

Wyoming Administrative Rules

Revenue Dept.

Excise Tax

Chapter 2: Sales and Use Tax

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CHAPTER 2

SALES AND USE TAX

Section 1. **Authority.** This chapter is adopted under the authority of W.S. 39-11-102.

Section 2. **Definitions.**

(a) “Abandonment” means all work performed within a well site to cease producing oil and gas from a well when it becomes unprofitable including removal of production equipment, permanent sealing of the wellbore and well site reclamation. Abandonment 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) “Agent” means any person acting under the authority of the vendor including, but not limited to, truckers, peddlers, canvassers, salespersons, representatives, employees, supervisors, distributors, delivery persons or any other persons performing deliveries in this state.

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

(e) “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 including, but 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.

(f) “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.

(g) “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.

(h) “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.

(i) “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.

(j) “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.

(k) “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.

(l) “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 that 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.

(m) “Drilling” means the act of boring a hole through which oil and/or gas

may be produced or encountered in commercial quantities including, but not limited to, 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.

(n) “Entity-based exemption” means an exemption based on who purchases the product or who sells the product.

(o) “Fixtures” means articles of 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.

(p) “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.

(i) “Prepared food” does not include:

(A) 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.

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

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

(D) 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.

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

(q) “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.

(r) “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.

(s) “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.

(t) “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.

(u) “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.

(v) “Native American” means any enrolled member of the Shoshone Tribe or the Northern Arapaho Tribe of the Wind River Indian Reservation.

(w) “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 printed materials when they are distributed and sold as part of the newspaper.

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

(y) “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.

(z) “Principal Residence” as used in section 11 means a person’s true, fixed

and permanent physical Wyoming address to which a person intends to return.

(aa) “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.

(bb) “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.

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

(dd) “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.

(ee) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(ff) “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.

(gg) “Seller” means a person making sales, leases, or rentals of personal property or services.

(hh) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(ii) “Use-based Exemption” means an exemption based on the purchaser’s use of the product.

Section 3. **Administrative Functions.**

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

(i) Leased/Rented Tangible Personal Property. 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) For services involving periodic billings, tax rate increases shall

apply to the first billing period starting on or after the effective date of the rate change. For tax rate decreases, the new rate shall apply to bills rendered on or after the effective date.

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

(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. The amendments do not change the date of the original assessment.

(e) The State of Wyoming shall provide and maintain a database of sales and use tax rates for all taxing jurisdictions residing within the boundaries of the state and a taxability matrix which provides sellers with a listing of general product and service categories and the taxability of each item. For the identification of state and local jurisdictions, the state shall use Federal Information Processing Standards (FIPS) codes.

(f) The state shall relieve sellers, Certified Service Providers (CSPs) and sellers using a Certified Automated System (CAS) 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, CSP or seller using a CAS relying on erroneous data provided by the state on tax rates, boundaries, or taxing jurisdiction assignments or erroneous information from the state's taxability matrix.

(g) 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).

(h) Use Tax.

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

(ii) Credit for Sales or Use Tax Payments Made to Another State. The Department shall allow credit for sales or use 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 or use tax paid. Offsetting credits can only be used within statutory time frames.

Section 4. **Licensing.**

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) Multiple Business Locations. At the vendor's option, they may ask to have the multiple locations, under the same ownership, consolidated and file the tax for all locations on a single return.

(f) 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.

Section 5. **Reporting.**

(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, quarterly or annually. Vendors volunteering to collect Wyoming sales and use tax through the Streamlined Sales and Use Tax Agreement shall file at least on an annual

basis or whenever the vendor has collected in excess of \$1,000.

(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 shall be rejected if not completed in accordance with the instructions provided. A vendor shall have fifteen (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. 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 and annual filers shall submit returns on or before January 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 or date submitted electronically 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.

(d) Credit.

(i) Vendors and direct payors who report and remit sales and use taxes which they have collected and/or accrued on or before the 15th day of the month in the month when the tax is due are entitled to a credit against the taxes paid. A return shall be considered timely if it is postmarked on or before the 15th of the month when due.

