

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 354

BY RINGO

AN ACT

1 RELATING TO TAXATION; AMENDING SECTION 63-602L, IDAHO CODE, TO DELETE REFER-
2 ENCE TO CUSTOM COMPUTER PROGRAMS; AMENDING CHAPTER 36, TITLE 63, IDAHO
3 CODE, BY THE ADDITION OF A NEW SECTION 63-3602A, IDAHO CODE, TO DEFINE
4 "COMPUTER SOFTWARE" AND "DIGITAL GOODS"; AMENDING SECTION 63-3608,
5 IDAHO CODE, TO REVISE THE DEFINITION OF "PURCHASE"; AMENDING SECTION
6 63-3609, IDAHO CODE, TO REVISE THE DEFINITION OF "RETAIL SALE" OR "SALE
7 AT RETAIL"; AMENDING SECTION 63-3610, IDAHO CODE, TO REVISE THE DEFINI-
8 TION OF "RETAILER"; AMENDING SECTION 63-3612, IDAHO CODE, TO REVISE THE
9 DEFINITION OF "SALE"; AMENDING SECTION 63-3613, IDAHO CODE, TO REVISE
10 THE DEFINITION OF "SALES PRICE"; AMENDING CHAPTER 36, TITLE 63, IDAHO
11 CODE, BY THE ADDITION OF A NEW SECTION 63-3614A, IDAHO CODE, TO DEFINE
12 THE TERM "SERVICES"; AMENDING SECTION 63-3615, IDAHO CODE, TO PROVIDE
13 THAT THE TERM "USE" INCLUDES THE CONSUMPTION OF A SERVICE IN IDAHO;
14 AMENDING SECTION 63-3616, IDAHO CODE, TO REVISE THE DEFINITION OF "TAN-
15 GIBLE PERSONAL PROPERTY"; AMENDING SECTION 63-3619, IDAHO CODE, TO DE-
16 CREASE THE RATE OF THE SALES TAX, TO PROVIDE THAT THE IMPOSITION AND RATE
17 OF THE SALES TAX INCLUDES SALES OF SERVICES AND TO MAKE A TECHNICAL COR-
18 RECTION; AMENDING SECTION 63-3621, IDAHO CODE, TO DECREASE THE RATE OF
19 THE USE TAX AND TO PROVIDE THAT THE IMPOSITION AND RATE OF THE USE TAX IN-
20 CLUDES SALES OF SERVICES; AMENDING SECTION 63-3622, IDAHO CODE, TO PRO-
21 VIDE EXEMPTION AND RESALE CERTIFICATES FOR SERVICES; AMENDING SECTION
22 63-3622D, IDAHO CODE, TO INCLUDE SERVICES IN THE PRODUCTION EXEMPTION;
23 REPEALING SECTION 63-3622LL, IDAHO CODE, RELATING TO THE EXEMPTION
24 FOR MEDIA MEASUREMENT SERVICES; AMENDING SECTION 63-3623, IDAHO CODE,
25 TO PROVIDE A CORRECT CODE REFERENCE; REPEALING SECTION 63-3640, IDAHO
26 CODE, RELATING TO CONTRACTS ENTERED INTO BEFORE THE EFFECTIVE DATE OF
27 INCREASED TAX; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDI-
28 TION OF A NEW SECTION 63-3642, IDAHO CODE, TO DEFINE THE TERM "SOURCING"
29 AND TO PROVIDE FOR THE PLACE WHERE A SALE OCCURS; AMENDING CHAPTER 36,
30 TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3643, IDAHO
31 CODE, TO PROVIDE GENERAL SOURCING DEFINITIONS; AMENDING CHAPTER 36,
32 TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3644, IDAHO
33 CODE, TO PROVIDE FOR MULTIPLE POINTS OF USE; AMENDING CHAPTER 36, TITLE
34 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3645, IDAHO CODE, TO
35 PROVIDE THE EFFECT ON CONTRACTS ENTERED INTO PRIOR TO THE EFFECTIVE DATE
36 OF THIS ACT; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.
37

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

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

41 63-602L. PROPERTY EXEMPT FROM TAXATION -- INTANGIBLE PERSONAL PROP-
42 ERTY. (1) The following intangible personal property is exempt from taxa-

1 tion: capital stock and bonds. The deposits in national banks, state banks,
2 and savings and loan associations. Shares and accounts of savings and loan
3 associations, credit unions or associations organized under the laws of the
4 state of Idaho for the purpose of accumulating the savings and funds of their
5 members and lending the same to their members. Goodwill, customer lists,
6 contracts and contract rights, patents, trademarks, ~~custom computer pro-~~
7 ~~grams as defined in section 63-3616, Idaho Code,~~ copyrights, trade secrets,
8 franchises, licenses, rights-of-way which are possessory only and not ac-
9 companied by title.

