain the same as a deposit of the proceeds of certified funds.

(D.) Letter of Credit

(1.) The LOC must have a face amount equal to or greater than 4% of the total contract amount for the project

(2.) The LOC must be issued by an FDIC insured bank with its main office or any branch located in Wyoming.

(3.) The LOC must be payable in current funds or such other manner as the department may determine on sight at the counters of an FDIC insured bank located within the State of Wyoming.

(4.) The LOC must be on the current form of letter of credit approved by the department from time to time.

(5.) The LOC shall be issued with an initial expiry date of not less than one year from the date of its issuance and automatically extended from year to year.

(6.) The issue date of the LOC must be written ten days before the date on which the deposit is received by the department.

(7.) The original LOC must be delivered to the department.

(8.) If a LOC is accepted and retained by the department and the contractor has not deposited an acceptable replacement surety bond or other acceptable security within 30 days before the LOC's expiration date or maturity date, the contractor will be deemed to have authorized and directed the department to draw the entire face amount of LOC and, upon receipt of the proceeds, retain the same as a deposit of proceeds of a collected cashier's check.

(9.) The contractor may deliver at any time to the department an acceptable surety bond or other acceptable security to replace an LOC retained by the department under this section. Upon its receipt and acceptance of such replacement, the department will deliver to the contractor the original LOC.

(10.) If the department determines that the contractor that has deposited an LOC under this section in lieu of a surety bond has complied with Wyoming Statutes 39-15-301-39-15-311 and W.S. 39-16-301-39-16-311, Department of Revenue Rules and Regulations and orders of the Department of Revenue, then the department shall deliver to the contractor the original LOC.

(iv.) Failure to register the project with the department shall result in a

penalty assessment of one percent (1%) of the total payments due under the contract.

(c.) Non-Resident Subcontractor Requirements. In addition to all other requirements under Wyoming law, upon being awarded a construction project or any part thereof, any non-resident subcontractor shall:

(i.) Report all lower tier subcontractors hired within 15 calendar days of subcontract award notification, and;

(ii.) Remit a completed affidavit of completion form on or before the end of the month following completion date of the subcontract.

(d.) Charges for labor to alter, improve, or construct real property are not subject to sales/use tax except where imposed by statute under W.S. 39-15-103(a)(i)(K). Charges for labor to alter, improve, repair or construct tangible personal property are subject to the sales/use tax.

(e.) Sales of tangible personal property to be used in the repair, alteration, improvement or construction of real property shall be considered taxable sales, whether sold to the owner of real property or to a contractor or subcontractor.

(f.) Work Performed for Exempt Entities. Contractors performing for exempt entities (such as the State of Wyoming, its political subdivisions or a religious or charitable organization) shall be subject to the sales and use tax on all equipment, materials, fixtures, and supplies purchased by the contractor to perform under the contract.

(g.) Contractors shall remit use tax and any sales tax not paid to a vendor to the Department by the last day of the month following the month in which a purchase is made. Failure to pay taxes timely may result in a 10% penalty plus interest as prescribed in W.S. 39-15-108(c) and W.S. 39-16-108(c).

(h.) The Department shall refund any excess retainage withheld from a non-resident subcontractor pursuant to W.S. 39-15-303(b)(ii) or W.S. 39-16-303(b)(ii) to the subcontractor, if the retainage has been remitted to the Department and exceeds sales or use tax owed by that subcontractor. Refunds shall be processed according to Section 10 of these rules.

Section 13. Motor Vehicles.

(a.) Tax Rate for Purchases. The appropriate tax rate on the purchase of a motor vehicle shall be comprised of state sales or use taxes and applicable county option sales or use taxes. The appropriate tax rate shall be determined by the tax rate in effect in the county of the purchaser's principal residence on the date of the sale

(b.) Tax Rate for Leases. The required sales tax rate for motor vehicles leased under recurring periodic payments will be determined according to the sourcing rules in Section 5(c)(i) through (iii). Any purchase option exercised at the end of a lease agreement is a separate transaction and will be taxed pursuant to Section 13(a) of these rules.

