

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable Lawrence Denney, Secretary of State of the State of Idaho:

“We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, effective July 1, 2017 to wit:

***AN INITIATIVE REDUCING THE SALES TAX RATE
AND BROADENING THE SALES TAX BASE***

AN INITIATIVE RELATING TO TAXATION; REDUCING SALES TAX RATE FROM SIX PERCENT (6%) TO FIVE PERCENT (5%); AMENDING DEFINITION OF “SALE” TO INCLUDE SALES OF SERVICES, COMPUTER SOFTWARE AND DIGITAL GOODS, AND CONTRACTS FOR INSTALLING, IMPROVING OR REPAIRING TANGIBLE PERSONAL PROPERTY AND REAL PROPERTY; REMOVING EXEMPTION FOR LABOR OR SERVICES RELATED TO PROPERTY INSTALLATION; REMOVING MANY SALES TAX EXEMPTIONS, INCLUDING: IRRIGATION EQUIPMENT AND SUPPLIES, POLLUTION CONTROL EQUIPMENT, BROADCASTING EQUIPMENT, PUBLISHING EQUIPMENT, RAILROAD ROLLING STOCK AND REMANUFACTURING, INTERSTATE TRUCKS, OUT-OF-STATE CONTRACTS, RESEARCH AND DEVELOPMENT EQUIPMENT, GLIDER KIT VEHICLES, BEVERAGE AND FOOD SAMPLES, PRECIOUS METAL BULLION, LABOR ON NEW MANUFACTURED HOMES OR MODULAR BUILDINGS, TELECOMMUNICATIONS EQUIPMENT, AND COMPUTER SOFTWARE AND DIGITAL GOODS; APPLYING THE SALES TAX TO NEW CATEGORIES OF SERVICES, INCLUDING: CONSTRUCTION, REPAIRS, PROFESSIONAL SERVICES, BUSINESS SERVICES, PERSONAL SERVICES, LOTTERY TICKETS AND PARI-MUTUEL BETTING, MEDIA MEASUREMENT SERVICES, MISCELLANEOUS SERVICES, NONPROFIT SHOOTING RANGE FEES, GRATUITIES FOR MEALS; REMOVING VARIOUS EXEMPTIONS, INCLUDING: HOSPITAL PURCHASES, INL RESEARCH AND DEVELOPMENT PURCHASES, MOTOR VEHICLE PURCHASES BY FAMILY MEMBERS, SALES BY 4-H AND FFA CLUBS AT FAIRS, SALES THROUGH VENDING MACHINES, AUTO MANUFACTURER REBATES, VOLUNTEER FIRE DEPARTMENTS AND EMERGENCY MEDICAL, AND SENIOR CITIZEN CENTERS; AND REMOVING PROPERTY TAX EXEMPTION ON CUSTOM COMPUTER PROGRAMS.

Be It Enacted by the people of the State of Idaho:

SECTION 1. That Section 63-602L, Idaho Code, be, and the same is hereby amended to read as follows:

63-602L. PROPERTY EXEMPT FROM TAXATION -- INTANGIBLE PERSONAL PROPERTY. (1) The following intangible personal property is exempt from taxation: capital stock and bonds. The deposits in national banks, state banks, and savings and loan associations. Shares and accounts of savings and loan associations, credit unions or associations organized under the laws of the state of Idaho for the purpose of accumulating the savings and funds of their members and lending the same to their members. Goodwill, customer lists, contracts and contract rights, patents, trademarks, ~~custom computer~~

programs as defined in section 63-3616, Idaho Code, copyrights, trade secrets, franchises, licenses, rights-of-way which are possessory only and not accompanied by title.

(2) The commission shall promulgate rules which shall provide for the exclusion of exempt intangible personal property from taxable value of operating property. Such rules shall allow each taxpayer the right to elect one (1) of the following three (3) methods for exclusion of exempt intangible personal property from its taxable value:

- (a) Separate exclusion of the exempt intangible personal property at the system level value; or
- (b) Separate exclusion of the exempt intangible personal property at the state allocated value; or
- (c) Exclusion of the exempt intangible personal property by valuation of only tangible personal property and nonexempt intangible personal property using valuation models which do not impound or include values of the exempt intangible personal property.

