

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 119

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3638, IDAHO  
2 CODE, TO REVISE PROVISIONS RELATING TO DISTRIBUTION OF MONEYS  
3 TO DEVELOPERS OF CERTAIN RETAIL COMPLEXES AND TO PROVIDE  
4 A CORRECT CODE REFERENCE; REPEALING SECTION 63-3641, IDAHO  
5 CODE, RELATING TO TANGIBLE PERSONAL PROPERTY SOLD BY CERTAIN  
6 RETAILERS; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE  
7 ADDITION OF A NEW SECTION 63-3641, IDAHO CODE, TO PROVIDE A SALES  
8 AND USE TAX REBATE TO DEVELOPERS OF CERTAIN RETAIL COMPLEXES,  
9 TO PROVIDE DEFINITIONS, TO PROVIDE PROVISIONS RELATING TO A  
10 WRITTEN CLAIM, TO PROVIDE FOR APPROVAL BY THE TAX COMMISSION,  
11 TO PROVIDE PROVISIONS RELATING TO THE REBATE AMOUNT, TO PROVIDE  
12 THAT CERTAIN INFORMATION IS CONFIDENTIAL, TO PROVIDE FOR DEPOSIT  
13 OF CERTAIN MONEYS AND TO PROVIDE FOR A REBATE LIMIT; AND  
14 DECLARING AN EMERGENCY.  
15

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

17 SECTION 1. That Section 63-3638, Idaho Code, be, and the same is hereby amended to  
18 read as follows:

19 63-3638. SALES TAX – DISTRIBUTION. All moneys collected under this chapter,  
20 except as may otherwise be required in sections 63-3203 and 63-3709, Idaho Code, shall be  
21 distributed by the tax commission as follows:

22 (1) An amount of money shall be distributed to the state refund account sufficient to pay  
23 current refund claims. All refunds authorized under this chapter by the commission shall be  
24 paid through the state refund account, and those moneys are continuously appropriated.

25 (2) Five million dollars (\$5,000,000) per year is continuously appropriated and shall be  
26 distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

27 (3) Four million eight hundred thousand dollars (\$4,800,000) per year is continuously  
28 appropriated and shall be distributed to the water pollution control account established by  
29 section 39-3605~~28~~, Idaho Code.

30 (4) An amount equal to the sum required to be certified by the chairman of the Idaho  
31 housing and finance association to the state tax commission pursuant to section 67-6211, Idaho  
32 Code, in each year is continuously appropriated and shall be paid to any capital reserve fund,  
33 established by the Idaho housing and finance association pursuant to section 67-6211, Idaho  
34 Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of  
35 the Idaho housing and finance association shall be repaid for distribution under the provisions  
36 of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing  
37 and finance association, as soon as possible, from any moneys available therefor and in excess  
38 of the amounts which the association determines will keep it self-supporting.

1 (5) An amount equal to the sum required by the provisions of sections 63-709 and  
2 63-717, Idaho Code, after allowance for the amount appropriated by section 63-718(3), Idaho  
3 Code, is continuously appropriated and shall be paid as provided by sections 63-709 and  
4 63-717, Idaho Code.

5 (6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

6 (7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

7 (8) One dollar (\$1.00) on each application for certificate of title or initial application  
8 for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle processed  
9 by the county assessor or the Idaho transportation department excepting those applications in  
10 which any sales or use taxes due have been previously collected by a retailer, shall be a fee for  
11 the services of the assessor of the county or the Idaho transportation department in collecting  
12 such taxes, and shall be paid into the current expense fund of the county or state highway  
13 account established in section 40-702, Idaho Code.

14 (9) Eleven and five-tenths percent (11.5%) is continuously appropriated and shall be  
15 distributed to the revenue sharing account which is created in the state treasury, and the moneys  
16 in the revenue sharing account will be paid in installments each calendar quarter by the tax  
17 commission as follows:

18 (a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as  
19 follows:

20 (i) Fifty percent (50%) of such amount shall be paid to the various cities, and  
21 each city shall be entitled to an amount in the proportion that the population of  
22 that city bears to the population of all cities within the state; and

23 (ii) Fifty percent (50%) of such amount shall be paid to the various cities, and  
24 each city shall be entitled to an amount in the proportion that the preceding year's  
25 market value for assessment purposes for that city bears to the preceding year's  
26 market value for assessment purposes for all cities within the state.

