

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 581

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE STREAMLINED SALES TAX; AMENDING SECTION 50-1046, IDAHO CODE, TO PROVIDE THAT ONE OF THE CITY LOCAL-OPTION NONPROPERTY TAXES SHALL BE A SALES TAX UPON SALES SUBJECT TO TAXATION UNDER THE STATE SALES AND USE TAX ACT AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1049, IDAHO CODE, TO REVISE COLLECTION AND ADMINISTRATION PROCEDURES OF LOCAL-OPTION NONPROPERTY TAXES; AMENDING SECTION 63-105, IDAHO CODE, TO PROVIDE ADDITIONAL POWERS AND AUTHORITY TO THE STATE TAX COMMISSION; AMENDING SECTION 63-3607, IDAHO CODE, TO REVISE THE DEFINITION OF "PERSON"; AMENDING SECTION 63-3608, IDAHO CODE, TO REVISE THE DEFINITION OF "PURCHASE"; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3608A, IDAHO CODE, TO PROVIDE A DEFINITION OF "PURCHASER"; AMENDING SECTION 63-3609, IDAHO CODE, TO REVISE THE DEFINITION OF "RETAIL SALE" OR "SALE AT RETAIL"; AMENDING SECTION 63-3610, IDAHO CODE, TO REVISE THE DEFINITION OF "RETAILER"; AMENDING SECTION 63-3611, IDAHO CODE, TO REVISE THE DEFINITION OF "RETAILER ENGAGED IN BUSINESS IN THIS STATE"; AMENDING SECTION 63-3612, IDAHO CODE, TO REVISE THE DEFINITION OF "SALE"; AMENDING SECTION 63-3613, IDAHO CODE, TO REVISE THE DEFINITION OF "SALES PRICE"; AMENDING SECTION 63-3614, IDAHO CODE, TO REVISE THE DEFINITION OF "SELLER"; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 63-3615B THROUGH 63-3615DD, IDAHO CODE, TO DEFINE "AGENT," TO DEFINE "CERTIFIED AUTOMATED SYSTEM," TO DEFINE "CERTIFIED SERVICE PROVIDER," TO DEFINE "ENTITY-BASED EXEMPTION," TO DEFINE "MODEL 1 SELLER," TO DEFINE "MODEL 2 SELLER," TO DEFINE "MODEL 3 SELLER," TO DEFINE "MODEL 4 SELLER," TO DEFINE "PRODUCT-BASED EXEMPTION," TO DEFINE "REGISTERED UNDER THE STREAMLINED SALES TAX AGREEMENT," TO DEFINE "USE-BASED EXEMPTION," TO DEFINE "STATE," TO DEFINE "BUNDLED TRANSACTION," TO DEFINE "DELIVERY CHARGES," TO DEFINE "DIRECT MAIL," TO DEFINE "LEASE OR RENTAL," TO DEFINE "CLOTHING," TO DEFINE "CLOTHING ACCESSORIES OR EQUIPMENT," TO DEFINE "ESSENTIAL CLOTHING," TO DEFINE "FUR CLOTHING," TO DEFINE "PROTECTIVE EQUIPMENT," TO DEFINE "SPORTS OR RECREATIONAL EQUIPMENT," TO PROVIDE COMPUTER-RELATED DEFINITIONS, TO PROVIDE COMPUTER SOFTWARE MAINTENANCE CONTRACT DEFINITIONS, TO PROVIDE DIGITAL PRODUCTS DEFINITIONS, TO PROVIDE FOOD AND FOOD PRODUCTS DEFINITIONS, TO PROVIDE HEALTH CARE TERMS, TO PROVIDE TELECOMMUNICATIONS TAX BASE AND EXEMPTION TERMS AND TO PROVIDE SALES TAX HOLIDAY DEFINITIONS; AMENDING SECTION 63-3616, IDAHO CODE, TO REVISE THE DEFINITION OF "TANGIBLE PERSONAL PROPERTY"; AMENDING SECTION 63-3619, IDAHO CODE, TO REVISE PROVISIONS FOR IMPOSITION OF THE SALES TAX AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3621, IDAHO CODE, TO ALLOW THE USE TAX TO APPLY TO TAXABLE SERVICES; AMENDING SECTION 63-3622N, IDAHO CODE, TO REVISE THE EXEMPTION FOR PRESCRIPTIONS AND TO PROVIDE AN EXEMPTION FOR MEDICAL EQUIPMENT; AMENDING SECTION 63-3622UU, IDAHO CODE, TO REVISE THE PROVISIONS FOR APPLICATION OF THE PERSONAL PROPERTY TAX ON RENTALS; AMENDING CHAPTER 36, TITLE 63, IDAHO

CODE, BY THE ADDITION OF A NEW SECTION 63-3622AAA, IDAHO CODE, TO PROVIDE A SALES AND USE TAX EXEMPTION FOR ITEMS FORMERLY NOT INCLUDED IN THE DEFINITION OF "SALES PRICE"; AMENDING TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 46, TITLE 63, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE A STATEMENT OF FINDINGS AND INTENT, TO PROVIDE DUTIES OF THE STATE TAX COMMISSION, TO PROVIDE STATE AND LOCAL TAX BASES, TO PROVIDE THAT THE STREAMLINED SALES TAX AGREEMENT IS NOT TO PREEMPT STATE LAW, TO PROVIDE FOR SELLER REGISTRATION, TO PROVIDE NOTICE FOR STATE TAX CHANGES, TO PROVIDE FOR LOCAL RATE AND BOUNDARY CHANGES, TO PROVIDE FOR RELIEF FROM CERTAIN LIABILITY, TO PROVIDE DATABASE REQUIREMENTS AND EXCEPTIONS, TO PROVIDE FOR STATE AND LOCAL TAX RATES, TO PROVIDE APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM THE RULES, TO PROVIDE FOR GENERAL SOURCING RULES, TO PROVIDE AN ELECTION FOR ORIGIN-BASED SOURCING, TO PROVIDE GENERAL SOURCING DEFINITIONS, TO PROVIDE FOR DIRECT MAIL SOURCING, TO PROVIDE AN ELECTION FOR ORIGIN-BASED DIRECT MAIL SOURCING, TO PROVIDE FOR A TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE, TO PROVIDE FOR TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE DEFINITIONS, TO PROVIDE FOR ENACTMENT OF EXEMPTIONS, TO PROVIDE FOR ADMINISTRATION OF EXEMPTIONS, TO PROVIDE FOR UNIFORM TAX RETURNS, TO PROVIDE UNIFORM RULES FOR THE REMITTANCE OF FUNDS, TO PROVIDE UNIFORM RULES FOR RECOVERY OF BAD DEBTS, TO PROVIDE FOR CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL 1 AND TO DEFINE A TERM, TO PROVIDE FOR SALES TAX HOLIDAYS, TO PROVIDE THE EFFECTIVE DATE FOR RATE CHANGES, TO PROVIDE FOR BUNDLED TRANSACTIONS, TO PROVIDE CAPS AND THRESHOLDS, TO PROVIDE FOR A ROUNDING RULE, TO PROVIDE CUSTOMER REFUND PROCEDURES, TO PROVIDE FOR DIRECT PAY PERMITS, TO PROVIDE FOR A TAXABILITY MATRIX, TO PROVIDE RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS, TO PROVIDE APPLICATION TO SPECIFIED DIGITAL PRODUCTS, TO PROVIDE FOR USE OF SPECIFIED DIGITAL PRODUCTS, TO PROVIDE FOR PROHIBITED REPLACEMENT TAXES, TO PROVIDE FOR SELLER PARTICIPATION, TO PROVIDE AMNESTY FOR REGISTRATION, TO PROVIDE A METHOD OF REMITTANCE, TO PROVIDE FOR REGISTRATION BY AN AGENT, TO PROVIDE FOR CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS, TO PROVIDE FOR REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYSTEM SOFTWARE AND CERTAIN LIABILITY RELIEF, TO PROVIDE FOR A MONETARY ALLOWANCE UNDER MODEL 1, TO PROVIDE FOR A MONETARY ALLOWANCE FOR MODEL 2 SELLERS, TO PROVIDE VENDOR COMPENSATION DEFINITIONS, TO PROVIDE A COMPENSATION REQUIREMENT, TO PROVIDE A PETITION FOR COLLECTION AUTHORITY AND COMPENSATION COMPLIANCE DETERMINATIONS, TO PROVIDE STANDARDS FOR COMPENSATION, TO PROVIDE AN OBLIGATION TO PAY, TO PROVIDE A SMALL SELLER EXCEPTION, TO PROVIDE FOR REPEAL OF CERTAIN PROVISIONS IF AN EVENT DOES NOT OCCUR, TO PROVIDE FOR VOLUNTARY COMPENSATION FOR REMOTE SELLERS, TO PROVIDE FOR OPTIONAL COMPENSATION FOR REMOTE SELLERS, TO PROVIDE FOR ENTRY INTO THE AGREEMENT; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 50-1046, Idaho Code, be, and the same is hereby amended to read as follows:

1 50-1046. CITY LOCAL-OPTION NONPROPERTY TAXES PERMITTED BY SIXTY ~~PER~~
 2 ~~CENT PERCENT~~ MAJORITY VOTE. A sixty ~~per cent~~ percent (60%) majority of the
 3 voters of any resort city voting on the question may approve and, upon such
 4 approval, any city may adopt, implement, and collect, subject to the provi-
 5 sions of this act, the following city local-option nonproperty taxes: (a) an
 6 occupancy tax upon hotel, motel, and other sleeping accommodations rented
 7 or leased for a period of thirty (30) days or less; (b) a tax upon liquor
 8 ~~by the drink~~ by the drink, wine and beer sold at retail for consumption on
 9 the licensed premises; and (c) a sales tax upon ~~part or all of~~ sales subject
 10 to taxation under chapter 36, title 63, Idaho Code.

11 SECTION 2. That Section 50-1049, Idaho Code, be, and the same is hereby
 12 amended to read as follows:

13 50-1049. COLLECTION AND ADMINISTRATION OF LOCAL-OPTION NONPROPERTY
 14 TAXES BY STATE TAX COMMISSION -- DISTRIBUTION. (a) A city which has levied
 15 a tax pursuant to section 50-1044, Idaho Code, ~~may~~ shall contract with the
 16 state tax commission for the collection and administration of such taxes in
 17 like manner and under the definitions, rules and regulations of the tax com-
 18 mission for the collection and administration of the state sales tax under
 19 chapter 36, title 63, Idaho Code. A city which levies such tax shall have
 20 the right to review and audit the records of collection thereof maintained
 21 by the commission ~~and the returns of taxpayers relating to such tax. Alter-~~
 22 ~~natively, such city shall have authority to administer and collect such tax.~~
 23 Only taxes collected pursuant to chapter 36, title 63, Idaho Code, may be
 24 imposed and collected pursuant to this chapter.

25 (b) All revenues collected by the tax commission pursuant to section
 26 50-1044, Idaho Code, shall be distributed as follows:

27 (1) An amount of money shall be distributed to the state refund account
 28 sufficient to pay current refund claims. All refunds authorized by the
 29 commission to be paid shall be paid through the state refund account and
 30 those moneys are continuously appropriated;

31 (2) An amount of money equal to such fee as may be agreed upon between
 32 the commission and such city for the actual cost of the collection and
 33 administration of the tax. The amount retained by the commission shall
 34 not exceed the amount authorized to be expended by appropriation by the
 35 legislature. Any unencumbered balance in excess of the actual cost at
 36 the end of each fiscal year shall be distributed as provided in para-
 37 graph (3) of this subsection;

38 (3) All remaining moneys received pursuant to this chapter shall be
 39 placed in an account designated by the state controller and remitted
 40 monthly to the city levying such tax.

41 SECTION 3. That Section 63-105, Idaho Code, be, and the same is hereby
 42 amended to read as follows:

43 63-105. POWERS AND DUTIES -- GENERAL. In addition to all other powers
 44 and duties vested in it, the state tax commission shall have the power and
 45 duty:

46 (1) To assess and collect all taxes and administer all programs relat-
 47 ing to taxes which are the responsibility of the state tax commission.

1 (2) To make, adopt and publish such rules as it may deem necessary and
2 desirable to carry out the powers and duties imposed upon it by law, provided
3 however, that all rules adopted by the state tax commission prior to the ef-
4 fective date of this 1996 amendatory act shall remain in full force and ef-
5 fect until such time as they may be rescinded or revised by the commission.

6 (3) To maintain a tax research section to observe and investigate the
7 effectiveness and adequacy of the revenue laws of this state and to assist
8 the executive and legislative departments in estimation of revenue, analy-
9 sis of tax measures and determination of the administrative feasibility of
10 proposed tax legislation.

11 (4) To prescribe forms and to specify and require information with re-
12 lation to any duty or power of the state tax commission except as provided in
13 section 63-219, Idaho Code.

14 (5) To ensure that statutory penalties are enforced, and proper com-
15 plaint is made against persons derelict in duty under any law relating to as-
16 sessment or equalization of taxes.

17 (6) To sue and be sued in the name of the state tax commission.

18 (7) To summon witnesses to appear before it or its agents to testify
19 and/or produce for examination such books, papers, records or other data re-
20 lating to any matter within its jurisdiction. However, no person shall be
21 required to testify outside the county wherein he resides or the principal
22 place of his business is located. Such summons to testify shall be issued
23 and served in like manner as a subpoena to witnesses issued from the district
24 court and shall be served without fee or mileage charge by the sheriff of the
25 county, and return of service shall be made by the sheriff to the commis-
26 sion. Persons appearing before the commission or its agents in obedience to
27 such a summons, shall, in the discretion of the commission, receive the same
28 compensation as witnesses in the district court, to be paid upon claims pre-
29 sented against the state from any appropriation made for the administration
30 of the provisions of this title, in the same manner as other claims against
31 the state are presented and paid.

32 (8) To administer oaths and take affirmations of witnesses appearing
33 before it. The power to administer oaths and take affirmations is vested in
34 each member of the state tax commission, and its duly constituted agents. In
35 case any witness shall fail or refuse to appear and testify before the state
36 tax commission or its agents upon being summoned to appear as herein pro-
37 vided, the clerk of the district court of the county shall, upon demand of the
38 state tax commission, any member thereof, or agent, issue a subpoena recit-
39 ing the demand therefor and summoning the witness to appear and testify at a
40 time and place fixed; and violation of such subpoena or disobedience thereto
41 shall be deemed and punished as a violation of any other subpoena issued from
42 the district court.

43 (9) To report to the governor from time to time, and to furnish to the
44 governor such assistance and information as may be required.

45 (10) To recommend to the governor in a report at least sixty (60) days
46 before and to the legislature ten (10) days prior to the meeting of any reg-
47 ular session of the legislature such amendments, changes and modifications
48 of the various tax laws necessary to remedy injustice and irregularities in
49 taxation and to facilitate assessment and collection of taxes in the most
50 economical and efficient manner.

1 (11) To implement the provisions of chapter 36, title 63 and chapter 46,
 2 title 63, Idaho Code:

3 (a) To create a rate and boundaries database of zip codes+4 data
 4 only or address level sourcing.

5 (b) To accept the data from the streamlined sales tax registration
 6 system.

7 (c) To accept a simplified electronic return from the streamlined
 8 sales tax.

9 (d) To accept electronic payments via automated clearing house
 10 (ACH) debit, ACH credit and bulk payments.

11 (e) To certify the accuracy of the certified service providers.

12 SECTION 4. That Section 63-3607, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 63-3607. PERSON. The term "person" includes any individual, firm, co-
 15 partnership, joint venture, association, social club, fraternal organiza-
 16 tion, corporation, estate, trust, business trust, receiver, trustee, syn-
 17 dicate, cooperative, assignee, or any other group or combination acting as
 18 a unit. For purposes of chapter 46, title 63, Idaho Code, "person" means an
 19 individual, trust, estate, fiduciary, partnership, limited liability com-
 20 pany, limited liability partnership, corporation or any other legal entity.

21 SECTION 5. That Section 63-3608, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 63-3608. PURCHASE. The term "purchase" means any transfer, rental,
 24 exchange, or barter, conditional or otherwise, in any manner or by any means
 25 whatsoever, of tangible personal property or taxable service for a consid-
 26 eration. A transaction whereby the possession of property or the taxable
 27 service is transferred but the seller retains the title as security for the
 28 payment of the price is a purchase. A transfer for a consideration of any
 29 publication or taxable service or of tangible personal property which or
 30 taxable service that has been produced, fabricated, or printed to the spe-
 31 cial order of the customer is also a purchase.

32 SECTION 6. That Chapter 36, Title 63, Idaho Code, be, and the same is
 33 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 34 ignated as Section 63-3608A, Idaho Code, and to read as follows:

35 63-3608A. PURCHASER. The term "purchaser" means a person to whom a
 36 sale of personal property is made or to whom a taxable service is furnished.

37 SECTION 7. That Section 63-3609, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or
 40 "sale at retail" ~~means a sale for any purpose other than resale in the regular~~
 41 ~~course of business or lease or rental of property in the regular course of~~
 42 ~~business where such rental or lease is taxable under section 63-3612(h),~~

1 ~~Idaho Code~~ means any sale, lease or rental for any purpose other than for
2 resale, sublease or subrent.

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

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

10 SECTION 8. That Section 63-3610, Idaho Code, be, and the same is hereby
11 amended to read as follows:

12 63-3610. RETAILER. The term "retailer" includes:

13 (a) Every seller who makes any retail sale ~~or sales of tangible personal~~
14 ~~property~~ and every person engaged in the business of making retail sales at
15 ~~auction of tangible personal property owned by the person or others.~~

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

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

26 (d) When the state tax commission determines that it is necessary for
27 the efficient administration of this act to regard any salesmen, representa-
28 tives, peddlers, or canvassers as agents of the dealers, distributors, su-
29 pervisors, or employers under whom they operate or from whom they obtain the
30 tangible personal property sold by them, irrespective of whether they are
31 making sales on their own behalf or on behalf of such dealers, distributors,
32 supervisors, or employers, the state tax commission may so regard them and
33 may regard the dealers, distributors, supervisors, or employers as retail-
34 ers for the purpose of this act.

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

38 SECTION 9. That Section 63-3611, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 63-3611. RETAILER ENGAGED IN BUSINESS IN THIS STATE. "Retailer en-
41 gaged in business in this state" as used in this chapter means any retailer
42 who:

43 (1) Engages in recurring solicitation of purchases from residents of
44 this state or otherwise purposefully directs its business activities at res-
45 idents of this state; and

46 (2) Has sufficient contact with this state, in accordance with the con-
47 stitution of the United States, to allow the state to require the seller to

1 collect and remit use tax on sales of tangible personal property or services
2 made to customers in this state.

3 (3) The term includes any of the following:

4 (a) Any retailer maintaining, occupying or using, permanently or tem-
5 porarily, directly or indirectly, or through a subsidiary or agent, by
6 whatever name called, an office, place of distribution, sales or sample
7 room or place, warehouse or storage place, or other place of business or
8 maintaining a stock of goods.

9 (b) Any retailer having any representative, agent, salesman, canvasser
10 or solicitor operating in this state under the authority of the retailer
11 or its subsidiary for the purpose of selling, delivering, installing or
12 the taking of orders for any tangible personal property.

13 (c) Any retailer, with respect to a lease or rental, deriving rentals
14 from a lease or rental of tangible personal property situated in this
15 state.

16 (d) Any retailer engaging in any activity in connection with servicing
17 or installing tangible personal property in this state.

18 (e) Any retailer with substantial nexus in this state within the mean-
19 ing of section 63-3615A, Idaho Code.

20 (f) Any retailer having a franchisee or licensee operating under its
21 trade name if the franchisee or licensee is required to collect the tax
22 under the provisions of this section.

23 (g) Any retailer performing services, the sale of which is subject to
24 tax under the provisions of this chapter and chapter 46, title 63, Idaho
25 Code.

26 SECTION 10. That Section 63-3612, Idaho Code, be, and the same is hereby
27 amended to read as follows:

28 63-3612. SALE. (1) The term "sale" means any transfer of title, ex-
29 change or barter, conditional or otherwise, of tangible personal property
30 for a consideration and shall include any similar transfer of possession
31 found by the state tax commission to be in lieu of, or equivalent to, a trans-
32 fer of title, exchange or barter.

33 (2) "Sale" shall also include the following transactions when a consid-
34 eration is transferred, exchanged or bartered:

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

39 (b) Furnishing, preparing, or serving food, meals, or drinks and nonde-
40 preciable goods and services directly consumed by customers included in
41 the charge thereof.

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

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

47 (e) Admission to a place or for an event in Idaho, provided that an or-
48 ganization conducting an exempt function as defined in section 527 or
49 exempted by section 501(c)(3) of the Internal Revenue Code, as incor-

porated 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, nondepreciable 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.

(j) Receipts from all activities deemed taxable by this chapter, chapter 46, title 63, Idaho Code, or rule of the state tax commission.

(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 11. 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 services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following~~ applies to the property or service subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for 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. The seller's cost of the property sold;~~

~~2. The cost of materials used, labor or service cost, losses, or any other expense. The cost of materials used, labor or service costs, in-~~

terest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;

3. ~~The cost of transportation of the property prior to its sale. Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;~~

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. Delivery charges;~~

5. ~~Installation charges; and~~

6. ~~Credit for any trade-in, as determined by state law.~~

(b) ~~The term "sales price" does not include any of the following: state tax commission by rule may exclude from "sales price" the amounts received for charges included in paragraphs 3. through 5. of this subsection, if they are separately stated on the invoice, billing or similar document given to the purchaser. The state tax commission by rule may exclude from paragraph 3. of this subsection, "telecommunications nonrecurring charges" if they are separately stated on the invoice, billing or similar documents. A state doing so must define "telecommunications nonrecurring charges" as follows: "telecommunications nonrecurring charges" means an amount billed for the installation, connection, change or initiation of "telecommunications service" received by the customer.~~

(c) "Sales price" shall not include:

1. Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

2. Interest, financing and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

3. Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(d) "Sales price" shall include consideration received by the seller from third parties if:

1. The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

2. The seller has an obligation to pass the price reduction or discount through to the purchaser;

3. The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

4. One (1) of the following criteria is met:

(i) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding

that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(ii) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount ("preferred customer" card that is available to any patron does not constitute membership in such a group); or

(iii) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(e) "Sales price" does not include either employee discounts that are reimbursed by a third party on sales of motor vehicles, or manufacturer rebates on motor vehicles or both.

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.

8. Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment

made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.