(ii) Any person not holding a valid Wyoming sales and use tax license is not allowed credit against taxes paid.

(iii) Any person requesting an extension of the filing due date shall not be allowed to claim the credit for early payment of the taxes due.

(iv) The credit allowed shall be limited to each person acting as a vendor or direct payor in Wyoming and not to each license held by the person. Should the total tax remitted from all locations reported by the vendor exceed the amount which would result in the \$500 cap on the credit the vendor shall be limited to a \$500 credit.

(v) Any amendments to taxes previously reported are not eligible for

the credit unless the amendment is also reported prior to the 15th of the month when the taxes are due. Should the amendment reduce the amount of tax originally reported the credit originally allowed shall be reduced accordingly.

(vi) Any vendor or direct payor that has an outstanding balance on their account from either unpaid taxes or a department assessment shall be ineligible for credits on their current taxes.

(vii) Any return and payment not postmarked by the discount date.

(e) Extension. The Department may grant extensions of filing due date 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.

(f) 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.

(g) 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.

(h) 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 the tax basis.

(i) 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. The exemption availed to the wholesaler in the wholesale transaction cannot be passed through to the consumer in a retail transaction.

(j) 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 subsection (k). The vendor shall retain copies of all 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.

(k) Taxes Calculated on Gross Receipts. This method of taxing sales is only allowed when a receipt is not provided to the consumer as part of the sale. Where receipts do not accompany each sale (e.g., coin operated vending sales, bar sales and cover charges, admission tickets and concessions vendors) shall maintain records of tax calculated on the following formula:

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

Example Gross Receipts = \$1,000

Tax Rate = 6%

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

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

$$\text{Tax} = 56.60$$

(l) 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 subsection (c).

(m) 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 6. 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 on the form and in a manner prescribed by the Department.

(i) 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.

(ii) If approved, the Department shall assign a direct pay permit number and provide the permittee with a printed direct pay permit.

(b) Reporting.

(i) Purchasers authorized to make direct payment of Wyoming sales tax shall report tax owed in a format as prescribed by the Department. The 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.

Section 7. Non-Taxable and Exempt Sales 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 nontaxable or exempt charges are not separately shown and distinguishable from taxable charges.

(b) Certificates of Exemption.

(i) Vendors shall obtain completed exemption certificates for all sales transactions, other than those qualifying under section 6 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. The certificates shall be in a format as prescribed by the Streamlined Sales and Use Tax Agreement 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 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.

(ii) Vendors shall be relieved of the tax otherwise due if the seller obtains a fully completed exemption certificate or captures the relevant data elements listed in subsection (i) above within ninety (90) days of the date of the sale.

(iii) Should the vendor not obtain an exemption certificate or the required relevant information, the vendor shall be allowed 120 days subsequent to a request for substantiation:

(A) To obtain a fully completed exemption certificate from the purchaser taken in good faith which means that the vendor obtains a certificate that claims an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, could be applicable to the item being purchased, and is reasonable for the purchaser's type of business; or

(B) To obtain other information establishing that the transaction was not subject to the tax.

(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 its federal 501(c)(3) status with the Department shall be issued an exemption approval letter on this documentation alone. All other organizations must furnish the documents set forth in the following subsection. The 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; and
- (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 shall 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 chapter, 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) Interstate Commerce. Purchasers and lessees of vehicles used in interstate commerce 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 shall document their USDOT number, motor carrier's 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 vehicles.

(f) 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.

(g) Manufacturing, Processing, Agriculture.

(i) Fuel and Power Purchases. Exempt Purchases of power or fuel shall be separately accounted for, by separate metering, storage, or engineered calculation as required by the Department, and distinguishable from taxable purchases of same.

(ii) Shipping Materials. Shipping materials shall be unique to the property and consumed as part of the shipping. Shipping materials which are reusable are not exempt under this exemption clause.

(h) School fundraising activities. School fundraising activities for public schools shall be sales tax exempt. The fundraising activities shall 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.

Section 8. Credits and Refunds.

(a) Credit. Credits shall automatically be applied against the next appropriate liability on the account.

