BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF **KIRBY HEDRICK** FROM A DECISION BY THE DEPARTMENT OF REVENUE (Taxability Determination)	))))	Docket No. **2024-30**

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER

APPEARANCES

Kirby Hedrick appeared pro se (hereafter Hedrick).

Karl Anderson and Jim Peters, Office of the Wyoming Attorney General, appeared on behalf of the Department of Revenue (hereafter Department).

DIGEST

[¶ 1] Hedrick appeals the Department's use tax determination concerning Hedrick's sales tax-free purchase of an airplane in Texas. The Department determined that Hedrick flew the airplane to, and hangered it in, Wyoming, and was therefore subject to Wyoming use tax pursuant to Wyoming Statutes section 39-16-103 (2023). Hedrick asserted that he first used his airplane in McKinney, Texas, and consequently is not subject to use tax for first using or storing the aircraft in Wyoming. The Department disagreed and, upon Hedrick's appeal, participated in a contested case hearing before the State Board of Equalization (hereafter State Board).

[¶ 2] The State Board[1], comprised of Chairman E. Jayne Mockler and Vice Chairman Martin L. Hardsocg, thoroughly reviewed the pleadings and considered the evidence and case law addressing the application of use tax to property brought into Wyoming when the same was not taxed upon purchase outside of Wyoming. We find that following the Department's 2014 removal of administrative rules defining "first use," the imposition of use tax no longer requires first use of property in Wyoming. Therefore, we shall **affirm**

[1] Board Member Dave Delicath participated in the contested case hearing but retired from the State Board in early May of 2025. He did not participate in the final determination of the appeal's merits.

the Department's determination that Hedrick is liable for use tax on the aircraft purchased in Texas, when he then used and stored the airplane in Wyoming.

ISSUES

[¶ 3] Summarizing his claim and position in this appeal, Hedrick states:

> The issue on which this appeal request is based is whether "first use" of Cirrus aircraft N3022 occurred in the state of Texas or Wyoming. The Department of Revenue's final determination is that "first use" as specified in W.S. 39-16-103(a)(ii) occurred in Wyoming despite the documentation provided by Petitioner that it occurred in Texas and thus the purchase is not subject to Wyoming Use Tax in accordance with W.S. 39-16-103(a) defining a Taxable Event.

Hedrick's Summary of Contentions, Dated Dec. 8, 2024.

[¶ 4] Hedrick further complains that the Department has not assessed use tax on numerous verified out-of-state sales of aircraft that were thereafter flown into, hangered, and maintained in Wyoming. Hedrick asserts that the Department has failed to uniformly assess use taxes and should not, therefore, assess use tax upon his airplane activities in Wyoming. *See infra* ¶ 13.

[¶ 5] The Department's responsive statement of the issues is as follows:

> Is the Department's determination on taxability of the Cirrus Design Corp., Model SR22T, Serial # 9617, Tail # NC011 correct, proper, and in accordance with the law?
>
> Is the State Board's decision in *In re Montana Butterfly,* SBOE Docket 2017-17 (2018) applicable and controlling in this appeal?

Wyo. Dep't of Revenue's Issue of Fact and Law and Exhibit Index at 1.

JURISDICTION

[¶ 6] The State Board shall "review final decisions of the department [of revenue] upon application of any interested person adversely affected." Wyo. Stat. Ann. § 39-11-102.1(c) (2023). An aggrieved taxpayer may file an appeal with this Board within 30 days after the Department's final decision. Rules, Wyo. State Bd. of Equalization, Ch. 2 § 5(e) (2021). The Department issued its final taxability decision to Kendrick on November 14, 2024, after which Hedrick appealed on November 27, 2024. (DOR Ex. 506; Notice of Appeal lttr. dated Nov. 26, 2024). The appeal is timely and we, therefore, have jurisdiction.