9. ~~The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code, by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.~~

10. ~~The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.~~

(c) ~~The sales price of a "new manufactured home" or a "modular building" as defined in this chapter shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.~~

(d) ~~Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.~~

(e) ~~Tangible personal property when sold at retail for more than eleven cents (11¢) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.~~

(f) ~~Sales price shall not include a gratuity or tip received when paid to the service provider of a meal. The gratuity or tip can be either voluntary or mandatory, but must be given for the service provided and as a supplement to the service provider's income.~~

SECTION 12. That Section 63-3614, Idaho Code, be, and the same is hereby amended to read as follows:

63-3614. SELLER. The term "seller" means every person making sales, ~~at retail or retail sales to a buyer or consumer, whether as agent, broker or principal~~ leases or rentals of personal property or services.

SECTION 13. 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 63-3615B, Idaho Code, and to read as follows:

63-3615B. AGENT. The term "agent" means a person appointed by a seller to represent the seller before the member states of the streamlined sales tax agreement.

SECTION 14. 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 63-3615C, Idaho Code, and to read as follows:

1 63-3615C. CERTIFIED AUTOMATED SYSTEM (CAS). The term "certified au-
2 tomated system" means software certified under the streamlined sales tax
3 agreement to calculate the tax imposed by each jurisdiction on a transac-
4 tion, to determine the amount of tax to remit to the appropriate state, and to
5 maintain a record of the transaction.

6 SECTION 15. That Chapter 36, Title 63, Idaho Code, be, and the same is
7 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
8 ignated as Section 63-3615D, Idaho Code, and to read as follows:

9 63-3615D. CERTIFIED SERVICE PROVIDER (CSP). The term "certified ser-
10 vice provider" means an agent certified under the streamlined sales tax
11 agreement to perform all the seller's sales and use tax functions, other than
12 the seller's obligation to remit tax on its own purchases.

13 SECTION 16. That Chapter 36, Title 63, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 63-3615E, Idaho Code, and to read as follows:

16 63-3615E. ENTITY-BASED EXEMPTION. The term "entity-based exemption"
17 means an exemption based on who purchases the product or who sells the prod-
18 uct. An exemption that is available to all individuals shall not be consid-
19 ered an entity-based exemption.

20 SECTION 17. That Chapter 36, Title 63, Idaho Code, be, and the same is
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
22 ignated as Section 63-3615F, Idaho Code, and to read as follows:

23 63-3615F. MODEL 1 SELLER. The term "model 1 seller" means a seller reg-
24 istered under the streamlined sales tax agreement that has selected a CSP as
25 its agent to perform all the seller's sales and use tax functions, other than
26 the seller's obligation to remit tax on its own purchases.

27 SECTION 18. That Chapter 36, Title 63, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 63-3615G, Idaho Code, and to read as follows:

30 63-3615G. MODEL 2 SELLER. The term "model 2 seller" means a seller reg-
31 istered under the streamlined sales tax agreement that has selected a CAS to
32 perform part of its sales and use tax functions, but retains responsibility
33 for remitting the tax.

34 SECTION 19. That Chapter 36, Title 63, Idaho Code, be, and the same is
35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
36 ignated as Section 63-3615H, Idaho Code, and to read as follows:

37 63-3615H. MODEL 3 SELLER. The term "model 3 seller" means a seller reg-
38 istered under the streamlined sales tax agreement that has sales in at least
39 five (5) member states, has total annual sales revenue of at least five hun-
40 dred million dollars (\$500,000,000), has a proprietary system that calcu-
41 lates the amount of tax due each jurisdiction and has entered into a perfor-

1 mance agreement with the member states that establishes a tax performance
 2 standard for the seller. As used in this definition, a seller includes an af-
 3 filiated group of sellers using the same proprietary system.

4 SECTION 20. That Chapter 36, Title 63, Idaho Code, be, and the same is
 5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 6 ignated as Section 63-3615I, Idaho Code, and to read as follows:

7 63-3615I. MODEL 4 SELLER. The term "model 4 seller" means a seller that
 8 is registered under the streamlined sales tax agreement and is not a model 1
 9 seller, a model 2 seller or a model 3 seller.

10 SECTION 21. That Chapter 36, Title 63, Idaho Code, be, and the same is
 11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 12 ignated as Section 63-3615J, Idaho Code, and to read as follows:

13 63-3615J. PRODUCT-BASED EXEMPTION. The term "product-based exemp-
 14 tion" means an exemption based on the description of the product and not
 15 based on who purchases the product or how the purchaser intends to use the
 16 product.

17 SECTION 22. That Chapter 36, Title 63, Idaho Code, be, and the same is
 18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 19 ignated as Section 63-3615K, Idaho Code, and to read as follows:

20 63-3615K. REGISTERED UNDER THE STREAMLINED SALES TAX AGREEMENT. The
 21 term "registered under the streamlined sales tax agreement" means registra-
 22 tion by a seller with the member states under the central registration system
 23 provided in chapter 46, title 63, Idaho Code.

24 SECTION 23. That Chapter 36, Title 63, Idaho Code, be, and the same is
 25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 26 ignated as Section 63-3615L, Idaho Code, and to read as follows:

27 63-3615L. USE-BASED EXEMPTION. The term "use-based exemption" means
 28 an exemption based on a specified use of the product by the purchaser.

29 SECTION 24. That Chapter 36, Title 63, Idaho Code, be, and the same is
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 31 ignated as Section 63-3615M, Idaho Code, and to read as follows:

32 63-3615M. STATE. "State" means any state of the United States, the
 33 District of Columbia and the Commonwealth of Puerto Rico.

34 SECTION 25. That Chapter 36, Title 63, Idaho Code, be, and the same is
 35 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 36 ignated as Section 63-3615N, Idaho Code, and to read as follows:

37 63-3615N. BUNDLED TRANSACTION. (1) A "bundled transaction" means the
 38 retail sale of two (2) or more products, except real property and services to
 39 real property, where the products are otherwise distinct and identifiable,
 40 and the products are sold for one (1) nonitemized price. A "bundled trans-

1 action" does not include the sale of any products in which the "sales price"
 2 varies or is negotiable, based on the selection by the purchaser of the prod-
 3 ucts included in the transaction.

4 (2) "Distinct and identifiable products" do not include:

5 (a) Packaging such as containers, boxes, sacks, bags and bottles, or
 6 other materials such as wrapping, labels, tags and instruction guides,
 7 that accompany the "retail sale" of the products and are incidental or
 8 immaterial to the "retail sale" thereof. Examples of packaging that are
 9 incidental or immaterial include grocery sacks, shoeboxes, dry clean-
 10 ing garment bags and express delivery envelopes and boxes.

11 (b) A "product provided free of charge" with the required purchase of
 12 another product. A product is "provided free of charge" if the "sales
 13 price" of the product purchased does not vary depending on the inclusion
 14 of the product "provided free of charge."

15 (c) Items included in the definition of "sales price," pursuant to this
 16 chapter.

17 (3) The term "one nonitemized price" does not include a price that is
 18 separately identified by product on binding sales or other supporting sales-
 19 related documentation made available to the customer in paper or electronic
 20 form including, but not limited to, an invoice, bill of sale, receipt, con-
 21 tract, service agreement, lease agreement, periodic notice of rates and ser-
 22 vices, rate card or price list.

23 (4) A transaction that otherwise meets the definition of a "bundled
 24 transaction" pursuant to this chapter, is not a "bundled transaction" if:

25 (a) It is the "retail sale" of tangible personal property and a service
 26 where the tangible personal property is essential to the use of the ser-
 27 vice, and is provided exclusively in connection with the service, and
 28 the true object of the transaction is the service; or

29 (b) It is the "retail sale" of services where one (1) service is pro-
 30 vided that is essential to the use or receipt of a second service and
 31 the first service is provided exclusively in connection with the second
 32 service and the true object of the transaction is the second service; or

33 (c) It is a transaction that includes taxable products and nontaxable
 34 products and the "purchase price" or "sales price" of the taxable prod-
 35 ucts is de minimis.

36 (i) "De minimis" means the seller's "purchase price" or "sales
 37 price" of the taxable products is ten percent (10%) or less of the
 38 total "purchase price" or "sales price" of the bundled products.

39 (ii) Sellers shall use either the "purchase price" or the "sales
 40 price" of the products to determine if the taxable products are de
 41 minimis. Sellers may not use a combination of the "purchase price"
 42 and "sales price" of the products to determine if the taxable prod-
 43 ucts are de minimis.

44 (iii) Sellers shall use the full term of a service contract to de-
 45 termine if the taxable products are de minimis; or

46 (d) It is the "retail sale" of exempt tangible personal property and
 47 taxable tangible personal property where:

48 (i) The transaction includes "food and food ingredients,"
 49 "drugs," "durable medical equipment," "mobility enhancing equip-

ment," "over-the-counter drugs," "prosthetic devices" (all as defined in this chapter) or medical supplies; and
 (ii) The seller's "purchase price" or "sales price" of the taxable tangible personal property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent (50%) determination for a transaction.

SECTION 26. 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 63-36150, Idaho Code, and to read as follows:

63-36150. DELIVERY CHARGES. The term "delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(1) The tax commission by rule may exclude all delivery charges from the sales price of all personal property and services, or choose to exclude from the sales price of personal property or services one (1) or more of the following components and may amend the definition of delivery charges accordingly:

(a) Handling, crating, packing, preparation for mailing or delivery and similar charges; or

(b) Transportation, shipping, postage and similar charges.

(2) In addition, the state tax commission by rule may treat "delivery charges" for "direct mail" differently than it treats "delivery charges" for other personal property or services. The state tax commission by rule may exclude all "delivery charges" from the "sales price" for "direct mail" or choose to exclude from the "sales price" of "direct mail" one (1) or more of the following components, and may amend the definition of "delivery charges" accordingly: handling, crating, packing, preparation for mailing or delivery and similar charges; transportation, shipping and similar charges; or postage.

(3) Unless a seller separately states the "delivery charges" or components of "delivery charges" on the invoice or similar billing document given to the purchaser, those nonseparately stated charges will not qualify for the exclusion from "sales price." The state tax commission may not require a seller to separately state any "delivery charge" or component thereof.

(4) The exclusion of "delivery charges" for "direct mail" shall apply to any sale involving the delivery or mailing of: "direct mail"; printed material that would otherwise be "direct mail" that results from a transaction that a state considers the sale of a service; or printed material delivered or mailed to a mass audience when the costs of the printed materials are not billed directly to the recipients and is the result of a transaction that includes the development of billing information or the provision of data processing services.

(5) If a shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

1 (a) A percentage based on the total sales prices of the taxable property
2 compared to the total sales prices of all property in the shipment; or

3 (b) A percentage based on the total weight of the taxable property com-
4 pared to the total weight of all property in the shipment.

5 The seller must tax the percentage of the delivery charge allocated to
6 the taxable property but does not have to tax the percentage allocated to the
7 exempt property.

8 SECTION 27. That Chapter 36, Title 63, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 63-3615P, Idaho Code, and to read as follows:

11 63-3615P. DIRECT MAIL. The term "direct mail" means printed material
12 delivered or distributed by United States mail or other delivery service to a
13 mass audience or to addressees on a mailing list provided by the purchaser or
14 at the direction of the purchaser when the cost of the items is not billed di-
15 rectly to the recipients. "Direct mail" includes tangible personal property
16 supplied directly or indirectly by the purchaser to the "direct mail" seller
17 for inclusion in the package containing the printed material. "Direct mail"
18 does not include multiple items of printed material delivered to a single ad-
19 dress.

20 SECTION 28. That Chapter 36, Title 63, Idaho Code, be, and the same is
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
22 ignated as Section 63-3615Q, Idaho Code, and to read as follows:

23 63-3615Q. LEASE OR RENTAL. "Lease or rental" means any transfer of
24 possession or control of tangible personal property for a fixed or inde-
25 terminate term for consideration. A "lease or rental" may include future
26 options to purchase or extend.

27 (1) "Lease or rental" does not include:

28 (a) A transfer of possession or control of property under a security
29 agreement or deferred payment plan that requires the transfer of title
30 upon completion of the required payments;

31 (b) A transfer or possession or control of property under an agreement
32 that requires the transfer of title upon completion of required pay-
33 ments and payment of an option price does not exceed the greater of one
34 hundred dollars (\$100) or one percent (1%) of the total required pay-
35 ments; or

36 (c) Providing tangible personal property along with an operator for a
37 fixed or indeterminate period of time. A condition of this exclusion is
38 that the operator is necessary for the equipment to perform as designed.
39 For the purpose of this subsection, an operator must do more than main-
40 tain, inspect or set up the tangible personal property.

41 (2) "Lease or rental" includes agreements covering motor vehicles and
42 trailers where the amount of consideration may be increased or decreased by
43 reference to the amount realized upon sale or disposition of the property as
44 defined in 26 U.S.C. 7701(h) (1).

45 (3) This definition shall be used for sales and use tax purposes regard-
46 less if a transaction is characterized as a lease or rental under generally

1 accepted accounting principles, the Internal Revenue Code, the uniform commercial code or other provisions of federal, state or local law.

3 (4) This definition will be applied only prospectively from the date of
4 adoption and will have no retroactive impact on existing leases or rentals.
5 This definition shall neither impact any existing sale-leaseback exemption
6 or exclusions the state of Idaho may have, nor preclude the state tax commis-
7 sion by rule from adopting a sale-leaseback exemption or exclusion after the
8 effective date of this act entering the state of Idaho into the streamlined
9 sales tax agreement.

10 SECTION 29. That Chapter 36, Title 63, Idaho Code, be, and the same is
11 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
12 ignated as Section 63-3615R, Idaho Code, and to read as follows:

13 63-3615R. CLOTHING. (1) "Clothing" means all human wearing apparel
14 suitable for general use. The following list contains examples and is not
15 intended to be an all-inclusive list. "Clothing" shall include: aprons,
16 household and shop; athletic supporters; baby receiving blankets; bathing
17 suits and caps; beach capes and coats; belts and suspenders; boots; coats
18 and jackets; costumes; diapers, children and adult, including disposable
19 diapers; ear muffs; footlets; formal wear; garters and garter belts; gir-
20 dles; gloves and mittens for general use; hats and caps; hosiery; insoles for
21 shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants;
22 sandals; scarves; shoes and shoelaces; slippers; sneakers; socks and stock-
23 ings; steel toed shoes; underwear; uniforms, athletic and nonathletic; and
24 wedding apparel.

25 (2) "Clothing" shall not include: belt buckles sold separately; cos-
26 tume masks sold separately; patches and emblems sold separately; sewing
27 equipment and supplies including, but not limited to, knitting needles, pat-
28 terns, pins, scissors, sewing machines, sewing needles, tape measures, and
29 thimbles; and sewing materials that become part of "clothing" including, but
30 not limited to, buttons, fabric, lace, thread, yarn and zippers.

31 SECTION 30. That Chapter 36, Title 63, Idaho Code, be, and the same is
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
33 ignated as Section 63-3615S, Idaho Code, and to read as follows:

34 63-3615S. CLOTHING ACCESSORIES OR EQUIPMENT. The term "clothing ac-
35 cessories or equipment" means incidental items worn on the person or in
36 conjunction with "clothing." "Clothing accessories or equipment" are mu-
37 tually exclusive of and may be taxed differently than apparel within the
38 definition of "clothing," "sport or recreational equipment," and "protec-
39 tive equipment." The following list contains examples and is not intended
40 to be an all-inclusive list. "Clothing accessories or equipment" shall
41 include: briefcases; cosmetics; hair notions, including, but not limited
42 to, barrettes, hair bows, and hair nets; handbags; handkerchiefs; jewelry;
43 nonprescription sun glasses; umbrellas; wallets; watches; and wigs and hair
44 pieces.

1 SECTION 31. That Chapter 36, Title 63, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 63-3615T, Idaho Code, and to read as follows:

4 63-3615T. ESSENTIAL CLOTHING. The term "essential clothing" means any
5 article of "clothing" with a sales price below a dollar threshold set by the
6 state tax commission by rule if the state tax commission chooses to tax "es-
7 sential clothing" differently from "clothing." If the state tax commission
8 elects to tax "essential clothing" differently from "clothing" it may not
9 exempt the portion of the price of any individual item of clothing below its
10 dollar threshold and shall administer the "essential clothing" threshold
11 consistent with the provisions of this chapter and chapter 46, title 63,
12 Idaho Code.

13 SECTION 32. That Chapter 36, Title 63, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 63-3615U, Idaho Code, and to read as follows:

16 63-3615U. FUR CLOTHING. The term "fur clothing" means "clothing" that
17 is required to be labeled as a fur product under the federal fur products la-
18 beling act, 15 U.S.C. section 69, and the value of the fur components in the
19 product is more than three (3) times the value of the next most valuable tan-
20 gible component. "Fur clothing" is human wearing apparel suitable for gen-
21 eral use but may be taxed differently from "clothing." For the purposes of
22 the definition of "fur clothing" the term "fur" means any animal skin or part
23 thereof with hair, fleece, or fur fibers attached thereto, either in its raw
24 or processed state, but shall not include such skins that have been converted
25 into leather or suede, or which in processing, the hair, fleece or fur fiber
26 has been completely removed.

27 SECTION 33. That Chapter 36, Title 63, Idaho Code, be, and the same is
28 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
29 ignated as Section 63-3615V, Idaho Code, and to read as follows:

30 63-3615V. PROTECTIVE EQUIPMENT. The term "protective equipment"
31 means items for human wear and designed as protection of the wearer against
32 injury or disease or as protections against damage or injury of other persons
33 or property but not suitable for general use. "Protective equipment" are
34 mutually exclusive of and may be taxed differently than apparel within the
35 definition of "clothing," "clothing accessories or equipment," and "sport
36 or recreational equipment." The following list contains examples and is
37 not intended to be an all-inclusive list. "Protective equipment" shall in-
38 clude: breathing masks; clean room apparel and equipment; ear and hearing
39 protectors; face shields; hard hats; helmets; paint or dust respirators;
40 protective gloves; safety glasses and goggles; safety belts; tool belts; and
41 welders gloves and masks.

42 SECTION 34. That Chapter 36, Title 63, Idaho Code, be, and the same is
43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
44 ignated as Section 63-3615W, Idaho Code, and to read as follows:

1 63-3615W. SPORTS OR RECREATIONAL EQUIPMENT. The term "sport or
 2 recreational equipment" means items designed for human use and worn in con-
 3 junction with an athletic or recreational activity that are not suitable for
 4 general use. "Sport or recreational equipment" are mutually exclusive of
 5 and may be taxed differently than apparel within the definition of "cloth-
 6 ing," "clothing accessories or equipment," and "protective equipment." The
 7 following list contains examples and is not intended to be an all-inclusive
 8 list. "Sport or recreational equipment" shall include: ballet and tap
 9 shoes; cleated or spiked athletic shoes; gloves, including, but not limited
 10 to, baseball, bowling, boxing, hockey and golf; goggles; hand and elbow
 11 guards; life preservers and vests; mouth guards; roller and ice skates; shin
 12 guards; shoulder pads; ski boots; waders; and wetsuits and fins.

13 SECTION 35. That Chapter 36, Title 63, Idaho Code, be, and the same is
 14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 15 ignated as Section 63-3615X, Idaho Code, and to read as follows:

16 63-3615X. COMPUTER-RELATED DEFINITIONS. (1) "Computer" means an
 17 electronic device that accepts information in digital or similar form and
 18 manipulates it for a result based on a sequence of instructions.

19 (2) "Computer software" means a set of coded instructions designed to
 20 cause a "computer" or automatic data processing equipment to perform a task.

21 (3) "Delivered electronically" means delivered to the purchaser by
 22 means other than tangible storage media.

23 (4) "Electronic" means relating to technology having electrical, digi-
 24 tal, magnetic, wireless, optical, electromagnetic or similar capabilities.

25 (5) "Load and leave" means delivery to the purchaser by use of a tangi-
 26 ble storage media where the tangible storage media is not physically trans-
 27 ferred to the purchaser.

28 (6) "Prewritten computer software" means "computer software," includ-
 29 ing prewritten upgrades, which is not designed and developed by the author or
 30 other creator to the specifications of a specific purchaser. The combining
 31 of two (2) or more "prewritten computer software" programs or prewritten
 32 portions thereof does not cause the combination to be other than "prewrit-
 33 ten computer software." "Prewritten computer software" includes software
 34 designed and developed by the author or other creator to the specifications
 35 of a specific purchaser when it is sold to a person other than the specific
 36 purchaser. Where a person modifies or enhances "computer software" of which
 37 the person is not the author or creator, the person shall be deemed to be
 38 the author or creator only of such person's modifications or enhancements.
 39 "Prewritten computer software" or a prewritten portion thereof that is mod-
 40 ified or enhanced to any degree, where such modification or enhancement is
 41 designed and developed to the specifications of a specific purchaser, re-
 42 mains "prewritten computer software"; provided, however, that where there
 43 is a reasonable, separately stated charge or an invoice or other statement
 44 of the price given to the purchaser for such modification or enhancement,
 45 such modification or enhancement shall not constitute "prewritten computer
 46 software." The state tax commission may by rule exempt "prewritten computer
 47 software" "delivered electronically" or by "load and leave."

1 SECTION 36. That Chapter 36, Title 63, Idaho Code, be, and the same is
 2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 3 ignated as Section 63-3615Y, Idaho Code, and to read as follows:

4 63-3615Y. COMPUTER SOFTWARE MAINTENANCE CONTRACT DEFINITIONS. (1) A
 5 "computer software maintenance contract" means a contract that obligates a
 6 vendor of computer software to provide a customer with future updates or up-
 7 grades to computer software, support services with respect to computer soft-
 8 ware or both.

9 (2) A "mandatory computer software maintenance contract" means a com-
 10 puter software maintenance contract that the customer is obligated by con-
 11 tract to purchase as a condition to the retail sale of computer software.

12 (3) An "optional computer maintenance contract" means a computer soft-
 13 ware maintenance contract that a customer is not obligated to purchase as a
 14 condition to the retail sale of computer software.

15 (4) The state tax commission by rule may limit the definition of "com-
 16 puter maintenance contract" to one (1) or more of the following: computer
 17 software maintenance contracts with respect to prewritten computer soft-
 18 ware; optional computer software maintenance contracts; mandatory computer
 19 software maintenance contracts; optional computer software maintenance
 20 contracts that do not include upgrades and updates delivered electroni-
 21 cally, by load and leave, or both; computer software maintenance contracts
 22 that only obligate a vendor of computer software to provide a customer with
 23 future updates or upgrades to computer software; computer software mainte-
 24 nance contracts that only obligate a vendor of computer software to provide a
 25 customer with support services with respect to computer software.