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

15 (a) Separate exclusion of the exempt intangible personal property at
16 the system level value; or

17 (b) Separate exclusion of the exempt intangible personal property at
18 the state allocated value; or

19 (c) Exclusion of the exempt intangible personal property by valuation
20 of only tangible personal property and nonexempt intangible personal
21 property using valuation models which do not impound or include values
22 of the exempt intangible personal property.

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

26 63-3602A. COMPUTER SOFTWARE AND DIGITAL GOODS. The term "computer
27 software" means any computer program, part of a program or any sequence
28 of instructions for automatic data processing equipment or information
29 stored in an electronic medium. The term "computer software" includes both
30 prewritten and custom software. Computer software is deemed to be tangible
31 personal property for purposes of this chapter regardless of the method by
32 which the title, possession or right to use the software is transferred to
33 the user. The term "digital goods" means items such as audio, video and
34 graphic files that are downloaded via electronic means which would be tan-
35 gible personal property if sold in another format, such as a CD, DVD, film or
36 cassette.

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

39 63-3608. PURCHASE. The term "purchase" means any transfer, rental,
40 exchange, or barter, conditional or otherwise, in any manner or by any means
41 whatsoever, of tangible personal property for a consideration. The term
42 "purchase" shall also include the payment of consideration for services as
43 defined in section 63-3614A, Idaho Code. A transaction whereby the posses-
44 sion of property is transferred but the seller retains the title as security
45 for the payment of the price is a purchase. A transfer for a consideration
46 of any publication or of tangible personal property which has been produced,

1 fabricated, or printed to the special order of the customer is also a pur-
2 chase.

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

5 63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or
6 "sale at retail" means a sale for any purpose other than resale in the regular
7 course of business or lease or rental of property in the regular course of
8 business where such rental or lease is taxable under section 63-3612(h),
9 Idaho Code.

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

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

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

19 63-3610. RETAILER. The term "retailer" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) Is not predominately recreational or commercial; and

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

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

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

33 (g) Providing hotel, motel, campground, or trailer court accommo-
34 dations, nondepreciable goods directly consumed by customers and
35 included services, except where residence is maintained continuously
36 under the terms of a lease or similar agreement for a period in excess of
37 thirty (30) days.

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

39 (i) ~~The intrastate transportation for hire by air of freight or pas-~~
40 ~~sengers, except (1) as part of a regularly scheduled flight by a certi-~~
41 ~~fied air carrier, under authority of the United States, or (2) when pro-~~
42 ~~viding air ambulance services~~ Sales of services as defined in section
43 63-3614A, Idaho Code.

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

46 (k) Contracts from applying, installing, cleaning, altering, improv-
47 ing, decorating, treating, storing or repairing tangible personal
48 property or real property.

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

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

6 63-3613. SALES PRICE. (a) The term "sales price" means the total
 7 amount for which tangible personal property, ~~including and services agreed~~
 8 ~~to be rendered as a part of the sale, is~~ are sold, rented or leased, valued in
 9 money, whether paid in money or otherwise, without any deduction on account
 10 of any of the following:

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

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

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

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

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

30 6. The amount charged for applying, installing, cleaning, altering,
 31 improving, decorating, treating, storing or repairing tangible per-
 32 sonal property or real property.

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

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

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

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

45 ~~4. The amount charged for labor or services rendered in installing or~~
 46 ~~applying the property sold, provided that said amount is stated sepa-~~
 47 ~~rately and such separate statement is not used as a means of avoiding~~
 48 ~~imposition of this tax upon the actual sales price of the tangible per-~~
 49 ~~sonal 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.~~

~~65. 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.~~

~~86. 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.~~

~~97. 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.~~

~~108. 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.~~

~~(ed) 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.~~

~~(fe) 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 volun-~~

1 tary or mandatory, but must be given for the service provided and as a supple-
2 ment to the service provider's income.