SECTION 2. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3602A, Idaho Code, and to read as follows:

63-3602A. **COMPUTER SOFTWARE AND DIGITAL GOODS.** The term "computer software" means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. The term "computer software" includes both prewritten and custom software. Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user. The term "computer software" includes "digital goods," which term includes items such as audio, video and graphic files that are downloaded via electronic means which would be tangible personal property if sold in another format, such as a CD, DVD, film or cassette.

SECTION 3. That Section 63-3608, Idaho Code, be, and the same is hereby amended to read as follows:

63-3608. **PURCHASE.** The term "purchase" means any transfer, rental, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. The term "purchase" shall also include the payment of consideration for services as defined in section 63-3614A, Idaho Code. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase. A transfer for a consideration of any publication or of tangible personal property which has been produced, fabricated, or printed to the special order of the customer is also a purchase.

SECTION 4. That Section 63-3609, Idaho Code, be, and the same is hereby amended to read as follows:

63-3609. **RETAIL SALE -- SALE AT RETAIL.** The terms "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

~~(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.~~

~~(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.~~

SECTION 5. That Section 63-3610, Idaho Code, be, and the same is hereby amended to read as follows:

63-3610. **RETAILER.** The term "retailer" includes: (a) Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

(c) Every person making more than two (2) retail sales of tangible personal property during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail or who sells a motor vehicle.

(d) When the state tax commission determines that it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the state tax commission may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this act.

~~(e) Persons conducting both contracting and retailing activities. Such persons must keep separate accounts for the retail portion of their business and pay tax in the usual fashion on this portion.~~

SECTION 6. That Section 63-3612, Idaho Code, be, and the same is hereby amended to read as follows:

63-3612. SALE. (1) The term "sale" means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) "Sale" shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

(b) Furnishing, preparing, or serving food, meals, or drinks and non-depreciable goods and services directly consumed by customers included in the charge thereof.

(c) A transfer of possession of property where the seller retains the title as security for the payment of the sales price.

(d) A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Admission to a place or for an event in Idaho, provided that an organization conducting an exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for attendance at the aforementioned event, shall not have those admission charges be defined as a sale if the event:

(i) Is not predominately recreational or commercial; and

(ii) Any included entertainment value is minimal when compared to the charge for attendance; and

(iii) Such entity has paid sales and use tax on taxable property or services used during the event.

(f) The use of or the privilege of using tangible personal property or facilities for recreation.

(g) Providing hotel, motel, campground, or trailer court accommodations, non-depreciable goods directly consumed by customers and included services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

(h) The lease or rental of tangible personal property.

~~(i) The intrastate transportation for hire by air of freight or passengers, except (1) as part of a regularly scheduled flight by a certified air carrier, under authority of the United States, or (2) when providing air ambulance services.~~ Sales of services as defined in section 63-3614A, Idaho Code.

(j) Computer software and digital goods as defined in section 63-3602A, Idaho Code.

(k) Contracts from applying, installing, cleaning, altering, improving, decorating, treating, storing or repairing tangible personal property or real property.

(3) As used in subsections (2)(b) and (2)(g) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable property.

SECTION 7. That Section 63-3613, Idaho Code, be, and the same is hereby amended to read as follows:

63-3613. SALES PRICE. (a) The term "sales price" means the total amount for which tangible personal property, ~~including and services agreed to be rendered as a part of the sale, is~~ are sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.

3. The cost of transportation of the property ~~prior to its sale.~~

4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

5. Any additional charge added to the sales price of tangible personal property.

6. The amount charged for applying, installing, cleaning, altering, improving, decorating, treating, storing or repairing tangible personal property or real property, including contracts performed for governmental entities. (Despite the exemptions provided for sales to or purchases by the State of Idaho and its agencies and political subdivisions under Idaho Code Section 63-3622O, the services rendered relative to such sales or purchases are subject to taxation hereunder.)