26 (5) The state tax commission may by rule include within its definition
 27 of "computer software maintenance contract" contracts sold by a person other
 28 than the vendor of the computer software to which the contract relates.

29 SECTION 37. That Chapter 36, Title 63, Idaho Code, be, and the same is
 30 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 31 ignated as Section 63-3615Z, Idaho Code, and to read as follows:

32 63-3615Z. DIGITAL PRODUCTS DEFINITIONS. (1) "Specified digital prod-
 33 ucts" means electronically transferred:

34 (a) "Digital audio-visual works" means a series of related images
 35 which, when shown in succession, impart an impression of motion, to-
 36 gether with accompanying sounds, if any;

37 (b) "Digital audio works" means works that result from the fixation of a
 38 series of musical, spoken or other sounds, including ringtones; and

39 (c) "Digital books" means works that are generally recognized in the
 40 ordinary and usual sense as "books."

41 (2) For purposes of the definition of "digital audio works," "ring-
 42 tones" means digitized sound files that are downloaded onto a device and that
 43 may be used to alert the customer with respect to a communication.

44 (3) For purposes of the definitions of "specified digital products,"
 45 "transferred electronically" means obtained by the purchaser by means other
 46 than tangible storage media.

1 SECTION 38. That Chapter 36, Title 63, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
3 ignated as Section 63-3615AA, Idaho Code, and to read as follows:

4 63-3615AA. FOOD AND FOOD PRODUCTS DEFINITIONS. (1) "Alcoholic bever-
5 ages" means beverages that are suitable for human consumption and contain
6 one-half of one percent (0.5%) or more of alcohol by volume.

7 (2) "Bottled water" means water that is placed in a safety sealed con-
8 tainer or package for human consumption. Bottled water is calorie free and
9 does not contain sweeteners or other additives except that it may contain:
10 (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins,
11 minerals and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only
12 those flavors, extracts or essences derived from a spice or fruit. "Bottled
13 water" includes water that is delivered to the buyer in a reusable container
14 that is not sold with the water.

15 (3) "Candy" means a preparation of sugar, honey, or other natural or ar-
16 tificial sweeteners in combination with chocolate, fruits, nuts or other in-
17 gredients or flavorings in the form of bars, drops, or pieces. "Candy" shall
18 not include any preparation containing flour and shall require no refrigera-
19 tion.

20 (4) "Dietary supplement" means any product, other than "tobacco," in-
21 tended to supplement the diet that contains one (1) or more of the follow-
22 ing dietary ingredients: a vitamin; a mineral; an herb or other botanical;
23 an amino acid; a dietary substance for use by humans to supplement the diet
24 by increasing the total dietary intake; or a concentrate, metabolite, con-
25 stituent, extract, or combination of any ingredient described in this sub-
26 section; and is intended for ingestion in tablet, capsule, powder, softgel,
27 gelcap, or liquid form, or if not intended for ingestion in such a form, is
28 not represented as conventional food and is not represented for use as a sole
29 item of a meal or of the diet; and is required to be labeled as a dietary sup-
30 plement, identifiable by the "supplemental facts" box found on the label and
31 as required pursuant to 21 CFR 101.36.

32 (5) "Food and food ingredients" means substances, whether in liquid,
33 concentrated, solid, frozen, dried, or dehydrated form, that are sold for
34 ingestion or chewing by humans and are consumed for their taste or nutri-
35 tional value. "Food and food ingredients" does not include "alcoholic bev-
36 erages" or "tobacco." The state tax commission by rule may exclude "bottled
37 water," "candy," "dietary supplements" and "soft drinks" from this defini-
38 tion, which items are mutually exclusive of each other.

39 (6) "Food sold through vending machines" means food dispensed from a
40 machine or other mechanical device that accepts payment.

41 (7) "Prepared food" means food sold in a heated state or heated by the
42 seller; two (2) or more food ingredients mixed or combined by the seller for
43 sale as a single item; food sold with eating utensils provided by the seller,
44 including plates, knives, forks, spoons, glasses, cups, napkins or straws.
45 A plate does not include a container or packaging used to transport the food.
46 "Prepared food" does not include food that is only cut, repackaged, or pas-
47 teurized by the seller, and eggs, fish, meat, poultry, and foods containing
48 these raw animal foods requiring cooking by the consumer as recommended by

1 the food and drug administration (FDA) in chapter 3, part 401.11 of its food
2 code so as to prevent food borne illnesses.

3 (8) The following items may be taxed differently than "prepared food"
4 and each other, if sold without eating utensils provided by the seller, but
5 may not be taxed differently than the same item when classified under food
6 and food ingredients:

7 (a) Food sold by a seller whose proper primary north American industry
8 classification system (NAICS) classification is manufacturing in sec-
9 tor 311, except subsector 3118 (bakeries);

10 (b) Food sold in an unheated state by weight or volume as a single item;

11 (c) Bakery items, including bread, rolls, buns, biscuits, bagels,
12 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts,
13 muffins, bars, cookies and tortillas. Substances within "food and food
14 ingredients" may be taxed differently if sold as "prepared food."

15 The state tax commission by rule shall tax or exempt from taxation "bot-
16 tled water," "candy," "dietary supplements," and "soft drinks" that are
17 sold as "prepared food" in the same manner as it treats other substances
18 that are sold as "prepared food."

19 (9) "Soft drinks" means nonalcoholic beverages that contain natural or
20 artificial sweeteners. "Soft drinks" do not include beverages that contain
21 milk or milk products, soy, rice or similar milk substitutes, or greater than
22 fifty percent (50%) of vegetable or fruit juice by volume.

23 (10) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or
24 any other item that contains tobacco.

25 SECTION 39. That Chapter 36, Title 63, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 63-3615BB, Idaho Code, and to read as follows:

28 63-3615BB. HEALTH CARE TERMS. (1) "Drug" means a compound, substance
29 or preparation, and any component of a compound, substance or preparation,
30 other than "food and food ingredients," "dietary supplements" or "alcoholic
31 beverages": recognized in the official United State pharmacopoeia, offi-
32 cial homeopathic pharmacopoeia of the United States, or official national
33 formulary, and supplement to any of them; or intended for use in the diag-
34 nosis, cure, mitigation, treatment, or prevention of disease; or intended
35 to affect the structure or any function of the body. The state tax commis-
36 sion may by rule limit the definition of "drug" to human use (as opposed to
37 both human and animal use): in the administration of its exemption; draft
38 its exemption for "drug" to specifically add insulin and/or medical oxygen
39 so that no prescription is required, even if Idaho requires a prescription
40 under its exemption for drugs; determine the taxability of the sales of drugs
41 and prescription drugs to hospitals and other medical facilities; deter-
42 mine the taxability of free samples of drugs; and determine the taxability
43 of bundling taxable and nontaxable drugs, if uniform treatment of bundled
44 transactions is not otherwise defined in this chapter and chapter 46, title
45 63, Idaho Code.

46 (2) "Durable medical equipment" means equipment including repair and
47 replacement parts for same, but does not include "mobility enhancing equip-
48 ment," which: can withstand repeated use; and is primarily and customar-
49 ily used to serve a medical purpose; and generally is not useful to a per-

son in the absence of illness or injury; and is not worn in or on the body. The state tax commission by rule may limit its exemption to "durable medical equipment": by requiring a prescription; based on medicare or medicaid payments or reimbursement; or for home use. The state tax commission's rules may limit the exemption using any combination of the above but in no case shall an exemption certificate be required. Repair and replacement parts as used in this definition include all components or attachments used in conjunction with the "durable medical equipment." The state tax commission by rule may exclude from repair and replacement parts items that are for single patient use only. The state tax commission's rules may exclude from the product definition of "durable medical equipment" any of the following for purposes of enacting a product-based exemption: oxygen delivery equipment not worn in or on the body, including repair and replacement parts; kidney dialysis equipment not worn in or on the body, including repair and replacement parts; or enteral feeding systems not worn in or on the body, including repair and replacement parts.

If the state tax commission's rules enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those items are not worn in or on the body, the commission must also enact a product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems, if those are worn in or on the body. The state tax commission's rules may limit the product-based exemption for oxygen delivery equipment, kidney dialysis equipment, or enteral feeding systems using any combination of the following: by requiring a prescription; based on medicare or medicaid payments or reimbursement; or for home use.

(3) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter-drugs."

(4) "Mobility enhancing equipment" means equipment including repair and replacement parts to same, but does not include "durable medical equipment," which: is primarily and customarily used to provide or increase the ability to move from one (1) place to another and which is appropriate for use either in a home or a motor vehicle; is not generally used by persons with normal mobility; and does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. The state tax commission by rule may limit the application of this definition by requiring a "prescription," or limit an exemption based on medicare or medicaid payments or reimbursements.

(5) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The state tax commission by rule may exclude "grooming and hygiene products" from this definition. The "over-the-counter-drug" label includes: a "drug facts" panel; or a statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.

(6) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of Idaho.

(7) "Prosthetic device" means a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body to: artificially replace a missing portion of the body; prevent or correct physical deformity or malfunction; or support a weak or deformed portion of the body. The state tax commission by rule may exclude any or all of the following from the definition of "prosthetic device": corrective eyeglasses; contact lenses; hearing aids; and dental prosthesis. The state tax commission may limit the application of this definition by requiring a "prescription," or limit an exemption based on medicare or medicaid payments or reimbursements.

SECTION 40. 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 63-3615CC, Idaho Code, and to read as follows:

63-3615CC. TELECOMMUNICATIONS TAX BASE/EXEMPTION TERMS. (1) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including, but not limited to, "detailed telecommunications billing," "directory assistance," "vertical service" and "voice mail services."

(2) "Conference bridging service" means an "ancillary service" that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include the "telecommunications services" used to reach the conference bridge.

(3) "Detailed telecommunications billing service" means an "ancillary service" of separately stating information pertaining to individual calls on a customer's billing statement.

(4) "Directory assistance" means an "ancillary service" of providing telephone number information, and/or address information.

(5) "Vertical service" means an "ancillary service" that is offered in connection with one (1) or more "telecommunications services," which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including "conference bridging services."

(6) "Voice mail service" means an "ancillary service" that enables the customer to store, send or receive recorded messages. "Voice mail service" does not include any "vertical services" that the customer may be required to have in order to utilize the "voice mail service."

(7) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include: data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the

1 underlying transaction is the processed data or information; installation
2 or maintenance of wiring or equipment on a customer's premises; tangible
3 personal property; advertising including, but not limited to, directory
4 advertising; billing and collection services provided to third parties;
5 internet access service; radio and television audio and video programming
6 services, regardless of the medium, including the furnishing of transmis-
7 sion, conveyance and routing of such services by the programming service
8 provider. Radio and television audio and video programming services shall
9 include, but not be limited to, cable service as defined in 47 U.S.C. section
10 522(6) and audio and video programming services delivered by commercial
11 mobile radio service providers, as defined in 47 CFR 20.3; "ancillary ser-
12 vices"; or digital products "delivered electronically" including, but not
13 limited to, software, music, video, reading materials or ring tones.

14 (8) "800 service" means a "telecommunications service" that allows a
15 caller to dial a toll-free number without incurring a charge for the call.
16 The service is typically marketed under the name "800," "855," "866," "877"
17 and "888" toll-free calling, and any subsequent numbers designated by the
18 federal communications commission.

19 (9) "900 service" means an inbound toll "telecommunications service"
20 purchased by a subscriber that allows the subscriber's customers to call in
21 to the subscriber's prerecorded announcement or live service. "900 ser-
22 vice" does not include the charge for: collection services provided by the
23 seller of the "telecommunications services" to the subscriber, or service or
24 product sold by the subscriber to the subscriber's customer. The service is
25 typically marketed under the name "900 service," and any subsequent numbers
26 designated by the federal communications commission.

27 (10) "Fixed wireless service" means a "telecommunications service"
28 that provides radio communication between fixed points.

29 (11) "Mobile wireless service" means a "telecommunications service"
30 that is transmitted, conveyed or routed regardless of the technology used,
31 whereby the origination and/or termination points of the transmission,
32 conveyance or routing are not fixed, including, by way of example only,
33 "telecommunications services" that are provided by a commercial mobile ra-
34 dio service provider.

35 (12) "Paging service" means a "telecommunications service" that pro-
36 vides transmission of coded radio signals for the purpose of activating spe-
37 cific pagers; such transmissions may include messages and/or sounds.

38 (13) "Prepaid calling service" means the right to access exclusively
39 "telecommunications services," which must be paid for in advance and which
40 enables the origination of calls using an access number or authorization
41 code, whether manually or electronically dialed, and that is sold in prede-
42 termined units or dollars of which the number declines with use in a known
43 amount.

44 (14) "Prepaid wireless calling service" means a telecommunications
45 service that provides the right to utilize mobile wireless service, as well
46 as other nontelecommunications services, including the download of digital
47 products delivered electronically, content and ancillary services, which
48 must be paid for, in advance, that is sold in predetermined units or dollars
49 of which the number declines with use in a known amount.

1 (15) "Private communications service" means a "telecommunications ser-
 2 vice" that entitles the customer to exclusive or priority use of a communica-
 3 tions channel or group of channels between or among termination points, re-
 4 gardless of the manner in which such channel or channels are connected, and
 5 includes switching capacity, extension lines, stations and any other asso-
 6 ciated services that are provided in connection with the use of such channel
 7 or channels.

8 (16) "Value-added non-voice data service" means a service that oth-
 9 erwise meets the definition of "telecommunications services" in which
 10 computer processing applications are used to act on the form, content, code
 11 or protocol of the information or data primarily for a purpose other than
 12 transmission, conveyance or routing.

13 The following terms can be used to further delineate the type of
 14 "telecommunications service" to be taxed or exempted. The terms would be
 15 used with the broader terms and subcategories delineated above.

16 (17) "Coin-operated telephone service" means a "telecommunications
 17 service" paid for by inserting money into a telephone accepting direct de-
 18 posits of money to operate.

19 (18) "International" means a "telecommunications service" that origi-
 20 nates or terminates in the United States and terminates or originates out-
 21 side the United States, respectively. United States includes the District
 22 of Columbia or a U.S. territory or possession.

23 (19) "Interstate" means a "telecommunications service" that originates
 24 in one (1) United States state, or a United States territory or possession,
 25 and terminates in a different United States state or a United States terri-
 26 tory or possession.

27 (20) "Intrastate" means a "telecommunications service" that originates
 28 in one (1) United States state or a United States territory or possession,
 29 and terminates in the same United States state or a United States territory
 30 or possession.

31 (21) "Pay telephone service" means a "telecommunications service" pro-
 32 vided through any pay telephone.

33 (22) "Residential telecommunications service" means a "telecommunica-
 34 tions service" or "ancillary services" provided to an individual for per-
 35 sonal use at a residential address, including an individual dwelling unit
 36 such as an apartment. In the case of institutions where individuals reside,
 37 such as schools or nursing homes, "telecommunications service" is consid-
 38 ered residential if it is provided to and paid for by an individual resident
 39 rather than the institution.

40 (23) The terms "ancillary services" and "telecommunications service"
 41 are defined as a broad range of services. The terms "ancillary services"
 42 and "telecommunications service" are broader than the sum of the subcate-
 43 gories. Definitions of subcategories of "ancillary services" and "telecom-
 44 munications service" can be used by a member state alone or in combination
 45 with other subcategories to define a narrower tax base than the definitions
 46 of "ancillary services" and "telecommunications service" would imply. The
 47 subcategories can also be used by a member state to provide exemptions for
 48 certain subcategories of the more broadly defined terms. The state tax com-
 49 mission's rules that specifically impose tax on, or exempt from tax, local
 50 telephone or local telecommunications service may define "local service" in

any manner in accordance with this chapter or chapter 46, title 63, Idaho Code, except as limited by other sections of those chapters.

SECTION 41. 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 63-3615DD, Idaho Code, and to read as follows:

63-3615DD. SALES TAX HOLIDAY. The definitions in this section are only applicable for the purposes of administration of a sales tax holiday.

(1) Administrative definitions. "Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption.

(a) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(b) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(2) Product definitions. "Disaster preparedness supply" means an item purchased in preparation or response to a disaster, including any fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether man-made, resulting from war or resulting from natural causes. "Disaster preparedness supply" shall include the following categories of items: general disaster preparedness supplies; disaster preparedness safety supplies; disaster preparedness food-related supplies; and disaster preparedness fastening supplies. If the state tax commission promulgates rules to exempt "disaster preparedness supplies" during a sales tax holiday it may exempt all disaster preparedness qualified supplies; or exempt specified classifications of supplies. The state tax commission may not exempt specific items within a classification, without exempting the entire classification of supplies.

(a) "Disaster preparedness general supply" means a general purpose item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness safety supplies," "disaster preparedness food-related supplies," and "disaster preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list: batteries (excluding automobile and marine batteries) AAA, AA, C, D, 6 volt or 9 volt; cellular telephone batteries and chargers; satellite phones; self-powered light sources; portable self-powered radios, two-way radios, weather-band radios and NOAA weather radios; gas or diesel fuel containers; nonelectric food storage coolers; portable generators; and storm shutter devices.

(b) "Disaster preparedness safety supply," means a safety item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness general supplies," "disaster preparedness food-related supplies," and "disaster preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list: carbon monoxide detectors; smoke detectors; fire extinguishers; and first aid kits.

(c) "Disaster preparedness food-related supply" means a food or food-related item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness general supplies," "disaster preparedness safety supplies," and "disaster preparedness fastening supplies," and may be taxed differently. The following is an all-inclusive list: artificial ice; water storage containers; manual can openers; and bottled water.

(e) "Disaster preparedness fastening supply" means a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms "disaster preparedness general supplies," "disaster preparedness safety supplies," and "disaster preparedness food-related supplies," and may be taxed differently. The following is an all-inclusive list: bungee cords; rope; ratchet straps; duct tape; boat anchor; fender, anchor chain, dock line or similar device; tarpaulins and other flexible waterproof sheeting; and ground anchor or tie down kits.

(f) "Energy star qualified product" means a product that meets the energy efficient guidelines set by the United States environmental protection agency and the United States department of energy that are authorized to carry the energy star label. Covered products are those listed at www.energystar.gov or successor address. If the state tax commission by rule wishes to exempt "energy star qualified products" during a sales tax holiday the commission may: exempt all energy star qualified products, or exempt specified energy star qualified products, or exempt specified classifications as categorized on the energy star product listing.

(g) "School supply" means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list: binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders; expandable, pocket, plastic and manila; glue, paste and paste sticks; highlighters; index cards; index card boxes; legal pads; lunch boxes; markers; notebooks; paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper; pencil boxes and other school supply boxes; pencil sharpeners; pencils; pens; protractors; rulers; scissors; and writing tablets.

(h) "School art supply" means an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms "school supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list: clay and glazes; paints; acrylic, tempera, and oil; paintbrushes for artwork; sketch and drawing pads; and watercolors.

(i) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms "school supply," "school art supply," and "school computer supply,"

1 and may be taxed differently. The following is an all-inclusive list:
2 reference books; reference maps and globes; textbooks; and workbooks.

3 (j) "School computer supply" means an item commonly used by a student in
4 a course of study in which a computer is used. The term is mutually ex-
5 clusive of the terms "school supply," "school art supply," and "school
6 instructional material," and may be taxed differently. The following
7 is an all-inclusive list: computer storage media; diskettes, compact
8 disks; handheld electronic schedulers, except devices that are cellu-
9 lar phones; personal digital assistants, except devices that are cel-
10 lar phones; computer printers, and printer supplies for computers;
11 printer paper and printer ink.

12 SECTION 42. That Section 63-3616, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal
15 property" means personal property which may be seen, weighed, measured,
16 felt or touched, or which is in any other manner perceptible to the senses.
17 "Tangible personal property" includes electricity, water, gas, steam and
18 prewritten computer software.

19 (b) The term "tangible personal property" includes any computer soft-
20 ware which is not a custom computer program.

21 (i) As used in this subsection, the term "computer software" means
22 any computer program, part of a program or any sequence of instructions
23 for automatic data processing equipment or information stored in an
24 electronic medium. Computer software is deemed to be tangible personal
25 property for purposes of this chapter regardless of the method by which
26 the title, possession or right to use the software is transferred to the
27 user.

28 (ii) As used in this subsection, the term "custom computer program"
29 means any computer software (as defined in this subsection) which is
30 written or prepared exclusively for a customer and includes those ser-
31 vices represented by separately stated charges for the modification of
32 existing prewritten programs when the modifications are written or pre-
33 pared exclusively for a customer. The term does not include a "canned"
34 or prewritten program which is held or existing for general or repeated
35 sale, lease or license, even if the program was initially developed on a
36 custom basis or for in-house use. Modification to an existing prewrit-
37 ten program to meet the customer's needs is custom computer programming
38 only to the extent of the modification, and only to the extent that
39 the actual amount charged for the modification is separately stated on
40 invoices, statements, and other billing documents supplied to the pur-
41 chaser.

42 (c) The term "tangible personal property" does not include advertising
43 space when sold to an advertiser or its agent by the publisher of the newspa-
44 per or the magazine in which the advertisement is displayed or circulated.

45 SECTION 43. That Section 63-3619, Idaho Code, be, and the same is hereby
46 amended to read as follows:

1 63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby
 2 imposed upon each sale at retail at the rate of six percent (6%) of the sales
 3 price of all retail sales subject to taxation under this chapter and such
 4 amount shall be computed monthly on all sales at retail within the preceding
 5 month.

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

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

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

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

24 (ed) The tax commission may by rule provide that the amount collected by
 25 the retailer from the customer in reimbursement of the tax be displayed sepa-
 26 rately from the list price, the price advertised on the premises, the marked
 27 price, or other price on the sales slip or other proof of sale.

28 ~~(fe)~~ The taxes imposed by this chapter shall apply to the sales to con-
 29 tractors purchasing for use in the performance of contracts with the United
 30 States.

31 SECTION 44. That Section 63-3621, Idaho Code, be, and the same is hereby
 32 amended to read as follows:

33 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise
 34 tax is hereby imposed on the storage, use, or other consumption in this state
 35 of tangible personal property acquired on or after October 1, 2006, for stor-
 36 age, use, or other consumption in this state at the rate of six percent (6%)
 37 of the value of the property, and a recent sales price shall be presumptive
 38 evidence of the value of the property or taxable service unless the property
 39 is wireless telecommunications equipment, in which case a recent sales price
 40 shall be conclusive evidence of the value of the property.

