

Committee Minutes:

JOINT LEGISLATIVE SALES TAX EXEMPTION TASK FORCE

Joe R. Williams Building, East Conference Room, First Floor

November 3, 2003

10:00 A.M.

The meeting was called to order by Cochairman Representative Dolores Crow at 10:00 a.m. Other committee members present included Representative Dell Raybould, Representative Wendy Jaquet, Cochairman Senator Hal Bunderson, Senator Fred Kennedy and Senator Edgar Malepei. Senator Joe Stegner and Representative Margaret was absent and excused.

Others present were Representative Shirley Ringo, Idaho Legislature; Woody Richards, Moffatt Thomas; Ron Williams, Ron Williams, P.L.; Alex LaBeau, Idaho Association of Realtors; Ken McClure, Givens Pursley; Jack Lyman, Idaho Mining Association; Tom Ryder, J.R. Simplot Company; Tom Laws and Jason Kreizenbeck, Micron; Brent Olmstead, Milk Producers; Pam Eaton, Idaho Retailers Association; Jane Gorsuch, Intermountain Forest Products; Russ Hendricks, Farm Bureau; Brad Hoaglund, Idaho Hay Growers and Outfitters and Guides; Valerie Brooks, Idaho Credit Union League; Judy Brown, Idaho Center on Budget and Tax Policy; Nicole Lafavour; Steve Ahrens, IACI; Derek Santos, Idaho Division of Financial Management; Vera Raybould; Dan John, Sam Haws and Dewey Hammond, State Tax Commission and Bill Roden, Hopkins, Roden. Staff members present were Mike Nugent and Toni Hobbs.

On a motion from Senator Bunderson, the minutes from the September meeting were approved as written.

Senator Bunderson was introduced to discuss a document he had prepared by the Legislative Services Office in draft form that includes that data that was presented at the last meeting in a more user friendly format. The arguments in favor of and opposed to each exemption that was discussed are included in the text of the document. He requested that committee members and the public read the document and present arguments for changes or additions to **Mr. Mike Nugent** in the Legislative Services Office. The objective here is for everyone to be able to say that the committee did a very disciplined and thorough evaluation of the exemptions. The issue of recommendations is more complex. The Speaker and the Pro Tem will be asked for more direction in this area. **Representative Jaquet** clarified that suggestions for changes to this document could be made to Mr. Nugent. **Representative Raybould** commented that in his review of the document he found a few statements that were not accurate and would like some changes made to some of the arguments dealing with repealing certain exemptions. **Representative Crow** suggested that once the rest of this document is put together the

committee meet to finalize what the final product will look like for presentation to the full legislature.

Mr. Dewey Hammond, State Tax Commission, was introduced to discuss what other states are doing regarding sales tax exemptions. He explained that his handout shows how each state handles taxation of goods that Idaho does not tax, entities that are not taxed in Idaho and the production exemption. This document is available at www2.state.id.us/legislat/legislat.html. This survey was completed by Jim Husted at the State Tax Commission by looking at the code of every state in America. **Mr. Hammond** also distributed a handout showing how interstate and intrastate telephone calls are taxed in all states.

Representative Jaquet stated that she would like to be able to go back and discuss some of the information that was presented at the last meeting at some point. **Representative Crow** said that would be possible.

The next agenda item was review of the remaining exemptions.

a. Production Exemption--Equipment 63-3622D, 63-3622JJ

This exemption was added in 1965. This feature of the production exemption exempts equipment used to produce a taxable product. Production activities covered by this exemption are limited to manufacturing, processing, fabricating, logging, farming, and mining. The equipment must be primarily and directly used in the production activity to qualify. Also, the claiming entity must be primarily engaged in a qualifying activity for its equipment to qualify. The only exception to this is logging, where any logging equipment qualifies.

b. Production Exemption--Supplies 63-3622D, 63-3622JJ

This feature of the production exemption exempts supplies used in the process of producing a product for resale. Production activities covered by this exemption are limited to manufacturing, processing, fabricating, farming, logging, and mining. The supplies must be primarily and directly used in the production activity to qualify. Also, the claiming entity must be primarily engaged in a qualifying activity for its production supplies to qualify. The only exception to this is logging, where any logging supplies qualify.

Representative Raybould commented that to foster an increase in business in Idaho, businesses have to be profitable. To tax an entity before it makes a profit is unfair. Profits need to be taxed. If it is felt that businesses or individuals are making too much money, income tax rates need to be looked at.

Representative Jaquet asked how businesses that get the production exemption are identified when purchasing goods. **Mr. Dan John, State Tax Commission**, said that they do not have identification cards. This was tried in the 1980s but was quickly abandoned. **Representative Raybould** explained that anyone who qualifies for the production exemption fills out a tax exemption form with a tax ID # and presents it to the business. That business is then required to keep the form on file. It is the responsibility of the purchaser to use those goods purchased in

production after he signs the form verifying that the goods he is buying are exempt.

