

## HOUSE BILL NO. HB0205

Tobacco taxes-amendments.

Sponsored by: Representative(s) Burlingame and Senator(s)  
Rothfuss and Scott

A BILL

for

1 AN ACT relating to taxation and revenue; increasing the tax  
2 rate on cigarettes and other tobacco products; increasing  
3 the items that constitute tobacco products subject to  
4 regulation; increasing the licensing fee; extending the  
5 tobacco taxes to sales from out of state; providing and  
6 amending definitions; clarifying that regulations apply to  
7 retailers; amending distribution of the tobacco taxes;  
8 conforming provisions; providing for reporting and taxation  
9 of floor stock; and providing for an effective date.

10

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

12

13           **Section**           1. W.S.           39-15-501(a)(intro),  
14 39-18-101(a)(v)(A), (B) and by creating new paragraphs (ix)  
15 through (xi), 39-18-102, 39-18-103(a)(iii), (iv) and

1 (c)(ii) through (iv), 39-18-104, 39-18-106(a), (c)(intro),  
2 (ii), (iii) and by creating a new paragraph (iv),  
3 39-18-107(a)(i), (ii), (b)(ii), (c)(i)(intro) and (D),  
4 39-18-108(c)(ii)(A), (v) through (viii), (ix)(intro) and  
5 (x) and 39-18-111(a), (b) and by creating a new subsection  
6 (d) are amended to read:

7

8 **39-15-501. Sales from remote sellers.**

9

10 (a) Notwithstanding any other provision of law, any  
11 seller of tangible personal property, admissions or  
12 services which are subject to taxation under chapter 15, ~~or~~  
13 16 or 18 of this title who does not have a physical  
14 presence in this state shall remit sales tax and follow all  
15 applicable procedures and requirements of this chapter as  
16 if the seller had a physical presence in this state once  
17 the seller meets either of the following requirements for  
18 the current calendar year or the immediately preceding  
19 calendar year:

20

21 **39-18-101. Definitions.**

22

23 (a) As used in this article:

1

2 (v) "Wholesaler" means any person who:

3

4 (A) Whether located within or without  
5 Wyoming, imports, sells or distributes cigarettes, ~~cigars,~~  
6 ~~snuff~~ or other tobacco products into this state for sale or  
7 resale to a retailer;

8

9 (B) Purchases cigarettes, ~~cigars,~~ ~~snuff~~ or  
10 other tobacco products in this state for sale or resale;

11

12 (ix) "Electronic smoking device" means any  
13 device that may be used to deliver any aerosolized or  
14 vaporized substance to the person inhaling from the device,  
15 including an e-cigarette, e-cigar, e-pipe, vape pen or  
16 e-hookah. "Electronic smoking device" includes any  
17 component, part or accessory of the device, whether or not  
18 sold separately, and includes any substance intended to be  
19 aerosolized or vaporized during the use of the device,  
20 whether or not the substance contains nicotine. "Electronic  
21 smoking device" does not include:

22

1                   (A) Any battery or battery charger when  
2 sold separately;

3

4                   (B) Drugs, devices or combination products  
5 authorized for sale by the United States food and drug  
6 administration as those terms are defined in the Federal  
7 Food, Drug and Cosmetic Act.

8

9                   (x) "Other tobacco product":

10

11                   (A) Means any product, other than  
12 cigarettes, containing, made of or derived from tobacco or  
13 that contains nicotine and that is intended for human  
14 consumption or is likely to be consumed, whether smoked,  
15 heated, chewed, absorbed, dissolved, inhaled or ingested by  
16 any other means, including a cigar, pipe tobacco, chewing  
17 tobacco, dry snuff or snus;

18

19                   (B) Means any electronic smoking device and  
20 any component, part or accessory of this subparagraph or  
21 subparagraph (A) of this paragraph, whether or not any of  
22 these contains tobacco or nicotine, including filters,  
23 rolling papers, blunt or hemp wraps and pipes;

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(C) Does not include drugs, devices or combination products authorized for sale by the United States food and drug administration as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(xi) "Retailer" means any person within Wyoming or any person outside of Wyoming to the extent provided by W.S. 39-15-501 who:

(A) Sells or offers for sale cigarettes or other tobacco products to consumers in this state; or

(B) Sells or distributes for sale cigarettes or other tobacco products over the internet or through any other means of direct or indirect mail solicitation or delivery to any consumer in this state.