(c.) Wyoming Sales/Use Tax Statement. All vendors of motor vehicles shall provide purchasers with a copy of the original sales invoice and a copy of the form titled "Wyoming Sales/Use Tax Statement," as prescribed by the Department. To calculate the correct tax owed the vendor must assess the rate in effect in the county of the purchaser's residence. An additional copy of the statement shall be furnished by the vendor to the County Clerk.

Section 14. County Treasurers.

(a.) Exemptions. County Treasurers shall be authorized to administer the following exemptions from the sales or use tax imposed upon the sale of motor vehicles without prior approval of the Department:

(i.) Sales to the U. S. Government, the State of Wyoming or its political subdivisions;

(ii.) Sales made to religious organizations in or for the conduct of the regular religious functions and activities of the organization, provided the Department has approved such exempt status in writing as provided in Section 9(d) of these rules.

(iii.) Sales made to charitable organizations in or for the conduct of the regular charitable functions and activities of the organization, provided the Department has approved such exempt status in writing as provided in Section 9(d) of these rules.

(iv.) Interstate Commerce. Trucks, truck-tractors, trailers, semi trailers and passenger buses in excess of ten thousand (10,000) pounds gross vehicle weight purchased or leased by common or contract interstate carriers shall be exempt from the sales and use tax provided that the vehicles are used in interstate commerce. Purchasers and lessees of such vehicles shall hold valid U.S. Department of Transportation (USDOT) permits or authority as follows to qualify for exemption;

(v.) Common or contract for hire interstate carriers must document their USDOT number, permit and insurance requirements to qualify for exemption.

(vi.) The sale of motor vehicles, house trailers, trailers, or semi-trailers registered in the name of the motor vehicle vendor provided that the vehicle is included as a part of the vendor's inventory and is held principally in the conduct of the vendor's business for sale, demonstration, or delivery prior to sale and use;

(vii.) The sale of motor vehicles to enrolled members of the Northern Arapahoe or Eastern Shoshone tribes whose principal residence is on the Wind River Indian Reservation as proven by a copy of their utility bills, drivers license or a signed affidavit.

Section 15. Specific Taxability Issues.

(a.) Admission Charges.

(i.) When a theater, hall, ballroom or similar facility is leased or rented or a concession is given for the use thereof in whole or part, or when a park, grounds or outdoor facility is leased or rented or a concession is granted for the use thereof in whole or in part for any form of amusement, entertainment, recreation, games or athletic event, the lessee shall collect and remit the sales tax on the total amount paid for admission to all such places. If any persons other than employees, officers of the law on official business or children under twelve (12) years of age are admitted free or at reduced rates to any such place when admission charge is made to other persons, an equivalent tax shall be paid by these persons based on the price charged to other persons. If the owners, proprietors or their agents of such theaters, halls, ballrooms, parks, grounds, or enclosures charge for the admission when conducting any kind of amusement, entertainment, recreation, games or athletic event therein, the owners, proprietors or their agents shall obtain a license to collect the tax.

(ii.) To ensure the collection of the tax on admissions when the place of such amusement, entertainment, recreation, games or athletic events has been leased or rented or concessions granted, the lessor may collect and remit the tax on the admissions to the Department of Revenue. The lessee's name shall appear on the record of such remittance. In the event the lessor chooses not to assume the responsibility of collecting the tax, the lessee shall register with the Department of Revenue and collect all applicable taxes as required under Wyoming law and these rules.

(iii.) Occasional sales of admissions to places of amusement, entertainment, recreation, games or athletic events made and conducted by religious or charitable organizations as recognized by the Department of Revenue shall not be subject to the sales tax. Such recognition shall be exhibited, at least fifteen (15) days prior to the event, to the lessor or operator of the theater, hall, ballroom, park, grounds or outdoor facility to relieve the lessor or operator of its responsibility for the collection and remittance of the tax on its sales of admissions on behalf of the religious or charitable organization.

