

HOUSE BILL NO. HB0138

Tax on unearned income.

Sponsored by: Representative(s) Schwartz, Connolly and
Zwonitzer and Senator(s) Kost and Rothfuss

A BILL

for

1 AN ACT relating to taxation; creating the Wyoming Unearned
2 Income Tax Act; imposing a tax on unearned income as
3 specified; providing for administration; providing
4 penalties; requiring rulemaking; requiring a report; and
5 providing for effective dates.

6

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

8

9 **Section 1.** W.S. 39-12-102 through 39-12-111 are
10 created to read:

11

12 **39-12-102. Administration; confidentiality.**

13

14 (a) This chapter is known and may be cited as the
15 "Wyoming Unearned Income Tax Act".

1

2 (b) The administration of this chapter is vested in
3 the department of revenue. The department shall administer
4 this chapter using the multistate tax compact as a guide to
5 the extent that the compact does not conflict with this
6 chapter or other Wyoming law.

7

8 (c) The department shall, to the extent practical,
9 obtain information from the federal Internal Revenue
10 Service to verify taxable unearned income under this
11 chapter. The department shall adopt rules and regulations
12 necessary to efficiently secure the payment, collection and
13 accounting for taxes imposed by this chapter.

14

15 (d) Notices required to be mailed by the department
16 under this chapter if mailed to the address shown on the
17 records of the department shall be sufficient for the
18 purposes of this chapter. If offered by the department and
19 upon request of the taxpayer, notices under this chapter
20 may be delivered by electronic transmission.

21

22 (e) No state employee or other person who by his
23 employment in connection with the state gains knowledge of

1 the business affairs of any person filing or required to
2 file any tax returns under this chapter shall make known
3 their contents in any manner or permit any person to have
4 access to any returns or information contained therein
5 except as provided by law. The department may also allow
6 the following:

7

8 (i) The delivery to the taxpayer or his legal
9 representatives upon written request of a copy of any
10 return or report in connection with the tax imposed by this
11 chapter;

12

13 (ii) The publication of statistics formatted to
14 prevent the identification of particular returns or
15 reports;

16

17 (iii) The inspection by the Wyoming attorney
18 general of the report or return of any person who brings an
19 action against the state relating to the report or return,
20 or against whom an action is contemplated or has been
21 instituted;

22

1 (iv) If otherwise admissible as evidence, the
2 introduction into evidence of any report or return or
3 information therefrom in any administrative or court
4 proceeding relating to the report or return and to which
5 the person making the report or return is a party;

6

7 (v) The furnishing of any information to the
8 United States government and its territories, the District
9 of Columbia, any state allowing similar privileges to the
10 department or to the multistate tax commission for relay to
11 tax officials of cooperating states. Information furnished
12 shall be only for tax purposes;

13

14 (vi) The inspection of tax returns and records
15 by the state department of audit.

16

17 (f) The district court of the county in which
18 violations of this subsection occur shall have jurisdiction
19 over those violations. No person shall:

20

21 (i) Fail or refuse to make any return or payment
22 required by this chapter;

23

1 (ii) Make any false return or statement;

2

3 (iii) Evade the payment of any tax due;

4

5 (iv) Aid or abet another in any attempt to evade
6 payment of the tax due;

7

8 (v) Knowingly attest by signature to a false or
9 fraudulent return.

10

11 **39-12-103. Imposition.**

12

13 (a) Taxable event. There is levied an income tax upon
14 the taxable unearned income of each taxpayer in this state
15 who is required to pay the tax as provided in this chapter.

16

17 (b) Apportionment of unearned income shall be as
18 follows for the purposes of W.S. 39-12-101(b)(iv)(E):

19

20 (i) If a taxpayer has no unearned income from
21 activity that is taxable in another state, the taxpayer's
22 entire taxable unearned income shall be allocated to
23 Wyoming;

1

2 (ii) A taxpayer having unearned income from
3 activity that is taxable both in another state and in
4 Wyoming shall apportion and allocate the unearned income as
5 provided in this subsection;

6

7 (iii) Income is taxable in another state if:

8

9 (A) In that other state, the income is
10 subject to a net income tax, a franchise tax measured by
11 net income, a franchise tax for the privilege of doing
12 business, a corporate stock tax or any similar tax; or

13

14 (B) That other state has jurisdiction to
15 subject the income to a net income tax regardless of
16 whether, in fact, the state subjects the taxpayer to the
17 tax.