Representative Jaquet asked how these files are audited. **Mr. John** said that the vendors are audited and if suspicious invoices are found, they go to the purchaser. He said he would get the percentage of audits done annually for the committee. **Representative Jaquet** asked if there is a phone number consumers can call if they suspect abuse. **Mr. John** stated that they can call the taxpayer service number in Boise, Coeur d'Alene, Lewiston, Idaho Falls, Pocatello and Twin Falls and that would be followed up on. The Boise number is a toll free number.

Representative Jaquet asked if the production exemption is similar to other businesses cost of goods sold due to the fact that those goods are purchased at a wholesale rate and sales tax is not paid on them. **Mr. John** answered that if something is being produced for resale, the raw materials are purchased without the tax. The cost would be subtracted on your income tax return to get to the taxable income also. **Mr. John** clarified that if something is being purchased to incorporate it into a product, sales tax is not paid on that or on the equipment that is used to produce that product.

Mr. Steve Ahrens, IACI, stated that he agreed with **Representative Raybould's** comments. He does not want the silence in the room to indicate that the production exemption is thought of as anything other than the absolute foundation of the Idaho economy. Any assault on it would be taken very seriously.

c. Irrigation Equipment and Supplies 63-3622W

Exempts agricultural irrigation equipment and supplies, even if attached to real property, and even if purchased by a contractor for an agricultural irrigation project. Originally enacted in 1975 as 63-3622(f).

Russ Hendricks, Farm Bureau, commented that irrigation supplies as well as the two previous exemptions are very important to all aspects of agriculture. He echoed **Mr. Ahrens and Representative Raybould's** comments above. It is very important that the goods being produced are not taxed every step along the way. They should only be taxed at end use. To do otherwise would see to be an unfair double taxation.

Senator Bunderson asked **Mr. Ahrens** if the production exemption needs to be expanded or is it adequate as it is. **Mr. Ahrens** answered that the means of production in Idaho have not ever been taxed in the history of the state. If it is seriously intended by this committee to consider changing this many years of tax policy, that should go through the legislative process to be resolved. **Senator Bunderson** agreed and explained that this committee is designed to look at all of the exemptions and make recommendations to the entire legislature for action. **Mr. Ahrens** said that he asked the question during the first meeting as to what the purpose of the committee really was. Was it to raise new revenues or to examine the current system from the standpoint of fairness and equity? He said he will take offense to any direction that is perceived in the committee that appears to be moving toward raising taxes. Every time something is changed in the process of removing an exemption or extending a sales tax to a service, that is a tax increase to that entity and must be carefully considered by the legislature. **Senator Bunderson** clarified

that the charge of this committee came from the Speaker of the House and the Pro Tem. That charge was to do an evaluation of the current sales tax exemptions and to make a recommendation. He added that the committee is a long ways from being able to make any recommendations.

Senator Bunderson again asked if the production exemption extends far enough. Are there any other industries that have unique aspects that are not currently covered under these exemptions. **Mr. Ahrens** said he does not have the answer to that question. He added that the production exemption has been protected and guarded by the business community and members of the legislature throughout the entire history of the state. If there are entities that believe they should have broader protection under the production exemption, he has not heard from them. If they are out there, they should bring their proposals to the legislature. **Senator Bunderson** agreed and said that is part of this committee. It is to examine both sides of the issue. Is the existing law reasonable under the circumstances. There should not be a defensive attitude taken during evaluation. **Mr. Ahrens** stated that he would find it hard to believe that a business faces the loss of a large amount of money due to repealing the production exemption would not adopt a defensive position. His original comment was simply that the silence in the room should not be misinterpreted.

Representative Raybould said that there were statements made in previous meetings that if some of these exemptions could be removed or repealed to bring in more income to the state, the broad tax to everyone could be lowered. In his opinion, this is nothing more than a tax shift and that is not the direction this committee should take. He thinks the committee should put that behind it and evaluate whether these exemptions are valid today and work toward making a recommendation.

Regarding irrigation and supplies exemption, **Representative Raybould** said that any irrigation supplies that become part of real estate are taxed such as headgates or flumes. Anything that becomes attached to the real estate is already taxed. Portable supplies and equipment are not taxed as part of the production exemption. **Brad Hoaglund, Idaho Hay Association. Alfalfa Seed Growers**, echoed what **Mr. Hendricks** said. Irrigation equipment is, in their view, part of the production of a particular commodity. Without the water delivery system, the commodity will probably not exist. **Senator Bunderson** clarified that this is the type of argument regarding exemptions is what he would like to see more of. **Senator Kennedy** said that the information from the tax commission says that irrigation equipment is exempt even if it is attached to real property and even if purchased by a contractor for agricultural irrigation purposes.

