



*State of Wyoming*  
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**Sales Of Businesses Excluded From Sales/Use Tax**

Originally Issued October 5, 2005

Revised July 1, 2013

We have a statutory definition of what constitutes a “sale.” [W.S. 39-15-101(a)(vii)] However, there are statutory provisions that exclude specifically enumerated acts, transfers and sales from the application of sales tax. It is not that such events are sales tax exempt; rather it is that they are excluded from our statutory definition of a “Sale.”

W.S. 39-15-101(a)(vii)(A-M) and W.S. 39-16-101(a)(iii)(A-M) are the governing statutes in determining whether the purchase of a business is subject to sales or use tax. These statutes not only tell us what a “sale” is but what it isn’t. While the Department of Revenue is responsible for administering all elements of W.S. 39-15-101(a)(vii)(A-M), subparagraph “M” is by far the most frequent application. There are key requirements in subparagraph “M” that must be adhered to in order to qualify for sales tax exclusion.

“The sale of a business entity when sold to a purchaser of all or not less than eighty percent (80%) of the value of all of the assets which are located in this state of the business entity when the purchaser continues to use the tangible personal property in the operation of an ongoing business entity in this state. As used in this subparagraph, "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.” [See use tax counterpart at W.S. 39-16-101(a)(iii)(A-M)]

A qualifying business transfer exclusion involves the sale of all or not less than eighty percent (80%) of the value of all of the entity’s assets located in Wyoming. In addition, the purchaser must continue to use the acquired tangible personal property assets in the operation of an ongoing business entity in Wyoming. Also, the seller must have paid sales tax directly or indirectly on the tangible personal property included in the sale of the business.

The relevant exclusion language in subpart (M) is based on “...the value of all of the assets which are located in this state of the business entity...” In Webster’s New World College Dictionary, Fourth Edition, (2000), the word “asset” is defined as “**3** [pl.] *Accounting* all of the entries on a balance sheet showing the entire resources of a person or business, tangible and intangible, including accounts and notes receivable, cash, inventory, equipment, real estate, goodwill, etc.” A similar definition for the word “asset” is found in Black’s Law Dictionary, Eighth Edition, (2004). In Black’s, the relevant definition for the word “asset” is “**2.** (pl) The entries on a balance sheet showing the items of property owned, including cash, inventory, equipment, real estate, accounts receivable, and goodwill.”

As a result, we require that a party seeking the business transfer exclusion provide our office with sufficient information to determine that the transaction meets the conditions for exclusion. Therefore we require:

- A copy of the balance sheet for the business dated as close as possible prior to the sale, reflecting the value of all of the assets of the business entity sold in whole or part. The balance sheet should include values for cash, receivables, fixed assets, equipment, and intangibles and other such asset types as are appropriate for the business; and
- An executed copy of the Asset Purchase Agreement showing the sale/purchase price as well as other transaction related documents to establish the conditions of the sale (e.g. non-compete agreements, escrow, etc.) and schedules of the assets sold and retained. This is done so that we can establish the proper percentages when compared to the balance sheet previously noted.

Once we have established that the transaction meets the sales threshold requirements, we move to the issue of the purchaser's use of the tangible personal property in an ongoing business entity in Wyoming. That is done internally via confirmation with Wyoming's Office of the Secretary of State that the purchaser's business entity is registered with their office.

The statutory language is clear that, in order to qualify for any sales exclusion, sales/use tax must have been paid by the seller on all tangible personal property involved in the sale. If motor vehicles are part of the tangible personal property involved in the transaction, the department must verify that sales tax has been paid, either through review of current Motor Vehicle Registrations (in the name of the seller) or Motor Vehicle Sales/Use Tax Receipts issued by the County Treasurer at the time of purchase/registration by the seller. If the seller is unable to document the same due to the age of the assets, the seller must be able to prove that the assets in question were purchased more than three (3) years prior to the business transfer transaction. We are limited to the three (3) year "look back" period under our business records retention statutes. [W.S. 39-15-107 and W.S. 39-16-110] We are guided in this by *In the Matter of the Appeal of Caza Drilling, Inc. from Sales and Use Tax Audit Assessment Decisions of the Department of Revenue, [State Board of Equalization] Docket No. 98-157 & Docket No. 99-149.*

If motor vehicles are part of the tangible personal property involved in the transaction, the Department of Revenue will, for a qualifying exclusion, provide the purchaser a letter to give to the appropriate county treasurer at the time of the vehicle(s) registration in Wyoming. This letter will document that we have reviewed the transaction and have concluded that it qualifies for the business transfer exclusion contained within W.S. 39-15-101(a)(vii)(A-M) and the purchase of the vehicles are not subject to sales tax.