**39-18-102. Administration; confidentiality.**

(a) The payment of the taxes required by this article shall be evidenced by the affixing of stamps, imprints or impressions on each package of cigarettes sold or

1 distributed by a licensed wholesaler. The department shall  
2 obtain suitable stamps and sell them to licensed  
3 wholesalers for cash at a ~~six percent (6%)~~ two percent (2%)  
4 discount. The department may deposit cigarette tax stamps  
5 in banks within Wyoming for disbursement to licensed  
6 wholesalers pursuant to rules and regulations of the  
7 department. The department shall keep accurate records of  
8 all stamps sold. The department may authorize licensed  
9 wholesalers to use department approved metering machines to  
10 affix imprints or impressions in lieu of affixing stamps.  
11 The machine shall be sealed by the department and used  
12 pursuant to rules and regulations of the department. The  
13 department shall inspect and read each metering machine at  
14 least once a month or may approve and appoint a bank within  
15 Wyoming of the wholesaler's choice to act as setting agent  
16 pursuant to rules and regulations of the department. Meter  
17 settings shall be sold to licensed wholesalers for cash at  
18 a ~~six percent (6%)~~ two percent (2%) discount. Wholesalers  
19 purchasing stamps, imprints or impressions with other than  
20 cash shall furnish the department a bond of not less than  
21 ten thousand dollars (\$10,000.00) or such other amount as  
22 specified by the department.

23

1           (b) The tax imposed by W.S. 39-18-103(a)(iii) shall  
2 be paid by the wholesaler. The wholesaler shall be  
3 entitled to retain ~~four percent (4%)~~ one percent (1%) of  
4 any tax collected under W.S. 39-18-103(a)(iii).

5

6           **39-18-103. Imposition.**

7

8           (a) Taxable event. The following event shall  
9 constitute a taxable event under this article:

10

11           (iii) In addition to the other taxes imposed by  
12 this subsection, there is levied and assessed upon ~~eigars,~~  
13 ~~snuff and~~ other tobacco products purchased or imported into  
14 this state by wholesalers for resale, except cigarettes  
15 taxed under this subsection, an excise tax at the rate  
16 imposed by W.S. 39-18-104(c) or (e), as applicable;

17

18           (iv) The tax imposed by paragraph (iii) of this  
19 subsection shall also be imposed upon the sale, use or  
20 storage by ~~consumers~~ retailers of ~~eigars, snuff and~~ other  
21 tobacco products in this state, ~~and upon those consumers,~~  
22 at the rate imposed by W.S. 39-18-104(d) or (f), as

1 applicable. This tax shall not apply if the tax imposed by  
2 paragraph (iii) of this subsection has been paid.

3

4 (c) Taxpayer. The following taxpayers are liable for  
5 the tax imposed by this article:

6

7 (ii) There is levied and shall be paid to the  
8 department an excise tax at the rate imposed by W.S.  
9 39-18-104(b) upon the sale, use or storage by ~~consumers~~  
10 retailers of cigarettes in Wyoming but only if the tax  
11 imposed by paragraph (i) of this subsection has not been  
12 paid;

13

14 (iii) In addition to the other taxes imposed by  
15 this subsection, there is levied and assessed upon ~~eigars,~~  
16 ~~snuff and~~ other tobacco products purchased or imported into  
17 this state by wholesalers for resale, except cigarettes  
18 taxed under this subsection, an excise tax at the rate  
19 imposed by W.S. 39-18-104(c) or (e), as applicable;

20

21 (iv) The tax imposed by paragraph (iii) of this  
22 subsection shall also be imposed upon the sale, use or  
23 storage by ~~consumers~~ retailers of ~~eigars, snuff and~~ other



1 tobacco products in this state, ~~and upon those consumers,~~  
2 at the rate imposed by W.S. 39-18-104(d) or (f), as  
3 applicable. This tax shall not apply if the tax imposed by  
4 paragraph (iii) of this subsection has been paid.

5

6 **39-18-104. Taxation rate.**

7

8 (a) There is levied and shall be collected and paid  
9 to the department an excise tax at the rate of ~~three cents~~  
10  ~~(\$.03)~~ ten cents (\$.10) upon the sale of each cigarette  
11 sold by wholesalers.

12

13 (b) There is levied and shall be paid to the  
14 department an excise tax at the rate of ~~three cents (\$.03)~~  
15 ten cents (\$.10) upon the sale, use or storage by ~~consumers~~  
16 retailers of cigarettes in Wyoming but only if the tax  
17 imposed by subsection (a) of this section has not been  
18 paid.