Representative Raybould said he has been paying tax on headgates and culverts and such that are permanently attached to the real estate. **Mr. John** clarified that the exemption for irrigation does extend to improvements to real estate. This was because the nature of the industry was changing with pivots and things there was a question of whether they were improvements to realty or not. Culverts are a different story. It was discussed that this might be a weakness in the system that it needs to be made easier to understand what is exempt and what is not.

Representative Crow said that is true in many cases but it is up to the individual to read the law.

d. Trade in Value 63-3613(b)2

Excludes from the taxable sales price any amounts allowed for merchandise traded in on other like goods. Enacted in 1965. Amended in 1990 to include trade-downs and barbers.

Representative Crow explained that one reason for this exemption is due to the fact the sales tax was paid on the item when it was originally purchased and to charge it again would be double taxation.

e. Motor vehicles used outside of Idaho 63-3622R

Exempts vehicles under 26,000 pounds bought in Idaho for use outside Idaho. It also applies to trailers. (See Interstate Trucks for vehicles over 26,000 pounds and trailers used in interstate commerce.) Originally enacted as 63-3622(q) in 1965, it exempted vehicles sold in Idaho for use out-of-state. It was amended in 1989 to add weight limit.

Mr. John explained that this was put in place so that people from Oregon or other states do not have to pay Idaho sales tax on vehicles purchased in Idaho for immediate use in that other state. To repeal this exemption would essentially mean that sales would not be made in Idaho for vehicles going out of the state. Other states have the same policies.

f. Interstate trucks 63-3622R

Exempts trucks weighing over 26,000 pounds that are registered under the international registration plan (or similar pro rata system) and trailers that are used in a fleet operating in interstate commerce. Provides a recapture of sales tax on vehicles that are part of a fleet that are not used at least 10% outside Idaho during the calendar year. Enacted in 1989.

Mr. John said that this is not an original exemption. With the advent of large trucking firms being able to pick and choose where to base their headquarters, this exempts vehicles that are used more than 10% outside of Idaho. Again, this was put into effect because other states have the same exemption and without it some trucking companies would have moved to other jurisdictions.

g. Food stamps/WIC 63-3622EE, 63-3622FF

Exempts goods purchased with WIC checks and federal food stamps. Mandated in 1987 by the federal government.

Mr. John explained that if the state taxes sales made with food stamps the federal government will take away food stamps to the state.

h. Out of state contracts 63-3622B

Exempts goods purchased by contractors to install into real property in nontaxing states. Originally enacted in 1965 as 63-3622(b), it was amended in 1993 to extend to non-Idaho contractors.

Mr. John again stated that this is in place due to loss of sales that would occur without it. If materials are brought in to the state that have not been taxed, they are subject to use tax. In response to a question from **Representative Jaquet**, **Mr. John** said that it is not difficult to make sure the use tax is being paid. The tax commission looks at building permits and business journals that show construction contracts. If the company that is making the sale has a site in Idaho, all of those sales are reported. **Representative Raybould** clarified that this is true with any company doing business in Idaho. If something is purchased from a chain store that is doing business in Idaho and Utah and you purchase something in Utah to be shipped to Idaho for use, they will charge you Idaho sales tax. This is similar to remote sales.

i. Pollution Control Equipment 63-3622X

Exempts equipment required by regulatory agencies for air or water pollution control. Originally enacted in 1977 as 63-3622(e). Amended in 1997 to add certain dry-cleaning equipment.

Mr. John explained that this was due to some actions by the federal government requiring expensive pollution controls on manufacturing industries in the state. **Representative Jaquet** asked if this is an ongoing cost or could it be revisited. **Mr. John** said this is an ongoing cost because today plant design costs are increased to incorporate these pollution controls.

j. School lunches and senior citizen meals 63-3622J

Exempts federal meals programs for youth and elderly. School Lunch programs were exempted in 1965 as 63-3622(k). Amended in 1974 to add sale of meals to aging persons under the Older Americans Act Program.

k. Railroad Rolling Stock and Remanufacturing 63-3622CC 63-3622DD

Provides an exemption for railroad rolling stock and for parts, equipment, and supplies used in the process of remanufacturing railroad rolling stock, whether or not the rolling stock is for resale. Rolling stock must have been used in interstate commerce at least three months prior to rebuild to qualify. Enacted in 1986.

Mr. John stated that this exemption was added as a competitive issue. The industry said that in order to stay in Idaho they wanted an exemption on the remanufacturing parts that were being put in locomotives and train cars. **Senator Bunderson** asked if this would be part of a production exemption anyway. **Mr. John** said no because they are not reselling what they are manufacturing in most cases.

Senator Bunderson stated that one of the evaluation criteria is consistency. He asked if this exemption is consistent with other industries or is it unique to railroads. **Mr. John** answered that companies that would be rebuilding automobiles would not get the exemption. He added that there is a tie to the production exemption because some of these are done by contract.