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

6 63-3614A. SERVICES. The term "services" means all activities engaged
7 in for other persons for a consideration, which activities involve predomi-
8 nantly the performance of a service as distinguished from selling or leasing
9 property. The term "services" does not include services provided by an em-
10 ployee to an employer. The term "services" does not include services pro-
11 vided by licensed medical doctors, dentists, osteopaths, physical thera-
12 pists, optometrists, physician assistants, podiatrists, hospitals, nursing
13 homes, chiropractors, nurse practitioners, midwives, naturopaths, or psy-
14 chologists. In determining what is a service, the intended use, principal
15 objective or ultimate objective of the contracting parties shall not be con-
16 trolling. The term "services" also includes the constructing, repairing,
17 decorating or improving of new or existing buildings or other structures un-
18 der, upon or above real property, including the installing or attaching of
19 any article of tangible personal property therein or thereto, whether or not
20 such personal property becomes a part of the realty by virtue of installa-
21 tion, and shall also include the clearing of land and the moving of earth.

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

24 63-3615. STORAGE -- USE. (a) The term "storage" includes any keeping
25 or retention in this state for any purpose except sale in the regular course
26 of business or subsequent use solely outside this state of tangible personal
27 property purchased from a retailer.

28 (b) The term "use" includes the exercise of any right or power over
29 tangible personal property incident to the ownership or the leasing of that
30 property or the exercise of any right or power over tangible personal prop-
31 erty by any person in the performance of a contract, or to fulfill contract or
32 subcontract obligations, whether the title of such property be in the sub-
33 contractor, contractor, contractee, subcontractee, or any other person, or
34 whether the titleholder of such property would be subject to the sales or use
35 tax, unless such property would be exempt to the titleholder under section
36 63-3622D, Idaho Code, except that the term "use" does not include the sale of
37 that property in the regular course of business. The term "use" includes the
38 consumption of a service in Idaho.

39 (c) "Storage" and "use" do not include the keeping, retaining, or exer-
40 cising of any right or power over tangible personal property for the purpose
41 of subsequently transporting it outside the state for use thereafter solely
42 outside the state, or for the purpose of being processed, fabricated, or man-
43 ufactured into, attached to, or incorporated into other tangible personal
44 property to be transported outside the state, and thereafter used solely
45 outside the state.

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

3 63-3616. TANGIBLE PERSONAL PROPERTY. ~~(a)~~ The term "tangible personal
4 property" means personal property which may be seen, weighed, measured, felt
5 or touched, or which is in any other manner perceptible to the senses.

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

8 ~~(i) As used in this subsection, the term "computer software" means~~
9 ~~any computer program, part of a program or any sequence of instructions~~
10 ~~for automatic data processing equipment or information stored in an~~
11 ~~electronic medium. Computer software is deemed to be tangible personal~~
12 ~~property for purposes of this chapter regardless of the method by which~~
13 ~~the title, possession or right to use the software is transferred to the~~
14 ~~user.~~

15 ~~(ii) As used in this subsection, the term "custom computer program"~~
16 ~~means any computer software (as defined in this subsection) which is~~
17 ~~written or prepared exclusively for a customer and includes those ser-~~
18 ~~vices represented by separately stated charges for the modification of~~
19 ~~existing prewritten programs when the modifications are written or pre-~~
20 ~~pared exclusively for a customer. The term does not include a "canned"~~
21 ~~or prewritten program which is held or existing for general or repeated~~
22 ~~sale, lease or license, even if the program was initially developed on a~~
23 ~~custom basis or for in-house use. Modification to an existing prewrit-~~
24 ~~ten program to meet the customer's needs is custom computer programming~~
25 ~~only to the extent of the modification, and only to the extent that~~
26 ~~the actual amount charged for the modification is separately stated on~~
27 ~~invoices, statements, and other billing documents supplied to the pur-~~
28 ~~chaser.~~

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

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

34 63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby
35 imposed upon each sale at retail at the rate of ~~six~~ five percent (65%) of the
36 sales price of all retail sales, including sales of services, subject to tax-
37 ation under this chapter and such amount shall be computed monthly on all
38 sales at retail within the preceding month.