(iv.) Sales of admission or user fees to county or municipal owned recreation facilities, such as swimming pools, athletic facilities or recreation centers made by the county or municipality shall not be subject to the sales tax. Such sales made by persons, firms or on behalf of the persons or firms leasing or renting the facility shall be subject to the tax. The person, firm or entity making sales of admissions shall be responsible for the collection of the sales tax on such sales and shall be liable for the entire amount of such tax. Public schools are not municipally or county owned facilities and shall collect sales tax on admissions, unless exempted under 39-15-105.

(b.) Advertising. Printed advertising material to be used or distributed in direct mail advertising within Wyoming shall be taxable to the purchaser. Printed advertising material to be used or distributed in direct mail advertising outside Wyoming shall not be taxable as interstate sales, provided the purchaser does not take possession in Wyoming of the publication from the printer (vendor). When the printer retains possession of the publication and mails the publication for the purchaser he/she shall retain evidence establishing the number of addresses outside Wyoming in the total mailing. This evidence shall be in the form of an affidavit specifically identifying the number of addresses outside Wyoming. Such affidavit shall be subject to audit by the Wyoming Department of Audit at the time of audit of the printer. The printer shall retain the affidavit to

support his/her report of not taxable as interstate sales on the sales tax returns.

(c.) Auctioneers and Selling Agents.

(i.) Auctioneers and Selling Agents shall be considered vendors as defined by W.S. 39-15-101(a)(xv) and W.S. 39-16-101(a)(ix). As agents for unknown or undisclosed principals, auctioneers or selling agents are required to have a sales tax license to conduct sales upon which the tax has been imposed and are responsible for the correct collection and remittance of the tax on such sales.

(d.) Computer Hardware and Software. The service of repairing, altering or improving computer hardware, computer software, or canned software shall be subject to the sales tax. Charges for installation of software packages shall also be subject to the tax.

(i.) The service of creating custom software for a person shall not be subject to the sales tax. The person performing the service shall be considered the consumer of all tangible personal property or services purchased to perform the service.

(e.) Concessions. The operator of any business or concession for the sale of property or services upon which the tax has been imposed at any location including fairgrounds, or in any building of an agricultural fair, carnival, show, circus, public park, wild west show or rodeo, race track, golf club or course, tennis club or court, passenger depot, city or town streets or public highways and similar places shall collect the sales tax and remit it to the Department for all such sales.

(f.) Credit, Contract or Conditional Sales. Sales and use tax shall be collected at the time of the sale or purchase transaction of tangible personal property or taxable services sold on a credit basis if title or possession of the property pass at the time of the transaction. If title passes at a future date the vendor collects sales tax on each payment that portion of the total tax bears to the purchase price.

(g.) Demurrage. Demurrage charges made by vendors selling acetylene, oxygen, nitrogen, hydrogen, helium, and similar gaseous products in returnable containers shall not be subject to the sales tax. The vendor shall separately state such charges from the sales price of the product.

(h.) Detailing. Vehicle detailing services shall be subject to the sales tax. This includes washing, drying, vacuuming, waxing, polishing and other similar services provided by the vendor's employees. The purchase of supplies to be used to perform such services shall be considered wholesale purchases and not subject to the sales or use tax.

(i.) Drop Shipments/Third Party Sales.

(i.) Vendors in Wyoming receiving orders from customers for delivery in Wyoming shall collect sales tax based on the amount charged the customer, even when another vendor makes actual delivery of the goods. In such cases, the vendor making delivery of the goods shall not be required to collect the sales tax on the amount received for the property delivered, but shall obtain an exemption certificate for a wholesale sale from the original vendor.

(ii.) Vendors in Wyoming receiving instructions from vendors located outside Wyoming to deliver goods in Wyoming shall not collect sales tax on the transaction. The vendor in Wyoming shall obtain an exemption certificate for a wholesale sale from the vendor from whom the order was received.

(j.) Exterminators. Services performed for the extermination of plant, insect or animal life shall not be subject to the sales tax. Purchases of equipment, materials, supplies, and services subject to sales or use tax shall be taxable when purchased by the person providing the extermination service.

(k.) Financial Institutions.

(i.) Banks, savings and loan associations, trust companies, finance and loan companies and other such companies shall be subject to the sales and use tax on tangible personal property purchased or leased and used to conduct their business. Such institutions shall collect and remit sales tax on their retail sales of tangible personal property.