Representative Jaquet said that there is company that might be locating in Idaho that rebuilds semi cabs. Would they be able to enjoy this same exemption? **Mr. John** said that if they are actually buying the cabs and remanufacturing them for resale, they would get the production

exemption. If an individual took a cab to them for work, they would not get the exemption. **Senator Kennedy** clarified that if a fleet of trucks located in Idaho that haul goods throughout the state were to purchase parts in Idaho in order to remanufacture their trucks would not receive an exemption on the parts they purchase. On the other hand, a railroad operating in Idaho would get an exemption **Mr. John** said that was correct. **Senator Kennedy** stated that this exemption should be added to the list for possible removal due to inconsistency with other industries.

l. Broadcast equipment and supplies 63-3622S

Provides an exemption for equipment and supplies used to produce and broadcast radio and television programs. It was originally enacted in 1975 as 63-3622(w) and was amended in 1987 to add aircraft to the exclusions from the exemption.

Mr. John said that in this case broadcast was considered a service. **Senator Bunderson** commented that it would seem in this case if services were taxed, this area would be covered under the production exemption anyway. **Mr. John** said that could easily be done.

m. Commercial Aircraft 63-3622GG

Exempts aircraft purchased for commercial transport of passengers or freight. Enacted in 1988. Amended in 1994 to add any aircraft that are for use outside Idaho.

This was added to keep purchasers of commercial aircraft from going to other states to make those purchases.

n. Sale of lease of businesses or business assets 63-3622K(b)(2-5)

Exempts sales of otherwise taxable merchandise, equipment, and supplies in cases where the entire business operation is undergoing transfer of ownership and the business itself will continue its operations. It also exempts sales of businesses that amount to change in the form of business ownership. It also exempts sales and leases of capital assets between closely related businesses, but only if the sales tax has previously been paid on the capital asset. Originally enacted as 63-3622(l), it was amended in 1967 to add bulk sales and change in form of doing business by adopting a new definition section 63-3612A in 1967. Section 63-3612A was repealed and moved to 63-3622K in 1988, then amended in 1990 to add related business transfers and sales. Amended in 1996 to add leases of assets among family-owned businesses.

o. Ski lifts and snowgrooming equipment 63-3622Y

Exempts the lifts, snowgroomers, and snowmaking equipment used by the owner of a ski area. Enacted in 1995.

Mr. John explained that since admissions are taxed in Idaho including ski lift tickets, the ski industry asked for an exemption on snow grooming equipment and other things that help them prepare the slopes. This did help the ski industry within the state.

p. Clean rooms 63-3622NN

Exempts any tangible personal property that is used in or becomes a part of a "clean room" used to manufacture semiconductors. Also includes property that is used to maintain a clean room. Enacted in 1999.

This arose out of a dispute between the tax commission and the chip manufacturing industry. The tax commission said that clean rooms were improvements to realty and the industry said they were equipment. This was a specific exemption that was put in place as a compromise and it is very strict as to what qualifies. **Senator Kennedy** asked if this exemption also extends to the manufacturers of equipment for clean rooms. **Mr. John** said he thought so because their standards have to be just as high as an actual clean room facility.

q. Publishing equipment and supplies 63-3622T

Provides an exemption for equipment and supplies used to publish advertising type newspapers that are sold or given away to the public, as long as the paper contains at least 10% editorial comment and advertising revenue is the publisher's primary source of income. This exemption was originally enacted in 1979 as 63-3622(x). The only amendment in 1987 to this exemption was to add aircraft to exclusions from the exemption.

r. Lodging, eating and drinking places 63-3612

Allows these industries an exemption for nondepreciable goods that are consumed by customers, such as guest hand soap provided in a motel room. Enacted in 1988.

s. Drivers education automobiles 63-3622R(d)

Exempts the value of motor vehicles that are temporarily donated to drivers education programs. Enacted in 1995.

t. Incidental sales of tangible personal property 63-3609

Exempts goods sold incidentally when selling real property, such as a stove and refrigerator included with a home. Enacted in 1985.

u. Donations of real property to Idaho Government or a nonprofit 63-3621(1)

Allows an exemption from use tax for goods that are donated to either the State of Idaho or to a nonprofit listed in 63-3622O, where the goods are incorporated into real property. Enacted in 1991.

Mr. John explained that before this exemption some contractors were doing free work for government entities and then the tax commission was charging a tax on the materials. The legislature felt this should be exempt because it was done as a form of a donation.

v. Common carrier purchases and out of state sales 63-3622Q and 63-3622P

Exempts goods delivered to buyers outside Idaho (63-3622Q) and in-state purchases by common carriers for use outside Idaho if transported out of Idaho under a bill of lading (63-3622P). Originally enacted as 63-3622(p) and 63-3622(o) in 1965.

Representative Jaquet asked how often this is audited. **Mr. John** said that if the Tax Commission sees items being sold as exempt during an audit, they verify how those were shipped out of the state.