(b) The term "sales price" does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.

2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.

3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

4. ~~The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.~~

5. ~~The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.~~

6. ~~The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.~~

~~7. Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.~~

SECTION 8. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3614A, Idaho Code, and to read as follows:

63-3614A. SERVICES. The term "services" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. The term "services" does not include services provided by an employee to an employer or independent contractor. The term "services" does not include services provided by health care professionals licensed by state boards, including but not limited to licensed medical doctors, dentists, osteopaths, physical therapists, optometrists, physician assistants, midwives, podiatrists, hospitals, nursing homes, chiropractors, nurse practitioners, naturopaths, or psychologists, or other healthcare professionals licensed by state boards. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. The term "services" also includes the constructing, repairing, decorating or improving of new or existing buildings, including "modular buildings" and "manufactured homes" or other structures under, upon or above real property, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the clearing of land and the moving of earth.

SECTION 9. That Section 63-3615, Idaho Code, be, and the same is hereby amended to read as follows:

63-3615. STORAGE -- USE. (a) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business. The term "use" includes the consumption of a service in Idaho.

(c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state.

SECTION 10. That Section 63-3616, Idaho Code, be, and the same is hereby amended to read as follows:

63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

~~(b) The term "tangible personal property" includes any computer software except the following: custom computer programs; computer software that is delivered electronically, remotely accessed computer software; and computer software that is delivered by the load and leave method where the vendor or its agent loads the software at the user's location but does not~~

~~transfer any tangible personal property containing the software to the user. As used in this subsection, the term "remotely accessed software" means software that a user accesses over the internet over private or public networks, or through wireless media, where the user has only the right to use or access the software by means of a license, lease, subscription, service or other agreement. Notwithstanding the foregoing exclusions of certain types of computer software from the definition of tangible personal property, tangible personal property shall include computer software that constitutes digital music, digital books, digital videos and digital video games when the purchaser has a permanent right to use such software and regardless of the method of delivery or access. If the right to use digital music, digital books, digital videos or digital games is conditioned upon the continued payment from the purchaser it is not a permanent right of use.~~

~~(i) As used in this subsection, the term "computer software" means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium.~~

~~(ii) As used in this subsection, the term "custom computer program" means any computer software (as defined in this subsection) which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a "canned" or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.~~

~~(e) The term "tangible personal property" does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated.~~

SECTION 11. That Section 63-3619, Idaho Code, be, and the same is hereby amended to read as follows:

63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby imposed upon each sale at retail at the rate of ~~six~~ five percent (~~65%~~) of the sales price of all retail sales, including sales of services, subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, installment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.

(b) The tax hereby imposed shall be collected by the retailer from the consumer.

(c) The state tax commission shall provide schedules for collection of the tax on sales, including sales of services, which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system prescribed which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting the tax.

(d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property or service sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

(e) The tax commission may by rule provide that the amount collected by the retailer from the customer in reimbursement of the tax be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales slip or other proof of sale.

(f) The taxes imposed by this chapter shall apply to the sales, including sales of services, to contractors purchasing for use in the performance of contracts with the United States.

SECTION 12. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property or services acquired on or after ~~October 1, 2006~~ July 1, 2017, for storage, use, or other consumption in this state at the rate of ~~six~~ five percent (65%) of the value of the property or service, and a recent sales price shall be presumptive evidence of the value of the property or service unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property or service.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property or services is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property or services for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property or services is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property or services sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property or service is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or service purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate relieves the person selling the property or service from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property or service and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property or service, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property or service sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property or service other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property or service is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property or service delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property or service was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property or service subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property or service will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state. The use tax herein shall also not apply to any use of a motor vehicle which is registered or licensed under the laws of the state of residence of a nonresident student while such nonresident student is enrolled as a full time student in an institution of postsecondary education that is both physically located in Idaho and recognized as accredited by the state board of education.