EVIDENCE PRESENTED AND FINDINGS OF FACT

[¶ 7] Hedrick purchased a Cirrus Aircraft, Model SR22T (hereafter "airplane"), from a private individual in Arlington, Texas, on July 1, 2024.[2] (DOR Ex. 501; 00:54:00-00:59:00). Upon closing the purchase and taking delivery, Hedrick flew the airplane to McKinney National Airport, located in McKinney, Texas, on July 1, where he flew the airplane locally and stored it in a hangar until July 4, 2024. (DOR Ex. 502, p. A018). Hedrick paid no sales tax to Texas on the purchase price. (DOR Ex. 502).

[¶ 8] From McKinney, Hedrick flew the airplane to his hometown of Pinedale, Wyoming, where he stored (and presently stores) it in a personal hangar. (DOR Ex. 502, p. A018). He stopped in Greeley, Colorado, to refuel before arriving in Pinedale. (Hr'g rec. at 01:02:00-01:05:00; DOR Ex. 501, at pp. A006, A012).

[¶ 9] Hedrick appears to dispute a single factual point regarding the airplane's initial use: the airplane's activities in McKinney, Texas. The Department determined from flight logs that for approximately ten hours, Hedrick used the airplane for "safety and training of the aircraft." (DOR Ex. 506, p. A035). Hedrick disagreed, responding:

> The flight time in McKinney was solely related to, a little bit of personal fly—site seeing—but predominantly it was a flight review that the FAA requires biannually for all pilots. The logbook endorsement in the back of my logbook, which I have here if anyone cares to inspect it, was signed by Lana Gary. She was the flight instructor that was giving me the biannual flight review. That flight review could have been done in any aircraft. The Cirrus is not an aircraft that requires an FAA flight certification. I solely did it in the Cirrus because it was convenient to do so.

(Hr'g rec. at 00:19:30-00:20:40).

[¶ 10] The Department requested Hedrick provide information concerning his airplane purchase. (DOR Exs. 500-503; Hr'g rec. at 00:58:00-01:01:00). After gathering information, it determined that Hedrick owed use tax because the airplane "was purchased for storage, use, or consumption in [Wyoming]" pursuant to Wyoming Statutes section 39-16-103(a)(ii) (2023). (DOR Ex. 506, p. A035). Notably, the Department did not allege or cite Hedrick's "first use" or "first storage" of the airplane in Wyoming, indicating that he was liable for use tax regardless of where he first used the airplane. *Id.* As will become evident, we are asked to resolve whether this is now relevant under the law.

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[2] Hedrick, as of the hearing, had not divulged the price paid for the airplane because the seller requested he maintain its confidentiality. (Hr'g rec. at 00:58:00-01:01:00). Hedrick stated that he would share the price if required to pay use tax. *Id.*

[¶ 11] In support of its decision, the Department relied heavily upon the State Board's decision *In re Montana Butterfly, LLC* SBOE Docket 2017-70 (Wyo. St. Bd. of Equalization, June 5, 2018), which it believed supported its conclusion that Hedrick's airplane purchase and storage in Wyoming made him liable for use tax. *Id.*; *see infra* ¶¶ 31-33.

[¶ 12] Hedrick responded to the Department's inquiries in writing, asserting that he first used his airplane in Texas and, therefore, did not owe use tax to Wyoming. (DOR Ex. 502). Hedrick cited our decision in *In re Admiral Beverage Corporation*, 2016 WL 6395731, Doc. No. 2014-107 (Wyo. St. Bd. of Equalization, Oct. 19, 2016) (Hardsocg, Vice Chairman, dissenting), arguing that he used his airplane similarly to the airplane purchased and used in the *Admiral Beverage* case, which this Board found was not subject to use tax. *Id.*; *see infra* ¶¶ 28-30.

[¶ 13] Hedrick also complained that he is aware of numerous other pilots who had acquired aircraft out-of-state for use and storage in and around his hometown. He believed that the Department had not collected use taxes from others who had similarly flown aircraft into Wyoming without having paid sales taxes to other states. (Hr'g rec. at 00:40:00-00:54:00). He asserted that the Department's failure to uniformly enforce the state's use tax law violated constitutional uniformity requirements. *Id.*

[¶ 14] The Department's case presentation paradoxically focused at times on Hedrick's first storage and use of the airplane in Wyoming, and it reasoned that Wyoming imposed use tax because Texas did not impose sales tax. So, while the Department assessed use tax narrowly because the airplane "was purchased for storage, use, or consumption in our state," its witness offered differing explanations during the hearing. (DOR Ex. 506, p. A035, citing Wyo. Stat. Ann. § 39-16-103(a)(ii); *supra* ¶ 10; *see also* Dep't Updated Sum. of Contentions).