18

19 (iv) Unearned taxable income under this
20 subsection shall be apportioned to Wyoming by multiplying
21 the income by a fraction, the numerator of which is the
22 total unearned income attributable to Wyoming during the
23 tax period and the denominator of which is the unearned

1 income of the taxpayer everywhere during the tax period. To
2 the extent necessary, the department shall by rule and
3 regulation determine whether income is attributable to
4 Wyoming or elsewhere.

5

6 (c) The department may require taxpayers to provide
7 additional information and documentation related to the
8 apportionment and allocation of unearned income to support
9 an income tax return under this chapter.

10

11 **39-12-104. Taxation rate.**

12

13 (a) There is levied and shall be paid by the taxpayer
14 an annual income tax on that portion of taxable unearned
15 income of the taxpayer that is allocated and apportioned to
16 Wyoming as follows:

17

18 (i) Zero percent (0%) on the first two hundred
19 thousand dollars (\$200,000.00) of taxable unearned income;
20 and

21

22 (ii) Four percent (4%) on all taxable unearned
23 income over two hundred thousand dollars (\$200,000.00).

1

2 **39-12-105. Exemptions.**

3

4 There are no specific applicable provisions for exemptions
5 for this chapter.

6

7 **39-12-106. Licenses and permits.**

8

9 There are no specific applicable provisions for licenses
10 and permits for this chapter.

11

12 **39-12-107. Compliance; collection procedures.**

13

14 (a) Returns and reports. Except as otherwise provided
15 in this subsection, each taxpayer shall report their total
16 unearned taxable income and the portion of the taxable
17 income that is apportioned to Wyoming as provided in W.S.
18 39-12-103 to the department not more than thirty (30) days
19 after the date the taxpayer is required to file a federal
20 income tax return under the provisions of the Internal
21 Revenue Code including any extensions authorized for filing
22 of the federal income tax return. If the taxpayer has two
23 hundred thousand dollars (\$200,000.00) or less in taxable

1 unearned income in any tax year the taxpayer shall not be
2 required to file a return under this subsection for that
3 year, provided that the department may require any person
4 to file a return if the department has reason to believe
5 that the taxpayer has taxable income that exceeds two
6 hundred thousand dollars (\$200,000.00).

7

8 (b) Payment. Any taxpayer owing a tax under this
9 chapter shall pay the tax once each year at the same time
10 the report under subsection (a) of this section is
11 provided. The tax shall be collected by the department.

12

13 (c) Timelines. There are no specific applicable
14 provisions for timelines for this chapter.

15

16 **39-12-108. Enforcement.**

17

18 (a) Audits. To assess credits and deficiencies
19 against taxpayers, the department is authorized to rely on
20 final audit findings made by the department of audit,
21 taxpayer information or information reported by the
22 taxpayer to the Internal Revenue Service or to the
23 department of revenue subject to the following conditions:

1

2 (i) Audits shall commence when the taxpayer
3 receives written notice of the engagement of the audit. The
4 issuance of the written notice of the audit shall toll the
5 statute of limitations provided in W.S. 39-12-110 for the
6 audit period specified in this subsection;

7

8 (ii) After receiving notice of an audit under
9 this subsection, the taxpayer shall preserve all records
10 and books necessary to determine the amount of tax due for
11 the time period that is being audited;

12

13 (iii) Except as otherwise provided in this
14 paragraph, audits shall encompass a time period not to
15 exceed three (3) years immediately preceding the reporting
16 period when the audit is engaged. The three (3) year limit
17 shall not apply to an audit if there is evidence of gross
18 negligence or intent to evade by the taxpayer in reporting
19 or remitting taxes for the reporting period being audited;

20

21 (iv) If a taxpayer is not willing or able to
22 produce adequate records to demonstrate taxes due, the

1 department or the department of audit may determine taxes
2 based on the best information available;

3

4 (v) The department of audit may contract with or
5 employ auditors or other technical assistance necessary to
6 determine whether the taxes imposed by this chapter have
7 been properly reported and paid;

8

9 (vi) Audits under this subsection are subject to
10 the authority and procedures provided in W.S. 9-2-2003.