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned vehicles or personally owned aircraft by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned vehicles or personally owned aircraft owned by active duty military personnel temporarily assigned in this state and spouses who accompany them if such articles were acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property or service which is or will be incorporated into real property and which has been donated to and has become the property of:

- (1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or
- (2) The state of Idaho; or
- (3) Any political subdivision of the state.

This exemption applies whether the tangible personal property or service is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person.

(n) The use tax herein imposed shall not apply to tastings of food and beverages, including, but not limited to, wine and beer. For the purposes of this subsection, a tasting of wine and beer shall be defined as the maximum serving allowed by state or federal laws for such occasions provided to a potential customer, at no charge, at a location where similar beverages are sold. For nonalcoholic beverages and food, a tasting shall be defined as a sample from a unit available for sale at the tasting location.

(o) The use tax herein imposed shall not apply to donations of food or beverages, or both to individuals or nonprofit organizations. For the purposes of this section, "nonprofit organization" means those nonprofit entities currently registered with the secretary of state pursuant to section 30-3-2, Idaho Code.

SECTION 13. That Section 63-3622, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENALTIES. (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property or service sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property or service and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property or service, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property or service other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property or service is first used by him, and the sales price of the property or service to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

SECTION 14. That Section 63-3622D, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

(1) Tangible personal property and services which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale, including birds, fish or other wildlife that are hunted or fished on property a business owns, controls or has the right to use and where the business collects sales tax for the charges imposed for the hunting or fishing activity, including the cost of acquiring such birds, fish or other wildlife and the feed, supplies and labor used to raise or maintain such birds, fish or other wildlife.

(2) Tangible personal property and services primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, fabricating, hunting or fishing operation including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property and including but not limited to, ammunition, birds, fish or other wildlife; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.

(3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced; and shall be also be available to a business, or separately operated segment of a business, engaged in offering the right to hunt birds or other wildlife or fish on property the business owns, controls or has the right to use, where the charges for such rights are subject to sales tax as provided in this chapter.

(d) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in the business of processing materials, substances or commodities for use as fuel for the production of energy, whether as a subcontractor, contractor, contractee or subcontractee, without regard to the ownership of the materials, substances or commodities being processed and irrespective of whether the materials, substances or commodities being processed are intended for ultimate sale at retail within or without this state.

(e) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(f) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(g) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars (\$100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming, fabricating, hunting or fishing operations, such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in transportation activities.

(4) Machinery, equipment, tools or other property used to make repairs.

This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(6) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(7) Motor vehicles and aircraft.

(8) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F and 63-3622I, Idaho Code.

(9) Tangible personal property described in section 63-3622HH, Idaho Code.

(h) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund.

SECTION 15. That Section 63-3622LL, Idaho Code, be, and the same is hereby repealed.

SECTION 16. That Section 63-3623, Idaho Code, be, and the same is hereby amended to read as follows:

63-3623. RETURNS AND PAYMENTS. (a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month.

(b) All moneys collected or received by the state tax commission from the taxes, penalties, interest and fees imposed by this act shall be deposited with the state treasurer to be credited by him to the sales tax account created by this act.

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent.

(e) For the purposes of the sales tax, the return shall show the total sales at retail subject to tax under this act during the reporting period. For the purposes of the use tax, in case of a return filed by a

retailer, the return shall show the total sales price of the property sold by him, the storage, use, or consumption of which property became subject to the use tax during the reporting period; in the case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the reporting period.

(f) The return shall show the amount of the taxes for the period covered by the return and such other information as the state tax commission deems necessary for the proper administration of this act.

(g) The person required to file the return shall mail or deliver the return together with a remittance of any tax due to the state tax commission for the reporting period.

(h) The state tax commission, if it deems it necessary in order to insure payment to or facilitate the collection by the state of taxes, may require returns for periods other than monthly periods.

(i) For the purposes of the sales tax, gross amounts from rentals or leases of tangible personal property which may be subject to tax under this act shall be reported and the tax paid in accordance with such rules as the state tax commission may prescribe.

(j) The state tax commission for good cause may extend, for not to exceed one (1) month, the time for making any return or paying any amount required to be paid under this act.