27 (b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as  
28 follows:

29 (i) One million three hundred twenty thousand dollars (\$1,320,000) annually  
30 shall be distributed one forty-fourth (1/44) to each of the various counties; and

31 (ii) The balance of such amount shall be paid to the various counties, and each  
32 county shall be entitled to an amount in the proportion that the population of that  
33 county bears to the population of the state;

34 (c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this  
35 subsection (9) shall be paid to the several counties for distribution to the cities and  
36 counties as follows:

37 (i) Each city and county which received a payment under the provisions of  
38 section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999,  
39 shall be entitled to a like amount during succeeding calendar quarters.

40 (ii) If the dollar amount of money available under this subsection (9)(c) in any  
41 quarter does not equal the amount paid in the fourth quarter of calendar year 1999,  
42 each city's and county's payment shall be reduced proportionately.

43 (iii) If the dollar amount of money available under this subsection (9)(c) in any  
44 quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each  
45 city and county shall be entitled to a proportionately increased payment, but such

1 increase shall not exceed one hundred five percent (105%) of the total payment  
2 made in the fourth quarter of calendar year 1999.

3 (iv) If the dollar amount of money available under this subsection (9)(c) in any  
4 quarter exceeds one hundred five percent (105%) of the total payment made in  
5 the fourth quarter of calendar year 1999, any amount over and above such one  
6 hundred five percent (105%) shall be paid fifty percent (50%) to the various cities  
7 in the proportion that the population of the city bears to the population of all cities  
8 within the state, and fifty percent (50%) to the various counties in the proportion  
9 that the population of a county bears to the population of the state; and

10 (d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection  
11 (9) shall be paid to the several counties for distribution to special purpose taxing districts  
12 as follows:

13 (i) Each such district which received a payment under the provisions of section  
14 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be  
15 entitled to a like amount during succeeding calendar quarters.

16 (ii) If the dollar amount of money available under this subsection (9)(d) in any  
17 quarter does not equal the amount paid in the fourth quarter of calendar year 1999,  
18 each special purpose taxing district's payment shall be reduced proportionately.

19 (iii) If the dollar amount of money available under this subsection (9)(d) in any  
20 quarter exceeds the amount distributed under paragraph (i) of this subsection  
21 (9)(d), each special purpose taxing district shall be entitled to a share of the excess  
22 based on the proportion each such district's current property tax budget bears to  
23 the sum of the current property tax budgets of all such districts in the state. The  
24 state tax commission shall calculate district current property tax budgets to include  
25 any unrecovered foregone amounts as determined under section 63-802(1)(e),  
26 Idaho Code. When a special purpose taxing district is situated in more than one  
27 (1) county, the tax commission shall determine the portion attributable to the  
28 special purpose taxing district from each county in which it is situated.

29 (iv) If special purpose taxing districts are consolidated, the resulting district is  
30 entitled to a base amount equal to the sum of the base amounts which were  
31 received in the last calendar quarter by each district prior to the consolidation.

32 (v) If a special purpose taxing district is dissolved or disincorporated, the state  
33 tax commission shall continuously distribute to the board of county commissioners  
34 an amount equal to the last quarter's distribution prior to dissolution or  
35 disincorporation. The board of county commissioners shall determine any  
36 redistribution of moneys so received.

37 (vi) Taxing districts formed after January 1, 2001, are not entitled to a payment  
38 under the provisions of this subsection (9)(d).

39 (vii) For purposes of this subsection (9)(d), a special purpose taxing district is any  
40 taxing district which is not a city, a county or a school district.