(ii.) Federally chartered credit unions and federal land banks shall be exempt from the sales or use tax on taxable services, tangible personal property purchased or leased and used to conduct their business. Such institutions shall collect and remit sales tax on their retail sales of tangible personal property or services which are subject to the sales tax.

(l.) Funeral Directors. Sales of caskets, vaults and other tangible personal property by funeral directors shall be subject to the sales tax. When a funeral director or funeral home charges a fee for a funeral with no separate statement of charges for the tangible personal property included within the service, sales tax shall be applied to the total charge made for the service.

(m.) Garages and Service Stations.

(i.) The sales price for all services performed upon tangible personal property by garages and service stations shall be subject to sales tax. The retail sale of tangible personal property made by garages and service stations, except sales of gasoline taxed under W.S. 39-17-101 through W.S. 39-17-111 and special fuel taxed under W.S. 39-17-201 through W.S. 39-17-211, shall be subject to the sales tax.

(ii.) Purchases of consumable materials and supplies, such as solvents, lubricants and parts, which are necessary in performing taxable services provided by garages and service stations shall be exempted from the tax as wholesale purchases or sales as defined by W.S. 39-15-105(a)(iii)(F).

(n.) Garbage and Chemical Toilets or Sanitary Services. Charges made for garbage hauling, latrine or sanitary services and similar services shall not be subject to the sales tax. The person providing the container, latrine, or similar container for use in the sanitary or latrine service shall pay the sales or use tax on the purchase of the container.

(o.) Goods Damaged in Transit. Where title to or possession of tangible personal property subject to sales tax, has passed to the purchaser, and is damaged in transit, the vendor shall collect the sales tax from the purchaser on the full sales price.

(i.) Where title to or possession of tangible personal property shipped by a vendor to a purchaser has not passed to the purchaser and the goods are damaged or destroyed during transit, the taxability of the vendor's reimbursement for such damages shall depend upon whether the reimbursement for the damages or destruction allows title or possession to the property to pass to the carrier or the carrier's insurance firm. If title or possession to the tangible personal property passes to the carrier or the carrier's insurance firm as in a retail sale as defined by W.S. 39-15-101(a)(vi), the transfer shall be subject to the tax. The amount of the reimbursement shall establish the tax base of the transaction. If title to the tangible personal property passes to the carrier or the carrier's insurance firm as in a wholesale sale as defined by W.S. 39-15-101(a)(xvi), the transfer shall be exempt from sales tax.

(ii.) Sales of damaged goods by the carrier or the carrier's insurance firm shall be considered retail sales as defined by W.S. 39-15-101(a)(vi) and shall be subject to the tax.

(p.) Installation of Tangible Personal Property. Charges made by a vendor for the installation of tangible personal property in conjunction with the retail sale of the tangible personal property shall be subject to the sales tax, unless the installation charge is separately stated and the installation is to real property.

(q.) Laundry, Dry Cleaning, Pressing and Dyeing. The total charge made for performing the service of laundering, dry cleaning, or pressing shall be subject to the sales tax. Sales of materials and supplies which are necessary in performing the taxable service such as detergents, starch, and cleaning solvent shall be considered wholesale purchases or sales as defined by W.S. 39-15-101(a)(xvi). The service of linen and towel supply shall be considered to be a laundry service.

(r.) Lodging.

(i.) The total amount charged transient guests for board or room or both is subject to the sales tax and any local option lodging tax. The taxable sales price shall include all charges made for all services and supplies furnished in connection with the lodging service. This charge shall include charges for such services as in-room video viewing and room service meals.

(ii.) Charges made by a lodging establishment for facilities other than for lodging, such as meeting rooms, sample rooms and ballrooms shall not be subject to the sales tax.

(iii.) A lodging establishment shall be considered to be the consumer of electricity, fuel, linens, cleaning supplies, towels, furniture and other items of tangible personal property necessary for the maintenance of the establishment, and purchases of such items shall be subject to the sales or use tax. Paper cups, hand soap, toilet tissue, paper towels and similar items furnished to guests without additional charge shall be considered to be purchases by the lodging establishment for resale and shall not be subject to sales or use tax. Beverages, food and other convenience items provided to guests shall be considered purchases for resale and not subject to the sales or use tax if the cost of such items is part of the overall charge for lodging services.