(k) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate provided in section 63-3045, Idaho Code, from the date on which the tax would have been due without the extension until the day of payment.

(l) Upon the transfer of ownership of a motor vehicle subject to sales or use tax, a certificate of title will be issued to the new owner only upon presentation of evidence of payment of sales or use tax on the transaction.

(m) The owner of a motor vehicle or trailer required to be registered by the laws of this state shall, upon demand, furnish to the officer issuing such registration, satisfactory evidence that any sales or use tax to which such motor vehicle or trailer is subject has been paid to this state before any such registration shall be issued.

(n) Retail sales of tangible personal property through a vending machine which are taxable upon the purchase price paid by the owner or operator of the vending machine pursuant to subsection (ed) of section 63-3613, Idaho Code, shall be reported upon the sales tax return of the owner or operator of the vending machine in the manner by which the tax commission may by rule prescribe.

SECTION 17. That Section 63-3640, Idaho Code, be, and the same is hereby repealed.

SECTION 18. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3642, Idaho Code, and to read as follows:

63-3642. PLACE WHERE SALE OCCURS -- SOURCING. (1) The term "sourcing" means the point at which a retail sale occurs. The retail sale of a product or service, excluding lease or rental, of a product shall be sourced as follows:

(a) When the product or service is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the product or service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where received by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser, or donee, known to the seller.

(c) When subsection (1)(a) and (1)(b) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When subsection (1)(a), (1)(b) and (1)(c) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When none of the previous provisions of subsection (1)(a), (1)(b), (1)(c) or (1)(d) of this section apply, including the circumstance in which the seller is without sufficient information to apply the

previous provisions, then the location will be determined by the address from which tangible personal property was shipped, from which the digital goods or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product or service sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (1) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (1) of this section.

(3) The lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not qualify as transportation equipment as defined in subsection (4) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (1) of this section.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (1) of this section, notwithstanding the exclusion of lease in subsection (1) of this section. "Transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(b) Trucks and truck tractors with a gross vehicle weight rating (GVWR) greater than twenty-six thousand (26,000) pounds, trailers, semitrailers or passenger buses that are:

(i) Registered through the international registration plan; and

(ii) Operated under authority of a carrier authorized and certificated by the U.S. department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(c) Aircraft that are operated by air carriers authorized and certificated by the U.S. department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(d) Containers designed for use on and component parts attached or secured on the items set forth in subsection (4)(a) through (4)(c) of this section.

(5) Services performed and consumed at the same location in Idaho are sourced to that location.

Services performed in another state but consumed in Idaho will be sourced to the Idaho location at which the consumption occurs. Services performed in Idaho but consumed in another state shall not be sourced to Idaho.

SECTION 19. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3643, Idaho Code, and to read as follows:

63-3643. GENERAL SOURCING DEFINITIONS. For the purposes of subsection (1) of section 63-3642, Idaho Code, the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

- (2) Making first use of services; or
- (3) Taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

SECTION 20. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3644, Idaho Code, and to read as follows:

63-3644. MULTIPLE POINTS OF USE. Notwithstanding the provisions of section 63-3642, Idaho Code, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically or a service that the digital good, computer software delivered electronically or service will be concurrently available for use in more than one (1) jurisdiction shall deliver to the seller in conjunction with its purchase a "multiple points of use" or "MPU" exemption form disclosing this fact.

(1) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay or remit the applicable tax and the purchaser shall be obligated to collect, pay or remit the applicable tax on a direct pay basis.

(2) A purchaser delivering the MPU exemption form may use any reasonable but consistent and uniform method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

(3) The MPU exemption form shall remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the provisions of subsection (2) of this section and the facts existing at the time of the sale until it is revoked in writing.

(4) A holder of a direct pay permit shall not be required to deliver an MPU exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection (2) of this section in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one (1) jurisdiction.