41 (10) Amounts calculated in accordance with section 2, chapter 356, laws of 2001,  
42 for annual distribution to counties and other taxing districts beginning in October 2001 for  
43 replacement of property tax on farm machinery and equipment exempted pursuant to section  
44 63-602EE, Idaho Code. For nonschool districts, the state tax commission shall distribute  
45 one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the  
46 state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each

1 school district. For nonschool districts, the county auditor shall distribute to each district within  
 2 thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received  
 3 by each taxing district for replacement shall be utilized in the same manner and in the same  
 4 proportions as revenues from property taxation. The moneys remitted to the county treasurer  
 5 for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code,  
 6 may be considered by the counties and other taxing districts and budgeted at the same time, in  
 7 the same manner and in the same year as revenues from taxation on personal property which  
 8 these moneys replace. If taxing districts are consolidated, the resulting district is entitled to  
 9 an amount equal to the sum of the amounts which were received in the last calendar quarter  
 10 by each district pursuant to this subsection prior to the consolidation. If a taxing district is  
 11 dissolved or disincorporated, the state tax commission shall continuously distribute to the board  
 12 of county commissioners an amount equal to the last quarter's distribution prior to dissolution  
 13 or disincorporation. The board of county commissioners shall determine any redistribution of  
 14 moneys so received. If a taxing district annexes territory, the distribution of moneys received  
 15 pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001,  
 16 are not entitled to a payment under the provisions of this subsection. School districts shall  
 17 receive an amount determined by multiplying the sum of the year 2000 school district levy  
 18 minus .004 times the market value on December 31, 2000, in the district of the property exempt  
 19 from taxation pursuant to section 63-602EE, Idaho Code, provided that the result of these  
 20 calculations shall not be less than zero (0). The result of these school district calculations shall  
 21 be further increased by six percent (6%). For purposes of the limitation provided by section  
 22 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for  
 23 property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as  
 24 property tax revenues.

25 (11) Amounts necessary to pay refunds as provided in ~~subsection (3) of~~ section 63-3641,  
 26 Idaho Code, to a developer of a retail ~~commercial~~ complex ~~whose stores sell tangible personal~~  
 27 ~~property or taxable services subject to the sales and use tax up to an aggregate total of~~  
 28 ~~thirty five million dollars (\$35,000,000) per project~~ shall be remitted to the demonstration pilot  
 29 project fund created in ~~subsection (3) of~~ section 63-3641, Idaho Code, ~~and shall be specific to~~  
 30 ~~and accounted for by each project.~~

31 (12) Amounts calculated in accordance with subsection (4) of section 63-602KK, Idaho  
 32 Code, for annual distribution to counties and other taxing districts for replacement of property  
 33 tax on personal property tax exemptions pursuant to subsection (1) of section 63-602KK, Idaho  
 34 Code, which amounts are continuously appropriated unless the legislature enacts a different  
 35 appropriation for a particular fiscal year.

36 (13) Any moneys remaining over and above those necessary to meet and reserve for  
 37 payments under other subsections of this section shall be distributed to the general fund.

38 SECTION 2. That Section [63-3641](#), Idaho Code, be, and the same is hereby repealed.

39 SECTION 3. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended  
 40 by the addition thereto of a NEW SECTION, to be known and designated as Section 63-3641,  
 41 Idaho Code, and to read as follows:

42 63-3641. REBATE OF SALES TAXES COLLECTED. (1) As provided in and subject  
 43 to the limitations of this section, a developer of a retail complex shall receive a rebate of  
 44 sales taxes collected and remitted to the state tax commission under this chapter by qualified

1 retailers within the retail complex to reimburse the developer for project expenses incurred for  
 2 the installation of approved transportation improvements.

3 (2) As used in this section:

4 (a) "Approved transportation improvements" means a highway project the cost of which  
 5 is in excess of six million dollars (\$6,000,000) for the installation of an interchange from  
 6 an interstate highway or expended on the improvement of a highway as defined in section  
 7 40-109(5), Idaho Code. To qualify as an approved highway improvement the developer  
 8 of a retail complex must enter into an agreement with the Idaho transportation board  
 9 and/or political subdivision. An approved highway improvement shall include those costs  
 10 directly associated with the highway project but shall not include any improvement not  
 11 within the right-of-way of the proposed public highway improvement, improvements not  
 12 specifically authorized in the agreement entered into, or developer financed improvements  
 13 required by state or local agencies as part of the permitting and development process not  
 14 within the public highway right-of-way.

