

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 29

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  
9 THE DEFINITION OF "SALE"; AMENDING SECTION 63-3613, IDAHO CODE, TO RE-  
10 VISE THE DEFINITION OF "SALES PRICE"; AMENDING CHAPTER 36, TITLE 63,  
11 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3614A, IDAHO CODE, TO  
12 DEFINE THE TERM "SERVICES"; AMENDING SECTION 63-3615, IDAHO CODE, TO  
13 PROVIDE THAT THE TERM "USE" INCLUDES THE CONSUMPTION OF A SERVICE IN  
14 IDAHO; AMENDING SECTION 63-3616, IDAHO CODE, TO REVISE THE DEFINITION  
15 OF "TANGIBLE PERSONAL PROPERTY"; AMENDING SECTION 63-3619, IDAHO CODE,  
16 TO DECREASE THE RATE OF THE SALES TAX AND TO PROVIDE THAT THE IMPOSI-  
17 TION AND RATE OF THE SALES TAX INCLUDES SALES OF SERVICES; AMENDING  
18 SECTION 63-3621, IDAHO CODE, TO DECREASE THE RATE OF THE USE TAX AND  
19 TO PROVIDE THAT THE IMPOSITION AND RATE OF THE USE TAX INCLUDES SALES  
20 OF SERVICES; AMENDING SECTION 63-3622, IDAHO CODE, TO PROVIDE EXEMP-  
21 TION AND RESALE CERTIFICATES FOR SERVICES; AMENDING SECTION 63-3622D,  
22 IDAHO CODE, TO INCLUDE SERVICES IN THE PRODUCTION EXEMPTION; REPEALING  
23 SECTION 63-3622LL, IDAHO CODE, RELATING TO THE EXEMPTION FOR MEDIA MEA-  
24 SUREMENT SERVICES; AMENDING SECTION 63-3623, IDAHO CODE, TO PROVIDE A  
25 CORRECT CODE REFERENCE; REPEALING SECTION 63-3640, IDAHO CODE, RELAT-  
26 ING TO CONTRACTS ENTERED INTO BEFORE THE EFFECTIVE DATE OF INCREASED  
27 TAX; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A  
28 NEW SECTION 63-3642, IDAHO CODE, TO DEFINE THE TERM "SOURCING" AND TO  
29 PROVIDE FOR THE PLACE WHERE A SALE OCCURS; AMENDING CHAPTER 36, TITLE  
30 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3643, IDAHO CODE,  
31 TO PROVIDE GENERAL SOURCING DEFINITIONS; AMENDING CHAPTER 36, TITLE  
32 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3644, IDAHO CODE, TO  
33 PROVIDE FOR MULTIPLE POINTS OF USE; AMENDING CHAPTER 36, TITLE 63, IDAHO  
34 CODE, BY THE ADDITION OF A NEW SECTION 63-3645, IDAHO CODE, TO PROVIDE  
35 THE EFFECT ON CONTRACTS ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS  
36 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~~

1 ~~set up of a manufactured home shall be included in the "sales price" of~~  
 2 ~~such manufactured home.~~

3 5. The amount of any tax (not including, however, any manufacturers' or  
 4 importers' excise tax) imposed by the United States upon or with respect  
 5 to retail sales whether imposed upon the retailer or the consumer.

6 ~~65.~~ The amount charged for finance charges, carrying charges, ser-  
 7 vice charges, time-price differential, or interest on deferred payment  
 8 sales, provided such charges are not used as a means of avoiding impo-  
 9 sition of this tax upon the actual sales price of the tangible personal  
 10 property.