[¶ 15] For example, Ms. Lynn Frank, the Sales Tax Division's Education and Taxability Manager, explained the Department's determination that Hedrick first stored and used the airplane in Wyoming, and that his activities with the airplane in Texas did not qualify as the airplane's first use:

> Question: In most of your testimony, you avoid using the word "first use" is any qualifier or condition for a taxpayer to look at in determining whether or not the law applies within [the statute]. Can you, can you help me understand why you have eliminated the first use qualifier, and why you have substituted an aircraft's home for [inaudible]

> Answer: Well, in this case, what I will say is, because Texas did not believe that the training, … the training and repairs or the test flights in Texas are not considered first use in that state, then first use has to occur in Wyoming because the airplane was not in any other place but Texas and Wyoming. So that means that first use didn't occur in Texas, that first use would have to occur in Wyoming.

(Hr'g rec. at 02:01:00-02:02:58; *see also* 02:09:00-02:10:00). She cautioned, however, that the Department would not administer the use tax so broadly to achieve an absurd result, referring to the *Montana Butterfly* decision. (Hr'g rec. at 02:09:30-02:10:30; *see infra* ¶¶ 31-33; *see supra* ¶ 11).

[¶ 16] And, Department's counsel during closing argument suggested that the Department would not so broadly enforce the tax to render an absurd result. (Hr'g rec. at 02:33:00-02:41:00). He recognized the potential confusion in the absence of the historic "first use" requirement:

> Question: Is there a temporal element at all, I mean, as long as the airplane was used in Texas, was flown into Colorado, … and was stored eventually in Pinedale, does it matter at that point [inaudible] there's no tax being paid in Texas or in Colorado, and so it doesn't matter how many states or places he could have used it, as long as it's going to end up in Wyoming and no taxes have been paid, there is no temporal limitation?
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> Answer: … there is a potential when looking at this, that you could come up with these absurd results. And, …and that's not our intent. We understand that there could be circumstances where there is this limited temporal incident where it just temporally sticks in the state of Wyoming, whether it's an aircraft, or it's a tourist coming through to buy a souvenir from somewhere. We obviously want to avoid that, and I think that the Board correctly acknowledged that [in *Montana Butterfly*]. There are factual scenarios where this could be absurd and against the intent of the legislature. It's hard to draw a bright line. Absurd result necessarily means you need to look at the facts, it's fact dependent.

(Hr'g rec. at 02:33:40-02:35:15, citing *Montana Butterfly*, *infra* at ¶¶ 17-19).

CONCLUSIONS OF LAW

A. State Board's review function and burdens of proof

[¶ 17] This Board shall "review final decisions of the department upon the application of any person adversely affected[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2023). At the request of an adversely affected party, we "[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instruction prescribed by the department." Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2023).

[¶ 18] We have described the Petitioner's burden in this way:

> Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to show the Department determination is incorrect, the burden shifts to the Department to defend its action.

Rules, Wyo. State Bd. of Equalization, Ch. 2 § 20 (2021). The burden of going forward, also called the burden of production, is "[a] party's duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a preemptory ruling such as a summary judgment or a directed verdict." *Burden of Production, Black's Law Dictionary*, 236 (10th ed. 2014).

B. Recent history of Wyoming's use tax imposition law

[¶ 19] Hedrick claims that because he first used his purchased airplane in McKinney, Texas, the Department incorrectly determined that he owed Wyoming use tax on the airplane's purchase price. *Supra* ¶¶ 12-13. So, we must consider whether Hedrick's "first use" of the airplane, assuming it occurred in Texas, is determinative.