While W.S. 39-15-101(a)(vii)(A-M) does not contain specific references to limited liability companies, we are administering the provisions related to corporations and partnerships as also applying to limited liability companies. This is a matter of policy in the absence of specific statutory direction. It is generally recognized that limited liability companies are a hybrid of a corporation and of a partnership. They possess characteristics of both. As such, we recognize transfers to limited liability companies within the context of the applicable business transfer exclusions found in the referenced statutes.

As a caveat, we must advise potential buyers of their successor liability. Under W.S. 39-15-103(c)(iv), the purchaser/successor has the obligation "...to pay the taxes, penalties and interest due on the outstanding amount of all credit, installment and conditional sales upon which the tax has not been paid until the time the former owner produces a receipt from the department showing that all taxes have been paid or a certificate that no taxes are due."

Also, there should be a review of the other exclusions (A-K) to a sale that may apply to any other transfers of possession of tangible personal property as listed below.

#### Supporting Authority –

W.S. 39-15-101(a)(vii) states:

"Sale" means any transfer of possession in this state for a consideration including the fabrication of tangible personal property when the materials are furnished by the purchaser but excluding an exchange or transfer of tangible personal property upon which the seller has directly or indirectly paid sales or use tax incidental to:

- (A) A division of partnership assets among the partners according to their interests in the partnership. As used in this subparagraph, "partnership" includes a limited partnership;
- (B) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to assets contributed;
- (C) The transfer of assets of shareholders in the formation or dissolution of professional corporations;
- (D) The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
- (E) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- (F) The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (G) A transfer of a partnership interest;
- (H) The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;
- (J) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (K) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between affiliated companies, partnerships and corporations which are owned in similar percentages by the same persons. "Closely held subsidiary corporation" means a corporation in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock;
- (M) The sale of a business entity when sold to a purchaser of all or not less than eighty percent (80%) of the value of all of the assets which are located in this state of the business

entity when the purchaser continues to use the tangible personal property in the operation of an ongoing business entity in this state. As used in this subparagraph, "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.

W.S. 39-15-101(a)(ix) states:

"Tangible personal property" means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten computer software; and includes any controlled substances as defined by W.S. 35-7-1002(a)(iv) which are not sold pursuant to a written prescription of or through a licensed practitioner as defined by W.S. 35-7-1002(a)(xx);

W.S. 39-15-103(a)(i)(A) states:

Except as provided by W.S. 39-15-105, there is levied an excise tax upon:  
The sales price of every retail sale of tangible personal property within the state;

W.S. 39-15-103(c)(iv) states:

The vendor shall file a return within thirty (30) days after discontinuing or selling his business. His successor in business shall withhold from the purchase price enough money to pay the taxes, penalties and interest due on the outstanding amount of all credit, installment and conditional sales upon which the tax has not been paid until the time the former owner produces a receipt from the department showing that all taxes have been paid or a certificate that no taxes are due. If the successor fails to withhold from the purchase price the amount due and the taxes, penalty and interest are unpaid the original vendor and successor vendor are liable for the payment of the unpaid taxes, penalties and interest.

*WY Dept of Rev Rules, Chap 2, Sec 3(k)* states:

"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.

Please be advised that this bulletin addresses issues in general terms and cannot be appropriate or applicable in all situations. If your situation is markedly different or you have concerns about this issue, please do not hesitate to contact this department. You can do so by e-mail directed to [DOR\\_taxability@wyo.gov](mailto:DOR_taxability@wyo.gov)