11 ~~7. Delivery and handling charges for transportation of tangible per-~~  
 12 ~~sonal property to the consumer, provided that the transportation is~~  
 13 ~~stated separately and the separate statement is not used as a means of~~  
 14 ~~avoiding imposition of the tax upon the actual sales price of the tan-~~  
 15 ~~gible personal property; except that charges by a manufactured homes~~  
 16 ~~dealer for transportation of a manufactured home shall be included in~~  
 17 ~~the "sales price" of such manufactured home.~~

18 ~~86.~~ Manufacturers' rebates when used at the time of a retail sale as a  
 19 down payment on or reduction to the retail sales price of a motor vehicle  
 20 to which the rebate applies. A manufacturer's rebate is a cash payment  
 21 made by a manufacturer to a consumer who has purchased or is purchasing  
 22 the manufacturer's product from the retailer.

23 ~~97.~~ The amount of any fee imposed upon an outfitter as defined in sec-  
 24 tion 36-2102, Idaho Code, by a governmental entity pursuant to statute  
 25 for the purpose of conducting outfitting activities on land or water  
 26 subject to the jurisdiction of the governmental entity, provided that  
 27 the fee is stated separately and is presented as a use fee paid by the  
 28 outfitted public to be passed through to the governmental entity.

29 ~~108.~~ The amount of any discount or other price reduction on telecommuni-  
 30 cations equipment when offered as an inducement to the consumer to com-  
 31 mence or continue telecommunications service, or the amount of any com-  
 32 mission or other indirect compensation received by a retailer or seller  
 33 as a result of the consumer commencing or continuing telecommunications  
 34 service.

35 (c) ~~The sales price of a "new manufactured home" or a "modular building"~~  
 36 ~~as defined in this act shall be limited to and include only fifty-five per-~~  
 37 ~~cent (55%) of the sales price as otherwise defined herein.~~

38 ~~(d)~~ Taxes previously paid on amounts represented by accounts found to  
 39 be worthless may be credited upon a subsequent payment of the tax provided in  
 40 this chapter or, if no such tax is due, refunded. If such accounts are there-  
 41 after collected, a tax shall be paid upon the amount so collected.

42 (ed) Tangible personal property when sold at retail for more than  
 43 eleven cents (\$.11) but less than one dollar and one cent (\$1.01) through a  
 44 vending machine shall be deemed to have sold at a sales price equal to one  
 45 hundred seventeen percent (117%) of the price which is paid for such tangi-  
 46 ble personal property and/or its component parts including packaging by the  
 47 owner or operator of the vending machines.

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

1           63-3614A. SERVICES. The term "services" means all activities engaged  
2 in for other persons for a consideration, which activities involve pre-  
3 dominantly the performance of a service as distinguished from selling or  
4 leasing property. The term "services" does not include services provided  
5 by an employee to an employer. The term "services" does not include ser-  
6 vices provided by licensed medical doctors, dentists, osteopaths, physical  
7 therapists, optometrists, physician assistants, midwives, podiatrists,  
8 hospitals, nursing homes, chiropractors, nurse practitioners, midwives,  
9 naturopaths, or psychologists. In determining what is a service, the in-  
10 tended use, principal objective or ultimate objective of the contracting  
11 parties shall not be controlling. The term "services" also includes the  
12 constructing, repairing, decorating or improving of new or existing build-  
13 ings or other structures under, upon or above real property, including the  
14 installing or attaching of any article of tangible personal property therein  
15 or thereto, whether or not such personal property becomes a part of the re-  
16 alty by virtue of installation, and shall also include the clearing of land  
17 and the moving of earth.

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

20           63-3615. STORAGE -- USE. (a) The term "storage" includes any keeping  
21 or retention in this state for any purpose except sale in the regular course  
22 of business or subsequent use solely outside this state of tangible personal  
23 property purchased from a retailer.

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

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

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

44           63-3616. TANGIBLE PERSONAL PROPERTY. ~~(a)~~ The term "tangible personal  
45 property" means personal property which may be seen, weighed, measured, felt  
46 or touched, or which is in any other manner perceptible to the senses.

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

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

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

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

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

29       63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby  
30 imposed upon each sale at retail at the rate of ~~six~~ five percent (65%) of the  
31 sales price of all retail sales, including sales of services, subject to tax-  
32 ation under this chapter and such amount shall be computed monthly on all  
33 sales at retail within the preceding month.