SECTION 21. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3645, Idaho Code, and to read as follows:

63-3645. CONTRACTS FOR SERVICES ENTERED INTO PRIOR TO JULY 1, 2017. (1) Beginning July 1, 2017, and ending June 30, 2019, the sales of services to improve real property shall be exempt if the contract to improve real property is in writing and entered into prior to July 1, 2017. Contractors purchasing materials for such a contract shall be deemed the consumers of those materials and shall pay sales or use tax on the purchase of such materials.

(2) Beginning July 1, 2017, and ending June 30, 2019, purchasers of services other than improvements to real property may claim a refund of the sales tax actually paid for such services if the sales of the services would have been exempt prior to July 1, 2017. To qualify for a refund the agreement to purchase such services must be in writing. The service must be one that is either:

- (a) Continuous in nature and started prior to July 1, 2017, but not completed until after that date; or
- (b) Agreed to commence after July 1, 2017.
- (c) Agreements that are not continuous in nature will not qualify for a refund of tax. For instance, if a purchaser contracts for a service to be performed once a week for a year and the service is one that is started and completed within one (1) day, payments for such service will not be subject to refund if they occur after July 1, 2017.

SECTION 22. That the following Sections of Idaho Code, Title 63, be, and hereby are, repealed:

Section 3613(b)4; Section 3613(f); Section 3621(n); Section 3622W; Section 3622X; Section 3622S; Section 3622T; Section 3622CC; Section 3622DD; Section 3622R(c); Section 3622B; Section 3622U; Section 3622V; Section 3622LL; Section 3622O(2)(d);

Section 3622R(d); Section 3622BB; Section 3622K(c)(1); Section 3622K(b)(7); Section 3622O(1)(g); Section 3622O(2)(l); Section 3622O(1)(h); Section 3622O(3)(n); Section 3622PP; Section 3622RR; Section 3622SS

SECTION 23. That Idaho Code Section 7439, Title 67, be, and hereby is amended as follows:

67-7439. TAXES. Income taxes shall only be imposed on lottery prizes received from lottery tickets purchased after the effective date of this act. Lottery prizes awarded by the Idaho state lottery under six hundred dollars (\$600) shall not be subject to the state income tax. ~~No taxes of any kind whatsoever shall be imposed upon the sale, purchase, storage, use or other consumption of Idaho lottery tickets or shares, or upon equipment, devices or systems directly used in the production, operation, sales, distribution, tracking, drawing, accounting, communication or computation of lottery games.~~

The state lottery shall pay to a city, county, the state, or any political subdivision or municipality thereof in which the state lottery occupies a premises owned by the state a grant not to exceed the amount that would be payable as taxes on the property in that year, if the property were not exempt from taxation.

~~SECTION 24. That the following services shall maintain their status of being exempt from imposition of the Idaho Sales and Use Tax:~~

~~Agricultural and Industrial Services, Transportation Services, Information Services, Health and Medical Services, Social Services and Educational Services~~

SECTION 24: That the following services are no longer exempt from the imposition of the Idaho Sales and use Tax:

Professional Services: including, but not limited to Legal Services, Accounting Services, Engineering Services, Architectural Services, Consulting Services, Scientific Research Services, Advertising Services, and services included in NAICS Major Group 541

Business Services: including, but not limited to, Office Services, Employment Services, Building Services, Employment Agencies, Facility Services, and Security Agencies and services included in NAICS Major Groups 561 and 562

Personal Services: including, but not limited to, Laundry and Dry Cleaning, Barbers and Beauticians, Shoe Repair, Funeral Services, Massage Parlors and Escort Services and services included in NAICS Major Group 812

SECTION 25. That Section 63-3622O(1), Idaho Code, be, and the same is hereby amended to read as follows:

63-3622O. EXEMPT, PRIVATE AND PUBLIC ORGANIZATIONS

(1) There are exempted from the taxes imposed by this Chapter:

- (a) Sales to or purchases by ~~hospitals~~, health related entities, educational institutions and forest protective associations ~~and canal companies~~ which are nonprofit organizations; and

SECTION 26. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 27. This act shall be in full force and effect on and after July 1, 2017.

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