15 (b) "Political subdivision" means a city, county or highway district that receives highway  
 16 funding pursuant to section 40-709, Idaho Code.

17 (c) "Qualified retailer" means a specific location within a retail complex operated by a  
 18 retailer in regard to which the retailer:

19 (i) Has obtained a separate seller's permit pursuant to section 63-3620, Idaho  
 20 Code, applicable only to that location and has collected sales or use taxes in regard  
 21 to retail sales made at that location and has remitted all such taxes to the state tax  
 22 commission with returns related to that permit;

23 (ii) Has been identified in the manner required by rules of the state tax  
 24 commission as associated with the specific retail complex; and

25 (iii) Did not directly or by any related party (as defined in section 63-3615A(2),  
 26 Idaho Code) operate a retail business in the same location before construction of  
 27 the retail complex.

28 (d) "Retail complex" means:

29 (i) One (1) or more buildings in a single location constructed by a developer  
 30 applying for a rebate under this section;

31 (ii) Facilities reasonably related to the buildings, such as parking lots, sidewalks,  
 32 lighting, traffic signs and accessory equipment; and

33 (iii) For which the developer has expended a minimum of four million dollars  
 34 (\$4,000,000).

35 (e) "Retailer" has the same meaning as provided in section 63-3610, Idaho Code;

36 (f) "Retail sales" has the same meaning as that term is defined in section 63-3609, Idaho  
 37 Code.

38 (3) To obtain the rebate provided by this section, the developer of a retail complex shall  
 39 file a written claim with the state tax commission.

40 (a) The claim shall:

41 (i) Identify the location and boundaries of the retail complex;

42 (ii) Identify the qualified retailers making retail sales within the complex;

43 (iii) Include verification that the developer has met the expenditure requirements of  
 44 paragraph (2)(d)(iii) of this section;

1 (iv) Include certification from the Idaho transportation department or political  
2 subdivision of the amount expended on the approved transportation improvements  
3 related to the retail complex;

4 (v) Contain such additional information as the state tax commission may require  
5 by rule.

6 (b) The claim shall be subject to such reasonable documentation and verification as the  
7 state tax commission may require.

8 (c) A developer of a retail complex must submit a claim under this subsection within two  
9 (2) years of the developer's last expenditure on approved transportation improvements.

10 (4) (a) Upon approval by the state tax commission, the developer is entitled to receive  
11 a rebate of sixty percent (60%) of all sales and use taxes imposed by this chapter and  
12 remitted to the state tax commission after the date of approval by qualified retailers in the  
13 retail complex but not to exceed the lesser of:

14 (i) The amount certified pursuant to subsection (3)(a)(iv) of this section; or

15 (ii) The limitation imposed by subsection (5)(c) of this section.

16 (b) No interest shall be paid on the amounts rebated.

17 (c) All sales and use tax information remitted by retailers shall be deemed a trade secret,  
18 shall be confidential and shall not be disclosed by the state tax commission.

19 (5) (a) When a retailer certifies to the state tax commission and the commission  
20 determines that the requirements of subsection (3)(a)(i), (ii) and (iii) of this section have  
21 been met, sixty percent (60%) of all sales and use taxes imposed by this chapter and  
22 remitted to the state tax commission after the date of approval by qualified retailers in  
23 the retail complex, shall be deposited into the demonstration pilot project fund, which is  
24 hereby created in the state treasury.

25 (b) All moneys rebated shall be paid by the state tax commission from the demonstration  
26 pilot project fund in a timely manner not to exceed sixty (60) calendar days after receipt  
27 as funds are available in the demonstration pilot project fund. Payments shall be specific  
28 to and accounted for by each project.

29 (c) Once a total of thirty-five million dollars (\$35,000,000) has been paid in as a rebate  
30 on a particular approved transportation improvement, no additional rebates shall be paid  
31 in regard to that approved transportation improvement.

32 SECTION 4. An emergency existing therefor, which emergency is hereby declared to  
33 exist, this act shall be in full force and effect on and after its passage and approval.