[¶ 20] In four separate subparagraphs, the use tax imposition statute refers to "first use," but the scope and application of that phrase is less than clear: it specifically ties "first use" to services, not the use of purchased property. The statute defines "taxable event" as: "Persons making ***first use*** of ***taxable services*** or storing, using or consuming tangible personal property or specified digital products, except as otherwise provided in this paragraph, are liable for the tax imposed by this article." Wyo. Stat. Ann. § 39-16-103(a)(i) (2023) (emphasis added). That language is essentially repeated in subparagraph (a)(ii), which likewise addresses digital products and services related to personal property. *Id.* at (a)(ii).

[¶ 21] The statute next defines the tax's "basis" in paragraph (b), again referring to the "first use of services":

> (i) Specified digital products sold, services to repair, alter or improve tangible personal property sold and tangible personal property sold by any person for delivery in this state or ***where first use of the service occurs in this state is deemed sold for storage, use or consumption herein*** and is subject to the tax imposed by this article unless the person selling the property has received from the purchaser a signed certificate stating the property or service was purchased for resale and showing his name address.

Wyo. State. Ann. § 39-16-103(b)(i) (2023) (emphasis added).

[¶ 22] Then under paragraph (c), the statute defines taxpayer obligations, similarly providing:

> (ii) Persons making ***first use*** of taxable services or storing, using or consuming tangible personal property or specified digital products are liable for the tax imposed by this article.
>
> ...
>
> (iv) Every person making ***first use*** of taxable services or storing, using or consuming tangible personal property or specified digital products purchased from a vendor who does not maintain a place of business in this state is liable for the tax imposed by this article.

Wyo. Stat. Ann. § 39-16-103(c)(ii), (vi) (2023) (emphasis added).

[¶ 23] The statute's origin and history are of little assistance. Prior to 2014, the statute made no mention of "first use" at all. Then in 2014, the legislature inserted the phrase "making first use of taxable services or ..." after "[p]ersons," but did not explicitly extend that limitation to the balance of the sentence, "storing, using, or consuming tangible personal property ...." *See* 2014 Wyo. Sess. Laws 257-58; *see supra* ¶¶ 20-22. The imposition statute has remained unchanged since 2014.

[¶ 24] Long before the current version of the use tax imposition statute, the Wyoming Supreme Court observed that the use tax statutes were poorly worded, finding them ambiguous. *See Barcon, Inc. v. Wyo. State Bd. of Equalization*, 845 P.2d 373, 377-78 (Wyo. 1992) (citing Wyo. Stat. Ann. § 39-6-504 (Michie 1977) ("After this review, we have no difficulty in agreeing with the Board of Equalization that the Use Tax Act is 'poorly worded.' "). That 1977 version of Wyoming's use tax provided, in relevant part:

> (b) Persons storing, using or consuming tangible personal property are liable for the tax imposed by this article …
> (c) Tangible personal property sold by any person for delivery in this state is deemed sold for storage, use or consumption herein and is subject to the tax imposed by this article ….

Wyo. Stat. Ann. 39-6-504(b), (c) (Michie 1977). So, from its inception, the use tax statute included no "first use" limitation.

[¶ 25] So, how did the use tax's "first use" or "prior use" limitation materialize? The Department's rules. The Department long ago, by interpretive rule, implemented a "first use" or "prior use" trigger for use tax imposition. By rule, use tax applied only when a taxpayer first used, stored, or consumed untaxed personal property in Wyoming, that the taxpayer had purchased elsewhere. *See In re Admiral Beverage Corp.*, 2016 WL 6395731, Doc. No. 2014-107 (Wyo. St. Bd. of Equalization, Oct. 19, 2016), dissenting op., ¶¶ 3-13, ** 17-20 (reviewing entire history of use taxation, including evolution of Department's administrative rules); *see also Exxon Corp. v. Wyo. St. Bd. of Equalization*, 783 P.2d 685, 688 (Wyo. 1989) (observing that the Department, through its rule, initiated a "self-imposed limitation" to the use tax.).

[¶ 26] In 2014, the Department deleted its interpretive regulatory guidance concerning first use, stating only that "use tax shall be determined by when tangible personal property is first stored, or first used or first consumed in Wyoming." *Compare* Rules, Wyo. Dep't of Revenue, Ch. 2 § 4(i.) (2012) and Ch. 2 §§ 3-4 (2014) (deleting entire "first use" or "prior use" definitional guidance from sales and use tax administrative rules).

