

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 314

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXATION; AMENDING SECTION 63-2551, IDAHO CODE, TO REVISE DEF-  
2 INITIONS AND TO DEFINE A TERM; AMENDING SECTION 63-2552B, IDAHO CODE,  
3 TO REVISE PROVISIONS REGARDING THE TOBACCO PRODUCTS USE TAX; AMEND-  
4 ING CHAPTER 25, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
5 63-2552C, IDAHO CODE, TO PROVIDE FOR A TAX ON THE SALE OF ELECTRONIC  
6 SMOKING DEVICES; AMENDING SECTION 63-2553, IDAHO CODE, TO REVISE LEG-  
7 ISLATIVE INTENT; AMENDING SECTION 63-2554, IDAHO CODE, TO REVISE PRO-  
8 VISIONS REGARDING CERTAIN PERMITS REQUIRED; AMENDING SECTION 63-2555,  
9 IDAHO CODE, TO REVISE PROVISIONS REGARDING BOOKS AND RECORDS TO BE PRE-  
10 SERVED AND ENTRY AND INSPECTION BY THE STATE TAX COMMISSION; AMENDING  
11 SECTION 63-2556, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE PRESER-  
12 VATION OF INVOICES OF SALES; AMENDING SECTION 63-2557, IDAHO CODE,  
13 TO REVISE A PROVISION REGARDING CERTAIN INVOICES; AMENDING SECTION  
14 63-2558, IDAHO CODE, TO REVISE PROVISIONS REGARDING CERTAIN RECORDS;  
15 AMENDING SECTION 63-2559, IDAHO CODE, TO REVISE PROVISIONS REGARDING  
16 WHEN CREDIT MAY BE OBTAINED FOR TAX PAID; AND DECLARING AN EMERGENCY AND  
17 PROVIDING AN EFFECTIVE DATE.  
18

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

20 SECTION 1. That Section 63-2551, Idaho Code, be, and the same is hereby  
21 amended to read as follows:

22 63-2551. TOBACCO PRODUCTS TAX -- DEFINITIONS. As used in this act:

23 (1) "Tobacco products" shall mean any cigars, cheroots, stogies,  
24 smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed  
25 and any other kinds and forms of tobacco suitable for smoking in a pipe or  
26 cigarette), chewing tobacco (including cavendish, twist, plug, scrap and  
27 any other kinds and forms of tobacco suitable for chewing) and snuff, however  
28 prepared; and shall include any other articles or products made of tobacco  
29 except cigarettes;

30 (2) "Manufacturer" means a person who manufactures and sells tobacco  
31 products or electronic smoking devices;

32 (3) "Distributor" means (a) any person engaged in the business of sell-  
33 ing tobacco products in this state who brings, or causes to be brought, into  
34 this state from without the state any tobacco products or electronic smoking  
35 devices for sale, (b) any person who makes, manufactures, or fabricates to-  
36 bacco products or electronic smoking devices in this state for sale in this  
37 state, (c) any person engaged in the business of selling tobacco products or  
38 electronic smoking devices without this state who ships or transports to-  
39 bacco products or electronic smoking devices to retailers in this state, to  
40 be sold by those retailers;

1 (4) "Subjobber" means any person, other than a manufacturer or distrib-  
 2 utor, who buys tobacco products or electronic smoking devices from a dis-  
 3 tributor and sells them to persons other than the ultimate consumers;

4 (5) "Retailer" means any person engaged in the business of selling to-  
 5 bacco products or electronic smoking devices to ultimate consumers;

6 (6) "Sale" means any transfer, exchange, or barter, in any manner or by  
 7 any means whatsoever, for a consideration, and includes and means all sales  
 8 made by any person. It includes a gift by a person engaged in the business of  
 9 selling tobacco products or electronic smoking devices, for advertising, as  
 10 a means of evading the provisions of this chapter, or for any other purposes  
 11 whatsoever;

12 (7) "Wholesale sales price" means the established price for which a  
 13 manufacturer or any person sells a tobacco product or electronic smoking  
 14 device to a distributor that is not a related person as defined in section 267  
 15 of the Internal Revenue Code, exclusive of any discount or other reduction;

16 (8) "Business" means any trade, occupation, activity, or enterprise  
 17 engaged in for the purpose of selling or distributing tobacco products or  
 18 electronic smoking devices in this state;

19 (9) "Place of business" means any place where tobacco products or elec-  
 20 tronic smoking devices are manufactured, stored, or kept for the purpose of  
 21 sale or consumption, including any vessel, vehicle, airplane or train;

22 (10) "Retail outlet" means each place of business from which tobacco  
 23 products or electronic smoking devices are sold to consumers;

24 (11) "Commission" means the Idaho state tax commission.

25 (12) "Electronic smoking device" has the same meaning as in section  
 26 39-5702(13) (a) (ii), Idaho Code.