(iv.) Purchases of intrastate telephone services by the lodging establishment vendor shall be subject to the sales tax. The vendor shall pay tax on the difference between the cost of intrastate telephone service and the total fees collected from customers for intrastate telephone calls.

(v.) Where a guest (individual or corporate) contracts for or leases a room for a term of thirty (30) continuous days, or more, there is no sales tax due. In this arrangement, the first twenty-nine days are not taxable because of the intent to lease for thirty (30) or more continuous days. If, for example, a corporation were to rent a room for a term of thirty (30) continuous days or more and rotate employees during the term, it qualifies as nontaxable because the corporation is considered the guest. The contract, lease, or correspondence should clearly indicate this arrangement. If the lodging service ends before the thirtieth day, the sales tax is due.

(s.) Machine Shops and Welding Services. The gross charges made by machine shops and those engaged in welding upon tangible personal property shall be subject to the sales tax. Gross charges include such charges as labor, parts, and supplies. Purchase of parts, materials, or supplies which become an ingredient of the welding services such as welding rod, acetylene and oxygen, provided by machine shops and welding services when welding upon tangible personal property shall be considered wholesale purchases or sales as defined by W.S. 39-15-101(a)(xvi), and therefore exempt from the sales tax.

(i.) Charges for welding performed on real property shall not be subject to the sales tax.

(t.) Magazines and Trade Journals. Sales of magazines, periodicals, and trade journals shall be considered retail sales and shall be subject to sales tax. Sales or use tax is due on purchases of publications to be distributed free of charge.

(u.) Meals. Meals sold or furnished by hospitals to patients and staff, by schools to students and staff, and nursing homes to occupants and staff shall not be subject to the sales tax if such establishments do not hold themselves out as selling to the public at large. Such establishments shall be considered to be purchasers of the food and shall pay sales or use tax on those purchases, unless otherwise exempt. Meals sold by senior citizen centers shall not be subject to the sales tax.

(i.) All establishments of any nature which sell and serve food and meals to the general public shall collect tax on the amount charged for all meals sold. Tax shall not be collected on food or meals furnished without charge to employees. Napkins, disposable food containers, and similar consumable items sold with the food at no additional charge to the customer shall be considered to be wholesale purchases for resale and exempt from the tax.

(v.) Meat Cutting, Butchering Services. Meat cutting and butchering services shall be considered to be services performed upon tangible personal property and subject to the sales tax pursuant to W.S. 39-15-103(a)(i)(J).

(w.) Memorial Dealers. Sales of tombstones, markers, and other memorials shall be subject to sales tax. Sales of materials used in setting memorials shall also be subject to the sales

tax.

(x.) Oil and Gas Services.

(i.) The taxability of oil and gas services does not depend on whether the work performed is to real or tangible personal property. Instead, taxability hinges on whether the service performed is prior to or after a starting point for taxation as follows. Nontaxable oil or gas services are performed prior to the setting and cementing of production casing, or in open hole completions, prior to the completion of the underreaming or the attainment of total depth of the oil or gas well. Taxable oil or gas services begin with and includes the setting and cementing of production casing, or in open hole completions, after the completion of the underreaming or the attainment of total depth of the oil or gas well.

(ii.) Taxable oil and gas services include all services within the well site that are required for the entire productive life of the well. Subject to the starting point of taxation identified in subsection (i) above, taxable oil and gas services are those activities sequentially required for the production of an oil or gas well. Commencing or completing any oil or gas service sequentially required for the production of an oil or gas well, prior to the starting point of taxation identified in subsection (i) above, does not alter the taxable status of the service. All recompletion services to oil or gas wells are subject to sales tax.

(iii.) Taxability also hinges on an ending point of taxation. Consistent with the provisions of (i) and (ii) above, the completion of abandonment services within an oil or gas well site is the ending point for sales tax purposes.