(b) Refunds. Refund requests shall be made in writing to the Department and shall explain the basis of the refund request. Supporting documentation evidencing the overpayment shall be retained by the vendor. Postmarks shall serve as the date of refund request and shall begin tolling the statute of limitations. A taxpayer seeking refund of taxes overpaid to a vendor shall seek a refund from the vendor. The notice to the vendor shall contain the information necessary to determine the validity of the request. In

connection with the taxpayer's request from the vendor of over-collected sales or use tax, a vendor shall be presumed to have a reasonable business practice, if in the collection of sales or use taxes, the vendor:

(i) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(ii) Has remitted to the state all taxes collected less any deductions, credits or collection allowances.

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

Section 9. Collection and Enforcement.

(a) Installment Payment Agreements. 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.

(b) 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.

Section 10. Contractor Procedure.

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

(ii) Post a bond with the Department. In lieu of a bond, the Department may accept:

(A) A cashier check

(B) A certificate of deposit, provided that the certificate of deposit:

(I) Shall be issued by an FDIC insured bank with its main office or any branch located in Wyoming.

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

(III) Shall be issued for an initial term of not less than one year and automatically renewable from year to year.

(IV) The contractor must execute a valid, binding, first priority pledge agreement as to the certificate of deposit, which agreement shall be on the form approved by the Department.

(V) The originals of both the certificate of deposit and fully executed pledged agreement shall be delivered to the department at the same time.

(1.) If a certificate of deposit 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 thirty (30) days before the certificate of deposit's maturity date, then the contractor shall be deemed to have authorized and directed the Department to demand immediate payment on the certificate of deposit and upon receipt of the proceeds, retain the same as a deposit of the proceeds of certified funds.

(C) A letter of credit, provided the letter of credit:

(I) Shall have a face amount equal to or greater than four percent (4%) of the total contract amount for the project;

(II) Shall be issued by an FDIC insured bank with its main office or any branch located in Wyoming;

(III) Shall be payable in current funds or other manner as the Department may determine on sight at the counters of an FDIC insured bank located within the State of Wyoming;

(IV) Shall be on a form of approved by the Department;

(V) Shall be issued with an initial expiry date of not less than one (1) year from the date of its issuance and automatically extended from year to year;

(VI) The issue date shall be written ten (10) days before the date on which the deposit is received by the Department; and

(VII) The original letter of credit shall be delivered to the Department.

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

(2.) The contractor may deliver at any time to the Department an acceptable surety bond or other acceptable security to replace a letter of credit retained by the Department. Upon receipt and acceptance of a replacement, the Department shall deliver to the contractor the original letter of credit.

(3.) If the Department determines that the contractor that has deposited a letter of credit under this section in lieu of a surety bond has complied with W.S. 39-15-301 through -311 and W.S. 39-16-301 through -311, the Department's rules and orders of the Department, then the Department shall deliver to the contractor the original letter of credit.

(b) 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 fifteen (15) calendar days of subcontract award notification, and;

(ii) Remit a completed affidavit of completion form within fifteen (15) days following completion date of the subcontract.

(c) 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).

(d) 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.

(e) Work Performed for Exempt Entities. Contractors performing for exempt entities 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.

(f) 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.

(g) The Department shall refund any excess retainage withheld from a non-resident subcontractor to the subcontractor, if the retainage has been remitted to the Department and exceeds sales or use tax owed by that subcontractor.

Section 11. 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) Any purchase option exercised at the end of a lease agreement is a separate taxable transaction.

(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 shall 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 12. County Treasurers.

(a) **Exemptions.** County Treasurers shall 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 exempt status in writing as provided in section 9(d) of this chapter.

(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 exempt status in writing as provided in section 9(d) of this chapter.

(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 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 shall document their USDOT number, motor carrier's permit and insurance requirements to qualify for exemption.

(vi) The sale of motor vehicles to Native Americans if possession is passed to the purchaser on the Wind River Indian Reservation.