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

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

44 (c) The state tax commission shall provide schedules for collection of
45 the tax on sales, including sales of services, which involve a fraction of a
46 dollar. The retailer shall calculate the tax upon the entire amount of the
47 purchases of the consumer made at a particular time and not separately upon
48 each item purchased. The retailer may retain any amount collected under the

1 bracket system prescribed which is in excess of the amount of tax for which
 2 he is liable to the state during the period as compensation for the work of
 3 collecting the tax.

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

10 (e) The state tax commission may by rule provide that the amount col-
 11 lected by the retailer from the customer in reimbursement of the tax be dis-
 12 played separately from the list price, the price advertised on the premises,
 13 the marked price, or other price on the sales slip or other proof of sale.

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

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

19 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise
 20 tax is hereby imposed on the storage, use, or other consumption in this state
 21 of tangible personal property or services acquired on or after ~~October 1,~~
 22 ~~2006~~ July 1, 2012, for storage, use, or other consumption in this state at the
 23 rate of ~~six~~ five percent (~~65%~~) of the value of the property or service, and a
 24 recent sales price shall be presumptive evidence of the value of the property
 25 or service unless the property is wireless telecommunications equipment, in
 26 which case a recent sales price shall be conclusive evidence of the value of
 27 the property or service.

28 (a) Every person storing, using, or otherwise consuming, in this state,
 29 tangible personal property or services is liable for the tax. His liability
 30 is not extinguished until the tax has been paid to this state except that a
 31 receipt from a retailer maintaining a place of business in this state or en-
 32 gaged in business in this state given to the purchaser is sufficient to re-
 33 lieve the purchaser from further liability for the tax to which the receipt
 34 refers. A retailer shall not be considered to have stored, used or consumed
 35 wireless telecommunications equipment by virtue of giving, selling or oth-
 36 erwise transferring such equipment at a discount as an inducement to a con-
 37 sumer to commence or continue a contract for telecommunications service.

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

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

1 (d) Every retailer engaged in business in this state or maintaining a
2 place of business in this state shall register with the state tax commission
3 and give the name and address of all agents operating in this state, the loca-
4 tion of all distributions or sales houses or offices or other places of busi-
5 ness in this state, and such other information as the state tax commission
6 may require.

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

19 A seller may accept a resale certificate from a purchaser prior to the
20 time of sale, at the time of sale, or at any reasonable time after the sale
21 when necessary to establish the privilege of the exemption. The resale cer-
22 tificate relieves the person selling the property or service from the burden
23 of proof only if taken from a person who is engaged in the business of sell-
24 ing or renting tangible personal property or service and who holds the per-
25 mit provided for by section 63-3620, Idaho Code, or who is a retailer not en-
26 gaged in business in this state, and who, at the time of purchasing the tan-
27 gible personal property or service, intends to sell or rent it in the reg-
28 ular course of business or is unable to ascertain at the time of purchase
29 whether the property or service will be sold or will be used for some other
30 purpose. Other than as provided elsewhere in this section, when a resale
31 certificate, properly executed, is presented to the seller, the seller has
32 no duty or obligation to collect sales or use taxes in regard to any sales
33 transaction so documented regardless of whether the purchaser properly or
34 improperly claimed an exemption. A seller so relieved of the obligation to
35 collect tax is also relieved of any liability to the purchaser for failure to
36 collect tax or for making any report or disclosure of information required or
37 permitted under this chapter.

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

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

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

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

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

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

24 (k) The use tax herein imposed shall not apply to the use by a nonres-
25 ident of this state of a motor vehicle which is registered or licensed un-
26 der the laws of the state of his residence and is not used in this state more
27 than a cumulative period of time totaling ninety (90) days in any consecutive
28 twelve (12) months, and which is not required to be registered or licensed
29 under the laws of this state. The use tax herein shall also not apply to any
30 use of a motor vehicle which is registered or licensed under the laws of the
31 state of residence of a nonresident student while such nonresident student
32 is enrolled as a full-time student in an institution of postsecondary educa-
33 tion that is both physically located in Idaho and recognized as accredited by
34 the state board of education.