There have been incidents involving artwork being purchased and made to look as if it were shipped to other locations.

v. Motor fuels 63-3622C

Exempts motor fuels subject to motor fuels tax; exempts off-road fuels loaded in Idaho and used outside Idaho. Originally enacted in 1965 as 63-3622(c). Exempted on road use of motor fuels; amended in 1986 to exempt locomotive fuels unless loaded and burned off in Idaho.

Mr. John stated that if motor fuel was taxed, any tax from fuel used on the highways, by constitution, has to go to the highway fund and be used to build and repair roads.

w. Utility sales 63-3622F

Exempts sales of natural gas, electricity, and water delivered to consumers by means of wires, pipes, mains, or similar systems. Originally enacted in 1965 as 63-3622(f). A consumer in this case means an individual or business.

Representative Jaquet commented that since utilities already pay franchise fees, removing this exemption would be adding another tax that is passed on to the consumers. **Mr. John** said that is essentially true. He reminded the committee that the tax is always on the consumer, not the seller.

Nicole LaFavour asked if it is possible to tax for use above a certain amount or percentage. **Mr. John** said that would be possible but very difficult for utilities to implement.

x. Prescriptions and durable medical equipment 63-3622N

Exempts most prescription medical items. This exemption was originally enacted as 63-3622(q) in 1967 to exempt prescription drugs. It was amended in 1971 to add prescription oxygen and amended in 1976 to add prosthetics, limbs, wheelchairs, hearing aides, and crutches. It was amended in 1990 to add durable medical equipment, and numerous other prescription items. Amended in 1992 to clarify that dentures and other orthodontic appliances are taxable when purchased by the practitioner. Amended in 1998 to reverse the 1992 amendment, and provide that dental prostheses and other orthodontic appliances, except fillings, are exempt.

z. Heating materials 63-3622G

Exempts wood, coal, gas, and petroleum products used as a source of heat for either industrial or domestic purposes. Originally enacted in 1965 as 63-3622(g).

aa. Used mobile homes 63-3622R

Exempts the sale of used manufactured homes from the sales tax. Original 63-3622(q) amended in 1976 to exempt used manufactured homes.

bb. New manufactured homes or modular buildings 63-3613(c)

Excludes 45% of the sales price of new manufactured homes and modular buildings from the taxable sales price. Originally exempted 60% of the sales price of mobile homes when enacted in 1965. It was amended in 1976 to exempt 45% and add modular buildings (which were previously treated as real property improvements and taxed on materials as built).

cc. Funeral caskets 63-3622U

Exempts goods sold in conjunction with a funeral. Originally enacted in 1977 as 63-3622(y). This has to be through a licensed funeral director. **Representative Jaquet** said that many states are making this taxable and wondered why Idaho does not. **Mr. John** said that this exemption was looked at a few years ago and it was very emotional. **Representative Crow** added that if this area were taxed, the tax would be passed on to the family of the deceased, not the mortician.

dd. Precious metal bullion 63-3622V

Exempts sales of precious metal bullion and coins. Originally enacted in 1982 as 63-3622(z).

ee. Telecommunications equipment 63-3613(b), 63-3621(a)

Exempts from taxation the amount of discount or price reduction that is offered as an inducement to commence or continue telecommunications service. Enacted in 1996.

Mr. John said that as the industry changed companies began giving away cell phones with purchase of a service plan. The tax commission was saying that this was taxable on the cost of the cell phone. The industry said there was no way to separate out the price of the phone from the service so it was made exempt. This is actually written in the definition of sale as "telecommunication that is incidental to the sale of the service is not treated as a sale for the sales tax act." If you actually purchase a phone, that is taxable.

ff. Nonprofit literature 63-3622I

Exempts literature published and sold by 501(c)(3) nonprofit organizations. Originally enacted in 1965 as 63-3622(j), exempting only religious literature. Amended in 1989 to include literature of all 501(c)(3) nonprofit organizations in response to the U.S. Supreme Court ruling in *Texas Monthly vs. Bullock*. Amended in 1999 to include alternative forms, including audio-visual, magnetic, optical, and other machine-readable media.

gg. Official documents 63-3622AA

Exempts sales of documents when the fee for the document is set by Idaho Code. Originally enacted in 1984.

hh. Containers 63-3622E

Exempts containers that are part of goods for sale, including returnable containers.

Originally enacted in 1965 as 63-3622(e).

ii. Vending machines and amusement devices 63-3622II

Exempts coin-operated machines that vend a taxable product or service. Enacted in 1990. **Mr. John** explained that amusement devices are taxed a \$35.00 per year fee in lieu of paying sales tax on the money that actually goes through the machine. By vending machine this means the actual machine that dispenses the products.