11

12 (b) Interest. The following shall apply:

13

14 (i) Interest at an annual rate equal to the
15 average prime interest as determined by the state treasurer
16 during the preceding fiscal year, plus four percent (4%),
17 shall be added to all delinquent taxes under this chapter.
18 To determine the average prime interest rate, the state
19 treasurer shall average the prime interest for at least
20 seventy-five percent (75%) of the thirty (30) largest banks
21 in the United States. The interest rate on delinquent
22 taxes shall be adjusted on January 1 of each year following
23 the year in which the taxes first became delinquent. In no

1 instance shall the delinquent interest rate be less than
2 twelve percent (12%) nor greater than eighteen percent
3 (18%);

4

5 (ii) The department may credit or waive interest
6 imposed by this subsection as part of a settlement or for
7 any other good cause.

8

9 (c) Penalties. The following shall apply:

10

11 (i) If any part of a deficiency is due to
12 negligence or intentional disregard of statute or rules and
13 regulations but without intent to defraud there shall be
14 added a penalty of ten percent (10%) of the amount of the
15 deficiency plus interest as provided by paragraph (b)(i) of
16 this section. The taxes, penalty and interest shall be paid
17 by the taxpayer within ten (10) days after notice and
18 demand is made by the department;

19

20 (ii) If any part of the deficiency is due to
21 fraud with intent to evade there shall be added a penalty
22 of twenty-five percent (25%) of the amount of the
23 deficiency plus interest as provided by paragraph (b)(i) of

1 this section. The taxes, penalty and interest shall be paid
2 by the taxpayer within ten (10) days after notice and
3 demand is made by the department;

4

5 (iii) Any person who files a false or fraudulent
6 return is subject to the provisions of W.S. 6-5-303;

7

8 (iv) Any person who violates any provision of
9 this chapter for which there are no specific penalties is
10 guilty of a misdemeanor and upon conviction shall be fined
11 not more than one thousand dollars (\$1,000.00). Each
12 violation is a separate offense;

13

14 (v) If a taxpayer fails to file a return as
15 required by this chapter, the department shall give written
16 notice by mail to the taxpayer to file a return on or
17 before the last day of the month following the notice of
18 delinquency. If a taxpayer then fails to file a return the
19 department shall make a return from the best information
20 available, which will be prima facie correct and the tax
21 due therein is a deficiency and subject to penalties and
22 interest as provided by this chapter;

23

1 (vi) The department may credit or waive
2 penalties imposed by this subsection as part of a
3 settlement or for any other good cause.

4

5 (d) Liens. The following shall apply:

6

7 (i) Any tax due under this chapter constitutes a
8 debt to the state from the taxpayer, and is a lien from the
9 date the tax is due on all the real and personal property
10 of the taxpayer. Notice of the lien shall be filed with the
11 county clerk of the county in which the taxpayer resides or
12 conducts business. The lien does not have preference over
13 preexisting secured indebtedness but shall have priority
14 from and after the date of filing or recording. The
15 department shall cancel lien statements within sixty (60)
16 days after taxes due are paid or collected. No other action
17 by the department is required to perfect a lien under this
18 paragraph regardless of the type of property involved.

19

20 (e) Tax sales. The following shall apply:

21

22 (i) The tax due together with interest,
23 penalties and costs may be collected by appropriate

1 judicial proceedings or the department or its
2 representative may, with board approval, seize and sell at
3 public auction so much of the taxpayer's property as will
4 pay all the tax then due plus interest, penalties and
5 costs. Notice of the auction shall be published for four
6 (4) weeks in a newspaper published in the resident county
7 of the taxpayer or the county in which the majority of the
8 property is located.

9

10 **39-12-109. Taxpayer remedies.**

11

12 (a) Interpretation requests. A taxpayer may request
13 and the department shall provide written interpretations of
14 these statutes and rules adopted by the department. When
15 requesting an interpretation, a taxpayer shall set forth
16 the facts and circumstances pertinent to the issue. If the
17 department deems the facts and circumstances provided to be
18 insufficient, it may request additional information. A
19 taxpayer may act in reliance upon a written interpretation
20 through the end of the calendar year in which the
21 interpretation was issued, or until revoked by the
22 department, whichever occurs last if the pertinent facts

1 and circumstances were substantially correct and fully
2 disclosed.