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

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

39       (c) The state tax commission shall provide schedules for collection of  
40 the tax on sales, including sales of services, which involve a fraction of a  
41 dollar. The retailer shall calculate the tax upon the entire amount of the  
42 purchases of the consumer made at a particular time and not separately upon  
43 each item purchased. The retailer may retain any amount collected under the  
44 bracket system prescribed which is in excess of the amount of tax for which  
45 he is liable to the state during the period as compensation for the work of  
46 collecting the tax.

47       (d) It is unlawful for any retailer to advertise or hold out or state to  
48 the public or to any customer, directly or indirectly, that the tax or any  
49 part thereof will be assumed or absorbed by the retailer or that it will not



1 be added to the selling price of the property or service sold or that if added  
2 it or any part thereof will be refunded. Any person violating any provision  
3 of this section is guilty of a misdemeanor.

4 (e) The tax commission may by rule provide that the amount collected by  
5 the retailer from the customer in reimbursement of the tax be displayed sepa-  
6 rately from the list price, the price advertised on the premises, the marked  
7 price, or other price on the sales slip or other proof of sale.

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

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

13 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise  
14 tax is hereby imposed on the storage, use, or other consumption in this state  
15 of tangible personal property or services acquired on or after ~~October 1,~~  
16 ~~2006~~ July 1, 2011, for storage, use, or other consumption in this state at the  
17 rate of ~~six~~ five percent (~~6~~5%) of the value of the property or service, and a  
18 recent sales price shall be presumptive evidence of the value of the property  
19 or service unless the property is wireless telecommunications equipment, in  
20 which case a recent sales price shall be conclusive evidence of the value of  
21 the property or service.

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

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

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

43 (d) Every retailer engaged in business in this state or maintaining a  
44 place of business in this state shall register with the state tax commission  
45 and give the name and address of all agents operating in this state, the loca-  
46 tion of all distributions or sales houses or offices or other places of busi-  
47 ness in this state, and such other information as the state tax commission  
48 may require.

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

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

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

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

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

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

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

7 (j) When the tangible personal property or service subject to use tax  
8 has been subjected to a general retail sales or use tax by another state of  
9 the United States in an amount equal to or greater than the amount of the  
10 Idaho tax, and evidence can be given of such payment, the property will not  
11 be subject to Idaho use tax. If the amount paid the other state was less, the  
12 property or service will be subject to use tax to the extent that the Idaho  
13 tax exceeds the tax paid to the other state. For the purposes of this sub-  
14 section, a registration certificate or title issued by another state or sub-  
15 division thereof for a vehicle or trailer or a vessel as defined in section  
16 67-7003, Idaho Code, shall be sufficient evidence of payment of a general re-  
17 tail sales or use tax.

18 (k) The use tax herein imposed shall not apply to the use by a nonres-  
19 ident of this state of a motor vehicle which is registered or licensed un-  
20 der the laws of the state of his residence and is not used in this state more  
21 than a cumulative period of time totaling ninety (90) days in any consecutive  
22 twelve (12) months, and which is not required to be registered or licensed  
23 under the laws of this state.

24 (l) The use tax herein imposed shall not apply to the use of household  
25 goods, personal effects and personally owned vehicles or personally owned  
26 aircraft by a resident of this state, if such articles were acquired by such  
27 person in another state while a resident of that state and primarily for use  
28 outside this state and if such use was actual and substantial, but if an arti-  
29 cle was acquired less than three (3) months prior to the time he entered this  
30 state, it will be presumed that the article was acquired for use in this state  
31 and that its use outside this state was not actual and substantial. For pur-  
32 poses of this subsection, "resident" shall be as defined in section 63-3013  
33 or 63-3013A, Idaho Code.

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

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

40 (2) The state of Idaho; or

41 (3) Any political subdivision of the state.