Section 13. **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. Admission charges shall include charges commonly referred to as "cover charges" when these charges are paid for entrance into a place of amusement, entertainment, recreation, games or athletic events. 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 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 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 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. The lessee's name shall appear on the record of remittance. In the event the lessor chooses not to assume the responsibility of collecting the tax, the lessee shall register with the Department 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 shall not be subject to the sales tax. The 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. 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 the sales and shall be liable for the entire amount of tax. Public schools are not municipally or county owned facilities and shall collect sales tax on admissions, unless exempted under W.S. 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. The 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. Auctioneers and selling agents shall be considered vendors. 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 the sales.

(d) Computer Hardware and Software.

(i) The sale of prewritten computer software is taxable regardless of whether sold on tangible storage media or delivered by the seller electronically.

(ii) 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.

(A) 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.

(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 shall collect 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.

(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. The purchase of supplies to be used to perform the 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. The vendor making delivery of the goods shall not 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 shall be subject to the sales or use tax 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 similar companies shall be subject to the sales and use tax on tangible personal property purchased or leased and used to conduct their business. The 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. The 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 -111 and special fuel taxed under W.S. 39-17-201 through -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.

(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 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 in a wholesale sale, 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 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. 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 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 these 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 the 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 charges for 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, 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 the establishments do not hold themselves out as selling to the public at large. The 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.

(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) All seismographic and geophysical surveying, stratigraphic

testing, coring, logging and testing calculated to reveal the existence of geologic conditions favorable to the accumulation of oil or gas are nontaxable.

(ii) Invoices billing for oil and gas field services shall 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 underreaming or the attaining of total depth of the oil or gas well and shall 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 shall separately state the taxable and non-taxable services provided or the entire invoice shall be subject to the sales tax.

(iii) Any person engaged in the business of selling oil or gas services within the well site is a vendor and shall license and report their taxable and non-taxable services to the department. The tax associated with taxable services shall 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 non-capitalized 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 the transfer would be taxable if a sale occurred, shall be subject to the sales tax. The owner of the 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 shall 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 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. 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 the 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 resorts and dude ranches 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 chapter 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. The vendors shall be liable for the sales/use tax owed on the 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) Specified Digital Products. The sale of specified digital products is subject to sales tax when the product is transferred for permanent use to the taxpayer. The sale of digital code shall be taxed as the sale of a specified digital product. For the purpose of this rule “digital code” means a code which provides the purchaser with a right to obtain one or more specified digital products. Digital code may be obtained by any means, including email or the sale of a coded card regardless of its designation as “song code”, “video code”, or “book code”.

(gg) 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.

(hh) Taxidermy shall be considered a taxable service performed on tangible personal property.

(ii) 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.

(jj) Prepaid 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 this chapter. The retail sale or purchase of cards shall be subject to the sales and use tax.

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

(ll) Vending Machines. Vending machine sales of tangible personal property, except postage stamps and food for domestic home consumption, shall be subject to the sales tax. Prepared food sold in a vending machine shall remain taxable.

(i) 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.

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

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

Example Gross Receipts = \$1,000

Tax Rate = 6%

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

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

$$\text{Tax} = 56.60$$

(nn) Warranties.

(i) Standard or mandatory warranties and maintenance contracts provided with the purchase of tangible personal property by the manufacturer or vendor

shall be included in the sales price of the tangible personal property.

(A) 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 and maintenance contracts or similar agreements which are sold for an additional and separate cost and provide additional services or extend the timeframe of service coverage shall not be subject to the sales tax.

(A) 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.

(I) The consumer shall be liable for the tax on repair services not covered by the agreement. The issuer of the agreement shall be liable for the sales tax on the repair charges covered by the extended warranty.

(iii) For the purpose of this section a “computer software maintenance contract” is a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

Section 14. **Hearing Procedures.**

(a) Upon a violation of W.S. 39-15-101 through W.S. 39-16-211 or the Department’s rules, the Department may initiate a hearing to require the vendor to show cause why his or her license should not be revoked.

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

(i) The 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 address on record with the Department of a vendor.

(g) Hearing Officer. The Director of the Department, his designee, 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, his designee, 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) 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.

(i) 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.

(j) 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, and the proposed findings of fact and conclusions of law from both parties, if any, to the Director of the Department.

(ii) After receipt of the record, the Director of the Department 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.