19

20 (c) In addition to the other taxes imposed by this  
21 section, there is levied and assessed upon ~~cigars, snuff~~  
22 ~~and~~ other tobacco products purchased or imported into this  
23 state by wholesalers for resale, except ~~cigarettes and~~

1 moist snuff taxed under this section, an excise tax at the  
2 rate of ~~twenty percent (20%)~~ fifty-six percent (56%) of the  
3 wholesale purchase price at which the other tobacco  
4 products are purchased by wholesalers from manufacturers.

5  
6 (d) The tax imposed by subsection (c) of this section  
7 shall also be imposed upon the sale, use or storage by  
8 ~~consumers-retailers~~ of ~~cigars, snuff and~~ other tobacco  
9 products ~~other than cigarettes and~~ except moist snuff in  
10 this state, and upon those ~~consumers-retailers,~~ at the rate  
11 of ~~ten percent (10%)~~ twenty-eight percent (28%) of the  
12 retail price of the ~~cigar, snuff or~~ other tobacco product.  
13 ~~other than cigarettes and moist snuff.~~ This tax shall not  
14 apply if the tax imposed by subsection (c) of this section  
15 has been paid.

16  
17 (e) In addition to the other taxes imposed by this  
18 section, there is levied and assessed upon moist snuff  
19 purchased or imported into this state by wholesalers for  
20 resale, an excise tax at the rate of ~~sixty cents (\$0.60)~~  
21 two dollars and sixty cents (\$2.60) for any amount of moist  
22 snuff up to ~~one (1) ounce~~ one and two-tenths (1.2) ounces  
23 plus a proportionate tax at the like rate on any fractional

1 parts of more than ~~one (1) ounce~~ one and two-tenths (1.2)  
2 ounces. The tax on moist snuff shall be imposed based on  
3 the net weight as listed by the manufacturer.

4  
5 (f) The tax imposed by subsection (e) of this section  
6 shall also be imposed upon the sale, use or storage by  
7 ~~consumers~~ retailers of moist snuff in this state, ~~and upon~~  
8 ~~those consumers~~, at the rate of ~~sixty cents (\$0.60)~~ two  
9 dollars and sixty cents (\$2.60) for any amount of moist  
10 snuff up to ~~one (1) ounce~~ one and two-tenths (1.2) ounces  
11 plus a proportionate tax at the like rate on any fractional  
12 parts of more than ~~one (1) ounce~~ one and two-tenths (1.2)  
13 ounces. This tax shall not apply if the tax imposed by  
14 subsection (e) of this section has been paid. The tax on  
15 moist snuff shall be imposed based on the net weight as  
16 listed by the manufacturer.

17

18 **39-18-106. Licensing; permits.**

19

20 (a) Every wholesaler, retailer, cigarette importer  
21 and cigarette manufacturer who sells or offers to sell  
22 cigarettes, ~~cigars, snuff~~ or other tobacco products in this  
23 state must have a license to do so issued by the

1 department. No license or renewal of a license shall be  
2 granted under this section unless the wholesaler or  
3 retailer states in writing, under penalty for false  
4 swearing, that he shall comply fully with W.S. 9-4-1201  
5 through 9-4-1209. The license fee is ~~ten dollars (\$10.00)~~  
6 one hundred dollars (\$100.00) per year or fraction thereof  
7 and is valid through June 30 in each year. The license will  
8 be granted only to wholesalers or retailers who own or  
9 operate the place from which sales are made and additional  
10 licenses must be obtained for each separate location. The  
11 licenses are transferable pursuant to rules and regulations  
12 promulgated by the department. License fees paid under this  
13 subsection shall be deposited in the state general fund.

14

15 (c) No license for a cigarette wholesaler, retailer,  
16 cigarette importer or cigarette manufacturer shall be  
17 granted, maintained or renewed if the applicant:

18

19 (ii) Has imported or caused to be imported into  
20 the United States any tobacco products in violation of 19  
21 U.S.C. 1681a; ~~or~~

22

1           (iii) Has imported or caused to be imported into  
2 the United States, or manufactured for sale or distribution  
3 in the United States any cigarette that does not fully  
4 comply with the federal Cigarette Labeling and Advertising  
5 Act, (15 U.S.C. 1331, et seq.) ~~i-~~ or

6  
7           (iv) Is not in compliance with all applicable  
8 federal and state laws concerning the distribution, resale,  
9 sale, use, storage and reporting of information regarding  
10 cigarettes and other tobacco products.