41 (a) Every person storing, using, or otherwise consuming, in this state,
 42 tangible personal property or taxable services is liable for the tax. His
 43 liability is not extinguished until the tax has been paid to this state ex-
 44 cept that a receipt from a retailer maintaining a place of business in this
 45 state or engaged in business in this state given to the purchaser is suffi-
 46 cient to relieve the purchaser from further liability for the tax to which
 47 the receipt refers. A retailer shall not be considered to have stored, used
 48 or consumed wireless telecommunications equipment by virtue of giving,
 49 selling or otherwise transferring such equipment at a discount as an induce-

1 ment to a consumer to commence or continue a contract for telecommunications
2 service.

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

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

14 (d) Every retailer engaged in business in this state or maintaining a
15 place of business in this state shall register with the state tax commission
16 and give the name and address of all agents operating in this state, the loca-
17 tion of all distributions or sales houses or offices or other places of busi-
18 ness in this state, and such other information as the state tax commission
19 may require.

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

32 A seller may accept a resale certificate from a purchaser prior to the
33 time of sale, at the time of sale, or at any reasonable time after the sale
34 when necessary to establish the privilege of the exemption. The resale cer-
35 tificate relieves the person selling the property from the burden of proof
36 only if taken from a person who is engaged in the business of selling or rent-
37 ing tangible personal property or taxable services and who holds the permit
38 provided for by section 63-3620, Idaho Code, or who is a retailer not en-
39 gaged in business in this state, and who, at the time of purchasing the tan-
40 gible personal property or taxable services, intends to sell or rent it in
41 the regular course of business or is unable to ascertain at the time of pur-
42 chase whether the property will be sold or will be used for some other pur-
43 pose. Other than as provided elsewhere in this section, when a resale cer-
44 tificate, properly executed, is presented to the seller, the seller has no
45 duty or obligation to collect sales or use taxes in regard to any sales trans-
46 action so documented regardless of whether the purchaser properly or improv-
47 erly claimed an exemption. A seller so relieved of the obligation to collect
48 tax is also relieved of any liability to the purchaser for failure to collect
49 tax or for making any report or disclosure of information required or permit-
50 ted under this chapter.

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

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

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

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

18 (i) It shall be presumed that tangible personal property or service de-
 19 livered outside this state to a purchaser known by the retailer to be a res-
 20 ident of this state was purchased from a retailer for storage, use, or other
 21 consumption in this state. This presumption may be controverted by evidence
 22 satisfactory to the state tax commission that the property was not purchased
 23 for storage, use, or other consumption in this state.

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

35 (k) The use tax herein imposed shall not apply to the use by a nonres-
 36 ident of this state of a motor vehicle which is registered or licensed un-
 37 der the laws of the state of his residence and is not used in this state more
 38 than a cumulative period of time totaling ninety (90) days in any consecutive
 39 twelve (12) months, and which is not required to be registered or licensed
 40 under the laws of this state. The use tax herein shall also not apply to any
 41 use of a motor vehicle which is registered or licensed under the laws of the
 42 state of residence of a nonresident student while such nonresident student
 43 is enrolled as a full-time student in an institution of postsecondary educa-
 44 tion that is both physically located in Idaho and recognized as accredited by
 45 the state board of education.

46 (l) The use tax herein imposed shall not apply to the use of household
 47 goods, personal effects and personally owned vehicles or personally owned
 48 aircraft by a resident of this state, or military personnel temporarily as-
 49 signed in this state and spouses who accompany them, if such articles were
 50 acquired by such person in another state while a resident of that state and

1 primarily for use outside this state and if such use was actual and substan-
 2 tial, but if an article was acquired less than three (3) months prior to the
 3 time he entered this state, it will be presumed that the article was acquired
 4 for use in this state and that its use outside this state was not actual and
 5 substantial. For purposes of this subsection, "resident" shall be as de-
 6 fined in section 63-3013 or 63-3013A, Idaho Code.

7 (m) The use tax herein imposed shall not apply to the storage, use or
 8 other consumption of tangible personal property which is or will be incor-
 9 porated into real property and which has been donated to and has become the
 10 property of:

11 (1) A nonprofit organization as defined in section 63-36220, Idaho
 12 Code; or

13 (2) The state of Idaho; or

14 (3) Any political subdivision of the state.

15 This exemption applies whether the tangible personal property is incorpo-
 16 rated in real property by the donee, a contractor or subcontractor of the
 17 donee, or any other person.

18 SECTION 45. That Section 63-3622N, Idaho Code, be, and the same is
 19 hereby amended to read as follows:

20 63-3622N. PRESCRIPTIONS AND MEDICAL EQUIPMENT. ~~(a) There are exempted~~
 21 ~~from the taxes imposed by this chapter: the following when administered or~~
 22 ~~distributed by a practitioner or when purchased by or on behalf of an in-~~
 23 ~~dividual for use by such individual under a prescription or work order of a~~
 24 ~~practitioner:~~

25 ~~(1) Drugs, hypodermic syringes, insulin, insulin syringes, artificial~~
 26 ~~eyes, hearing aids, and hearing aid parts and accessories;~~

27 ~~(2) Drugs and supplies used in hemodialysis and peritoneal dialysis;~~

28 ~~(3) Braces and other orthopedic appliances;~~

29 ~~(4) Dental prostheses and other orthodontic appliances, including~~
 30 ~~fillings;~~

31 ~~(5) Catheters, urinary accessories, colostomy supplies, and other~~
 32 ~~prosthetic devices which shall include, but are not limited to, enteral~~
 33 ~~and parenteral feeding equipment and supplies, (tubing, pumps, con-~~
 34 ~~tainers) catheter devices and supplies, but not including eyeglasses~~
 35 ~~and contact lenses;~~

36 ~~(6) Equipment and devices or chemical reagents which are used to test or~~
 37 ~~monitor blood or urine of a diabetic;~~

38 ~~(7) Other durable medical equipment and devices and related parts and~~
 39 ~~supplies specifically designed for those products which shall include,~~
 40 ~~but are not limited to: oxygen equipment, oxygen cylinders, cylinder~~
 41 ~~transport devices (sheaths, carts), cylinder stands, support devices,~~
 42 ~~regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxy-~~
 43 ~~gen base dispenser, liquid oxygen portable dispenser, oxygen tubing,~~
 44 ~~nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and~~
 45 ~~accessories, respiratory therapy equipment, room humidifiers, aspira-~~
 46 ~~tors, aerosol compressors (stationary and portable), ultrasonic nebu-~~
 47 ~~lizers, volume ventilators, respirators and related device supplies,~~
 48 ~~percussors, vibrators, IPPB, circuits, devices and supplies, air oxy-~~
 49 ~~gen mixers, manual resuscitators, nebulizers, tubing, emergency oxygen~~

1 delivery units, patient care equipment, physical and occupational
 2 therapy items, hospital beds, trapeze bars and bar stand, bed rails,
 3 geriatric chairs, lift recliners, bedside commodes, overbed tables,
 4 patient lifts, patient lift slings, traction stands and pulleys, shower
 5 seating, shower grip bars, raised toilet seats, toilet safety frames,
 6 walking canes, quad canes and accessories, walkers, wheeled walkers,
 7 walker accessories, I.V. stands, crawlers, posture back supports for
 8 seating, posture back supports, wheelchairs, crutches, crutch pads,
 9 tips, grips, restraints, standing frame devices and accessories, hand
 10 exercise equipment and putty, specially designed hand utensils, leg
 11 weights, paraffin baths, hydrocollators, hydrotherm heating pads, com-
 12 munication aids for physically impaired, specialized seating, desks,
 13 work stations, foam wedges, writing and speech aids for the impaired,
 14 dressing aids, button loops and zipper aids, grooming aids, dental
 15 aids, eating and drinking aids, splints, holders, household aids for
 16 the impaired, shampoo trays, reaching aids, foam seating pads, decu-
 17 bitus seating pads, bed pads, fitted stroller, alternating pressure
 18 pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and
 19 sleeping cushions, patient transport devices, boards, stairglides,
 20 lifts in home, transcutaneous nerve stimulators, muscle stimulators
 21 and bone fracture therapy devices

22 (a) Drugs for human consumption, durable medical equipment, mobility
 23 enhancing equipment and prosthetic devices, except eyeglasses and contact
 24 lenses sold with prescription or administered or distributed by a practi-
 25 tioner.

26 (b) The term "practitioner" means a physician, physician assistant,
 27 surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist,
 28 ophthalmologist, nurse practitioner, denturist, orthodontist, audiolo-
 29 gist, hearing aid dealer or fitter or any person licensed by the state under
 30 title 54, Idaho Code, to prescribe, administer or distribute items identi-
 31 fied in subsection (a) of this section.

32 (c) The term "drug" means a drug which is:

33 (1) Defined in section 54-1705, Idaho Code; and

34 (2) Either:

35 (i) Listed in a drug compendia which the state board of pharmacy
 36 requires to be maintained by Idaho licensed pharmacies; or

37 (ii) The use of which requires a prescription under state or fed-
 38 eral law. The term shall not include articles intended for use in
 39 the diagnosis, cure, mitigation, treatment or prevention of dis-
 40 ease in animals other than man.

41 (d) The term "durable medical equipment" means equipment which:

42 (1) Can withstand repeated use;

43 (2) Is primarily and customarily used to serve a medical purpose;

44 (3) Generally is not useful to a person in the absence of illness or in-
 45 jury; and

46 (4) Is appropriate for use in the home.

47 (e) The term "prosthetic device" means a device which replaces a miss-
 48 ing part or function of the human body and shall include any supplies physi-
 49 cally connected to such devices.

1 SECTION 46. That Section 63-3622UU, Idaho Code, be, and the same is
2 hereby amended to read as follows:

3 63-3622UU. PERSONAL PROPERTY TAX ON RENTALS. The taxes imposed by this
4 chapter ~~do not~~ apply to charges for personal property tax added to the rent
5 paid for leases of tangible personal property. ~~This exemption applies if:~~

6 ~~(1) The lessor separately states the charge for property tax to the~~
7 ~~lessee; and~~

8 ~~(2) The amount charged to the lessee is not more than the property tax~~
9 ~~actually paid by the lessor; and~~

10 ~~(3) The lease agreement is for an initial period of one (1) year or~~
11 ~~longer.~~

12 SECTION 47. That Chapter 36, Title 63, Idaho Code, be, and the same is
13 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
14 ignated as Section 63-3622AAA, Idaho Code, and to read as follows:

15 63-3622AAA. EXEMPTION FOR ITEMS FORMERLY NOT INCLUDED IN SALES
16 PRICE. As the state tax commission may prescribe, an exemption may be taken
17 if the retailer has purchased property for some purpose other than resale
18 or rental, has reimbursed his vendor for tax which the vendor is required to
19 pay to the state or has paid the use tax with respect to the property, and has
20 resold or rented the property prior to making any use of the property other
21 than retention, demonstration or display while holding it for sale in the
22 regular course of business. If such an exemption is claimed by the retailer,
23 no refund or credit will be allowed to his vendor with respect to the sale of
24 the property. There is hereby exempt from taxation the following items:

25 (1) The cost of materials used, labor or service cost, losses, or any
26 other expenses.

27 (2) The cost of transportation of the property prior to its sale.

28 (3) The value of a manufacturer's discount coupon is a price reduction
29 coupon presented by a consumer to a retailer upon purchase of a manufac-
30 turer's product, the face value of which may only be reimbursed by the
31 manufacturer to the retailer.

32 (4) Retailer discounts allowed and taken on sales, but only to the ex-
33 tent that such retailer discounts represent price adjustments as opposed to
34 cash discounts offered only as an inducement for prompt payment.

35 (5) Any sums allowed on merchandise accepted in payment of other mer-
36 chandise, provided that this allowance shall not apply to the sale of a "new
37 manufactured home" or a "modular building" as defined herein.

38 (6) The amount charged for property returned by customers when the
39 amount charged therefor is refunded either in cash or credit; but this exclu-
40 sion shall not apply in any instance when the customer, in order to obtain the
41 refund, is required to purchase other property at a price greater than the
42 amount charged for the property that is returned.

43 (7) The amount charged for labor or services rendered in installing or
44 applying the property sold, provided that said amount is stated separately
45 and such separate statement is not used as a means of avoiding imposition of
46 this tax upon the actual sales price of the tangible personal property; ex-
47 cept that charges by a manufactured homes dealer for set up of a manufactured
48 home shall be included in the "sales price" of such manufactured home.

1 (8) The amount of any tax, not including any manufacturers' or im-
 2 porters' excise tax imposed by the United States upon, or with respect to,
 3 retail sales whether imposed upon the retailer or the consumer.

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

8 (10) Delivery and handling charges for transportation of tangible per-
 9 sonal property to the consumer, provided that the transportation is stated
 10 separately and the separate statement is not used as a means of avoiding
 11 imposition of the tax upon the actual sales price of the tangible personal
 12 property; except that charges by a manufactured homes dealer for transporta-
 13 tion of a manufactured home shall be included in the "sales price" of such
 14 manufactured home.

15 (11) Manufacturer's rebate when used at the time of a retail sale as a
 16 down payment on or reduction to the retail sales price of a motor vehicle to
 17 which the rebate applies. A manufacturer's rebate is a cash payment made by
 18 a manufacturer to a consumer who has purchased or is purchasing the manufac-
 19 turer's product from the retailer.

20 (12) The amount of any fee imposed upon an outfitter as defined in sec-
 21 tion 36-2102, Idaho Code, by a governmental entity pursuant to statute for
 22 the purpose of conducting outfitting activities on land or water subject to
 23 the jurisdiction of the governmental entity, provided that the fee is stated
 24 separately and is presented as a use fee paid by the outfitted public to be
 25 passed through to the governmental entity.

26 (13) The amount of any discount or other price reduction on telecommuni-
 27 cations equipment when offered as an inducement to the consumer to commence
 28 or continue telecommunications service, or the amount of any commission or
 29 other indirect compensation received by a retailer or seller as a result of
 30 the consumer commencing or continuing telecommunications service.

31 (14) Forty-five percent (45%) of the sales price of a "new manufactured
 32 home" or a "modular building" as defined in this chapter.

33 (15) Taxes previously paid on amounts represented by accounts found to
 34 be worthless may be credited upon a subsequent payment of the tax provided in
 35 this chapter or, if no such tax is due, refunded. If such accounts are there-
 36 after collected, a tax shall be paid upon the amount so collected.

37 (16) A gratuity or tip received when paid to the service provider of a
 38 meal. The gratuity or tip can be either voluntary or mandatory, but must be
 39 given for the service provided and as a supplement to the service provider's
 40 income.

41 (17) Tangible personal property sold through a vending machine, pro-
 42 vided that tangible personal property when sold at retail for more than
 43 eleven cents (11¢) but less than one dollar and one cent (\$1.01) through a
 44 vending machine shall be deemed to have sold at a sales price equal to one
 45 hundred seventeen percent (117%) of the price, which is paid for such tangi-
 46 ble personal property and/or its component parts including packaging by the
 47 owner or operator of the vending machine and no exemption shall attach.

48 SECTION 48. That Title 63, Idaho Code, be, and the same is hereby
 49 amended by the addition thereto of a NEW CHAPTER, to be known and designated
 50 as Chapter 46, Title 63, Idaho Code, and to read as follows:

CHAPTER 46
STREAMLINED SALES TAX

63-4601. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement" means the streamlined sales and use tax agreement as adopted.

(2) "Commission" means the Idaho state tax commission.

(3) "Sales tax" means the tax levied by section 63-3619, Idaho Code, and local sales taxes levied in accordance with chapter 10, title 50, Idaho Code, and section 67-4718 or 67-4917B, Idaho Code.

(4) "Seller" means any person making sales, leases or rentals of personal property or services.

(5) "State" means any state of the United States and the District of Columbia.

(6) "Use tax" means the tax levied by section 63-3621, Idaho Code, and local sales taxes levied in accordance with chapter 10, title 50, Idaho Code, and section 67-4718 or 67-4917B, Idaho Code.

63-4602. STATEMENT OF FINDINGS AND INTENT. The legislature finds that a simplified sales and use tax system will reduce and, over time, eliminate the burden and cost for all vendors to collect this state's sales and use tax. The legislature further finds that this state should participate in the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

63-4603. DUTIES OF THE COMMISSION. (1) The state tax commission shall provide state level administration of sales and use taxes subject to the state level agreement. The state level administration shall be performed by the state tax commission. Sellers and purchasers are only required to register with, file returns with, and remit funds to the state level authority. The state tax commission shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. The state tax commission shall conduct, or others may be authorized to conduct on its behalf, subject to the provisions of this chapter and chapter 36, title 63, Idaho Code, all audits of the sellers and purchasers for that state's tax and the tax of its local jurisdictions. Except as provided herein, local jurisdictions shall not conduct independent sales or use tax audits of sellers and purchasers.

(2) Nothing in this section prohibits the state tax commission from authorizing audits of taxpayers to be conducted or performed by others on behalf of the state tax commission so long as: (a) the person is conducting the audit for all taxes due and not just for taxes due to a specific local taxing jurisdiction; (b) the person is subject to the same confidentiality provisions, and other protections afforded to a taxpayer, as a person working for the state tax commission; (c) absent fraud, a refund claim filed subsequent to the audit that covers part of the audit period or if by mutual consent, the audit does not cover an audit period already conducted by the state tax commission or another person acting on its behalf; and (d) the audit is subject

1 to the same administrative and appeal procedures granted to audits conducted
2 by the state tax commission.

3 63-4604. STATE AND LOCAL TAX BASES. The tax base for local jurisdic-
4 tions shall be identical to the state tax base unless otherwise prohibited
5 by federal law. This section does not apply to sales or use taxes levied on
6 fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or
7 to electricity, piped natural or artificial gas or other fuels delivered by
8 the seller and the retail sale or transfer of motor vehicles, aircraft, wa-
9 tercraft, modular homes, manufactured homes or mobile homes.

10 63-4605. AGREEMENT NOT TO PREEMPT STATE LAW. No provision of the
11 agreement authorized pursuant to this chapter in whole or in part invali-
12 dates or amends any provision of the laws of this state. Adoption of the
13 agreement by this state does not amend or modify any law of this state.
14 Implementation of any condition of the agreement in this state, whether
15 adopted before, at, or after membership of this state in the agreement, must
16 be by the action of the legislature or by administrative rules of the commis-
17 sion authorized by the legislature.

18 63-4606. SELLER REGISTRATION. (1) The state tax commission shall par-
19 ticipate in an online sales and use tax registration system in cooperation
20 with the other member states. Under this system a seller registering under
21 the streamlined sales tax agreement shall be registered in Idaho. A model 2,
22 model 3, or model 4 seller may elect to be registered in one (1) or more states
23 as a seller which anticipates making no sales into such state(s) if it has
24 not had sales into such state(s) for the preceding twelve (12) months. Such
25 election does not relieve the seller of its agreement pursuant to this chap-
26 ter to collect taxes on all sales into such states or its liability for re-
27 mitting to the proper states any taxes collected. The state tax commission
28 agrees not to require the payment of any registration fees or other charges
29 for a seller to register in a state in which the seller has no legal require-
30 ment to register. A written signature from the seller is not required and an
31 agent may register a seller under uniform procedures adopted by the member
32 states. A seller may cancel its registration under the system at any time un-
33 der uniform procedures adopted by the governing board and cancellation does
34 not relieve the seller of its liability for remitting to the proper states
35 any taxes collected.

36 (2) Nothing in this section shall be construed to relieve a seller of
37 any legal obligation it may have under a state's laws to register in that
38 state or its obligation to collect and remit taxes for at least thirty-six
39 (36) months in a state and meet all other requirements for amnesty set out
40 in this chapter in order to be eligible for amnesty in such state. Sellers
41 registered under the streamlined sales tax agreement shall be registered in
42 Idaho as follows:

43 (a) Model 1 sellers will be automatically registered in Idaho.

44 (b) Model 2, model 3 and model 4 sellers will be automatically regis-
45 tered in the state of Idaho but may elect to be registered as a seller
46 which anticipates making no sales into the state of Idaho.

1 (3) Upon registration, the state tax commission shall provide to the
 2 seller information regarding the requirements and options for filing a sim-
 3 plified electronic return and for filing remittances in any member state.
 4 The state tax commission may provide information to sellers concerning
 5 other tax return filing options in the state of Idaho. The state tax com-
 6 mission shall cause the system for registering under the streamlined sales
 7 tax agreement to include a feature that allows sellers registered under the
 8 agreement to update relevant registration data in the system and have such
 9 updated data provided to all member states.

10 63-4607. NOTICE FOR STATE TAX CHANGES. (1) The state tax commission
 11 shall lessen the difficulties faced by sellers when there is a change in
 12 Idaho's state sales or use tax rate or base by making a reasonable effort to
 13 do all of the following:

14 (a) Provide sellers with as much advance notice as practicable of a rate
 15 change;

16 (b) Limit the effective date of a rate change to the first day of a cal-
 17 endar quarter; and

18 (c) Notify sellers of legislative changes in the tax base and amend-
 19 ments to sales and use tax rules.

20 (2) Failure of a seller to receive notice or failure of a member state to
 21 provide notice or limit the effective date of a rate change shall not relieve
 22 the seller of its obligation to collect sales or use taxes for Idaho.

23 (3) If Idaho fails to provide for at least thirty (30) days between the
 24 enactment of the statute providing for a rate change and the effective date
 25 of such rate change, the seller shall be relieved of liability for failing to
 26 collect tax at the new rate if:

27 (a) The seller collected tax at the immediately preceding effective
 28 rate; and

29 (b) The seller's failure to collect at the newly effective rate does
 30 not extend beyond thirty (30) days after the date of enactment of the new
 31 rate.

32 (4) If the state tax commission establishes the seller fraudulently
 33 failed to collect at the new rate or solicits purchasers based on the immedi-
 34 ately preceding effective rate this relief does not apply.

35 (5) The state tax commission may provide for relief of liability for
 36 failing to collect tax as a result of a tax change beyond the liability relief
 37 required by this section.

38 63-4608. LOCAL RATE AND BOUNDARY CHANGES. Local jurisdictions in
 39 Idaho that levy a sales or use tax shall:

40 (1) Provide that local rate changes will be effective only on the first
 41 day of a calendar quarter after a minimum of sixty (60) days' notice to sell-
 42 ers. Apply local sales tax rate changes to purchases from printed catalogs
 43 wherein the purchaser computed the tax based upon local tax rates published
 44 in the catalog only on the first day of a calendar quarter after a minimum of
 45 one hundred twenty (120) days' notice to sellers. For sales and use tax pur-
 46 poses only, apply local jurisdiction boundary changes only on the first day
 47 of a calendar quarter after a minimum of sixty (60) days' notice to sellers.