[¶ 27] However, by July of 2024 when Hedrick purchased the airplane in question and flew his aircraft to Pinedale, Wyoming, the Department had deleted completely all mention of "first use" or "prior use" concepts from its rules. *See* Rules, Wyo. Dep't of Revenue, Ch. 2 § 3 (effective Aug. 2023 thru Sept. 2024) & Ch., 2 § 3 (Sept. 2024 thru the present)). In its final determination letter to Hedrick, the Department explains: "subsequent to *Admiral Beverage* ..., the Wyoming Legislature amended the use tax statutes and the Department promulgated new Rules removing the first use rule since it is covered in the statute [W.S. 39-16-103(a)(ii)]." (DOR Ex. 506, p. A035).

C. Recent use tax cases involving airplanes purchased outside of Wyoming for storage and use in Wyoming

[¶ 28] As one might anticipate, disputes over whether use tax applies have come down to whether purchasers "first used" out-of-state acquired property before the property entered Wyoming for use. And indeed, the parties' disagreement stems from how the Department has applied use taxes to out-of-state aircraft purchases. We begin with the decision Hedrick cites in support of his appeal, *Admiral Beverage*. The Department in *Admiral Beverage* assessed use tax on Admiral Beverage Corporation's four-million dollar purchase of an airplane in Columbia, South Carolina, for which almost no excise tax was paid. *Id.* at ¶¶ 1-4, * 2. Admiral Beverage began to fly the plane from South Carolina, where it had undergone repairs, to Texas, but returned to South Carolina immediately when mechanical problems arose. *Id.* at ¶¶ 5-9, * 2.

[¶ 29] Still in South Carolina, Admiral Beverage test flew from Columbia to Charleston, South Carolina, and then flew the plane to Addison, Texas, picking up the company's president from business meetings. *Id.* at ¶¶ 12-13, * 2. Admiral Beverage flew the plane, with its president aboard, to Great Falls, Montana, for additional meetings, stopping in Nebraska to refuel. *Id.* at ¶¶ 14-16, * 2. Admiral Beverage finally flew the aircraft to Worland, Wyoming, its domicile destination where it intended to permanently hangar the plane. *Id.* at 22, * 3. Admiral Beverage's initial flight following purchase occurred January 22, 2014, and it reached Worland, Wyoming, January 26, 2014. *Id.* at ¶¶ 8-9, 18-19.

[¶ 30] The Department determined that Admiral Beverage owed use tax because Admiral Beverage "first stored, or first used or first consumed in Wyoming" the plane pursuant to statute and the Department's administrative rule. *Id.* at ¶¶ 23, 29, ** 3-4; *see* Wyo. Stat. § 39-16-103(a)(i) or (c)(vi) (2013). The Department's rule provided that "first use" of personal property occurred when it was "used in the manner for which it was manufactured or assembled in another state, prior to its use in Wyoming." *Id.* at ¶ 44, * 7, citing Rules, Wyo. Dep't of Revenue, Ch. 2 § 4(i) (2012)). Over one dissent, the State Board agreed that Admiral Beverage's stops in Texas and Montana, on the way to Wyoming, constituted the airplane's first use, rendering use tax inapplicable.[3] *Id.* at ¶¶ 54-60, ** 9-10.

[¶ 31] For its part, the Department cites our recent decision, *In re Montana Butterfly, LLC*, 2018 WL 2772634, Docket No. 2017-70 (Wyo. St. Bd. of Equalization, June 5, 2018). Montana Butterfly purchased and received delivery of an airplane in Salt Lake City, Utah,

[3] Critical to the dissent, the Department had changed its "first use" rule, removing language requiring a "bona fide" first use outside of Wyoming, and substituted the language requiring only use for which it was manufactured or assembled. *Id.* at dissenting opinion, ¶¶ 8-12, ** 18-20. Thus, the Department by rule limited its discretion to consider whether a purported first use of property was a bona fide first use. *Id.*

refueled and performed maintenance on the aircraft. *Id.* at ¶ 1, *1. The new owner flew the aircraft to Evanston, Wyoming, where it hangered the plane. *Id.* at ¶ 1, * 1. Neither California nor Utah imposed excise tax on the purchase. From California's standpoint, the airplane was to be flown to, and hangered in, Wyoming. From Utah's standpoint, the plane was in Utah only a brief time. *Id.* at ¶ 2, *1. The Department assessed use tax, and the taxpayer appealed.