11  
12           **39-18-107. Compliance; collection procedures.**

13  
14           (a) Returns and reports. The following shall apply:

15  
16           (i) Each wholesaler and retailer shall keep  
17 complete and accurate records of all cigarettes, ~~cigars,~~  
18 ~~snuff or~~ and other tobacco products purchased and sold for  
19 three (3) years. The records shall be in the form  
20 prescribed by the department and will be available for  
21 inspection by the department at any reasonable time. The  
22 department may investigate and examine the stock of

1 cigarettes or other tobacco products upon any premises  
2 where they are stored or sold;

3

4 (ii) On or before the tenth day of each calendar  
5 quarter, every ~~consumer~~ wholesaler or retailer who, during  
6 the preceding calendar quarter, has acquired title to or  
7 possession of ~~cigars, snuff or~~ other tobacco products for  
8 sale, use or storage in this state, upon which products the  
9 tax imposed by W.S. 39-18-103(a)(iii) has not been paid,  
10 shall file a return with the department showing the  
11 quantity of such products so acquired. The return shall be  
12 made upon a form furnished and prescribed by the department  
13 and shall contain such other information as the department  
14 may require. The return shall be accompanied by a  
15 remittance for the full unpaid tax liability shown by it.

16

17 (b) Payment. The following shall apply:

18

19 (ii) There is levied and shall be paid to the  
20 department an excise tax at the rate imposed by W.S.  
21 39-18-104(b) upon the sale, use or storage by ~~consumers~~  
22 retailers of cigarettes in Wyoming but only if the tax

1 imposed by paragraph (i) of this subsection has not been  
2 paid;

3

4 (c) Timelines. The following shall apply:

5

6 (i) No later than the twentieth day of the month  
7 following the sale of cigarettes, or the month following  
8 the end of the calendar quarter for ~~eigars, snuff or~~ other  
9 tobacco products each wholesaler shall return to the  
10 department the following information on forms furnished by  
11 the department:

12

13 (D) The amount paid by the wholesaler to  
14 the manufacturer for ~~eigars, snuff or~~ other tobacco  
15 products ~~other than~~ except moist snuff. For sales of moist  
16 snuff, the return shall include the net weight as listed by  
17 the manufacturer. The department shall compile the  
18 information provided under this subparagraph with respect  
19 to ~~moist snuff other~~ tobacco product sales on an annual  
20 basis and shall report the information to the legislature  
21 every five (5) years beginning on July 1, 2014.

22

23 **39-18-108. Enforcement.**

1

2 (c) Penalties. The following shall apply:

3

4 (ii) The following acts are misdemeanors  
5 punishable by a fine of not more than one hundred dollars  
6 (\$100.00) or imprisonment in the county jail for not more  
7 than six (6) months or both:

8

9 (A) Selling or distributing cigarettes,  
10 ~~eigars, snuff~~ or other tobacco products as a wholesaler or  
11 retailer without a license;

12

13 (v) The department may revoke the license of any  
14 wholesaler or retailer violating any provision of this  
15 article after a hearing. No license shall be issued to a  
16 wholesaler or retailer for two (2) years following  
17 revocation of his license;

18

19 (vi) Any person who purchases any cigarette or  
20 other tobacco product for resale in this state from other  
21 than a licensed wholesaler or retailer is liable for the  
22 tax and any penalties and interest imposed under this  
23 paragraph as if he were a wholesaler or retailer under this



1 act and shall pay an additional penalty of twenty-five  
2 percent (25%) of any tax due. Any wholesaler, retailer or  
3 other person who fails to file any return or to pay any tax  
4 within the time required or permitted by this subsection  
5 shall be subject to a penalty of five percent (5%) of the  
6 amount of the tax due, plus one percent (1%) of the tax for  
7 each month of delinquency or fraction thereof. The  
8 department may waive all or any part of this penalty for  
9 good cause shown;

10

11 (vii) Any wholesaler, retailer or other person  
12 who does any act prohibited by this article, or omits,  
13 neglects or refuses to comply with any duty imposed upon  
14 him by this article, or causes not to be done any of the  
15 things required by this article, or does any act prohibited  
16 by this article, may, in addition to any other penalty  
17 provided by this article, be liable for a penalty of not to  
18 exceed one thousand dollars (\$1,000.00) or five (5) times  
19 the retail value of the tobacco product at issue, whichever  
20 is lesser, to be recovered in a civil action;

21

22 (viii) Any wholesaler, retailer or other person  
23 who fails to pay any tax imposed by this article at the

1 time prescribed by law or department rule or regulation  
2 may, in addition to any other penalty provided by this  
3 article, be liable for a penalty of not to exceed five (5)  
4 times the tax due, but unpaid, to be recovered in a civil  
5 action;

6

7 (ix) Any fixture, equipment or other personal  
8 property used by a cigarette or other tobacco product  
9 wholesaler or retailer to commit any of the following acts  
10 shall be subject to forfeiture to the state, if the retail  
11 value of the cigarettes involved or any tax involved in the  
12 act exceeds five hundred dollars (\$500.00):

