

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 12, As Amended in the Senate

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3622FF, IDAHO CODE, TO DELETE OBSOLETE LANGUAGE AND TO PROVIDE A SALES TAX EXEMPTION FOR FOOD PURCHASED WITH BENEFITS PROVIDED UNDER THE FEDERAL SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM; AND AMENDING SECTION 63-3621, IDAHO CODE, TO CLARIFY THAT FOR MEMBERS OF THE MILITARY AND ACCOMPANYING SPOUSES NO USE TAX SHALL APPLY TO CERTAIN ARTICLES ACQUIRED PRIOR TO A TIME CERTAIN.

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

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

63-3622FF. PURCHASES MADE WITH ~~FEDERAL FOOD STAMPS -- FEDERAL FOOD, CONSERVATION AND ENERGY ACT COUPONS~~ SNAP BENEFIT CARDS. Purchases of food made with coupons issued under the federal food stamp act of 1977 and the food security act of 1985, and purchases of food made with coupons issued under the federal food, conservation, and energy act of 2008 (P.L. 110-246, 122 Stat. 1651 (2008), also known as the Farm Bill of 2008), benefits provided under the federal supplemental nutrition assistance program (SNAP) are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code.

SECTION 2. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as follows:

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

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

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

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

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

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

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

48 The resale certificate shall bear the name and address of the purchaser,
49 shall be signed by the purchaser or his agent, shall indicate the number of
50 the permit issued to the purchaser, or that the purchaser is an out-of-state

1 retailer, and shall indicate the general character of the tangible personal
2 property sold by the purchaser in the regular course of business. The cer-
3 tificate shall be substantially in such form as the state tax commission may
4 prescribe.

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

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

12 (h) It shall be presumed that tangible personal property shipped or
13 brought to this state by the purchaser was purchased from a retailer, for
14 storage, use or other consumption in this state.

15 (i) It shall be presumed that tangible personal property delivered out-
16 side this state to a purchaser known by the retailer to be a resident of this
17 state was purchased from a retailer for storage, use, or other consumption in
18 this state. This presumption may be controverted by evidence satisfactory
19 to the state tax commission that the property was not purchased for storage,
20 use, or other consumption in this state.

21 (j) When the tangible personal property subject to use tax has been sub-
22 jected to a general retail sales or use tax by another state of the United
23 States in an amount equal to or greater than the amount of the Idaho tax, and
24 evidence can be given of such payment, the property will not be subject to
25 Idaho use tax. If the amount paid the other state was less, the property will
26 be subject to use tax to the extent that the Idaho tax exceeds the tax paid
27 to the other state. For the purposes of this subsection, a registration cer-
28 tificate or title issued by another state or subdivision thereof for a vehi-
29 cle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be
30 sufficient evidence of payment of a general retail sales or use tax.

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

42 (l) The use tax herein imposed shall not apply to the use of household
43 goods, personal effects and personally owned vehicles or personally owned
44 aircraft by a resident of this state, ~~or military personnel temporarily as-~~
45 ~~signed in this state and spouses who accompany them,~~ if such articles were
46 acquired by such person in another state while a resident of that state and
47 primarily for use outside this state and if such use was actual and substan-
48 tial, but if an article was acquired less than three (3) months prior to the
49 time he entered this state, it will be presumed that the article was acquired
50 for use in this state and that its use outside this state was not actual and

1 substantial. The use tax herein imposed shall not apply to the use of house-
2 hold goods, personal effects and personally owned vehicles or personally
3 owned aircraft by active duty military personnel temporarily assigned in
4 this state and spouses who accompany them if such articles were acquired
5 prior to receipt of orders to transfer to Idaho or three (3) months prior
6 to moving to Idaho, whichever time period is shorter. For purposes of this
7 subsection, "resident" shall be as defined in section 63-3013 or 63-3013A,
8 Idaho Code.

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

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

15 (2) The state of Idaho; or

16 (3) Any political subdivision of the state.

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

20 (n) The use tax herein imposed shall not apply to free tastings of bev-
21 erages including, but not limited to, wine and beer. For the purposes of this
22 subsection, a free tasting shall be defined as a beverage provided to a po-
23 tential customer, at no charge, and to occur individually at that specific
24 location and time.