1 (2) Provide and maintain a database that describes boundary changes for
2 all taxing jurisdictions. This database shall include a description of the
3 change and the effective date of the change for sales and use tax purposes.

4 (3) Provide and maintain a database of all sales and use tax rates for
5 all of the jurisdictions levying taxes within the state. For the identifi-
6 cation of states, counties, cities and taxing districts, codes correspond-
7 ing to the rates must be provided according to federal information process-
8 ing standards (FIPS) as developed by the national institute of standards and
9 technology. For the identification of all other jurisdictions, codes corre-
10 sponding to the rates must be in the format determined by the governing board
11 of the streamlined sales tax agreement.

12 (4) Provide and maintain a database that assigns each five-digit and
13 nine-digit zip code within Idaho to the proper tax rates and jurisdictions.
14 The state tax commission must apply the lowest combined tax rate imposed
15 in the zip code area if the area includes more than one (1) tax rate in any
16 level of taxing jurisdictions. If a nine-digit zip code designation is not
17 available for a street address or if a seller or CSP is unable to determine
18 the nine-digit zip code designation applicable to a purchase after exercis-
19 ing due diligence to determine the designation, the seller or CSP may apply
20 the rate for the five-digit zip code area. For the purposes of this section,
21 there is a rebuttable presumption that a seller or CSP has exercised due
22 diligence if the seller has attempted to determine the nine-digit zip code
23 designation by utilizing software approved by the governing board of the
24 streamlined sales tax agreement that makes this designation from the street
25 address and the five-digit zip code applicable to a purchase.

26 (5) Have the option of providing address-based boundary database
27 records for assigning taxing jurisdictions and their associated rates
28 which shall be in addition to the requirements of subsection (6) of this
29 section. The database records must be in the same approved format as the
30 database records pursuant to subsection (6) of this section, and must meet
31 the requirements developed pursuant to the federal mobile telecommunica-
32 tions sourcing act (4 U.S.C.A. Sec. 119(a)). The state tax commission may
33 require sellers that register under the streamlined sales tax agreement to
34 use an address-based database provided by the state tax commission. If any
35 member state of the streamlined sales tax agreement develops address-based
36 assignment database records pursuant to the agreement, a seller or CSP may
37 use those database records in place of the five- and nine-digit zip code
38 database records provided for in subsection (6) of this section. If a seller
39 or CSP is unable to determine the applicable rate and jurisdiction using an
40 address-based database record after exercising due diligence, the seller or
41 CSP may apply the nine-digit zip code designation applicable to a purchase.
42 If a nine-digit zip code designation is not available for a street address or
43 if a seller or CSP is unable to determine the nine-digit zip code designation
44 applicable to a purchase after exercising due diligence to determine the
45 designation, the seller or CSP may apply the rate for the five-digit zip code
46 area. For the purposes of this section, there is a rebuttable presumption
47 that a seller or CSP has exercised due diligence if the seller or CSP has
48 attempted to determine the tax rate and jurisdiction by utilizing software
49 approved by the governing board that makes this assignment from the address
50 and zip code information applicable to the purchase.

(6) States that have met the requirements of subsection (5) may also elect to certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database records pursuant to this section and must meet the requirements developed pursuant to the federal mobile telecommunications sourcing act (4 U.S.C.A. Sec. 119 (a)). If a state certifies a vendor address-based database, a seller or CSP may use that database in place of the database provided for in subsection (5) of this section. Vendors providing address-based databases may request certification of their databases from the governing board. Certification by the governing board does not replace the requirement that the databases be certified by the states individually.

(7) Make databases provided pursuant to subsections (4) and (5) of this section available to a seller or CSP by the first day of the month prior to the first day of a calendar quarter. Databases must be in a format approved by the governing board of the streamlined sales tax agreement and the state tax commission and available on the state tax commission's website or other location determined by the governing board of the streamlined sales tax agreement.

63-4609. RELIEF FROM CERTAIN LIABILITY. The state tax commission shall relieve sellers and CSPs using databases pursuant to section 63-4608, Idaho Code, from liability to Idaho, and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions pursuant to section 63-4608, Idaho Code, may cease providing liability relief for errors resulting from the reliance on the database provided by the member state under the provisions of section 63-4608, Idaho Code. If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, the state tax commission and the governing board of the streamlined sales tax agreement may extend the relief from liability to such seller for a designated period of time.

63-4610. DATABASE REQUIREMENTS AND EXCEPTIONS. The electronic databases provided for in section 63-4608, Idaho Code, shall be in a downloadable format approved by the governing board of the streamlined sales tax agreement. The databases may be directly provided by the state tax commission or provided by a vendor as designated by the state tax commission. A database provided by a vendor as designated by the state tax commission shall be applicable to and subject to all the provisions of sections 63-4608 and 63-4609, Idaho Code, and this section. These databases must be provided at no cost to the user of the database. The provisions of section 63-4608, Idaho Code, do not apply when the purchased product is received by the purchaser at the business location of the seller. The databases provided by section 63-4608, Idaho Code, are not a requirement of the state tax commission prior to entering into the agreement which is July 1, 2013. A seller that did not have a requirement to register in a state prior to registering pursuant to this agreement or a CSP shall not be required to collect sales or use taxes

1 for a state until the first day of the calendar quarter commencing more than
 2 sixty (60) days after the state tax commission has provided the databases
 3 required by section 63-4608, Idaho Code. Provided, for the initial imple-
 4 mentation of the agreement pursuant to this chapter, a CSP shall be required
 5 to collect sales or use taxes for the state tax commission, subject to the
 6 provisions of this chapter pursuant to the terms of the operating agreement
 7 entered into between the CSP and the governing board of the streamlined sales
 8 tax agreement in order to provide adequate time for testing and loading of
 9 the databases.

10 63-4611. STATE AND LOCAL TAX RATES. For purposes of the streamlined
 11 sales tax, the state of Idaho shall not have multiple state sales and use tax
 12 rates on items of personal property or services, except that Idaho may impose
 13 a single additional rate, which may be zero, on food and food ingredients and
 14 drugs as defined by chapter 36, title 63, Idaho Code, pursuant to the stream-
 15 lined sales tax agreement. In addition, if federal law prohibits the im-
 16 position of a local tax on a product that is subject to state tax, the state may
 17 impose an additional rate on such product, provided such rate achieves tax
 18 parity for similar products. Local jurisdictions in Idaho that levy a sales
 19 or use tax shall not have more than one (1) local sales tax rate or more than
 20 one (1) local use tax rate per local jurisdiction. If the local jurisdic-
 21 tion levies both a sales tax and use tax, the local rates must be identical.
 22 The provisions of this section do not apply to sales or use taxes levied on
 23 fuel used to power motor vehicles, aircraft, locomotives, or watercraft, or
 24 to electricity, piped natural or artificial gas, or other fuels delivered by
 25 the seller, or the retail sale or transfer of motor vehicles, aircraft, wa-
 26 tercraft, modular homes, manufactured homes or mobile homes.

27 63-4612. APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM
 28 THE RULES. The state tax commission shall require sellers to source the re-
 29 tail sale of a product in accordance with sections 63-4613 and 63-4614, Idaho
 30 Code. Except as provided in section 63-4614, Idaho Code, the provisions of
 31 section 63-4613, Idaho Code, apply to all sales regardless of the charac-
 32 terization of a product as tangible personal property, a digital good, or a
 33 service. Except as otherwise provided in this chapter and chapter 36, title
 34 63, Idaho Code, the provisions of sections 63-4613 and 63-4614, Idaho Code,
 35 only apply to determine a seller's obligation to pay or collect and remit a
 36 sales or use tax with respect to the seller's retail sale of a product. These
 37 provisions do not affect the obligation of a purchaser or lessee to remit tax
 38 on the use of the product to the taxing jurisdictions of that use. Sections
 39 63-4613 and 63-4614, Idaho Code, do not apply to sales or use taxes levied on
 40 the following:

41 (1) The retail sale or transfer of watercraft, modular homes, manufac-
 42 tured homes, or mobile homes. These items must be sourced according to rules
 43 of the state tax commission.

44 (2) The retail sale, excluding lease or rental of motor vehicles,
 45 trailers, semi-trailers or aircraft that do not qualify as transportation
 46 equipment as defined in section 63-4613, Idaho Code. The retail sale of
 47 these items shall be sourced according to the rules of the state tax com-

mission and the lease or rental items must be sourced according to section 63-4613, Idaho Code.

(3) Telecommunications services and ancillary services as set out in section 63-4616, Idaho Code, and internet access service shall be sourced in accordance with section 63-4615, Idaho Code.

(4) Florist sales as defined by chapter 36, title 63, Idaho Code, and such sales must be sourced according to those provisions.

(5) The retail sales of products and services qualifying as direct mail shall be sourced in accordance with section 63-4614, Idaho Code.

63-4613. GENERAL SOURCING RULES. (1) Except as provided in section 63-4614, Idaho Code, the retail sale, excluding the lease or rental of a product shall be sourced as follows:

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

(b) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt 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 by the seller.

(c) When subsection (1) (a) and (b) do 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), (b) and (c) of this section do 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 rules of subsection (1) (a), (b), (c) or (d) of this section apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good 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 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 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

1 does not constitute bad faith. The property location shall not be al-
 2 tered by intermittent use at different locations, such as use of busi-
 3 ness property that accompanies employees on business trips and service
 4 calls.

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

8 (c) This subsection does not affect the imposition or computation of
 9 sales or use tax on leases or rentals based on a lump sum or accelerated
 10 basis, or on the acquisition of property for lease.

11 (3) The lease or rental of motor vehicles, trailers, semi-trailers or
 12 aircraft that do not qualify as transportation equipment as defined in sub-
 13 section (4) of this section, shall be sourced as follows:

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

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

23 (c) This subsection does not affect the imposition or computation of
 24 sales or use tax on leases or rentals based on a lump sum or accelerated
 25 basis, or on the acquisition of property for lease.

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

31 (a) Locomotive and railcars that are utilized for the carriage of per-
 32 sons or property in interstate commerce.

33 (b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR)
 34 of ten thousand one (10,001) pounds or greater, trailers, semi-trailers
 35 or passenger buses that are:

36 (i) Registered through the international registration plan; and

37 (ii) Operated under authority of a carrier authorized and certi-
 38 ficated by the United States department of transportation or an-
 39 other federal authority to engage in the carriage of persons or
 40 property in interstate or foreign commerce.

41 (c) Aircraft that are operated by air carriers authorized and certifi-
 42 cated by the United States department of transportation or another fed-
 43 eral or foreign authority to engage in the carriage of persons or prop-
 44 erty in interstate or foreign commerce.

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

48 63-4614. ELECTION FOR ORIGIN-BASED SOURCING. (1) The state tax com-
 49 mission may promulgate rules to source the retail sale of tangible personal

1 property and digital goods pursuant to the provisions of this section in lieu
2 of the provisions of subsection (1) (b), (c) and (d) of section 63-4613, Idaho
3 Code, if they comply with the provisions of subsection (4) of this section,
4 and the only exception to section 63-4613, Idaho Code, is the exception pro-
5 vided for in subsection (2) of this section.

6 (2) The state tax commission may promulgate rules to source retail
7 sales, excluding lease or rental of tangible personal property of digital
8 goods to the location where the order is received by the seller if:

9 (a) The order is received in the same state by the seller where receipt
10 of the product by the purchaser (or the purchaser's donee, designated as
11 such by the purchaser) occurs;

12 (b) Location where receipt of the product by the purchaser occurs is de-
13 termined pursuant to section 63-4613 (1) (b), (c) and (d), Idaho Code;
14 and

15 (c) At the time the order is received, the recordkeeping system of the
16 seller used to calculate the proper amount of sales or use tax to be im-
17 posed captures the location where the order is received.

18 (3) If the state tax commission promulgates rules electing to source
19 sales pursuant to this section, the rules shall comply with all of the fol-
20 lowing:

21 (a) When the location where the order is received by the seller and the
22 location where the receipt of the product by the purchaser (or the pur-
23 chaser's donee, designated as such by the purchaser) occurs as deter-
24 mined pursuant to section 63-4613 (1) (b), (c) and (d), Idaho Code, are in
25 different states, the sale must be sourced pursuant to the provisions of
26 section 63-4613, Idaho Code.

27 (b) When the sale is sourced pursuant to this section to the location
28 where the order is received by the seller, only the sales tax for the lo-
29 cation where the order is received by the seller may be levied. No addi-
30 tional sales or use tax based on the location where the product is deliv-
31 ered to the purchaser may be levied on that sale. The purchaser shall
32 not be entitled to any refund if the combined state and local rate or
33 rates at the location where the product is received by the purchaser is
34 lower than the rate where the order is received by the seller.

35 (c) The state tax commission may not require a seller to utilize a
36 recordkeeping system that captures the location where an order is re-
37 ceived to calculate the proper amount of sales or use tax to be imposed.

38 (d) A purchaser shall have no additional liability to the state tax com-
39 mission for tax, penalty or interest on a sale for which the purchaser
40 remits tax to the seller in the amount invoiced by the seller if such in-
41 voice amount is calculated at either the rate applicable to the location
42 where receipt by the purchaser occurs or at the rate applicable to the
43 location where the order is received by the seller. A purchaser may rely
44 on a written representation by the seller as to the location where the
45 order for such sale was received by the seller. When the purchaser does
46 not have a written representation by the seller as to the location where
47 the order for such sale was received by the seller, the purchaser may use
48 a location indicated by a business address for the seller that is avail-
49 able from the business records of the purchaser that are maintained in

1 the ordinary course of the purchaser's business to determine the rate
2 applicable to the location where the order was received.

3 (e) The location where the order is received by or on behalf of the
4 seller means the physical location of a seller or third party such as
5 an established outlet, office location or automated order receipt sys-
6 tem operated by or on behalf of the seller where an order is initially
7 received by or on behalf of the seller and not where the order may be
8 subsequently accepted, completed or fulfilled. An order is received
9 when all of the information from the purchaser necessary to the deter-
10 mination of whether the order can be accepted has been received by or on
11 behalf of the seller. The location from which a product is shipped shall
12 not be used in determining the location where the order is received by
13 the seller.

14 (f) The state tax commission shall provide for direct pay permits pur-
15 suant to section 63-4632, Idaho Code, and the requirements of this sub-
16 section. Purchasers that remit sales and use tax pursuant to such a per-
17 mit shall remit tax at the rate in effect for the location where receipt
18 of the product by the purchaser occurs or the product is first used as
19 determined by state law. The state tax commission may establish reason-
20 able thresholds at which level the state tax commission will consider
21 direct pay applications, provided the threshold must be based upon pur-
22 chases with no distinction between taxable and nontaxable purchases.
23 The state tax commission shall establish a process for application for
24 a direct pay permit as provided herein. The state tax commission may re-
25 quire the applicant to demonstrate:

26 (i) Ability to comply with chapter 36, title 63, Idaho Code;

27 (ii) A showing of a business purpose for seeking direct payment
28 permit and how the permit will benefit tax compliance; and

29 (iii) Proof of good standing under the tax laws of Idaho.

30 The state tax commission shall review all permit applications in a
31 timely manner so that applicants receive notification of authorization
32 or denial within one hundred twenty (120) days. The state tax commis-
33 sion shall not limit a direct pay applicant to businesses engaged in
34 manufacturing or businesses that do not know the ultimate use of the
35 product at the time of the purchase.

36 (g) When taxable services sold with tangible personal property or dig-
37 ital products pursuant to a single contract or in the same transaction,
38 are billed on the same billing statement(s), and because of the appli-
39 cation of this section would be sourced to different jurisdictions,
40 the state tax commission shall elect either origin sourcing or desti-
41 nation sourcing to determine a single situs for that transaction. Such
42 election by the state tax commission is required until such time as the
43 governing board of the streamlined sales tax agreement adopts a uniform
44 methodology to address such sales.

45 (h) If the state tax commission elects to source the sale of tangible
46 personal property and digital goods pursuant to the provisions of this
47 section, it shall inform the governing board of the streamlined sales
48 tax agreement of such election.

1 (4) Compliance with the provisions of this section shall satisfy the
 2 state tax commission's eligibility for membership in the streamlined sales
 3 tax agreement as follows:

4 (a) If the state tax commission is in substantial compliance with each
 5 of the provisions of the streamlined sales tax agreement other than
 6 sourcing of sales and tangible personal property and digital goods as
 7 provided in section 63-4613, Idaho Code, and elects to source sales of
 8 tangible personal property and digital goods pursuant to this section,
 9 the state tax commission may become an associate member state in the
 10 same manner as provided for states to become full member states pursuant
 11 to the streamlined sales tax agreement.

12 (b) If the state tax commission becomes an associate member state pur-
 13 suant to this section, it shall not become a full member state, provided
 14 that at least five (5) states which were not full member states on De-
 15 cember 31, 2007, have been found to be in substantial compliance with
 16 each of the provisions of the streamlined sales tax agreement other than
 17 sourcing sales of tangible personal property and digital goods pursuant
 18 to section 63-4613, Idaho Code, and have notified the governing board
 19 of an election pursuant to subsection (3) (h) of this section to source
 20 sales pursuant to this section and have been found to be in substantial
 21 compliance with the provisions of this section.

22 63-4615. GENERAL SOURCING DEFINITIONS. For purposes of subsection
 23 (1) of section 63-4613, Idaho Code, the terms "receive" and "receipt" mean
 24 taking possession of tangible personal property, making first use of ser-
 25 vices, or taking possession or making first use of digital goods, whichever
 26 comes first. The terms "receive" and "receipt" do not include possession by
 27 a shipping company on behalf of the purchaser.

28 63-4616. DIRECT MAIL SOURCING. (1) Notwithstanding sections 63-4613
 29 and 63-4614, Idaho Code, the following provisions apply to sales of "adver-
 30 tising and promotional direct mail":

31 (a) A purchaser of "advertising and promotional direct mail" may pro-
 32 vide the seller with either:

33 (i) A direct pay permit;

34 (ii) An agreement certificate of exemption claiming "direct mail"
 35 or other written statement approved, authorized or accepted by the
 36 state tax commission; or

37 (iii) Information showing the jurisdictions to which the "adver-
 38 tising and promotional direct mail" is to be delivered to recipi-
 39 ents.

40 (b) If the purchaser provides the permit, certificate or statement re-
 41 ferred to in subsection (1) (a) (i) or (ii) of this section, the seller,
 42 in the absence of bad faith, is relieved of all obligations to collect,
 43 pay or remit any tax on any transaction involving "advertising and pro-
 44 motional direct mail" to which the permit, certificate or statement
 45 applies. The purchaser shall source the sale to the jurisdictions to
 46 which the "advertising and promotional direct mail" is to be delivered
 47 to the recipients and shall report and pay any applicable tax due.

(c) If the purchaser provides the seller information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of "advertising and promotional direct mail" where the seller has sourced the sale according to the delivery information provided by the purchaser.

(d) If the purchaser does not provide the seller with any of the items listed in subsection (1) (a) (i), (ii) or (iii) of this section, the sale shall be sourced according to section 63-4613(1) (e), Idaho Code. The state to which the "advertising and promotional direct mail" is delivered may disallow credit for tax paid on sales sourced under this subsection.

(2) Notwithstanding sections 63-4613 and 63-4614, Idaho Code, the following provisions apply to sales of "other direct mail":

(a) Except as otherwise provided in this subsection, sales of "other direct mail" are sourced in accordance with subsection (1) (c) of section 63-4613, Idaho Code.

(b) A purchaser of "other direct mail" may provide the seller with either a direct pay permit or an agreement certificate of exemption claiming "direct mail" or other written statement approved, authorized or accepted by the state tax commission.

(c) If the purchaser provides the permit, certificate or statement referred to in subsection (2) (b) of this section, the seller in the absence of bad faith is relieved of all obligations to collect, pay, or remit any tax on any transaction involving "other direct mail" to which the permit, certificate or statement applies. Notwithstanding subsection (2) (a) of this section, the sale shall be sourced to the jurisdictions to which "other direct mail" is to be delivered to the recipients, and the purchaser shall report and pay applicable tax due.

(3) For purposes of this section:

(a) "Advertising and promotional direct mail" means: printed material that meets the definition of "direct mail" in chapter 36, title 63, Idaho Code, or this chapter and the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically or a service.

(b) "Other direct mail" means any direct mail that is not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. The term includes, but is not limited to, transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices; any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and other nonpromotional direct mail delivered to existing or former shareholders, customers,

employees, or agents including, but not limited to, newsletters and informational pieces. "Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental.

(4) This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of "direct mail." This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether "advertising and promotional direct mail" is included in the same mailing. If a transaction is a "bundled transaction" that includes "advertising and promotional direct mail," this section applies only if the primary purpose of the transaction is the sale of products or services that meet the definition of "advertising and promotional direct mail."

(5) Nothing in this section shall limit any purchaser's: obligation for sales or use tax to any state to which the direct mail is delivered; right under local, state, federal or constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions; or right to a refund of sales or use taxes overpaid to any jurisdiction. This section applies for purposes of uniformly sourcing "direct mail" transactions and does not impose requirements on states regarding the taxation of products that meet the definition of "direct mail" or to the application of sales for resale or other exemptions.

63-4617. ELECTION FOR ORIGIN-BASED DIRECT MAIL SOURCING. Notwithstanding sections 63-4613, 63-4614 and 63-4616, Idaho Code, the state tax commission by rule may elect to source the sale of all direct mail delivered or distributed from a location within the state and delivered or distributed to a location within the state pursuant to the provisions of this section.

(2) If the purchaser provides the seller with a direct pay permit or an agreement certificate of exemption claiming direct mail, or other written statement approved, authorized or accepted by the state, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit the applicable tax on any transaction involving "direct mail." The purchaser must report and pay any applicable tax due. An agreement certificate of exemption claiming direct mail shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(3) Except as provided in subsection (2) and in the second sentence of this subsection, the seller shall collect the tax according to subsection (1)(e) of section 63-4613, Idaho Code. To the extent the seller knows that a portion of the sale of direct mail will be delivered or distributed to a location in another state, the seller shall collect the tax on that portion according to section 63-4616, Idaho Code.

(4) Notwithstanding subsection (3) of this section, a seller may elect to use the provisions of section 63-4616, Idaho Code, to source all sales of "advertising and promotional direct mail."