13

14 (x) Any wholesaler, retailer or other person  
15 who, with intent to defraud, fails to comply with any  
16 requirement of this article or regulation prescribed  
17 hereunder may, in addition to any other penalty provided in  
18 this article, for each such offense, be fined not to exceed  
19 ten thousand dollars (\$10,000.00), or be imprisoned for not  
20 to exceed one (1) year, or both;

21

22 **39-18-111. Distribution.**

23

1           (a) ~~Fifteen percent (15%)~~ Eighteen percent (18%) of  
2 the taxes collected pursuant to W.S. 39-18-104(a) and (b)  
3 shall be distributed to incorporated cities and towns and  
4 to boards of county commissioners in the proportion the  
5 cigarette taxes derived from sales within each incorporated  
6 city or town or county bears to total cigarette taxes  
7 collected. The computation for the distribution shall be  
8 made by the department according to the monthly returns  
9 filed by the wholesalers and retailers. After the  
10 distribution in this subsection and subsection (d) of this  
11 section the remainder shall be deposited in the state  
12 general fund.

13

14           (b) After the distribution in subsection (d) of this  
15 section the revenue received from the tax imposed by W.S.  
16 39-18-104(c) and (d) shall be deposited in the general  
17 fund.

18

19           (d) Ten percent (10%) of the taxes collected pursuant  
20 to W.S. 39-18-104(a) through (f) shall be distributed to a  
21 tobacco cessation program account and shall be continuously  
22 appropriated to the department of health for the tobacco  
23 cessation program pursuant to W.S. 9-4-1204 and for any

1 other evidence based tobacco use prevention and cessation  
2 initiatives that align with United States centers for  
3 disease control and prevention best practices for  
4 comprehensive tobacco control programs and include the  
5 goals of preventing youth initiation of tobacco usage,  
6 helping youth and adults to quit tobacco use and reducing  
7 exposure to secondhand smoke. The computation for the  
8 distribution shall be made by the department according to  
9 the monthly returns filed by the wholesalers and retailers.  
10 Funds appropriated to the department of health under this  
11 subsection shall supplement and not supplant tobacco  
12 prevention and cessation funding provided to the department  
13 of health from the Wyoming tobacco settlement trust fund,  
14 the income account established under W.S. 9-4-1203(b) and  
15 other sources.

16

17 **Section 2.**

18

19 (a) Each Wyoming licensed wholesaler and retailer  
20 required to pay taxes under W.S. 39-18-104 shall:

21

22 (i) Take a physical inventory of all:

23

1                   (A) Cigarettes in packages bearing Wyoming  
2 tax stamps, and all unaffixed Wyoming cigarette tax stamps  
3 possessed by or in the control of the wholesaler or  
4 retailer at 11:59 p.m. on the effective date of this act;

5

6                   (B) Units of moist snuff possessed by or in  
7 the control of the wholesaler or retailer at 11:59 p.m. on  
8 the effective date of this act;

9

10                   (C) Other tobacco products possessed by or  
11 in the control of the wholesaler or retailer at 11:59 p.m.  
12 on the effective date of this act.

13

14                   (ii) File a return with the department not later  
15 than ten (10) days after the effective date of this act,  
16 showing the inventories taken under paragraph (i) of this  
17 subsection;

18

19                   (iii) Pay a floor stock tax at a proportionate  
20 rate equal to the increase in tobacco taxes under section 1  
21 of this act for all cigarettes, moist snuff and other  
22 tobacco products in the possession or control of the

1 wholesaler or retailer at 11:59 p.m. on the effective date  
2 of this act.

3

4 (b) The floor stock tax imposed by subsection (a) of  
5 this section may be paid in three (3) installments. The  
6 first installment, in an amount equal to at least one-third  
7 ( $1/3$ ) of the total amount due, shall be remitted with the  
8 return provided to the department not later than ten (10)  
9 days following the effective date of this act. The second  
10 installment, in an amount that brings the total amount paid  
11 to at least two-thirds ( $2/3$ ) of the total amount due, shall  
12 be remitted one (1) month following the due date of the  
13 first installment. The third installment, in an amount  
14 equal to the remaining balance, shall be remitted not later  
15 than two (2) months following the due date of the first  
16 installment. Penalties under W.S. 39-18-108(c)(iv) shall  
17 not be imposed against any outstanding installment payment  
18 not yet due from a wholesaler who files the return and  
19 makes payments as required under this section.

20

21 **Section 3.** This act is effective July 1, 2020.

22

23

(END)