35 (l) The use tax herein imposed shall not apply to the use of household
36 goods, personal effects and personally owned vehicles or personally owned
37 aircraft by a resident of this state, or military personnel temporarily as-
38 signed in this state and spouses who accompany them, if such articles were
39 acquired by such person in another state while a resident of that state and
40 primarily for use outside this state and if such use was actual and substan-
41 tial, but if an article was acquired less than three (3) months prior to the
42 time he entered this state, it will be presumed that the article was acquired
43 for use in this state and that its use outside this state was not actual and
44 substantial. For purposes of this subsection, "resident" shall be as de-
45 fined in section 63-3013 or 63-3013A, Idaho Code.

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

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

3 (2) The state of Idaho; or

4 (3) Any political subdivision of the state.

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

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

10 63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENAL-
11 TIES. (a) To prevent evasion of the sales and use tax, it shall be presumed
12 that all sales are subject to the taxes imposed by the provisions of this
13 chapter and the retailer shall have the burden of establishing the facts
14 giving rise to such exemption unless the purchaser delivers to the retailer,
15 or has on file with the retailer, an exemption or resale certificate.

16 (b) An exemption certificate shall show the purchaser's name, business
17 name and address (if any), address, and signature and the reason for and na-
18 ture of the claimed exemption.

19 (c) A resale certificate shall be signed by and bear the name and ad-
20 dress of the purchaser or his agent, shall indicate the number of the permit
21 issued to the purchaser or that the purchaser is an out-of-state retailer,
22 and shall indicate the general character of the tangible personal property
23 or service sold or rented by the purchaser in the regular course of busi-
24 ness. A resale certificate relieves the seller from the burden of proof only
25 if taken from a person who is engaged in the business of selling or renting
26 tangible personal property or service and who holds a permit provided for in
27 this section, or who is a retailer not engaged in business in this state, and
28 who, at the time of purchasing the tangible personal property or service, in-
29 tends to sell or rent it in the regular course of business or is unable to as-
30 certain at the time of purchase whether the property or service will be sold
31 or will be used for some other purpose. If a purchaser who gives a resale
32 certificate makes any use of the property or service other than retention,
33 demonstration or display while holding it for sale or rent in the regular
34 course of business, the use shall be taxable to the purchaser as of the time
35 the property or service is first used by him, and the sales price of the prop-
36 erty or service to him shall be deemed the measure of the tax.

37 (d) A seller may accept an exemption or resale certificate from a pur-
38 chaser prior to the time of sale, at the time of the sale, or at any reason-
39 able time after the sale when necessary to establish the privilege of the ex-
40 emption. Other than as provided elsewhere in this section, when an exemp-
41 tion or resale certificate, properly executed, is presented to or is on file
42 with the seller, the seller has no duty or obligation to collect sales or use
43 taxes in regard to any sales transaction so documented regardless of whether
44 the purchaser properly or improperly claimed an exemption. A seller so re-
45 lieved of the obligation to collect tax is also relieved of any liability to
46 the purchaser for failure to collect tax or for making any report or disclo-
47 sure of information required or permitted under this chapter. A seller need
48 not accept an exemption or resale certificate that is not readable, legible
49 or copyable.

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

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

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

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

21 63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes im-
22 posed by this chapter:

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

25 (1) Tangible personal property and services which will enter into and
26 become an ingredient or component part of tangible personal property
27 manufactured, processed, mined, produced or fabricated for sale.

28 (2) Tangible personal property and services primarily and directly
29 used or consumed in or during a manufacturing, processing, mining,
30 farming, or fabricating operation, including, but not limited to, re-
31 pair parts, lubricants, hydraulic oil, and coolants, which become a
32 component part of such tangible personal property; provided that the
33 use or consumption of such tangible personal property is necessary or
34 essential to the performance of such operation.

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

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

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

47 (b) Other than as provided in subsection (c) of this section, the ex-
48 emptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this
49 section are available only to a business or separately operated segment of

1 a business which is primarily devoted to producing tangible personal prop-
2 erty which that business will sell and which is intended for ultimate sale
3 at retail within or without this state. A contractor providing services to a
4 business entitled to an exemption under this section is not exempt as to any
5 property owned, leased, rented or used by it unless, as a result of the terms
6 of the contract, the use of the property is exempt under section 63-3615(b),
7 Idaho Code.