(iv.) All seismographic and geophysical surveying, stratagraphic testing, coring, logging and testing calculated to reveal the existence of geologic conditions favorable to the accumulation of oil or gas are nontaxable.

(v.) Invoices billing for oil and gas field services must indicate if the billed services are performed before or after 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 under-reaming or the attaining of total depth of the oil or gas well and must also state if the billed services are performed within the boundaries of the well site or outside the boundaries of the well site. The invoice must separately state the taxable and non-taxable services provided or the entire invoice will be subject to the sales tax.

(vi.) Any person engaged in the business of selling oil or gas services within the well site is a "Vendor" and must license and report their taxable and non-taxable services to the department. The tax associated with taxable services must be collected and remitted to the department unless the vendor receives the proper information required from a holder of a direct pay permit.

(y.) Photography, Photo Developing and Enlarging. The sales price paid for photographs, photo equipment and supplies, photography and photo developing, and printing shall be subject to the sales tax. Materials and supplies such as paper and chemicals consumed in the process of producing photographs intended for resale shall be exempt from the sales tax.

(z.) Printers. Printers produce tangible personal property. The printer's retail sale shall be subject to the sales tax. Printers shall not deduct labor or service charges from the tax base of the sale. When printers purchase cards or envelopes stamped with postage, for the imprinting of legends, the printers shall collect and remit sales tax on the total sales price less the amount of the postage. All charges made for copying or reproduction services shall be subject to the sales tax.

(aa.) Physicians and dentists. All purchases of noncapitalized equipment used in their practice by dentists and Medicare recognized health care providers shall be exempt from the sales and use tax. Disposable supplies which are used on a single patient and immediately discarded are exempt from the sales and use tax. All purchases of capitalized equipment depreciated under IRS rules, and office supplies are subject to sales and use taxes.

(bb.) Purchases by Businesses. Purchases by businesses and professional persons of equipment, tools and supplies for use in conducting their businesses or professions shall be subject to the sales or use tax.

(cc.) Rentals or Leases. The gross rental paid for a lease or contract where possession of tangible personal property transfers, and such transfer would be taxable if a sale occurred, shall be subject to the sales tax. The owner of such property shall be considered the vendor and shall charge, collect and remit the sales tax on each rental or lease payment. The purchase of tangible personal property which will be exclusively held for rental, lease or sale shall be considered a wholesale purchase and shall be exempt from the sales tax.

(dd.) Repairs, Alterations and Improvements. Labor or service charges for the repair, alteration or improvement of tangible personal property, as well as charges for materials, supplies and fabrication used in rendering such services shall be subject to the sales tax. The purchase of materials, supplies and fabrication which become an ingredient of the repair, alteration or improvement of tangible personal property shall be considered wholesale sales as defined by W.S. 39-15-101(a)(xvi). Labor or service charges for repairs, alterations or improvements of real property are not subject to the sales tax.

(i.) Repairs, alterations or improvements performed upon tangible personal property under a warranty, service or similar agreement shall be subject to the sales tax based on the sales price paid for the service. The sale of such an agreement shall not be subject to the sales tax. The consumer shall be liable for the tax on repair charges not covered by the agreement. The issuer of the agreement shall be liable for sales tax on the remainder of the repair charges.

(ee.) Resorts and Dude Ranches. The provision of meals and lodging service by such establishments shall be subject to the sales tax. If no separate charge for meals and lodging services is made by the vendor from charges made for other exempt services, the sales tax shall be applied to the total amount billed.

(i.) Vendors subject to this rule shall be considered to be the consumers of electricity, fuel, linens, bedding, cleaning supplies, towels, furniture and other items of tangible personal property necessary for the operation, furnishing and maintenance of the establishment. As such, those vendors shall be liable for the sales/use tax owed on such purchases. Disposable, non-

reusable items such as paper cups, hand soap, toilet tissue and paper towels furnished to guests without additional charge shall be considered purchases for resale and shall not be subject to the sales or use tax.

(ff.) State and Subdivisions Furnishing Copies of Official Documents. State of Wyoming agencies or political subdivisions furnishing copies of laws, rules and regulations, official documents or other records in the custody of the agencies for a charge, shall not collect sales tax on the same.