Representative Jaquet asked how relevant these fees are today. **Mr. John** stated that the amusement device is a relatively new phenomenon and the statute is going to be modified slightly to take into account the rate charged for the game. The vending machine exemption has not been looked at for quite some time.

jj. State of Idaho and Local Government Purchases 63-3622O(1)(f)

Exempts Idaho governmental agencies from paying sales tax on purchases. This exemption has been enjoyed since the original sales tax act and was codified in 1997.

kk. Hospital purchases 63-3622O(1)(a)

Exempts all purchases by nonprofit hospitals that are licensed by the state for the care of ill persons. Excludes from exemption nursing homes or "similar institutions." Originally enacted as 63-3622(s) in 1967.

Senator Bunderson asked if for-profit hospitals pay taxes on these types of purchases. **Mr. John** said that was correct. **Senator Bunderson** said that would seem to be an inconsistency between how like entities are dealt with. **Representative Raybould** commented that in his opinion this "not for profit" facilities were intended to be things like county hospitals and such. **Mr. John** clarified that this covers hospitals owned by religious organizations.

ll. Educational Institution Purchases 63-3622O(1)(a) and 33-5204

Exempts all purchases by nonprofit colleges, universities, primary and secondary schools. Excludes from exemption schools that primarily teach business, dancing, gymnastics, dramatics, music, cosmetology, writing, exercise, and "other special accomplishments." This was originally enacted as 63-3622(s) in 1967 and amended in 1990 to add non-resident schools with Idaho facilities. It was amended in 1993 to add all non-resident schools not otherwise excluded. 33-5204 was added in 1999 to explicitly add charter schools to this exemption.

mm. INEEL R&D Purchases 63-3622BB

Exempts goods used for research and development at the Idaho National Engineering and Environmental Laboratory (INEEL). It was originally enacted in 1967 and exempted all federal research and development and nuclear fuel reprocessing under 63-3615. It was amended in 1969 to limit to INEEL only. It was recodified in 1985 as 63-3622BB and removed nuclear fuel reprocessing from the exemption. Most business in Idaho doing research and development are specifically excluded from the production exemption. INEEL enjoys a specific exemption in this case and may be able to get an exemption on their contracts with the federal government as well. **Mr. John** said that he would get information on other nuclear facilities in other states.

nn. Sales by Indian tribes on reservations 63-3622Z

Exempts sales by Indian Tribal Enterprises from sales and use tax. This exemption allows a tribal enterprise to make sales to both Indians and non-Indians without collecting sales tax. Further, it provides that no use tax applies to the purchase even if the non-Indian removes the goods from the reservation. Originally enacted as 63-3622(aa) in 1984; exempted sales of tangible personal property by tribes within reservation boundaries; amended in 1987 to include sales of services and to define reservation. **Mr. John** stated that this would be difficult to implement if it were repealed.

In response to a question from **Senator Bunderson**, **Mr. John** said this exemption would include large ticket items such as automobiles. **Mr. Nugent** stated that at the time this exemption was enacted it was stated that if the tribes opened large shopping malls or auto dealerships, this exemption would be revisited.

oo. Sales by non-retailers (yard and occasional sales) 63-3622K(b)(1,6) 63-3622H

Exempts sales of items by individuals who are not retailers and who are not behaving as a retailer. Covers transactions such as occasional yard sales, occasional classified ad sales, etc. Motor vehicle sales are specifically excluded from this exemption. Originally enacted as 63-3622(j, 1) in 1965.

pp. Sales through vending machines 63-3613(e)

Allows retailers selling products through vending machines for \$1.00 or less to pay tax on 117% of their acquisition cost of the products rather than on the retail sales price.

Enacted in 1977.

Mr. John explained that the sales tax paid is paid at the current rate. **Representative Jaquet** stated that she would like to discuss this in more detail. **Representative Crow** said there would be time at the end of the meeting.

qq. Motor vehicle purchases by family members 63-3622K(c)

Exempts sales of motor vehicles between family members related within the second degree of consanguinity. This is because sales tax has already been paid on the vehicle once. Section 63-3612A was amended in 1980 to add the sale of motor vehicles to family members. It was repealed and moved to 63-3622K in 1988.

rr. Canal company purchases 63-3622O(1)(a)

Exempts all purchases by canal companies. Canal companies are defined as nonprofit corporations whose sole purpose is operating and maintaining dams, reservoirs, canals, lateral and drainage ditches, pumps, and pumping plants. Originally enacted in 1967 as 63-3622(s).

ss. Incidental sales by churches 63-3622KK

Exempts sales by churches that do not regularly compete with private enterprise. Enacted in 1990.