8 (c) The exemptions allowed in subsections (a) (1), (a) (2), (a) (3) and
9 (a) (4) of this section shall also be available to a business, or separately
10 operated segment of a business, engaged in farming or mining, whether as a
11 subcontractor, contractor, contractee or subcontractee, when such business
12 or segment of a business is primarily devoted to producing tangible personal
13 property which is intended for ultimate sale at retail within or without this
14 state, without regard to the ownership of the product being produced.

15 (d) The exemptions allowed in subsections (a) (1), (a) (2), (a) (3) and
16 (a) (4) of this section shall also be available to a business, or separately
17 operated segment of a business, engaged in the business of processing mate-
18 rials, substances or commodities for use as fuel for the production of en-
19 ergy, whether as a subcontractor, contractor, contractee or subcontractee,
20 without regard to the ownership of the materials, substances or commodities
21 being processed and irrespective of whether the materials, substances or
22 commodities being processed are intended for ultimate sale at retail within
23 or without this state.

24 (e) As used in this section, the term "directly used or consumed in or
25 during" a farming operation means the performance of a function reasonably
26 necessary to the operation of the total farming business, including, the
27 planting, growing, harvesting and initial storage of crops and other agri-
28 cultural products and movement of crops and produce from the place of harvest
29 to the place of initial storage. It includes disinfectants used in the dairy
30 industry to clean cow udders or to clean pipes, vats or other milking equip-
31 ment.

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

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

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

40 (2) Tangible personal property used in any activities other than the
41 actual manufacturing, processing, mining, farming or fabricating op-
42 erations such as office equipment and supplies, and equipment and sup-
43 plies used in selling or distributing activities.

44 (3) Property used in transportation activities.

45 (4) Machinery, equipment, tools or other property used to make repairs.
46 This subsection does not include repair parts that become a component
47 part of tangible property exempt from tax under this section or lubri-
48 cants, hydraulic oil, or coolants used in the operation of tangible per-
49 sonal property exempt under this section.

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

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

4 (ii) Owned by the manufacturer, processor, miner, farmer or fabri-
5 cator;

6 provided, however, this subsection does not prevent exemption of ma-
7 chinery, equipment, tools or other property exempted from tax under
8 subsection (a) (2) or (a) (3) of this section.

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

12 (7) Motor vehicles and aircraft.

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

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

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

25 SECTION 15. That Section [63-3622LL](#), Idaho Code, be, and the same is
26 hereby repealed.

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

29 63-3623. RETURNS AND PAYMENTS. (a) The taxes imposed by this act are
30 due and payable to the state tax commission monthly on or before the twenti-
31 eth day of the succeeding month.

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

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

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

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

1 return shall show the total sales price of the property sold by him, the stor-
2 age, use, or consumption of which property became subject to the use tax dur-
3 ing the reporting period; in the case of a return filed by a purchaser, the
4 return shall show the total sales price of the property purchased by him, the
5 storage, use, or consumption of which became subject to the use tax during
6 the reporting period.

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

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

13 (h) The state tax commission, if it deems it necessary in order to in-
14 sure payment to or facilitate the collection by the state of taxes, may re-
15 quire returns for periods other than monthly periods.

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

20 (j) The state tax commission for good cause may extend, for not to ex-
21 ceed one (1) month, the time for making any return or paying any amount re-
22 quired to be paid under this act.

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

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

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

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

42 SECTION 17. That Section [63-3640](#), Idaho Code, be, and the same is hereby
43 repealed.

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

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

4 (a) When the product or service is received by the purchaser at a busi-
5 ness location of the seller, the sale is sourced to that business loca-
6 tion.

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

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

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

23 (e) When none of the previous provisions of subsection (1) (a), (1) (b),
24 (1) (c) or (1) (d) of this section apply, including the circumstance in
25 which the seller is without sufficient information to apply the pre-
26 vious provisions, then the location will be determined by the address
27 from which tangible personal property was shipped, from which the dig-
28 ital goods or the computer software delivered electronically was first
29 available for transmission by the seller, or from which the service was
30 provided, disregarding for these purposes any location that merely pro-
31 vided the digital transfer of the product or service sold.