(5) Nothing in this section limits a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered, except that a purchaser whose direct mail is sourced pursuant to the first sentence of

1 subsection (3) of this section shall owe no additional sales or use tax to
 2 that state based on where the purchaser uses or delivers the direct mail in
 3 the state.

4 (6) If the state tax commission promulgates a rule that elects to source
 5 the sale of direct mail pursuant to the provisions of this section, it shall
 6 inform the governing board in writing at least sixty (60) days prior to the
 7 beginning of the calendar quarter in which such election begins.

8 63-4618. TELECOMMUNICATION AND RELATED SERVICES SOURCING
 9 RULE. (1) Except for the defined telecommunication services in subsection
 10 (3) of this section, the sale of telecommunication service sold on a
 11 call-by-call basis shall be sourced to:

12 (a) Each level of taxing jurisdiction where the call originates and ter-
 13 minates in that jurisdiction; or

14 (b) Each level of taxing jurisdiction where the call either originates
 15 or terminates and in which the service address is also located.

16 (2) Except for the defined telecommunication services in subsection
 17 (3) of this section, a sale of telecommunications services sold on a basis
 18 other than a call-by-call basis, is sourced to the customer's place of pri-
 19 mary use.

20 (3) The sale of the following telecommunication services shall be
 21 sourced to each level of taxing jurisdiction as follows:

22 (a) A sale of mobile telecommunications services other than air-to-
 23 ground radiotelephone service and prepaid calling service, is sourced
 24 to the customer's place of primary use as required by the mobile
 25 telecommunications sourcing act.

26 (b) A sale of post-paid calling service is sourced to the origination
 27 point of the telecommunications signal as first identified by either:

28 (i) The seller's telecommunications system; or

29 (ii) Information received by the seller from its service provider,
 30 where the system used to transport such signals is not that of the
 31 seller.

32 (c) A sale of prepaid calling service or a sale of a prepaid wireless
 33 calling service is sourced in accordance with section 63-4613, Idaho
 34 Code. Provided however, in the case of a sale of prepaid wireless call-
 35 ing service, the rule provided in subsection (1) (e) of section 63-4613,
 36 Idaho Code, shall include as an option the location associated with the
 37 mobile telephone number.

38 (d) A sale of a private communication service is sourced as follows:

39 (i) Service for a separate charge related to a customer channel
 40 termination point is sourced to each level of jurisdiction in
 41 which such customer channel termination point is located.

42 (ii) Service where all customer termination points are located
 43 entirely within one (1) jurisdiction or levels of jurisdiction is
 44 sourced in such jurisdiction in which the customer channel termi-
 45 nation points are located.

46 (iii) Service for segments of a channel between two (2) customer
 47 channel termination points located in different jurisdictions and
 48 which segments of channel are separately charged is sourced fifty

percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(e) The sale of internet access service is sourced to the customer's place of primary use.

(f) The sale of an ancillary service is sourced to the customer's place of primary use.

63-4619. TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE DEFINITIONS. (1) For the purpose of section 63-4618, Idaho Code, the following definitions apply:

(a) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services" including, but not limited to, "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(c) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(d) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(e) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under this chapter. "Customer" does not include a re-seller of telecommunications service or, for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(f) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(g) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(h) "Home service provider" means the same as that term is defined in section 124(5) of Public Law 106-252 (mobile telecommunications sourcing act).

(i) "Mobile telecommunications service" means the same as that term is defined in section 124(7) of Public Law 106-252 (mobile telecommunications sourcing act).

(j) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(k) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

(l) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(m) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(n) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(o) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known, "service address" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If the location above is not known, the service address means the location of the customer's place of primary use.

63-4620. ENACTMENT OF EXEMPTIONS. (1) The legislature shall enact entity-based, use-based and product-based exemptions in accordance with the provisions of this section and shall utilize common definitions in accordance with the provisions of this chapter and the definitions in chapter 36, title 63, Idaho Code.

1 (2) The legislature may enact a product-based exemption without re-
2 striction if the definitions in chapter 36, title 63, Idaho Code, does
3 not have a definition for such product. The legislature may enact a prod-
4 uct-based exemption for a product if chapter 36, title 63, Idaho Code, has
5 a definition for such product and the state tax commission utilizes, in the
6 exemption, the product definition in a manner consistent with chapter 36,
7 title 63, Idaho Code, and the provisions of this chapter. The legislature
8 may enact a product-based exemption exempting all items included within a
9 definition in chapter 36, title 63, Idaho Code, but shall not exempt specific
10 items included within the product definition unless the product definition
11 sets out an exclusion for such item.

12 (3) The legislature may enact an entity-based or a use-based exemption
13 for a product without restriction if chapter 36, title 63, Idaho Code, does
14 not have a definition for such product. The legislature may enact an en-
15 tity-based or a use-based exemption for a product if chapter 36, title 63,
16 Idaho Code, has a definition for such product and the member state utilizes,
17 in the exemption, the product definition in a manner consistent with chapter
18 36, title 63, Idaho Code, and the provisions of this chapter. The legisla-
19 ture may enact an entity-based exemption for an item if chapter 36, title 63,
20 Idaho Code, does not have a definition for such item but has a definition for
21 a product that includes such item. The legislature may not enact a use-based
22 exemption for an item which effectively constitutes a product-based exemp-
23 tion if chapter 36, title 63, Idaho Code, has a definition for a product that
24 includes such item. The legislature may enact a use-based exemption for an
25 item if chapter 36, title 63, Idaho Code, has a definition for a product that
26 includes such item, if not prohibited in this subsection and if consistent
27 with the definition in chapter 36, title 63, Idaho Code. For purposes of
28 complying with the requirements in this section, the inclusion of a product
29 within the definition of "tangible personal property" is disregarded.

30 63-4621. ADMINISTRATION OF EXEMPTIONS. (1) The state tax commission
31 shall observe the following provisions when a purchaser claims an exemption:

32 (a) The seller shall obtain identifying information of the purchaser
33 and the reason for claiming a tax exemption at the time of the purchase
34 as determined by the governing board.

35 (b) A purchaser is not required to provide a signature to claim an ex-
36 emption from tax unless a paper exemption certificate is used.

37 (c) The seller shall use the standard form for claiming an exemption
38 electronically as adopted by the state tax commission.

39 (d) The seller shall obtain the same information for proof of a claimed
40 exemption regardless of the medium in which the transaction occurred.

41 (e) The state tax commission may utilize a system wherein the purchaser
42 exempt from the payment of the tax is issued an identification number
43 that shall be presented to the seller at the time of the sale.

44 (f) The seller shall maintain proper records of exempt transactions and
45 provide them to the state tax commission when requested.

46 (g) The state tax commission shall administer use-based and en-
47 tity-based exemptions when practicable through a direct pay permit, an
48 exemption certificate, or another means that does not burden sellers.

1 (h) In the case of drop shipment sales, the state tax commission must
2 allow a third party vendor (e.g., drop shipper) to claim a resale ex-
3 emption based on an exemption certificate provided by its customer/re-
4 seller or any other acceptable information available to the third party
5 vendor evidencing qualification for a resale exemption, regardless of
6 whether the customer/re-seller is registered to collect and remit sales
7 and use tax in the state where the sale is sourced.

8 (2) The state tax commission shall relieve sellers that follow the re-
9 quirements of this section from the tax otherwise applicable if it is deter-
10 mined that the purchaser improperly claimed an exemption and to hold the pur-
11 chaser liable for the nonpayment of tax. This relief from liability does not
12 apply to a seller who fraudulently fails to collect tax; to a seller who so-
13 licits purchasers to participate in the unlawful claim of an exemption; to
14 a seller who accepts an exemption certificate when the purchaser claims an
15 entity-based exemption when the subject of the transaction sought to be cov-
16 ered by the exemption certificate is actually received by the purchaser at a
17 location operated by the seller and the state in which that location resides
18 provides an exemption certificate that clearly and affirmatively indicates
19 (graying out exemption reason types on the uniform form and posting it on the
20 state tax commission's website is an indicator) that the claimed exemption
21 is not available in Idaho.

22 (3) The state tax commission shall relieve a seller of the tax otherwise
23 applicable if the seller obtains a fully completed exemption certificate or
24 captures the relevant data elements required under the streamlined sales tax
25 agreement within ninety (90) days subsequent to the date of sale. The state
26 tax commission may provide, by rule, for a period longer than ninety (90)
27 days for the seller to obtain necessary information.

28 (4) If the seller has not obtained an exemption certificate or all rel-
29 evant data elements as provided in subsection (3) of this section the state
30 tax commission shall provide the seller with one hundred twenty (120) days
31 subsequent to a request for substantiation by a member state, to either:

32 (a) Obtain a fully completed exemption certificate from the purchaser,
33 taken in good faith, which means that the seller obtain a certificate
34 that claims an exemption that:

35 (i) Was statutorily available on the date of the transaction in the
36 jurisdiction where the transaction is sourced;

37 (ii) Could be applicable to the item being purchased; and

38 (iii) Is reasonable for the purchaser's type of business; or

39 (b) Obtain other information establishing that the transaction was not
40 subject to the tax. The state tax commission may provide for a period
41 longer than one hundred twenty (120) days for sellers to obtain the nec-
42 essary information.

43 (5) If the seller obtains the information described in subsection
44 (4) (a) of this section, the state tax commission shall relieve the seller of
45 any liability for the tax on the transaction unless it is discovered through
46 the audit process that the seller had knowledge or had reason to know at
47 the time such information was provided that the information relating to the
48 exemption claimed was materially false or the seller otherwise knowingly
49 participated in activity intended to purposefully evade the tax that is
50 properly due on the transaction. The state must establish that the seller

1 had knowledge or had reason to know at the time the information was provided
2 that the information was materially false.

3 (6) Nothing in this section shall affect the ability of member states to
4 require purchasers to update exemption certificate information or to reap-
5 ply with the state to claim certain exemptions.

6 (7) The state tax commission shall relieve a seller of the tax oth-
7 erwise applicable if it obtains a blanket exemption certificate from a
8 purchaser with which the seller has a recurring business relationship.
9 Notwithstanding the provisions of subsection (6) of this section, the state
10 tax commission may not request from the seller renewal of blanket certifi-
11 cates or updates of exemption certificate information or data elements when
12 there is a recurring business relationship between the buyer and seller. For
13 purposes of this section a recurring business relationship exists when a pe-
14 riod of no more than twelve (12) months elapses between sales transactions.

15 (8) The state tax commission shall post on its website the uniform paper
16 exemption certificate (streamlined sales and use tax exemption certificate)
17 as revised and adopted by the governing board, with any applicable graying
18 out of nonapplicable exemption types pursuant to this section and rules of
19 the state tax commission.

20 63-4622. UNIFORM TAX RETURNS. (1) The state tax commission shall:

21 (a) Require that only a single tax return for each taxing period for
22 each seller be filed with the state tax commission to include all the
23 taxing jurisdictions within Idaho.

24 (b) Require that returns be due no sooner than the twentieth day of the
25 month following the month in which the transaction occurred and when the
26 due date for a return falls on a Saturday or Sunday or legal holiday in
27 the subject member state, the return shall be due on the next succeeding
28 business day. If the return is filed in conjunction with a remittance
29 and the remittance cannot be made pursuant to section 63-4623, Idaho
30 Code, the return shall be accepted as timely filed on the same day as the
31 remittance under that section.

32 (c) Make available to all sellers, whether or not registered under the
33 agreement, except sellers of products qualifying for exclusion from the
34 provisions of section 63-4612, Idaho Code, a simplified return that is
35 filed electronically as follows:

36 (i) The simplified electronic return (hereinafter SER) shall be
37 in a form approved by the state tax commission and governing board
38 and shall contain only those fields approved by the governing
39 board. The SER shall contain two (2) parts. Part 1 shall contain
40 information relating to remittances and allocations and part 2
41 shall contain information relating to exempt sales.

42 (ii) The state tax commission must notify the governing board if
43 it requires the submission of the part 2 information. Provided,
44 the state tax commission may not require the submission of part 2
45 information from a model 4 seller which has no legal requirement to
46 register in Idaho.

47 (d) Returns shall be required as follows:

48 (i) Certified service providers must file a SER with the state
49 tax commission on behalf of model 1 sellers. Certified service

providers, on behalf of such sellers, shall file the audit reports provided for in rules of the state tax commission, and in addition, pursuant to rules of the state tax commission shall be required to file part 1 of the SER each month. The state tax commission shall allow a model 1 seller to file both part 1 and the part 2 of the SER. A model 1 seller that chooses to file both part 1 and the part 2 of the SER shall still be required to file the audit reports provided for in rules of the state tax commission.

(ii) Model 2 and model 3 sellers must file a SER with the state tax commission unless they have indicated that they anticipate making no sales in Idaho. Such sellers shall file part 1 of the SER every month if they anticipate making sales in Idaho or to Idaho residents. After January 1, 2014, they shall have the following options for meeting their obligation to furnish part 2 information:

File part 2 of the SER together with part 1 of the SER every month; or file part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals. Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to subsection (1) (c) (ii) of this section.

(iii) No later than January 1, 2015, the state tax commission shall allow model 4 sellers to file a SER. Such sellers shall file part 1 of the SER every month unless the state tax commission allows less frequent filing. Model 4 sellers which have a legal requirement to register in Idaho shall have the following options for meeting their obligation to furnish part 2 information:

File part 2 of the SER together with part 1 of the SER; or file part 2 of the SER at the same time part 1 of the SER for the month of December is due. Part 2 information filed pursuant to this option shall cover the month of December and all previous months of the same calendar year and shall only require annual and not monthly totals. Such sellers shall only be required to file part 2 of the SER for any state which has notified the governing board that it will require the submission of the part 2 information pursuant to subsection (1) (c) (ii) of this section.

(iv) The tax commission may provide an exemption from the requirement of part 2 information to a seller under terms and conditions set out by the state tax commission.

(v) The state tax commission may require a seller which elects to file a SER to give at least three (3) months notice of the seller's intent to discontinue filing a SER.

(2) After January 1, 2014, the state tax commission may require the filing of a return from a seller that is registered under the streamlined sales tax agreement that has indicated at the time of registration that it anticipates making no sales that would be sourced to the state under the stream-

lined sales tax agreement. A seller shall lose such exemption upon making any taxable sales into Idaho and shall file a return in the month following such sale. The state tax commission may, but is not required to, allow a seller to regain such filing exemption upon such terms and conditions as the state tax commission may impose.

(3) The state tax commission shall adopt a standardized transmission process to allow for receipt of uniform tax returns and other formatted information as approved by the governing board of the streamlined sales tax agreement. Such a process will provide for the filing of separate returns for multiple legal entities in a single transmission for each state and will not include any requirement for manual entry or input by the seller of any of the aforementioned information. This process will allow a certified service provider, a tax preparer, or any other person authorized to do so, to file returns for more than one (1) seller in a single electronic transmission. However, sellers filing returns for multiple legal entities may only do so for affiliated legal entities.

(4) After January 1, 2014, the state tax commission shall give notice to a seller registered under the streamlined sales tax agreement that has no legal requirement to register in Idaho, of a failure to file a required return and a minimum of thirty (30) days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return. Provided, the state tax commission may establish a liability amount for taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.

(5) Nothing in this section shall prohibit the state tax commission from allowing additional return options or the filing of returns less frequently.

63-4623. UNIFORM RULES FOR REMITTANCES OF FUNDS. (1) The state tax commission shall:

(a) Require only one (1) remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars (\$30,000) in sales and use taxes in Idaho during the preceding calendar year as provided herein. The state tax commission shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.

(b) Require, at the state tax commission's discretion, all remittances in payment of taxes reported on the approved simplified return format to be remitted electronically.

(c) Allow for electronic payments by all remitters by both automated clearing house (ACH) credit and ACH debit.

(d) Provide an alternative method for making "same day" payments if an electronic funds transfer fails.

(e) Provide that if a due date for a payment falls on a Saturday, Sunday, or legal holiday in Idaho, the payment, including any related payment voucher information, is due to the state tax commission on the next succeeding business day. Additionally, if the federal reserve bank is closed on a due date that prohibits a person from being able to make a

1 payment by ACH debit or credit, the payment shall be accepted as timely
2 if made on the next day the federal reserve bank is open.

3 (f) Require that any data that accompanies a remittance be formatted
4 using uniform tax type and payment type codes approved by rule of the
5 state tax commission.

6 (2) The state tax commission shall adopt a standardized transmission
7 process approved by the governing board of the streamlined sales tax agree-
8 ment that allows for the remittance in a single electronic transmission of
9 a single (bulk) payment for taxes reported on multiple SERs by affiliated
10 entities, certified service providers or preparers. The state tax commis-
11 sion shall comply with this provision no later than two (2) years after the
12 governing board of the streamlined sales tax agreement approves such a stan-
13 dardized transmission process.

14 63-4624. UNIFORM RULES FOR RECOVERY OF BAD DEBTS. (1) The state tax
15 commission shall use the following to provide a deduction for bad debts to a
16 seller. To the extent the state tax commission provides a bad debt deduction
17 to any other party, the same procedures will apply. The state tax commission
18 shall:

19 (a) Allow a deduction from taxable sales for bad debts. Any deduction
20 taken that is attributed to bad debts shall not include interest.

21 (b) Utilize the federal definition of "bad debt" in 26 U.S.C. section
22 166 as the basis for calculating bad debt recovery. However, the amount
23 calculated pursuant to 26 U.S.C. section 166 shall be adjusted to ex-
24 clude: financing charges or interest; sales or use taxes charged on the
25 purchase price; uncollectible amounts on property that remains in the
26 possession of the seller until the full purchase price is paid; expenses
27 incurred in attempting to collect any debt, and repossessed property.

28 (c) Allow bad debts to be deducted on the return for the period dur-
29 ing which the bad debt is written off as uncollectible in the claimant's
30 books and records and is eligible to be deducted for federal income tax
31 purposes. For purposes of this subsection, a claimant who is not re-
32 quired to file federal income tax returns may deduct a bad debt on a re-
33 turn filed for the period in which the bad debt is written off as uncol-
34 lectible in the claimant's books and records and would be eligible for
35 a bad debt deduction for federal income tax purposes if the claimant was
36 required to file a federal income tax return.

37 (d) Require that, if a deduction is taken for a bad debt and the debt
38 is subsequently collected in whole or in part, the tax on the amount so
39 collected must be paid and reported on the return filed for the period in
40 which the collection is made.

41 (e) Provide that, when the amount of bad debt exceeds the amount of tax-
42 able sales for the period during which the bad debt is written off, a re-
43 fund claim may be filed within the state tax commission's otherwise ap-
44 plicable statute of limitations for refund claims; however, the statute
45 of limitations shall be measured from the due date of the return on which
46 the bad debt could first be claimed.

47 (f) Where filing responsibilities have been assumed by a CSP, allow
48 the service provider to claim, on behalf of the seller, any bad debt al-

lowance provided by this section. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.

(g) Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges and any other charges.

(h) In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states of the streamlined sales tax agreement, permit the allocation.

(2) The state tax commission shall promulgate rules to provide in situations where the books and records of the party claiming the bad debt allowance may be used in support of an allocation, and permit the allocation of the bad debt among the member states.

63-4625. CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL

1. (1) The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with model 1 sellers.

(2) As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations and privileges; the term "personally identifiable information" means information that identifies a person; and the term "anonymous data" means information that does not identify a person.

(3) The state of Idaho agrees that a fundamental precept in model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a CSP shall perform its tax calculation, remittance and reporting functions without retaining the personally identifiable information of consumers.

(4) The state tax commission, through the governing board of the streamlined sales tax agreement, may certify a CSP only if that CSP certifies that:

(a) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(b) That personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers and proper identification of taxing jurisdictions;

(c) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official website of the CSP;

(d) Its collection, use and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services pur-

1 chased and for documentation of the correct assignment of taxing juris-
 2 dictions; and

3 (e) It provides adequate technical, physical and administrative safe-
 4 guards so as to protect personally identifiable information from unau-
 5 thorized access and disclosure.

6 (5) The state tax commission shall provide public notification to con-
 7 sumers, including their exempt purchasers, of the state's practices relat-
 8 ing to the collection, use and retention of personally identifiable informa-
 9 tion.

10 (6) When any personally identifiable information that has been col-
 11 lected and retained is no longer required for the purposes set forth in
 12 subsection (4)(d) of this section, such information shall no longer be re-
 13 tained by the state tax commission.

14 (7) When personally identifiable information regarding an individual
 15 is retained by or on behalf of the state tax commission, such state shall pro-
 16 vide reasonable access by such individual to his or her own information in
 17 the state's possession and a right to correct any inaccurately recorded in-
 18 formation.

19 (8) If anyone other than the state tax commission, or a person autho-
 20 rized by that state law or the streamlined sales tax agreement, seeks to
 21 discover personally identifiable information, the state tax commission from
 22 whom the information is sought should make a reasonable and timely effort to
 23 notify the individual of such request.

24 (9) This privacy policy is subject to enforcement by the attorney gen-
 25 eral.

26 (10) Idaho's laws and rules regarding the collection, use and main-
 27 tenance of confidential taxpayer information remain fully applicable and
 28 binding. Without limitation, the streamlined sales tax agreement shall not
 29 enlarge or limit Idaho's authority to:

30 (a) Conduct audits or other review as provided under the streamlined
 31 sales tax agreement and state law.

32 (b) Provide records pursuant to chapter 3, title 9, Idaho Code.

33 (c) Prevent, consistent with state law, disclosures of confidential
 34 taxpayer information.

35 (d) Prevent, consistent with federal law, disclosures or misuse of fed-
 36 eral return information obtained under a disclosure agreement with the
 37 internal revenue service.

38 (e) Collect, disclose, disseminate or otherwise use anonymous data for
 39 governmental purposes.

40 (11) This privacy policy does not preclude the state tax commission
 41 through the governing board from certifying a CSP whose privacy policy is
 42 more protective of confidential taxpayer information or personally identi-
 43 fiable information than is required by the streamlined sales tax agreement.

44 63-4626. SALES TAX HOLIDAYS. (1) If Idaho allows for temporary exemp-
 45 tion periods, commonly referred to as sales tax holidays, the state tax com-
 46 mission shall:

47 (a) Not apply an exemption unless the items to be exempted are specif-
 48 ically defined in this chapter or chapter 36, title 63, Idaho Code, and

1 the exemptions are uniformly applied to state and local sales and use
2 taxes.

3 (b) Provide notice of the exemption period at least sixty (60) days
4 prior to the first day of the calendar quarter in which the exemption
5 period will begin.