This is intended to cover those items where a church sells donated products on which the tax was paid on the product by the donator.

tt. Auto manufacturer rebates 63-3613(b)8

Allows dealers to deduct the amount of a rebate given to the buyer, by the motor vehicle manufacturer, from the taxable sales price of the vehicle. Enacted in 1990.

uu. Health entity purchases 63-3622O(1)(a)

Exempts all purchases by certain specified "health related entities." The list consists of: the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, The ARC, The Children's Home Society of Idaho, American Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association, Easter Seals, Idaho Community Action Agencies, Idaho Primary Care Association and its community health care centers, the Idaho Diabetes Youth Program, the Idaho Women's and Children's Alliance, and Special Olympics Idaho. It also includes the local or regional chapters or divisions of these

entities. History: Amended in 1980 to add first list of health related entities. Amended in 1986, 1990, 1999 and 2000 to expand the list. This is due to the misconception in Idaho that not for profits are automatically exempt from sales tax. Once that is pointed out, they are normally added to this list.

vv. Food bank purchases 63-3622O(1)(b,c)

Exempts all purchases by food banks or soup kitchens. Includes the Idaho Food Bank Warehouse, Inc. by specific reference, and also includes any other nonprofit corporation or association "one of whose" primary purposes is the furnishing of food or food products to others without charge. Enacted in 1991. Amended in 1998 to add "growing" to the list of activities that qualify for this exemption.

ww. Forest protective association purchases 63-3622O(1)(a)

Exempts all purchases by forest protective associations. Forest protective associations are associations that detect, prevent, and suppress forest or range fires. They include only those associations that contract with the State of Idaho pursuant to Chapter 1, Title 38, Idaho Code. Enacted in 1979. This is essentially nongovernment entities that fight fires.

xx. Sales by 4-H and FFA clubs at fairs 63-3622K(b)7

Exempts sales of animals by any 4-H club or FFA club held in conjunction with a fair or the Western Idaho Spring Lamb Sale. Enacted in 1979 by amending 63-3612A. Moved to 63-3622K in 1988. If these groups hold their own sales, those sales are taxable. If sales are done through local or state fairs, they are exempt. There would also be some sales tax charged for butchering services.

yy. Sales by outfitters and guides 63-3613(b)9

Allows outfitters to exclude from the taxable amount charged to their customers the federal fees imposed on outfitters for the right to use recreational sites. Enacted in 1990. Amended in 1994 to eliminate the provision that the federal fees must be for the purpose of managing the land or water upon which the outfitting occurs. **Mr. John** explained that guide services are treated as admissions and are subject to tax. This exemption exempts the amount paid to the federal government for use of facilities. Essentially it exempts a portion of the sales price from tax. **Mr. Brad Hoaglund, Outfitters and Guides Association**, further explained that this exemption keeps outfitters from having to pay a sales tax on the use fee charged for the use of federal land.

zz. Sales of meals by churches to members 63-3622J

Exempts meals sold at church functions to members of the congregation. Originally enacted as 63-3622(k) in 1965. If churches are selling meals for special occasions to non-church members, tax should be paid on those meals.

aaa. Sales or purchases by centers for independent living 63-3622O(1)(e)

Exempts sales to or purchases by centers for independent living. Centers for independent living are defined as private, non-profit, non-residential organizations where at least 51% of the governing board are individuals with disabilities. Enacted in 1997. These are organizations that are funded by federal funds with limited resources. They felt that these limited resources should not be used to pay sales tax on purchases. These are similar to the health related entities discussed earlier.

bbb. Nonsale clothier purchases 63-3622O(1)(d)

Exempts donations or sales of clothes to nonsale clothiers. Nonsale clothiers are defined as any nonprofit corporation or association "one of whose" primary purposes is the furnishing of clothes to others without charge. Enacted in 1992. If these entities actually sell any of the donated clothing, that is taxable.

ccc. Ronald McDonald House Rooms 63-3622O(5)

This exempts the renting of a place to sleep by the Ronald McDonald House. Enacted in 1997. They are also exempt on purchases as the health care entities are.

ddd. Federal excise tax imposed at retail level 63-3613(b)5

Excludes retail level federal excise taxes from the taxable sales price. Originally enacted in 1965.

This is if there is a separately stated federal excise tax, the sales price does not include that amount. This used to exist on tires because it was stated separately.

eee. Federal constitutional prohibitions 63-3622A

State cannot tax goods when prohibited by the U.S. Constitution. Originally enacted in 1965 as 63-3622(a).

fff. Other federal and state statutory prohibitions (various)

Exemptions granted from state sales tax by other state statutes and by federal statutes, such as the American Red Cross, Amtrak, Credit Unions, Emergency 911, Federal Intermediate Credit Banks, Federal Land Banks, Foreign Diplomats, Idaho Health Facility Authority, Idaho Housing Authority, Idaho Life and Health Insurance Guaranty Association, Idaho Onion Commission, Idaho Potato Commission, Idaho Turnpike Authority, Idaho Wheat Commission, Jr. College Dormitory Housing Authority, Production Credit Association, and Regional Airport Authority. The date of exemptions varies by statute.

With the conclusion of the explanation of exemptions, **Representative Jaquet** asked that the committee go back to discuss the issue of pyramiding. She stated her concern about the ability to identify where these taxes are actually added. **Mr. John** said that if she is saying that if taxes are charged on services, that is pyramiding onto good sales, that is not true. If services were taxed, the production exemption would need to be looked at to see if it need to be modified to either

exempt services that become part of another service or equipment used to produce the service. This would eliminate any pyramiding that would take place. **Representative Jaquet** said she would like to have that looked at so that she can gain an understanding of why the exemptions exist.