(gg.) "Taxidermy" shall be considered a taxable service performed on tangible personal property and shall be subject to the sales tax.

(hh.) Telephone Services. All rentals of equipment or services incidental to intrastate telephone services including but not limited to, the lease or rental of tangible personal property and access to a telephone transmission system shall be considered retail in nature and shall be subject to the sales tax.

(i.) Pre-paid calling cards, telephone debit cards, or other similar items which entitle the purchaser to receive telephone services shall be considered tangible personal property as that term is used in these rules. The retail sale or purchase of such cards shall be subject to the sales and use tax.

(ii.) All Tobacco Products. Retail sales of all tobacco products including cigarettes shall be subject to the sales tax.

(jj.) Vending Machines. Vending machine sales of tangible personal property, except postage stamps, shall be subject to the sales tax.

(kk.) Complete records shall be kept by the vending machine vendor showing the location of each machine operated by the vendor during each monthly period, its serial number and the amount of revenue taken from the machine during each monthly period.

(ll.) Taxes Calculated on Gross Receipts. Where receipts do not normally accompany each sale e.g. (coin operated vending, bars, movie theaters) vendors must maintain records of tax calculated based on the following formula:

$$\text{Tax} = \text{Gross Receipts} - (\text{Gross Receipts} \div (1 + \text{Tax Rate}))$$

Example Gross Receipts = \$1,000

Tax Rate = 6%

$$\text{Tax} = \$1,000 - (\$1,000 \div (1 + .06))$$

$$\text{Tax} = \$1,000 - 943.40$$

$$\text{Tax} = 56.60$$

(mm.) Warranties.

(i.) Standard warranties: those warranties which are provided with the purchase of tangible personal property, are provided by the manufacturer or vendor and are included in the

sales price of the tangible personal property.

(A.) The cost of a manufacturer's standard warranty shall be subject to the sales tax.

(B.) Repairs, alterations, or improvements performed upon tangible personal property under a standard warranty shall not be subject to the sales tax.

(ii.) Extended warranties, service contracts or similar agreements: those agreements which are sold for an additional and separate cost and provide additional services or extend the timeframe of service coverage.

(A.) The cost of an extended warranty, service contract or similar agreement shall not be subject to the sales tax.

(B.) Repairs, alterations, or improvements performed upon tangible personal property under an extended warranty, service contract, or similar agreement shall be subject to the sales tax.

(1.) The consumer shall be liable for the tax on repair services not covered by the agreement.

(2.) The issuer of the agreement shall be liable for the sales tax on the repair charges covered by the extended warranty.

(C.) The taxable basis is the sales price of the service performed, consistent with rule 15(ee) of this chapter.

(nn.) Water. The retail sale of water in bottles or similar containers shall be subject to the sales tax. The sale of water delivered by pipeline or truck is not subject to the sales tax.

Nothing in these rules in any way shall be construed to limit any power arising under the laws of the State of Wyoming to levy sales or use taxes.

Section 16. Hearing Procedures.

(a.) Commencement of Action. Upon an appropriate showing of violation of W.S. 39-15-101 through W.S. 39-16-211 or the Rules and Regulations of the Department, the Department may commence proceedings to suspend or revoke the license of the vendor.

(b.) In an Order to Show Cause, the Department shall notify the vendor of the:

(i.) Time, place and nature of the hearing;

(ii.) The legal authority and jurisdiction under which the hearing is to be held;

(iii.) The particular sections of the statutes and rules involved; and

(iv.) A short and plain statement of the violations alleged.

(c.) No answer is required, and at the hearing, the vendor may appear and show why his license should not be suspended or revoked.

(d.) Time and Place of Hearing. The hearing may be held no less than thirty (30) days after service of the Order to Show Cause upon the licensee, so that he may have adequate time for preparation. Upon motion and for good cause, the hearing may be postponed by the Department until a later date.

(e.) Hearings shall be conducted in Cheyenne, Wyoming, unless upon motion and for good cause shown the Department determines another location is preferable.