27 SECTION 2. That Section 63-2552B, Idaho Code, be, and the same is hereby  
 28 amended to read as follows:

29 63-2552B. TOBACCO PRODUCTS USE TAX. Any person who does not hold a to-  
 30 bacco products tax permit who possesses, purchases or consumes tobacco prod-  
 31 ucts or electronic smoking devices upon which tax imposed by this chapter has  
 32 not been paid, including tobacco products or electronic smoking devices sold  
 33 by internet, catalog, telephone and facsimile sellers, is liable for the  
 34 taxes imposed by sections 63-2552, ~~and 63-2552A,~~ and 63-2552C, Idaho Code,  
 35 to be reported and paid as required in section 63-2560, Idaho Code.

36 SECTION 3. That Chapter 25, Title 63, Idaho Code, be, and the same is  
 37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 38 ignated as Section 63-2552C, Idaho Code, and to read as follows:

39 63-2552C. TAX ON THE SALE OF ELECTRONIC SMOKING DEVICES -- DISTRIBU-  
 40 TION. (1) Starting July 1, 2025, there is levied and there shall be collected  
 41 a tax upon the sale, use, handling, or distribution of all electronic smok-  
 42 ing devices that contain nicotine in this state at the rate of three cents  
 43 (\$0.03) per milliliter of any solution or substance contained in or used with  
 44 an electronic smoking device that contains nicotine and a proportionate tax  
 45 at the like rate on all fractional parts of a milliliter thereof. The tax on  
 46 electronic smoking devices shall be imposed based on the net volume of the

1 solution or substance as listed by the manufacturer. Such tax shall be im-  
2 posed at the time the distributor:

3 (a) Brings, or causes to be brought, into this state from outside the  
4 state electronic smoking devices for sale;

5 (b) Makes, manufactures, or fabricates electronic smoking devices in  
6 this state for sale in this state; or

7 (c) Ships or transports electronic smoking devices to retailers in this  
8 state, to be sold by those retailers.

9 (2) (a) A retailer who brings, or causes to be brought, into this state  
10 from outside the state electronic smoking devices for sale on which the  
11 tax has not been paid is responsible for payment of the tax at the time of  
12 receiving the electronic smoking devices and before selling the prod-  
13 ucts to the ultimate consumer.

14 (b) A retailer who sells to the ultimate consumer electronic smoking  
15 devices on which the tax has not been paid is liable for the amount of  
16 the tax due and additionally shall be subject to a civil penalty equal  
17 to three (3) times the amount of tax due for each electronic smoking  
18 device, but in no event shall the penalty be less than fifty dollars  
19 (\$50.00). Such penalty shall be assessed and collected as provided in  
20 section 63-2516, Idaho Code.

21 (3) The tax collected pursuant to this section shall be distributed by  
22 the state tax commission as follows:

23 (a) Seventy-five percent (75%) shall be distributed to the prevention  
24 of minors' access to tobacco products or electronic smoking devices  
25 fund established pursuant to section 39-5711, Idaho Code; and

26 (b) Twenty-five percent (25%) shall be distributed to the public health  
27 districts for the purpose of prevention and cessation programs for to-  
28 bacco, vape, and other substances as funds allow, with such moneys to be  
29 distributed equally among the public health districts.

30 SECTION 4. That Section 63-2553, Idaho Code, be, and the same is hereby  
31 amended to read as follows:

32 63-2553. LEGISLATIVE INTENT. It is the intent and purpose of this  
33 chapter to levy a tax on all tobacco products and electronic smoking devices  
34 sold, used, consumed, handled, or distributed within this state and to col-  
35 lect the tax from the distributor as defined in section 63-2551, Idaho Code.  
36 It is the further intent and purpose of this chapter to impose the tax only  
37 once but nothing in this chapter shall be construed to exempt any person tax-  
38 able under any other law or under any other tax imposed by the state of Idaho.

39 SECTION 5. That Section 63-2554, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

41 63-2554. PERMIT REQUIRED. No person shall engage in the business of a  
42 distributor or subjobber of tobacco products or electronic smoking devices  
43 at any place of business without first having received from the commission a  
44 permit as provided in section 63-2503 or 63-2504, Idaho Code.

45 SECTION 6. That Section 63-2555, Idaho Code, be, and the same is hereby  
46 amended to read as follows:

1           63-2555. BOOKS AND RECORDS TO BE PRESERVED -- ENTRY AND INSPECTION BY  
 2 COMMISSION. (1) Every distributor shall keep at each registered place of  
 3 business complete and accurate records for that place of business, including  
 4 itemized invoices, of tobacco products and electronic smoking devices held,  
 5 purchased, manufactured, brought in or caused to be brought in from without  
 6 the state, or shipped or transported to retailers in this state, and of all  
 7 sales of tobacco products and electronic smoking devices made, except sales  
 8 to the ultimate consumer.