6 (c) Not apply an entity or use-based exemption to items except a member
7 state may limit a product-based exemption to items purchased for per-
8 sonal or nonbusiness use.

9 (d) Not require a seller to obtain an exemption certificate or other
10 certification from a purchaser for items to be exempted during a sales
11 tax holiday.

12 (2) The legislature may provide by law a sales tax holiday that utilizes
13 price thresholds set by the state tax commission, and the provisions of the
14 streamlined sales tax agreement on the use of thresholds shall not apply to
15 exemptions provided by law during a sales tax holiday. In order to provide
16 uniformity, a price threshold established by a member state for exempt items
17 shall include only items priced below the threshold. The state tax commis-
18 sion shall not exempt only a portion of the price of an individual item during
19 a sales tax holiday.

20 (3) The following procedures are to be used in administering a sales tax
21 holiday exemption:

22 (a) Layaway Sales. A sale of eligible property under a layaway sale
23 qualifies for exemption if:

24 (i) Final payment on a layaway order is made by, and the property is
25 given to, the purchaser during the exemption period; or

26 (ii) The purchaser selects the property and the retailer accepts
27 the order for the item during the exemption period, for immediate
28 delivery upon full payment, even if delivery is made after the ex-
29 emption period.

30 (b) Bundled Sales. The state tax commission shall follow the same pro-
31 cedure during the sales tax holiday as agreed upon for handling a bun-
32 dled sale at other times.

33 (c) Coupons and Discounts. A discount by the seller reduces the sales
34 price of the property and the discounted sales price determines whether
35 the sales price is within a sales tax holiday price threshold of the
36 state tax commission. A coupon that reduces the sales price is treated
37 as a discount if the seller is not reimbursed for the coupon amount
38 by a third party. If a discount applies to the total amount paid by a
39 purchaser rather than to the sales price of a particular item and the
40 purchaser has purchased both eligible property and taxable property,
41 the seller should allocate the discount based on the total sales prices
42 of the taxable property compared to the total sales prices of all prop-
43 erty sold in that same transaction.

44 (d) Splitting of Items Normally Sold Together. Articles that are nor-
45 mally sold as a single unit must continue to be sold in that manner. Such
46 articles cannot be priced separately and sold as individual items in or-
47 der to obtain the exemption. For example, a pair of shoes cannot have
48 each shoe sold separately so that the sales price of each shoe is within
49 a sales tax holiday price threshold.

(e) Rain Checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

(f) Exchanges. The procedure for an exchange in regards to a sales tax holiday is as follows: if a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color or other feature, no additional tax is due even if the exchange is made after the exemption period. If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item. If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(g) Delivery Charges. Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless Idaho law defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling or service charge to determine if the price threshold is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller should allocate the delivery charge by using: a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

(h) Order Date and Back Orders. For the purpose of a sales tax holiday, eligible property qualifies for exemption if:

(i) The item is both delivered to and paid for by the customer during the exemption period; or

(ii) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period.

The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the

customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

(i) Returns. For a sixty (60) day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This sixty (60) day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The sixty (60) day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

(j) Different Time Zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one (1) time zone and a seller is located in another.

63-4627. EFFECTIVE DATE FOR RATE CHANGES. The effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows: for a rate increase, the new rate shall apply to the first billing period starting on or after the effective date, and for a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

63-4628. BUNDLED TRANSACTIONS. (1) The state tax commission shall adopt and utilize to determine tax treatment, the core definition for a "bundled transaction" as provided in this chapter and chapter 36, title 63, Idaho Code.

(2) The state tax commission is not restricted in its tax treatment of bundled transactions except as otherwise provided in the streamlined sales tax agreement. The state tax commission is not restricted in its ability to treat some bundled transactions differently from other bundled transactions.

(3) In the case of a bundled transaction that includes telecommunication service, ancillary service, internet access or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from

1 its books and records that are kept in the regular course of business for
2 other purposes including, but not limited to, nontax purposes.

3 (c) The provisions of this section shall apply unless otherwise pro-
4 vided by federal law.

5 (4) In the case of a transaction that includes an "optional computer
6 software maintenance contract" for prewritten computer software and the
7 state otherwise has not specifically imposed tax on the retail sale of com-
8 puter software maintenance contracts, the following provisions apply:

9 (a) If an optional computer software maintenance contract only obli-
10 gates the vendor to provide upgrades and updates, it will be character-
11 ized as a sale of prewritten computer software.

12 (b) If an optional computer software maintenance contract only obli-
13 gates the vendor to provide support services, it will be characterized
14 as a sale of services and a state may use any of the methods provided pur-
15 suant to this section to determine the taxable and nontaxable or exempt
16 portions.

17 (c) If an optional computer software maintenance contract is a "bun-
18 dled transaction" in which both taxable and nontaxable or exempt prod-
19 ucts that are not separately itemized on the invoice or similar billing
20 document, then states shall elect one (1) of the following tax treat-
21 ments:

22 (i) The contract shall be characterized as all taxable;

23 (ii) The contract shall be characterized as all taxable unless the
24 seller can demonstrate, using a reasonable method as of the time of
25 sale, the portion of the contract that is for nontaxable or exempt
26 products;

27 (iii) The contract shall be characterized as all nontaxable or ex-
28 empt; or

29 (iv) The contract shall be characterized as twenty (20), thirty
30 (30), forty (40) or fifty percent (50%) taxable or eighty (80),
31 seventy (70), sixty (60) and fifty percent (50%) nontaxable or ex-
32 empt respectively, as selected by each member state.

33 (d) With respect to states that elect the method described in subsec-
34 tion (4)(c) of this section, the state tax commission may prescribe the
35 use of such reasonable methods as it deems appropriate, and the method
36 selected by the seller shall be binding on the purchaser.

37 63-4629. CAPS AND THRESHOLDS. The state tax commission shall not have
38 caps or thresholds on the application of state sales or use tax rates or ex-
39 emptions that are based on the value of the transaction or item or have caps
40 that are based on the application of the rates unless the state tax commis-
41 sion assumes the administrative responsibility in a manner that places no
42 additional burden on the retailer. The legislature may not place caps or
43 thresholds on the application of local rates or use tax rates or exemptions
44 that are based on the value of the transaction or item. The provisions of
45 this section do not apply to sales or use taxes levied on the retail sale or
46 transfer of motor vehicles, aircraft, watercraft, modular homes, manufac-
47 tured homes or mobile homes or to instances where the burden of administra-
48 tion has been shifted from the retailer.

1 63-4630. ROUNDING RULE. (1) The state tax commission shall adopt a
2 rounding algorithm that meets the following criteria:

3 (a) Tax computation must be carried to the third decimal place; and

4 (b) The tax must be rounded to a whole cent using a method that rounds
5 up to the next cent whenever the third decimal place is greater than four
6 (4) .

7 (2) The state tax commission shall allow sellers to elect to compute
8 the tax due on a transaction on an item or on an invoice basis, and shall al-
9 low the rounding rule to be applied to the aggregated state and local taxes.
10 The state tax commission shall not require a seller to collect tax based on a
11 bracket system.

12 63-4631. CUSTOMER REFUND PROCEDURES. (1) The state tax commission
13 shall allow a purchaser to seek a return of over-collected sales or use taxes
14 from the seller and this section shall provide procedures for such refunds.

15 (2) Nothing in this section shall either require the state tax commis-
16 sion to provide, or prevent the state tax commission from providing, a pro-
17 cedure by which a purchaser may seek a refund directly from the state arising
18 out of sales or use taxes collected in error by a seller from the purchaser.
19 Nothing in this section shall operate to extend any person's time to seek a
20 refund of sales or use taxes collected or remitted in error.

21 (3) These customer refund procedures provide the first course of rem-
22 edy available to purchasers seeking a return of over-collected sales or use
23 taxes from the seller. A cause of action against the seller for the over-
24 collected sales or use taxes does not accrue until a purchaser has provided
25 written notice to a seller and the seller has had sixty (60) days to respond.
26 Such notice to the seller must contain the information necessary to deter-
27 mine the validity of the request.

28 (4) In connection with a purchaser's request from a seller of over-col-
29 lected sales or use taxes, a seller shall be presumed to have a reasonable
30 business practice, if in the collection of such sales or use taxes, the
31 seller: uses either a provider or a system, including a proprietary system,
32 that is certified by the state tax commission; and has remitted to the state
33 tax commission all taxes collected less any deductions, credits, or collec-
34 tion allowances.

35 63-4632. DIRECT PAY PERMITS. The state tax commission shall provide
36 for a direct pay authority that allows the holder of a direct pay permit to
37 purchase otherwise taxable goods and services without payment of tax to the
38 supplier at the time of purchase. The holder of the direct pay permit will
39 make a determination of the taxability and then report and pay the applicable
40 tax due directly to the state tax commission. The state tax commission shall
41 provide by rule limits and requirements for the direct pay permit. The state
42 tax commission in promulgating rules setting state direct pay limits and re-
43 quirements, shall consider use of the model direct payment permit regulation
44 as developed by the task force on electronic data interchange (EDI) audit and
45 legal issues for tax administration.

46 63-4633. TAXABILITY MATRIX. (1) To ensure uniform application of
47 terms defined in this chapter and chapter 36, title 63, Idaho Code, the state

1 tax commission shall complete a taxability matrix adopted by the governing
 2 board of the streamlined sales tax agreement. The state tax commission's
 3 entries in the matrix shall be provided and maintained in a database that is
 4 in a downloadable format approved by the governing board. The state tax com-
 5 mission shall provide notice of changes in the taxability of the products or
 6 services listed in the taxability matrix as required by the governing board.

7 (2) The state tax commission shall relieve sellers and CSPs from li-
 8 ability to the state tax commission and local jurisdictions for having
 9 charged and collected the incorrect amount of sales or use tax resulting from
 10 the seller or CSP relying on erroneous data provided by the state tax commis-
 11 sion in the taxability matrix.

12 (3) If a sales and use tax is imposed on a specified digital product and
 13 provides an exemption for an item within the definition of such specified
 14 digital product pursuant to chapter 36, title 63, Idaho Code, and this chap-
 15 ter, such exemption must be noted in the taxability matrix.

16 (4) If a sales tax holiday is provided, the state tax commission shall,
 17 in a format approved by the governing board of the streamlined sales tax,
 18 give notice in the taxability matrix of the products for which a tax exemp-
 19 tion is provided.

20 63-4634. RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS. (1) The state
 21 tax commission shall relieve a purchaser from liability for penalty and its
 22 local jurisdictions for having failed to pay the correct amount of sales or
 23 use tax in the following circumstances:

24 (a) A purchaser's seller or CSP relied on erroneous data provided by the
 25 state tax commission on tax rates, boundaries, taxing jurisdiction as-
 26 signments, or in the taxability matrix completed by the state tax com-
 27 mission pursuant to section 63-4633, Idaho Code; or

28 (b) A purchaser holding a direct pay permit relied on erroneous data
 29 provided by the state tax commission on tax rates, boundaries, taxing
 30 jurisdiction assignments, or in the taxability matrix completed by the
 31 state tax commission pursuant to section 63-4633, Idaho Code; or

32 (c) A purchaser relied on erroneous data provided by the state tax com-
 33 mission in the taxability matrix completed by the state tax commission
 34 pursuant to section 63-4633, Idaho Code;

35 (d) A purchaser using databases pursuant to section 63-4608, Idaho
 36 Code, relied on erroneous data provided by the state tax commission
 37 on tax rates, boundaries, or taxing jurisdiction assignments. After
 38 providing adequate notice as determined by the governing board, if the
 39 state tax commission provided an address-based database for assigning
 40 taxing jurisdictions pursuant to section 63-4608, Idaho Code, it may
 41 cease providing liability relief for errors resulting from the reliance
 42 on the database provided by the state tax commission under the provi-
 43 sions of section 63-4608, Idaho Code.

44 (2) Except where prohibited by the constitution of the state of Idaho,
 45 the state tax commission shall also relieve a purchaser from liability for
 46 tax and interest to the state of Idaho and its local jurisdictions for having
 47 failed to pay the correct amount of sales or use tax in the circumstances de-
 48 scribed in this section, provided that, with respect to reliance on the tax-
 49 ability matrix completed by that member state pursuant to section 63-4633,

1 Idaho Code, such relief is limited to the state's erroneous classification
 2 in the taxability matrix of terms included in the definitions of chapter 36,
 3 title 63, Idaho Code, and this chapter as "taxable" or "exempt," "included in
 4 sales price" or "excluded from sales price" or "included in the definition"
 5 or "excluded from the definition."

6 (3) For purposes of this section, the term "penalty" means an amount im-
 7 posed for noncompliance that is not fraudulent, willful or intentional that
 8 is in addition to the correct amount of sales or use tax and interest.

9 (4) The state tax commission may allow relief on terms and conditions
 10 more favorable to a purchaser than the terms required by this section.

11 63-4635. SPECIFIED DIGITAL PRODUCTS. (1) "Specified digital prod-
 12 ucts," "digital audio-visual works," "digital audio works" or "digital
 13 books" shall not be included within the definition of "ancillary services,"
 14 "computer software," "telecommunication services" or "tangible personal
 15 property." This restriction shall apply regardless of whether the "speci-
 16 fied digital product" is sold to a purchaser who is an end user or with less
 17 than the right of permanent use granted by the seller or use that is condi-
 18 tioned upon continued payment from the purchaser.

19 (2) For purpose of the taxability matrix and definitions in this chap-
 20 ter and chapter 36, title 63, Idaho Code, "digital audio-visual works,"
 21 "digital audio works," and "digital books" are separate definitions.

22 (3) If the state of Idaho imposes a sales or use tax on products "trans-
 23 ferred electronically" separately from its imposition of tax on "tangible
 24 personal property," the state of Idaho will not be required to use the terms
 25 "specified digital products," "digital audio-visual works," "digital audio
 26 works," or "digital books," or enact an additional or separate sales or use
 27 tax levy on any "specified digital product."

28 (4) A statute imposing a tax on "specified digital products," "digi-
 29 tal audio-visual works," "digital audio works" or "digital books" or on any
 30 other product "transferred electronically" shall be construed as only im-
 31 posing the tax on a sale to a purchaser who is an end user unless the statute
 32 specifically imposes and separately enumerates the tax on a sale to a pur-
 33 chaser who is not an end user. For purposes of this subsection, an "end user"
 34 includes any person other than a person who receives by contract a product
 35 "transferred electronically" for further commercial broadcast, rebroad-
 36 cast, transmission, retransmission, licensing, relicensing, distribution,
 37 redistribution or exhibition of the product, in whole or in part, to another
 38 person or persons. A person that purchases products "transferred electroni-
 39 cally" or the code for "specified digital products" for the purpose of giving
 40 away such products or code shall not be considered to have engaged in the
 41 distribution or redistribution of such products or code and shall be treated
 42 as an end user. A statute imposing a tax on "specified digital products,"
 43 "digital audio-visual works," "digital audio works" or "digital books" on
 44 any other product "transferred electronically" shall be construed as only
 45 imposing tax on a sale with the right of permanent use granted by the seller
 46 unless the statute specifically imposes and separately enumerates the tax on
 47 a sale with the right of less than permanent use granted by the seller. For
 48 purposes of this subsection "permanent" means perpetual or for an indefinite
 49 or unspecified length of time. A right of permanent use shall be presumed

1 to have been granted unless the agreement between the seller and the pur-
 2 chaser specifies or the circumstances surrounding the transaction suggest
 3 or indicate that the right to use terminates on the occurrence of a condition
 4 subsequent. A statute imposing a tax on "specified digital products," "dig-
 5 ital audio-visual works," "digital audio works" or "digital books" or on any
 6 other product "transferred electronically" shall be construed as only im-
 7 posing tax on a sale which is not conditioned upon continued payment from the
 8 purchaser unless the statute specifically imposes and separately enumerates
 9 the tax on a sale which is conditioned upon continued payment from the pur-
 10 chaser. The state tax commission that imposes a sales or use tax on the sale
 11 of a product "transferred electronically" to a person other than an end user
 12 or on a sale with the right of less than permanent use granted by the seller or
 13 that is conditioned upon continued payment from the purchaser shall so indi-
 14 cate in its taxability matrix in a format approved by the governing board.

15 (5) Nothing in this section or the definition of "specified digital
 16 products" shall limit a state's right to impose a sales or use tax or exempt
 17 from sales or use tax any products or services that are outside the defini-
 18 tion of "specified digital products."

19 (6) The state tax commission may treat a subscription to products
 20 "transferred electronically" differently than a nonsubscription purchase
 21 of such product. For purposes of this section, "subscription" means an
 22 agreement with a seller that grants a consumer the right to obtain products
 23 transferred electronically from within one (1) or more product categories
 24 having the same tax treatment, in a fixed quantity or for a fixed period of
 25 time, or both.

26 (7) The tax treatment of a "digital code" shall be the same as the
 27 tax treatment of the "specified digital product" or product "transferred
 28 electronically" to which the "digital code" relates. The retail sale of
 29 the "digital code" shall be considered the transaction for purposes of the
 30 streamlined sales tax agreement. For purposes of this section, "digital
 31 code" means a code, which provides a purchaser with a right to obtain one (1)
 32 or more such products having the same tax treatment. A "digital code" may be
 33 obtained by any means, including email or by tangible means regardless of its
 34 designation as "song code," "video code" or "book code."

35 (8) Notwithstanding the provisions of section 63-4620, Idaho Code, the
 36 legislature may provide a product-based exemption for specific items within
 37 the definition of "specified digital products," provided such items that are
 38 not "transferred electronically" must also be granted a product-based ex-
 39 emption by the legislature.

40 (9) For purposes of this section, the term "transferred electroni-
 41 cally" means obtained by the purchaser by means other than tangible storage
 42 media.

43 63-4636. USE OF SPECIFIED DIGITAL PRODUCTS. The legislature shall
 44 not include any product transferred electronically in its definition of
 45 "tangible personal property." "Ancillary services," "computer software"
 46 and "telecommunication services" shall be excluded from the term "products
 47 transferred electronically." For purposes of this section, the term "trans-
 48 ferred electronically" means obtained by the purchaser by means other than
 49 tangible storage media.

1 63-4637. PROHIBITED REPLACEMENT TAXES. The legislature shall not en-
2 act a prohibited replacement tax on any product defined in this chapter or
3 chapter 36, title 63, Idaho Code, which has the effect of avoiding the intent
4 of the streamlined sales tax agreement.

5 63-4638. SELLER PARTICIPATION. (1) The state tax commission shall
6 provide an online registration system that will allow sellers to register in
7 all the member states of the streamlined sales tax agreement.

8 (2) By registering, the seller agrees to collect and remit sales and use
9 taxes for all taxable sales into the member states, including member states
10 joining after the seller's registration. Withdrawal or revocation of a mem-
11 ber state shall not relieve a seller of its responsibility to remit taxes
12 previously or subsequently collected on behalf of the state.

13 (3) In member states where the seller has a requirement to register
14 prior to registering under the streamlined sales tax agreement, the seller
15 may be required to provide additional information to complete the registra-
16 tion process or the seller may choose to register directly with those states.

17 (4) A member state or a state that has withdrawn or been expelled shall
18 not use registration with the central registration system and the collection
19 of sales and use taxes in the member states as a factor in determining whether
20 the seller has nexus with that state for any tax at any time.

21 63-4639. AMNESTY FOR REGISTRATION. (1) Subject to the limitation in
22 this section:

23 (a) The state tax commission shall provide amnesty for uncollected or
24 unpaid sales or use tax to a seller who registers to pay or to collect
25 and remit applicable sales or use tax on sales made to purchasers in the
26 state in accordance with the terms of the streamlined sales tax agree-
27 ment, provided that the seller was not so registered in Idaho in the
28 twelve (12) month period preceding the effective date of Idaho's par-
29 ticipation in the streamlined sales tax agreement.

30 (b) The amnesty will preclude assessment for uncollected or unpaid
31 sales or use tax together with penalty or interest for sales made during
32 the period the seller was not registered in Idaho, provided regis-
33 tration occurs within twelve (12) months of the effective date of the
34 state's participation in the streamlined sales tax agreement.

35 (c) Amnesty similarly shall be provided by any additional state that
36 joins the agreement after the seller has registered.

37 (2) The amnesty is not available to a seller with respect to any matter
38 or matters for which the seller received notice of the commencement of an au-
39 dit and which audit is not yet finally resolved including any related admin-
40 istrative and judicial processes.

41 (3) The amnesty is not available for sales or use taxes already paid or
42 remitted to the state or to taxes collected by the seller.

43 (4) The amnesty is fully effective, absent the seller's fraud or inten-
44 tional misrepresentation of a material fact, as long as the seller contin-
45 ues registration and continues payment or collection and remittance of ap-
46 plicable sales or use taxes for a period of at least thirty-six (36) months.
47 Idaho's statute of limitations applicable to asserting a tax liability dur-
48 ing this thirty-six (36) month period is tolled.

1 (5) The amnesty is applicable only to sales or use taxes due from a
2 seller in its capacity as a seller and not to sales or use taxes due from a
3 seller in its capacity as a buyer.

4 (6) The legislature and the state tax commission may allow amnesty on
5 terms and conditions more favorable to a seller than the terms required by
6 this section.

7 63-4640. METHOD OF REMITTANCE. When registering, the seller may se-
8 lect one (1) of the following methods of remittance or other method allowed
9 by state law to remit the taxes collected:

10 (1) Model 1, wherein a seller selects a CSP as an agent to perform all
11 the seller's sales or use tax functions, other than the seller's obligation
12 to remit tax on its own purchases.

13 (2) Model 2, wherein a seller selects a CAS to use which calculates the
14 amount of tax due on a transaction.

15 (3) Model 3, wherein a seller utilizes its own proprietary automated
16 sales tax system that has been certified as a CAS.

17 63-4641. REGISTRATION BY AN AGENT. A seller may be registered by an
18 agent. Such appointment shall be in writing and submitted to a member state
19 if requested by the member state.

20 63-4642. CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYSTEMS.

21 (1) The state tax commission shall certify automated systems and ser-
22 vice providers to aid in the administration of sales and use tax collections.

23 (2) The state tax commission may certify a person as a CSP if the person
24 meets all of the following requirements:

25 (a) The person uses a CAS;

26 (b) The person integrates its CAS with the system of a seller for whom
27 the person collects tax so that the tax due on a sale is determined at the
28 time of the sale;

29 (c) The person agrees to file returns on behalf of the sellers for whom
30 it collects tax;

31 (d) The person agrees to protect the privacy of tax information it ob-
32 tains in accordance with this chapter.