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

35 (a) For a lease or rental that requires recurring periodic payments,
36 the first periodic payment is sourced the same as a retail sale in accor-
37 dance with the provisions of subsection (1) of this section. Periodic
38 payments made subsequent to the first payment are sourced to the primary
39 property location for each period covered by the payment. The primary
40 property location shall be as indicated by an address for the property
41 provided by the lessee that is available to the lessor from its records
42 maintained in the ordinary course of business, when use of this address
43 does not constitute bad faith. The property location shall not be al-
44 tered by intermittent use at different locations, such as use of busi-
45 ness property that accompanies employees on business trips and service
46 calls.

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

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

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

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

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

19 (a) Locomotives and railcars that are utilized for the carriage of per-
20 sons or property in interstate commerce.

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

- 24 (i) Registered through the international registration plan; and
25 (ii) Operated under authority of a carrier authorized and certi-
26 ficated by the U.S. department of transportation or another fed-
27 eral authority to engage in the carriage of persons or property in
28 interstate commerce.

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

33 (d) Containers designed for use on and component parts attached or se-
34 cured on the items set forth in subsection (4) (a) through (4) (c) of this
35 section.

36 (5) Services performed and consumed at the same location in Idaho are
37 sourced to that location. Services performed in another state but consumed
38 in Idaho will be sourced to the Idaho location at which the consumption oc-
39 curs. Services performed in Idaho but consumed in another state shall not be
40 sourced to Idaho.

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

44 63-3643. GENERAL SOURCING DEFINITIONS. For the purposes of subsection
45 (1) of section 63-3642, Idaho Code, the terms "receive" and "receipt" mean:

46 (1) Taking possession of tangible personal property;

47 (2) Making first use of services; or

48 (3) Taking possession or making first use of digital goods, whichever
49 comes first.

1 The terms "receive" and "receipt" do not include possession by a shipping
2 company on behalf of the purchaser.

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

6 63-3644. MULTIPLE POINTS OF USE. Notwithstanding the provisions of
7 section 63-3642, Idaho Code, a business purchaser that is not a holder of a
8 direct pay permit that knows at the time of its purchase of a digital good,
9 computer software delivered electronically or a service that the digital
10 good, computer software delivered electronically or service will be con-
11 currently available for use in more than one (1) jurisdiction shall deliver
12 to the seller in conjunction with its purchase a "multiple points of use" or
13 "MPU" exemption form disclosing this fact.

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

18 (2) A purchaser delivering the MPU exemption form may use any reason-
19 able but consistent and uniform method of apportionment that is supported by
20 the purchaser's business records as they exist at the time of the consumma-
21 tion of the sale.

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

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

32 SECTION 21. 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 63-3645, Idaho Code, and to read as follows:

35 63-3645. CONTRACTS FOR SERVICES ENTERED INTO PRIOR TO JULY 1,
36 2013. (1) Beginning July 1, 2013, and ending June 30, 2015, the sales of
37 services to improve real property shall be exempt if the contract to improve
38 real property is in writing and entered into prior to July 1, 2013. Contrac-
39 tors purchasing materials for such a contract shall be deemed the consumers
40 of those materials and shall pay sales or use tax on the purchase of such
41 materials.

42 (2) Beginning July 1, 2013, and ending June 30, 2015, purchasers of
43 services other than improvements to real property may claim a refund of the
44 sales tax actually paid for such services if the sales of the services would
45 have been exempt prior to July 1, 2013. To qualify for a refund the agreement
46 to purchase such services must be in writing. The service must be one that is
47 either:

- 1 (a) Continuous in nature and started prior to July 1, 2013, but not com-
2 pleted until after that date; or
- 3 (b) Agreed to commence after July 1, 2013.
- 4 (c) Agreements that are not continuous in nature will not qualify for a
5 refund of tax. For instance, if a purchaser contracts for a service to
6 be performed once a week for a year and the service is one that is started
7 and completed within one (1) day, payments for such service will not be
8 subject to refund if they occur after July 1, 2013.

9 SECTION 22. SEVERABILITY. The provisions of this act are hereby de-
10 clared to be severable and if any provision of this act or the application
11 of such provision to any person or circumstance is declared invalid for any
12 reason, such declaration shall not affect the validity of the remaining por-
13 tions of this act.

14 SECTION 23. This act shall be in full force and effect on and after July
15 1, 2013.