Representative Crow said that if the committee does get to the point of taxing services, everything will have to be looked at. **Representative Jaquet** said that she would not feel comfortable making any recommendations without further study in this area. Recommendations are part of the committee's charge. **Representative Crow** explained that the next committee meeting will be to finalize that report that will be given back to the Speaker and Pro Tem. All of the questions will not be answered until the actual issue is being worked on. If the committee decides that broadening the tax base is important, the charge would move to the germane committees to decide how to do that. **Representative Jaquet** said that is not her understanding of the committee's charge and wanted that to be reflected in the minutes. **Senator Bunderson** commented that he is not comfortable making a recommendation at this time either. The committee has reviewed the exemptions but in-depth review has to include an understanding by the citizens of this state because this is a taxation issue that is very significant. Such a recommendation will not pass the legislature without considerable effort. The type of recommendation in the committee charge is not specified so it could be to continue to study this issue for further understanding. He said that he has requested more guidance from the creators of the task force on what direction to go. In his opinion, if the committee can develop a document showing all of the exemptions, background on what other states are doing and discussion of the pro and con arguments thus far, that would be a good step. If the facts are laid on the table for consideration, perhaps the germane committees will be able to decide if a significant change in public policy relative to taxation should occur. This is not an easy process.

Representative Jaquet said that one of the charges to the committee states to make recommendations that make the Idaho sales tax structure more relevant with the evolution of the economy to a service oriented economy. One recommendation she would like to make would be that the process of examining the exemptions takes place every 5 to 10 years. She continued that germane committees need to have more formalized ways of looking at the sales tax structure including incident studies. Incident studies include looking at how different sectors of the economy would be affected by certain changes. She would like this committee to suggest new ways of looking at how fiscal policy is made with information given to all legislators, not just those on tax committees. There are going to be some serious issues in the state when the 6% sales tax expires and in her opinion this committee could also look at adequacy issues. At this point she would not be comfortable with any conclusion the committee would reach because the work is not complete.

Representative Raybould said that he looked at this committee assignment in a different light. Out of the 70 plus exemptions that have been reviewed by this committee, only about 4 or 5 would be exemptions that some part of the citizens of the state have problems with. This could be that the exemption does not do enough or that it is no longer valid. In his opinion, that is what these meetings were for. In his opinion, if this task force continues, anyone that thinks these exemptions are no longer valid should come forward with a recommendation as to what should be done with that exemption and let the committee debate it at that time. For this committee to

go through every one of these exemptions and to recommend action on those, without input from the public, would take a very long time. The public that has interest in the exemptions should bring the information to the committee on specific issues for review and action. **Representative Crow** commented that germane committee meetings in the house and senate are open meetings and the public can attend and bring suggested legislation for review as well. She continued that it would be too difficult for the committee to examine each and every exemption but it all boils down to the general public paying more if any of these exemptions are eliminated.

Senator Kennedy stated that in his opinion the charge to the task force goes far beyond whether specific individuals from given industries show up to discuss certain exemptions. This task force has been given a charge to make a study of the entire sales tax system, whether or not the public shows up. He quoted from the charge "to consider the introduction of a broader based tax on a consumption of services, not as a major source of new revenue, but as a means to reform the entire sales tax structure and it's relevance to today's global economy." He does not think the task force is anywhere near close to completing their work. In his opinion, the committee needs to give the legislature recommendations on what should be done to broaden that tax base of sales tax in the state of Idaho. **Representative Crow** added that recommendation of another committee to study the issue is also an option. **Senator Kennedy** continued that he would not see that as an option. This committee needs to stand up to the charge and not put off making recommendations to the legislature. **Representative Crow** asked what he would like to see on an agenda for the future. **Senator Kennedy** suggested that in order to fulfill the charge, the committee needs to complete the study and come back with recommendations as to what changes need to be made in order to make Idaho's tax structure relevant to today's service oriented tax structure. In his opinion, serious consideration of a tax on certain services would be a good place to start. **Senator Bunderson** commented that as a next step the committee expand the draft document that was discussed earlier with today's information. This document, along with additional direction from the Speaker and Pro Tem, can be used to make the final decisions on what to recommend to the full legislature. He added that this document will be available to everyone by early December for review and comment before final recommendations are made. **Senator Kennedy and Representative Crow** agreed with that suggestion. **Representative Jaquet** agreed also but wanted to be sure there was adequate time for review before a meeting is held.

Representative Jaquet said that in her opinion the lack of participation from the stakeholders shows a lack of interest in going forward with the charge of the committee. She is very disappointed with that. She also thanked the Tax Commission for all of the information they provided.

Senator Bunderson moved that the meeting be adjourned. The motion passed and the meeting was adjourned at 12:40 p.m.