33 (e) The person enters into a contract with the member states of the
34 streamlined sales tax agreement and agrees to comply with the terms of
35 the contract.

36 (3) The state tax commission may certify a software program as a CAS if
37 the commission determines that the program meets all of the following re-
38 quirements:

39 (a) It determines the applicable state and local sales and use tax rate
40 for a transaction, in accordance with this chapter and chapter 36, title
41 63, Idaho Code;

42 (b) It determines whether or not an item is exempt from tax;

43 (c) It determines the amount of tax to be remitted for each taxpayer for
44 a reporting period;

45 (d) It can generate reports and returns as required by the state tax
46 commission; and

47 (e) It can meet any other requirement set by the state tax commission.

(4) The state tax commission may establish one (1) or more sales tax performance standards for model 3 sellers that meet the eligibility criteria set by the state tax commission and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

63-4643. REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYSTEM SOFTWARE AND CERTAIN LIABILITY RELIEF.

(1) The state tax commission shall review software submitted to the commission for certification as a CAS under section 63-4642, Idaho Code. Such review shall include a review to determine that the program accurately reflects the taxability of the product categories included in the program. Upon approval by the state tax commission, the state tax commission shall certify to the governing board of the streamlined sales tax agreement its acceptance of the determination of the taxability of the product categories included in the program.

(2) The state tax commission shall relieve CSPs and model 2 sellers from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the CSP or model 2 seller relying on the certification provided by the state tax commission.

(3) The state tax commission shall provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of this chapter.

(4) The state tax commission shall not be responsible for classification of an item or transaction within the product categories certified. The relief from liability provided in this section shall not be available for a CSP or model 2 seller that has incorrectly classified an item or transaction into a product category certified by the state tax commission. This subsection shall not apply to the individual listing of items or transactions within a product definition approved by the state tax commission.

(5) If the state tax commission determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the CSP or model 2 seller of the incorrect classification. The CSP or model 2 seller shall have ten (10) days to revise the classification after receipt of notice from the member state of the determination. Upon expiration of the ten (10) days, the CSP or model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the state tax commission.

63-4644. MONETARY ALLOWANCE UNDER MODEL 1. (1) The state tax commission shall provide a monetary allowance to a CSP in model 1 in accordance with the terms of the contract between the governing board and the CSP. The details of the monetary allowance will be provided through the contract process. The governing board shall require that such allowance be funded entirely from money collected in model 1.

(2) The contract between the state tax commission and a CSP may base the monetary allowance to a CSP on one (1) or more of the following:

(a) A base rate that applies to taxable transactions processed by the CSP;

(b) For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the streamlined sales tax agree-

ment's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

63-4645. MONETARY ALLOWANCE FOR MODEL 2 SELLERS. The state tax commission initially anticipates that it will provide a monetary allowance to sellers under model 2 based on the following:

(1) All sellers shall receive a base rate for a period not to exceed twenty-four (24) months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for model 1. This allowance will be in addition to any discount afforded by the state tax commission at the time.

(2) The state tax commission anticipates a monetary allowance to a model 2 seller based on the following:

(a) For a period not to exceed twenty-four (24) months following a voluntary seller's registration through the streamlined sales tax agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax;

(b) Following the conclusion of the twenty-four (24) month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

63-4646. VENDOR COMPENSATION DEFINITIONS. The following definitions apply to sections 63-4647 through 63-4654, Idaho Code, inclusive.

(1) "Remote sales" means sales into a state in which the seller would not legally be required to collect sales or use tax, but for the ability of that state to require such "remote seller" to collect sales or use tax under federal authority.

(2) "Remote seller" means a seller that would not register in a state, but for the ability of that state to require such "remote seller" to collect sales or use tax under federal authority.

(3) "In-state seller" means any seller that is not a "remote seller" in a state and is legally required to collect sales or use tax in that state.

(4) "New remote seller" means a "remote seller" who registers with the online registration system established pursuant to this chapter and was not previously required to collect sales or use taxes. A seller merely reincorporating, changing its name or having a change in ownership or any other similar change in its business structure or operations does not constitute a "new remote seller."

63-4647. COMPENSATION REQUIREMENT. The state tax commission may require "remote sellers" to collect state and local sales and use tax on "remote sales" provided the state tax commission authorizes compensation to all sellers in accordance with the requirements of sections 63-4647 through 63-4654, Idaho Code. The state tax commission shall not be required to comply with the requirements for compensation in sections 63-4647 through 63-4654, Idaho Code, inclusive, but if such member state does not comply with

1 the requirements for compensation, it shall not exercise collection author-
2 ity over "remote sellers."

3 63-4648. PETITION FOR COLLECTION AUTHORITY AND COMPENSATION COMPLI-
4 ANCE DETERMINATIONS. The process for certification by the governing board of
5 the streamlined sales tax agreement is as follows:

6 (1) The state tax commission shall petition the governing board for
7 certification that it meets all the compensation requirements of this sec-
8 tion. The petition must include the most recent certificate of compliance
9 showing Idaho to be in full compliance with the minimum simplification re-
10 quirements of the agreement, other than compensation.

11 (2) A petition for collection authority may be submitted to the govern-
12 ing board at any time but the governing board shall not grant a state specific
13 authorization to begin remote seller collections until at least six (6)
14 months after the general remote seller collection authority has been granted
15 by federal authority.

16 (3) Upon certification by the governing board, the member state will
17 be authorized to require collection by remote sellers. This authority will
18 commence for such state on the first day of the next calendar quarter at least
19 sixty (60) days after the date the governing board makes its compensation de-
20 termination. Such collection authority will continue as long as the member
21 state provides the minimum compensation to all sellers as required or per-
22 mitted under the agreement and consistent with subsection (4) of this sec-
23 tion and maintains its certification and compliance with the agreement.

24 (4) At any time after the governing board has made the determinations
25 required by the agreement to grant remote seller collection authority to a
26 member state, any person affected by the agreement may petition the govern-
27 ing board for a determination of a member state's compliance with the agree-
28 ment. Such request shall be deemed a petition for matters of compliance un-
29 der this chapter and shall comply with the rules and procedures for issue
30 resolution in this chapter.

31 (5) Upon final determination by the governing board that Idaho's com-
32 pensation is not in compliance with the compensation requirements of the
33 agreement, the state tax commission's authority to require collection by
34 remote sellers shall automatically terminate thirty (30) days following the
35 date of such final determination.

36 (6) Upon final determination by the governing board that a member state
37 is not in compliance with the minimum simplification parts of the agreement,
38 other than compensation, the state tax commission shall lose its remote
39 seller collection authority on the earlier of:

40 (a) The date specified by the governing board; or

41 (b) The later of the first day of January at least two (2) years af-
42 ter the governing board finally determined that Idaho was not in com-
43 pliance or the first day of a calendar quarter following the end of one
44 (1) full session of the Idaho legislature beginning after the governing
45 board finally determined the state was not in compliance.

46 (7) If the state tax commission loses its collection authority it must
47 file a petition with the governing board to have its remote seller collec-
48 tion authority restored. The petition, which may be submitted at any time,
49 should identify how the issues which caused loss of certification have been

1 addressed and why certification should be restored. Restoration of collec-
 2 tion authority, if granted, will commence on the first day of the next calen-
 3 dar quarter at least sixty (60) days after the governing board makes its com-
 4 pensation determination.

5 63-4649. STANDARDS FOR COMPENSATION. (1) The state tax commission
 6 shall provide at least the minimum compensation to all sellers for expenses
 7 incurred in administering, collecting and remitting sales and use taxes
 8 (other than taxes paid on goods and services purchased for consumption by
 9 the seller) to the state of Idaho that is reasonably related to actual costs
 10 incurred in collecting and remitting sales and use taxes.

11 (2) Compensation will be paid as a percentage applied to tax remitted on
 12 a return.

13 (3) The state tax commission shall establish three (3) rates of compen-
 14 sation that shall be a percentage of a portion of sales and use taxes remit-
 15 ted by a seller in the reported month. Rate 1 shall be paid on the first six
 16 thousand two hundred fifty dollars (\$6,250) of the sales and use tax remit-
 17 ted by a seller in the reported month. Rate 2, which shall not be less than
 18 fifty percent (50%) of rate 1, shall be paid on the amount of sales and use
 19 tax remitted in the reported month exceeding six thousand two hundred fifty
 20 dollars (\$6,250) and less than or equal to sixty-two thousand five hundred
 21 dollars (\$62,500). Rate 3, which shall not be less than twenty-five per-
 22 cent (25%) of rate 1, shall be paid on the sales and use tax remitted by a
 23 seller in the reported month exceeding sixty-two thousand five hundred dol-
 24 lars (\$62,500). The state tax commission shall establish rates 1, 2 and 3
 25 to provide total compensation not less than: three-fourths of one percent
 26 (0.75%) of state and local sales and use tax collections for states that re-
 27 quire sellers to report tax by local jurisdiction; or one-half of one per-
 28 cent (0.5%) of sales and use tax collections for states that do not require
 29 sellers to report tax by local jurisdiction. Calculation of the compensa-
 30 tion rate for the next succeeding calendar year shall be based on remittances
 31 for the previous twelve (12) months ending June 30 of the immediately prior
 32 calendar year and the methodology prescribed in the rules to be promulgated
 33 by the governing board.

34 (4) The state tax commission shall not be required by the agreement to
 35 pay compensation to a seller in any six (6) months on sales and use taxes
 36 remitted for such month in excess of: seven hundred fifty thousand dollars
 37 (\$750,000) with sales and use tax collections in the twelve (12) month period
 38 ending June 30 of the previous calendar year of not more than one billion
 39 dollars (\$1,000,000,000); or one million dollars (\$1,000,000) with sales
 40 and use tax collections in the twelve (12) month period ending June 30 of the
 41 previous calendar year of more than one billion dollars (\$1,000,000,000) and
 42 not more than two billion five hundred million dollars (\$2,500,000,000);
 43 or three million dollars (\$3,000,000) with sales and use tax collections in
 44 the twelve (12) month period ending June 30 of the previous calendar year
 45 of more than two billion five hundred million dollars (\$2,500,000,000)
 46 and not more than five billion dollars (\$5,000,000,000); or five million
 47 dollars (\$5,000,000) with sales and use tax collections in the twelve (12)
 48 month period ending June 30 of the previous calendar year of more than five
 49 billion dollars (\$5,000,000,000) and not more than seven billion five hun-

1 dred million dollars (\$7,500,000,000); seven million dollars (\$7,000,000)
 2 with sales and use tax collections in the twelve (12) month period ending
 3 June 30 of the previous calendar year of more than seven billion five hun-
 4 dred million dollars (\$7,500,000,000) and not more than ten billion dollars
 5 (\$10,000,000,000); or ten million dollars (\$10,000,000) with sales and use
 6 tax collections in the twelve (12) month period ending June 30 of the previ-
 7 ous calendar year of more than ten billion dollars (\$10,000,000,000).

8 (5) The state tax commission will be required to pay additional com-
 9 pensation if there is a second state rate on groceries, drugs or clothing
 10 thresholds.

11 (6) Compensation shall be paid for any period that a return is timely
 12 filed and fully paid. The state tax commission is not required to pay com-
 13 pensation for an untimely or partially paid return. Absent fraud, a return
 14 filed and fully paid in good faith does not constitute a partially paid re-
 15 turn if it is subsequently determined that additional tax is due from the
 16 seller. The state tax commission is not required to provide compensation on
 17 additional tax found due.

18 (7) The state tax commission will not be required to pay compensation on
 19 sales for which a seller is using a certified service provider and such cer-
 20 tified service provider is being compensated for that service by the state.

21 (8) The state tax commission is not required to provide compensation
 22 for transactions in which the seller is not responsible for collecting and
 23 remitting the tax, and for persons with direct pay permits.

24 (9) The state tax commission shall not assess penalty or interest on tax
 25 due pursuant to this chapter on remote sales transactions occurring during
 26 the first six (6) months following commencement of remote seller collection
 27 authority.

28 (10) The state tax commission shall be permitted to lower, reduce or
 29 eliminate the amount or rate of compensation otherwise provided for by this
 30 section paid to public utilities providing gas, electric, water or sewer
 31 services.

32 63-4650. OBLIGATION TO PAY. (1) For purposes of this section the term
 33 "small remote seller" shall mean a new remote seller that has gross national
 34 remote sales of no more than five million dollars (\$5,000,000) as calculated
 35 pursuant to this chapter and shall include sellers that would be "new remote
 36 sellers" but for the fact that they had gross national remote sales of less
 37 than five hundred thousand dollars (\$500,000) as calculated pursuant to this
 38 chapter.

39 (2) The state tax commission shall begin paying compensation to a "new
 40 remote seller" upon submission of the seller's initial return filed after
 41 the effective date of the member state's authorization for compensation
 42 that meets the standards of section 63-4649, Idaho Code. Notwithstanding
 43 the rates of compensation established by the state tax commission, a "small
 44 remote seller" may elect to receive twenty percent (20%) of the tax collected
 45 and due, except for the compensation amount to be retained by the "small re-
 46 mote seller," to a state in a month not to exceed compensation of eighty-five
 47 dollars (\$85.00) in any month in lieu of compensation calculated using the
 48 rates of compensation established by the state tax commission. Such elec-
 49 tion shall be for a six (6) month period beginning with the first month that

1 such seller collects a member state's tax. After such six (6) month period,
 2 the rates used to calculate compensation for such seller shall be those rates
 3 established by the state tax commission. The increased amount of compensa-
 4 tion allowed by this subsection shall be available to a "small remote seller"
 5 that begins collecting tax for Idaho within the first twelve (12) months
 6 following the date of Idaho's authorization for the collection of taxes on
 7 remote sales. A seller subsequently found not to meet the qualifications of
 8 a "small remote seller" may be denied and assessed, including any applicable
 9 penalties and interest, for any compensation it was not qualified to claim.

10 (3) If the state tax commission determines that a "new remote seller"
 11 had previously been registered in Idaho, compensation for that seller may
 12 be delayed until the state is required to pay compensation for all "in-state
 13 sellers" as set forth in subsection (4) of this section.

14 (4) The state tax commission shall elect one (1) of the following meth-
 15 ods (option 1, option 2 or option 3) by rule for commencing payment of compen-
 16 sation for "in-state sellers" or "new remote sellers" previously registered
 17 in that state.

18 (a) Option 1. Pay "in-state sellers" and "new remote sellers" previ-
 19 ously registered in that state when tax collections from "new remote
 20 sellers" reach the dollar threshold established by the following
 21 method:

22 (i) If this option is used, the state tax commission shall track
 23 and report its total collections from "new remote sellers" to the
 24 governing board. When the amount of monthly collections received
 25 from such sellers for each of four (4) consecutive months occur-
 26 ring some time after the date remote seller collection authority
 27 began, meets or exceeds the amount that would be required to pay
 28 the approved average monthly level of compensation for all other
 29 sellers, then compensation will be due and owing beginning the
 30 first day of the following quarter and thereafter for all sellers.

31 (ii) If Idaho is already compensating its sellers, only the dif-
 32 ference above the currently paid amount and the amount that would
 33 be required to pay the approved average monthly level of compen-
 34 sation for all other sellers will be required to accumulate before
 35 implementing the approved compensation.

36 (b) Option 2. Begin paying "in-state sellers" and "remote sellers"
 37 that had been previously registered in that state on the next return re-
 38 mitted fifteen (15) months following the grant of collection authority.

39 (c) Option 3. Continue paying compensation to all the sellers previ-
 40 ously receiving such payment as long as such compensation meets the re-
 41 quirements of this section.

42 (5) If the state tax commission determines that the state of Idaho does
 43 not receive sufficient sales and use tax collections from remote sellers
 44 to justify the state of Idaho's continued participation, it will notify
 45 the governing board of the streamlined sales tax agreement that its remote
 46 collection authority should expire and may terminate its obligation to pay
 47 compensation at the governing board-approved rate. The state tax commission
 48 shall give not less than sixty (60) days' notice of its intent to relinquish
 49 remote collection authority.

1 63-4651. SMALL SELLER EXCEPTION. (1) The state tax commission shall
 2 develop a sales volume threshold for determining which "small remote sell-
 3 ers" qualify for an exemption from the requirement to collect sales or use
 4 taxes on "remote sales." In making such a determination the governing board
 5 shall consider whether:

6 (a) The sales are occasional or isolated;

7 (b) The sales are of such low volume that the administrative expense of
 8 collection imposes too great a burden on both seller and member state;

9 (c) The collection burden on the remote seller is offset by compensa-
 10 tion;

11 (d) The remote seller has a monthly filing requirement in a member
 12 state;

13 (e) Certified service providers for sellers in that industry group are
 14 readily available; and

15 (f) Technology solutions are available to mitigate the filing burden.

16 In making such determination, the state tax commission shall iden-
 17 tify the total annual dollar volume of gross remote sales nationwide of the
 18 seller, above which would trigger a collection responsibility for remote
 19 sellers. The exemption threshold shall be set at a relatively low level, and
 20 over time adjusted downward, so that only sellers making isolated or occa-
 21 sional sales are excluded from the collection requirement. The threshold
 22 shall be based on national remote sales volume.

23 (2) "Remote sellers" shall be required to annually determine if the
 24 small seller exemption applies based on sales volume of the seller and the
 25 annual policy determination of the governing board and the state tax commis-
 26 sion. To determine whether a remote seller qualifies for the small seller
 27 exception, the seller computes the total gross national remote sales volume
 28 for the most recent twelve (12) month period beginning July 1 of one calendar
 29 year and ending June 30 of the next calendar year. If the total gross na-
 30 tional remote sales volume for such period exceeds the exemption threshold
 31 amount in effect for such period, then the remote seller shall begin collec-
 32 tion and remittance of sales and use tax on remote sales on January 1 of the
 33 following year.

34 (3) Once a seller has exceeded the exemption threshold, the seller
 35 must be allowed until the beginning of the first calendar quarter commenc-
 36 ing within sixty (60) days following the date such threshold is exceeded,
 37 in order to prepare before the collection obligation becomes effective. If
 38 gross national remote sales volume for a seller that is currently collecting
 39 and remitting sales and use tax on remote sales falls below the small seller
 40 exemption threshold amount then in effect, such seller shall continue to
 41 collect and remit such taxes until the end of the following calendar quarter.

42 (4) In determining whether a "remote seller" has exceeded the small
 43 seller exemption threshold, the remote sales of such seller should be to-
 44 taled with the remote sales of any affiliated business owned in whole or
 45 substantial part by another "remote seller" selling the same or substan-
 46 tially similar products and doing business under the same or substantially
 47 similar business. No "remote seller" that is part of an affiliated group
 48 with a gross national remote sales volume above the small seller exemption
 49 threshold is eligible to qualify for the small seller exemption, even if such
 50 seller's gross national remote sales volume is below such threshold.

1 (5) The state tax commission shall post information about the small
2 seller exception on its website at least ninety (90) days prior to the date on
3 which it becomes effective on the first day of a calendar quarter.

4 (6) The state tax commission shall review the small seller exemption
5 threshold every two (2) years, and such threshold may be adjusted no more
6 frequently than annually with not less than ninety (90) days' notice. Remote
7 sellers claiming the small seller exemption must file an exemption certifi-
8 cate with the online registration system, stating that they qualify for the
9 small seller exception and meet such threshold. Prior to the implementation
10 of remote collection authority in Idaho, the state tax commission shall pro-
11 mulgate rules that provide for the registration of remote sellers and the im-
12 plementation of the requirement for remote sellers to begin collecting.

13 (7) The state tax commission shall adopt rules to establish the amount
14 of annual gross remote sales necessary to require a seller to register with
15 the online registration system and the amount of annual gross remote sales
16 necessary to require a seller to collect sales and use tax.

17 63-4652. REPEAL. Sections 63-4646 through 63-4654, Idaho Code, inclu-
18 sive, are repealed twenty-four (24) months after their adoption if congress
19 has not granted states authority to require remote sellers to collect sales
20 and use tax.

21 63-4653. VOLUNTARY COMPENSATION FOR REMOTE SELLERS. The state tax
22 commission may choose to compensate remote sellers as a measure of good
23 faith, and offer such compensation as an inducement to registering to col-
24 lect through the online registration system.

25 63-4654. OPTIONAL COMPENSATION FOR REMOTE SELLERS. The state tax com-
26 mission may choose to not compensate remote sellers until such time federal
27 legislation authorizes states to require remote sellers to collect sales and
28 use tax.

29 63-4655. ENTRY INTO AGREEMENT. (1) The state tax commission may apply
30 to become a full member, a contingent member or an associate member of the
31 governing board by submitting a petition for membership and certificate of
32 compliance to the governing board of the streamlined sales tax agreement.

33 (2) The petition for full membership shall include such state's pro-
34 posed date of entry. The state tax commission's proposed date of entry shall
35 be on the first day of a calendar quarter. The proposed date of entry shall
36 be a date on which all provisions necessary for the state to be in compliance
37 with the agreement are in place and effective.

38 (3) The certificate of compliance shall be signed by the chairman of
39 the state tax commission. The certificate of compliance shall document com-
40 pliance with the provisions of the agreement and cite applicable statutes,
41 rules, regulations or other authorities evidencing such compliance.

42 (4) The state tax commission shall annually recertify that Idaho is in
43 compliance with the agreement. The state tax commission shall make a re-
44 certification to the governing board on or before August 1 of each year af-
45 ter the year of the state's entry. In its annual recertification, the state
46 shall include any changes in its statutes, rules, regulations, or other au-

1 thorities that could affect its compliance with the terms of the agreement.
2 The recertification shall be signed by the chairman of the state tax com-
3 mission. If the state tax commission cannot recertify its compliance with
4 the agreement it shall submit a statement of noncompliance to the governing
5 board. The statement of noncompliance shall include any action or decision
6 that takes such state out of compliance with the agreement and the steps it
7 will take to return to compliance.

8 (5) Idaho's representatives to the governing board shall consist of: a
9 member of the state senate appointed by the president pro tempore, a member
10 of the house of representatives appointed by the speaker, one (1) person ap-
11 pointed by the governor, and the chairman of the state tax commission.

12 SECTION 49. SEVERABILITY. The provisions of this act are hereby de-
13 clared to be severable and if any provision of this act or the application
14 of such provision to any person or circumstance is declared invalid for any
15 reason, such declaration shall not affect the validity of the remaining por-
16 tions of this act.

17 SECTION 50. This act shall be in full force and effect on and after July
18 1, 2013.