9           (2) These records shall show the names and addresses of purchasers, the  
 10 inventory of all tobacco products and electronic smoking devices on hand on  
 11 July 1, 1972, and other pertinent papers and documents relating to the pur-  
 12 chase, sale or disposition of tobacco products and electronic smoking de-  
 13 VICES.

14           (3) When a registered distributor sells tobacco products or electronic  
 15 smoking devices exclusively to the ultimate consumer at the address given  
 16 in the certificate, no invoice of those sales shall be required, but item-  
 17 ized invoices shall be made of all tobacco products and electronic smoking  
 18 devices transferred to other retail outlets owned or controlled by that reg-  
 19 istered distributor. All books, records, and other papers and documents re-  
 20 quired by this section to be kept shall be preserved for a period of at least  
 21 five (5) years after the date of the documents, as aforesaid, or the date  
 22 of the entries thereof appearing in the records, unless the commission, in  
 23 writing, authorizes their destruction or disposal at an earlier date. At  
 24 any time during usual business hours, the commission, or its duly authorized  
 25 agents or employees, may enter any place of business of a distributor, with-  
 26 out a search warrant, and inspect the premises, the records required to be  
 27 kept under this chapter, and the tobacco products and electronic smoking de-  
 28 VICES contained therein, to determine whether or not all the provisions of  
 29 this chapter are being fully complied with. If the commission, or any of its  
 30 agents or employees, is denied free access or is hindered or interfered with  
 31 in making such examination, the permit of the distributor at such premises  
 32 shall be subject to revocation by the commission.

33           SECTION 7. That Section 63-2556, Idaho Code, be, and the same is hereby  
 34 amended to read as follows:

35           63-2556. PRESERVATION OF INVOICES OF SALES TO OTHER THAN ULTIMATE CON-  
 36 SUMER. Every person who sells tobacco products or electronic smoking devices  
 37 to persons other than the ultimate consumer shall render with each sale item-  
 38 ized invoices showing the seller's name and address, the purchaser's name  
 39 and address, the date of sale, and all prices and discounts. He shall pre-  
 40 serve legible copies of all such invoices for five (5) years from the date of  
 41 sale.

42           SECTION 8. That Section 63-2557, Idaho Code, be, and the same is hereby  
 43 amended to read as follows:

44           63-2557. INVOICES OF PURCHASES TO BE PROCURED BY RETAILER, SUBJOBBER  
 45 -- PRESERVATION -- INSPECTION. Every retailer and subjobber shall procure  
 46 itemized invoices of all tobacco products and electronic smoking devices  
 47 purchased. The invoices shall show the name and address of the seller and the

1 date of purchase. The retailer and subjobber shall preserve a legible copy  
2 of each such invoice for five (5) years from the date of purchase. Invoices  
3 shall be available for inspection by the commission or its authorized agents  
4 or employees at the retailer's or subjobber's place of business.

5 SECTION 9. That Section 63-2558, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 63-2558. RECORDS OF SHIPMENTS, DELIVERIES FROM PUBLIC WAREHOUSE OF  
8 FIRST DESTINATION -- PRESERVATION -- INSPECTION. Records of all deliveries  
9 or shipments of tobacco products or electronic smoking devices from any  
10 public warehouse of first destination in this state shall be kept by the  
11 warehouse and be available to the commission for inspection. They shall  
12 show the name and address of the consignee, the date, the quantity of tobacco  
13 products and electronic smoking devices delivered, and such other informa-  
14 tion as the commission may require. These records shall be preserved for  
15 five (5) years from the date of delivery of the tobacco products or elec-  
16 tronic smoking devices.

17 SECTION 10. That Section 63-2559, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 63-2559. WHEN CREDIT MAY BE OBTAINED FOR TAX PAID. (1) Where tobacco  
20 products or electronic smoking devices upon which the ~~tax~~ taxes imposed by  
21 this chapter ~~has~~ have been reported and paid, are shipped or transported by  
22 the distributor to distributors or retailers outside the state, to be sold by  
23 those distributors or retailers, or are returned to the manufacturer by the  
24 distributor or destroyed by the distributor, credit of such ~~tax~~ taxes may be  
25 made to the distributor in accordance with rules prescribed by the commis-  
26 sion.

27 (2) Taxes paid on tobacco products or electronic smoking devices sold  
28 on or after January 1, 2000, on accounts later found to be worthless and actu-  
29 ally charged-off may be credited upon a subsequent payment of the ~~tax~~ taxes  
30 on tobacco products and electronic smoking devices or, if no such ~~tax~~ is  
31 taxes are due, refunded. If all or part of such an account is thereafter col-  
32 lected, the ~~tax~~ taxes shall be paid based upon the proportion of the amount  
33 collected.

34 SECTION 11. An emergency existing therefor, which emergency is hereby  
35 declared to exist, this act shall be in full force and effect on and after May  
36 1, 2025.