3

4 (b) Appeals. Except as provided by this subsection,
5 no person aggrieved by the payment of the taxes, penalty
6 and interest imposed by this chapter may appeal a decision
7 of the state board of equalization until all taxes, penalty
8 and interest have been paid. For good cause shown, the
9 court to which the decision of the board is appealed may
10 stay enforcement of the tax during the pendency of the
11 appeal. The court's stay of enforcement shall not affect
12 the accrual of interest upon any assessment and levy.

13

14 (c) Refunds. The following shall apply:

15

16 (i) Any tax, penalty or interest under this
17 chapter which has been erroneously paid, computed or
18 remitted to the department by a taxpayer shall either be
19 credited against any subsequent tax liability of the
20 taxpayer or refunded. No credit or refund shall be allowed
21 after three (3) years from the date of overpayment. The
22 receipt of a claim for a refund by the department shall
23 toll the statute of limitations under W.S. 39-12-110. All

1 refund requests received by the department shall be
2 approved or denied within ninety (90) days of receipt. Any
3 credit or refund erroneously made or allowed may be
4 recovered in an action brought by the attorney general in
5 any court of competent jurisdiction.

6

7 (d) Credits. The following shall apply:

8

9 (i) Pursuant to article 15, section 18 of the
10 Wyoming Constitution, each taxpayer is entitled to a credit
11 against tax liability under this chapter for all excise,
12 sales, use, severance and ad valorem taxes paid in the tax
13 year by the same taxpayer to any taxing authority in
14 Wyoming. No credit shall be allowed for any tax collected
15 or remitted by the taxpayer on behalf of another person
16 including property taxes paid by the taxpayer on property
17 that is not owned by the taxpayer. The taxpayer shall
18 report the credit to the department on the return filed
19 under W.S. 39-12-107. The department may require supporting
20 documentation on the credit claimed under this paragraph.
21 In no case shall any refund be due or payable if the amount
22 of the credit claimed by any taxpayer under this paragraph

1 exceeds the amount of tax due under this chapter. False
2 claims are punishable as provided by W.S. 6-5-303;

3

4 (ii) The taxpayer is entitled to receive an
5 offsetting credit for any overpaid tax identified by an
6 audit that is within the scope of the audit period, without
7 regard to the limitation period for requesting refunds.

8

9 (e) Redemption. There are no specific applicable
10 provisions for redemption for this chapter.

11

12 (f) Escrow. There are no specific applicable
13 provisions for escrow for this chapter.

14

15 **39-12-110. Statute of limitations.**

16

17 (a) Except as otherwise provided in this chapter, no
18 credit or refund shall be allowed after three (3) years
19 from the date of overpayment. The receipt of a claim for a
20 refund by the department shall toll the statute of
21 limitations.

22

1 (b) Except as otherwise provided in this chapter, the
2 department may bring an action to recover any delinquent
3 taxes, penalty or interest in any court of competent
4 jurisdiction within three (3) years following the
5 delinquency. In the case of an assessment created by an
6 audit, the delinquency period is deemed to start thirty
7 (30) days after the date the audit assessment letter is
8 sent. Any tax penalty and interest related to the audit
9 assessment shall be calculated from the date on which the
10 deficiency occurred. In any such action a certificate by
11 the department is prima facie evidence of the amount due.

12

13 **39-12-111. Distribution.**

14

15 Revenues collected under W.S. 39-12-104 during each fiscal
16 year shall be recognized as revenue during that fiscal year
17 for accounting purposes. For all revenue collected by the
18 department under W.S. 39-12-104, the department shall
19 transfer the funds to the state treasurer for credit to the
20 school foundation program account.

21

22 **Section 2.** W.S. 39-12-101 is amended to read:

23

1 **39-12-101. Preemption by state; definitions.**

2

3 (a) The state of Wyoming does hereby preempt for
4 itself the field of imposing and levying income taxes,
5 earning taxes, or any other form of tax based on wages or
6 other income and no county, city, town or other political
7 subdivision shall have the right to impose, levy or collect
8 such taxes.