[¶ 32] We held that *Admiral Beverage* did not resolve whether first use occurred in Wyoming because the Department had changed its rules defining the "first use" concept. *Id.* at ¶¶ 16-18, * 4. The statute then, as now, provided that "[p]ersons making first use of taxable services or storing, using or consuming tangible personal property or specified digital products are liable for the tax imposed by this article." *Id.* at ¶¶ 12-14, * 3, citing Wyo. Stat. § 39-16-103(a)(i) (2015). The Board held that Montana Butterfly both used and stored its airplane in Wyoming and, therefore, the Department correctly assessed use tax. *Id.* at ¶¶ 20-26, ** 4-5.

[¶ 33] Somewhat prophetically, the Board concluded in *Montana Butterfly*: "While we can imagine situations in which strict application of the statutes and rules would produce absurd results, this case does not present one of those situations." *Id.* at ¶ 19, * 4.

D. Application of Wyoming use tax law to the facts established in evidence

[¶ 34] We thus resolve whether Hedrick's July 2024 airplane purchase in Arlington, Texas, his activities in McKinney, and his final flight to his Pinedale, Wyoming homebase hangar, rendered the purchase taxable. When interpreting statutes, we follow the Wyoming Supreme Court's guidance:

> The first step in analyzing the statute is to determine if an ambiguity exists.
>
> > We decide initially whether the statute is clear or ambiguous. This Court makes that determination as a matter of law. If we determine that the statute is clear and unambiguous, we give effect to the plain language of the statute. In effectuating the plain language of the statute, we begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe together all parts of the statute *in pari materia*. If, on the other hand, we determine the statute is ambiguous, we

> resort to general principles of statutory construction to determine the legislature's intent.

Jones ex rel. Jones v. Wyo. Dep't of Health, 2001 WY 28, ¶ 11, 18 P.3d 1189, 1194 (Wyo. 2001) (quoting *Wyo. Dep't of Trans. V. Haglund*, 982 P.2d 699, 701 (Wyo. 1999)). " 'Clear and unambiguous' language is wording 'reasonable persons' would agree as to its meaning." *Sinclair Wyo. Refining Co. v. Infrastructure, Ltd.*, 2021 WY 65, ¶ 12, 486 P.3d 990, 994 (Wyo. 2021) (citing *Ultra Res., Inc. v. Hartman*, 2010 WY 36, ¶ 69, 226 P.3d 889, 916 (Wyo. 2010)).

[¶ 35] Grammatically, the term "first use," attached to the phrase "of taxable services" within the sentence, does not necessarily or contextually apply to the series of actions that follows: "...or storing, using or consuming tangible personal property or specified digital products, except as otherwise provided in this paragraph, are liable for the tax imposed by this article." Wyo. Stat. Ann. § 39-16-103(a)(i) (2023) (emphasis added); *see supra* ¶¶ 20-22. "The word 'or' usually is used in a disjunctive sense and can be interchanged with the word 'and' only when necessary to harmonize provisions of a statute." *Amoco Prod. Co. v. Bd. of Com'rs of Carbon Cty.*, 876 P.2d 989, 993 (Wyo. 1994). "Generally, use of the disjunctive indicates alternatives and requires separate treatment of those alternatives, hence a clause following a disjunction is considered inapplicable to the subject matter of the preceding clause." *Matter of Voss' Adoption*, 550 P.2d 481, 485 (Wyo. 1976).