(f.) Service. The Order to Show Cause shall be served personally or by mail, return receipt requested, addressed to the place of business of the vendor, or to the vendor's most recent residence address on record with the Department of a vendor.

(g.) Hearing Officer. The Department director or a hearing officer assigned by the Office of Administrative Hearings shall conduct the hearing.

(i.) The vendor may move to disqualify a hearing officer by filing written motion and supporting affidavits of personal bias with the Department. After careful consideration of the evidence presented, the director of the Department, or hearing officer assigned by the Office of Administrative Hearings shall rule upon the motion.

(ii.) The hearing officer may withdraw whenever he deems himself disqualified because of personal bias or other substantial reason.

(h.) Authority of Hearing Officers. Hearing officers have the authority in accordance with W.S. 16-3-112 to:

(i.) Administer oaths and affirmations;

(ii.) Issue subpoenas;

(iii.) Rule upon offers of proof and receive relevant evidence;

(iv.) Take or cause depositions to be taken in accordance with the provisions of the Administrative Procedure Act, W.S. 16-3-101 through 16-3-115;

(v.) Regulate the course of the hearing;

(vi.) Hold conferences for the settlement or simplification of the issues;

(vii.) Dispose of procedural discovery requests or similar matters;

(viii.) Make recommended decisions when directed to do so by the agency; and

(ix.) Make any action authorized by agency rules, the Administrative Procedure Act, or W.S. 39-15-101 through W.S. 39-16-211.

(i.) Counsel. All parties may appear at the hearing with or without counsel.

(j.) Inspection of File. Each party, or his authorized representative, shall be permitted to inspect and copy, at his own expense at the offices of the Department, all documents filed in the license suspension or revocation proceedings, and all documents regarding the subject of the hearing contained in the Department's files permitted by law to be inspected and copied.

(k.) Record of Proceedings. The hearing shall be reported verbatim, stenographically or by any other appropriate means determined by the Department or hearing officer. A copy shall be furnished to any party upon written request to the Department and payment of a reasonable fee. If one or more parties desires the hearing transcribed by a certified court reporter, he shall make the necessary arrangements and bear the cost.

(l.) Order of Procedure at Hearing. Hearings shall be conducted substantially as follows:

(i.) The hearing officer shall announce that the hearing is called to order and announce the matter to be heard, briefly summarizing the case and the issues.

(ii.) The hearing officer shall take up any preliminary motions or matters to be discussed.

(iii.) The Department may present a brief opening statement of the charges, explain the theory of the case and what the evidence will show.

(iv.) The vendor may present his opening statement in the same manner.

(v.) The Department shall then present the evidence of the Department, subject to cross examination by the vendor and the hearing officer.

(vi.) The vendor shall present his evidence, subject to cross examination by the Department and the hearing officer. The Department may follow with rebuttal evidence.

(vii.) Closing statements may be made at the conclusion of the evidence by both parties. These statements may include summaries of the evidence and legal arguments. The Department shall precede the vendor and may also briefly rebut vendor's closing statement.

(viii.) The hearing officer may ask for proposed findings of fact and conclusions of law from both parties, to be submitted within a reasonable time.

(ix.) After all proceedings have been concluded the hearing officer shall dismiss and excuse all witnesses not already excused and declare the hearing closed.

(m.) Decision of Department.

(i.) Within twenty (20) days after completion, the hearing officer shall prepare proposed findings of fact and conclusions of law for submittal, along with the entire record as defined in W.S. 16-3-107(o), and the proposed findings of fact and conclusions of law from both parties, if any, to the Director of the Department of Revenue.

(ii.) After receipt of the record, the Department of Revenue shall within twenty (20) days enter a decision and final order containing findings of fact and conclusions of law, signed by the Director or other administrator of the Department.

(iii.) The vendor shall be promptly notified by mail of the final order.

(iv.) Appeals to State Board of Equalization. Any vendor aggrieved or adversely affected by a final decision of the Department after a hearing is entitled to appeal the decision to the State Board of Equalization pursuant to rules of the Board.

Nothing in these contested case rules shall be construed in any way to limit the right of the Department to other lawful remedies to which it may be entitled.