9

10 (b) To the extent they do not conflict with the
11 provisions of this chapter, the terms and definitions of
12 the Internal Revenue Code shall apply to this chapter. As
13 used in this chapter:

14

15 (i) "Business income" means income arising from
16 transactions and activity in the regular course of the
17 taxpayer's trade or business and includes income from
18 tangible and intangible property if the acquisition,
19 management or disposition of the property constitute an
20 integral part of the taxpayer's regular trade or business
21 operations;

22

1 (ii) "Earned income" means business income and
2 any salaries, wages, tips, professional fees and other
3 amounts received as pay for work actually performed.
4 "Earned income" also includes a taxable distribution from a
5 qualified disability trust;

6
7 (iii) "Tax year" means the taxable year used by
8 the taxpayer for purposes of the federal income tax;

9
10 (iv) "Taxable income" or "taxable unearned
11 income" means the unearned income, as provided in paragraph
12 (vi) of this subsection, of a taxpayer as computed under
13 the Internal Revenue Code and reported by the taxpayer to
14 the Internal Revenue Service, adjusted as follows:

15
16 (A) Reduced by any interest received from
17 obligations of the United States that is included in
18 unearned income or in the computation of unearned taxable
19 income on the federal tax return;

20
21 (B) Reduced by any other income included in
22 the taxable income or in the computation of taxable income
23 which is exempt from taxation by this state because of the

1 provisions of the Constitution of Wyoming or the
2 Constitution of the United States;

3
4 (C) Increased by the amount of any income
5 taxes, including income taxes of foreign countries, or
6 franchise or privilege taxes measured by income, to the
7 extent that the taxes were applicable to unearned income
8 and were deducted to determine federal taxable income;

9
10 (D) Increased to remove any deductions
11 taken for sales, use and ad valorem taxes paid in the tax
12 year by the same taxpayer to any taxing authority in
13 Wyoming, provided that this subparagraph shall not apply to
14 any credit taken under W.S. 39-12-109(d)(i);

15
16 (E) Reduced by the amount of income not
17 allocated and apportioned to this state under the
18 provisions of W.S. 39-12-103, but only to the extent that
19 the amount of net income not allocated and apportioned to
20 this state under the provisions of that section is not
21 included in any adjustment made pursuant to the preceding
22 subparagraphs of this paragraph.

23

1 (v) "Taxpayer" means any person who has taxable
2 income in Wyoming and who files or is required to file
3 federal income taxes with the Internal Revenue Service.
4 "Taxpayer" includes a married couple filing jointly if the
5 married couple files jointly for purposes of the federal
6 income tax;

7
8 (vi) "Unearned income" means income other than
9 earned income and includes interest, dividends and capital
10 gains including capital gain distributions. Distributions
11 of interest, dividends, capital gains and other unearned
12 income from a trust are also unearned income to a
13 beneficiary of the trust to the extent they are not
14 considered earned income under paragraph (ii) of this
15 subsection. As used in this paragraph, "capital gains"
16 shall not include any gains generated from the sale of the
17 taxpayer's primary residence.

18
19 **Section 3.** The department of revenue shall adopt
20 rules under W.S. 39-12-102 as necessary to begin collection
21 of the tax created by this act for tax years beginning on
22 or after January 1, 2022.

23

1 **Section 4.** The department of revenue shall
2 investigate the advisability of Wyoming becoming a member
3 state of the multistate tax commission and the advisability
4 of adopting all or a portion of the multistate tax compact.
5 The investigation shall include a determination of what
6 statutory changes would be required for Wyoming to become a
7 member of the multistate tax commission and any other
8 actions that would be necessary for membership. The
9 department shall report the results of the investigation
10 under this section to the joint revenue interim committee
11 not later than September 1, 2021.

12

13 **Section 5.**

14

15 (a) Sections 3 through 5 of this act are effective
16 immediately upon completion of all acts necessary for a
17 bill to become law as provided by Article 4, Section 8 of
18 the Wyoming Constitution.

19

20 (b) Except as otherwise provided in subsection (a) of
21 this section, this act is effective January 1, 2022.

22

23

(END)