[¶ 36] As much as we might read the balance of the sentence: "*first* storing, *first* using or *first* consuming tangible personal property or specified digital products," we are not permitted to do so unless it cannot reasonably be read otherwise. "The omission of words from a statute must be considered intentional on the part of the legislature. Words may not be supplied in a statute where the statute is intelligible without the addition of the alleged omission." *Int'l Ass'n of Fire Fighters Local Union No. 5058 v. Gillette/Wright/Campbell Cty. Fire Prot. Joint Powers Bd.*, 2018 WY 75, ¶ 33, 421 P.3d 1059, 1067 (Wyo. 2018) (citing *In re Adoption of Voss*, 550 P.2d at 485). While the provision is awkward at best, it is not unintelligible.

[¶ 37] Several other considerations undercut the argument that we should read and extend the limiting adjective "first" to the activities following the disjunctive "or" in the list. Given the history of the Department's regulatory interpretation, we presume the legislature well understood that its 2014 amendment addressed only the "first use of taxable services" and did not extend "first" to the uses of personal property. " 'We presume the legislature enacts statutes with full knowledge of the existing condition of the law and with reference to it.' " *Greenwalt v. Ram Rest. Corp. of Wyo.*, 2003 WY 77, ¶ 10, 71 P.3d 717, 722 (Wyo. 2003) (quoting *Almada v. State*, 994 P.2d 299, 306 (Wyo. 1999)). On the other hand, the

legislature may have assumed the Department would continue to limit use tax to the "first use" of property in Wyoming, as it had for decades. Either way, the legislature easily could have expressed its intent to apply the "first use" qualifier to property, as well as services.

[¶ 38] Also, while there are relatively few use tax disputes that might gain the legislature's attention, the present status of Wyoming's use tax enforcement has persisted unchanged since 2014. This too implies the legislature's assent. "Administrative interpretation of a statute ... [is] entitled to weight when the legislature has failed over a long period of time to make any change in the statute. Such failure is some indication of an acquiescence by the legislature to administrative interpretation[.]" *Public Service Com'n v. Formal Complaint of WWZ Co.*, 641 P.2d 183, 186 (Wyo. 1982).

CONCLUSION

[¶ 39] In the end, we are left with a vague administrative framework, and one that keeps the taxpayers guessing. The Department may impose use tax on untaxed purchases of property brought into Wyoming for use, storage or consumption, ***regardless*** of whether they were first used, stored, or consumed outside of Wyoming, or the duration of prior use before entering Wyoming. Only "services" are subject to the "first use" limitation. And so, the Department's use tax determination is consistent with Wyoming Statutes section 39-16-103 (2023). Hedrick's "first use" claim is irrelevant pursuant to the imposition statute and rules in effect at the time of his airplane purchase and storage in Wyoming.

[¶ 40] Hedrick's allegation that the Department has nonuniformly enforced use tax because other out-of-state airplane purchases have gone untaxed, lacks sufficient evidentiary foundation. *Supra* ¶ 13. The Department violates Article 15, section 11 uniformity protections only if it intentionally, or systemically, treats similar taxpayers differently. An occasional mistake or negligent administration, if it in fact occurred, does not violate constitutional uniformity guarantees. *See Weaver v. State Bd. of Equalization*, 511 P.2d 97, 98-99 (Wyo. 1973); *see also Bunten v. Rock Springs Grazing Assoc.*, 215 P. 244, 251) (Wyo. 1923) (analysis of constitutional uniform taxation criteria).

ORDER

[¶ 41] **IT IS HEREBY ORDERED** that the Wyoming Department of Revenue's determination, dated November 14, 2024, that Petitioner Kirby Hedrick became liable for use taxes pursuant to Wyoming Statutes section 39-16-103 (2023), because he purchased an airplane outside of Wyoming without paying excise taxes to the state wherein it was purchased, and wherein delivery of possession occurred, and flew the aircraft into Wyoming to use and store, is **affirmed;**

[¶ 42] **IT IS FURTHER ORDERED** that we make no determination as to whether "first use" of the acquired property occurred in Wyoming, as the applicable statutes and rules no longer limit use taxation to property "first used" in Wyoming.

[¶ 43] **Pursuant to Wyoming Statutes section 16-3-114 (2023) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.**

DATED this 2 day of June 2025.

STATE BOARD OF EQUALIZATION

E. Jayne Mockler, Chairman

Martin L. Hardsocg, Vice Chairman

ATTEST:

Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 2 day of June 2025, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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