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

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

47 63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENAL-  
48 TIES. (a) To prevent evasion of the sales and use tax, it shall be presumed  
49 that all sales are subject to the taxes imposed by the provisions of this

1 chapter and the retailer shall have the burden of establishing the facts  
2 giving rise to such exemption unless the purchaser delivers to the retailer,  
3 or has on file with the retailer, an exemption or resale certificate.

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

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

25 (d) A seller may accept an exemption or resale certificate from a pur-  
26 chaser prior to the time of sale, at the time of the sale, or at any reason-  
27 able time after the sale when necessary to establish the privilege of the ex-  
28 emption. Other than as provided elsewhere in this section, when an exemp-  
29 tion or resale certificate, properly executed, is presented to or is on file  
30 with the seller, the seller has no duty or obligation to collect sales or use  
31 taxes in regard to any sales transaction so documented regardless of whether  
32 the purchaser properly or improperly claimed an exemption. A seller so re-  
33 lieved of the obligation to collect tax is also relieved of any liability to  
34 the purchaser for failure to collect tax or for making any report or disclo-  
35 sure of information required or permitted under this chapter. A seller need  
36 not accept an exemption or resale certificate that is not readable, legible  
37 or copyable.

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

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

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

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

8 63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes im-  
9 posed by this chapter:

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

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

15 (2) Tangible personal property and services primarily and directly  
16 used or consumed in or during a manufacturing, processing, mining,  
17 farming, or fabricating operation, including, but not limited to, re-  
18 pair parts, lubricants, hydraulic oil, and coolants, which become a  
19 component part of such tangible personal property; provided that the  
20 use or consumption of such tangible personal property is necessary or  
21 essential to the performance of such operation.

22 (3) Chemicals, catalysts, and other materials which are used for the  
23 purpose of producing or inducing a chemical or physical change in the  
24 product or for removing impurities from the product or otherwise plac-  
25 ing the product in a more marketable condition as part of an operation  
26 described in subsection (a)(2) of this section, and chemicals and  
27 equipment used in clean-in-place systems in the food processing and  
28 food manufacturing industries.

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

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

34 (b) Other than as provided in subsection (c) of this section, the ex-  
35 emptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this  
36 section are available only to a business or separately operated segment of  
37 a business which is primarily devoted to producing tangible personal prop-  
38 erty which that business will sell and which is intended for ultimate sale  
39 at retail within or without this state. A contractor providing services to a  
40 business entitled to an exemption under this section is not exempt as to any  
41 property owned, leased, rented or used by it unless, as a result of the terms  
42 of the contract, the use of the property is exempt under section 63-3615(b),  
43 Idaho Code.

44 (c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and  
45 (a)(4) of this section shall also be available to a business, or separately  
46 operated segment of a business, engaged in farming or mining, whether as a  
47 subcontractor, contractor, contractee or subcontractee, when such business  
48 or segment of a business is primarily devoted to producing tangible personal

1 property which is intended for ultimate sale at retail within or without this  
2 state, without regard to the ownership of the product being produced.

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

12 (e) As used in this section, the term "directly used or consumed in or  
13 during" a farming operation means the performance of a function reasonably  
14 necessary to the operation of the total farming business, including, the  
15 planting, growing, harvesting and initial storage of crops and other agri-  
16 cultural products and movement of crops and produce from the place of harvest  
17 to the place of initial storage. It includes disinfectants used in the dairy  
18 industry to clean cow udders or to clean pipes, vats or other milking equip-  
19 ment.

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

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

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

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

32 (3) Property used in transportation activities.

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

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

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

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

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

46 (6) Any improvement to real property or fixture thereto or any tangible  
47 personal property which becomes or is intended to become a component of  
48 any real property or any improvement or fixture thereto.

49 (7) Motor vehicles and aircraft.

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

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

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

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

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

17 63-3623. RETURNS AND PAYMENTS. (a) The taxes imposed by this act are  
18 due and payable to the state tax commission monthly on or before the twenti-  
19 eth day of the succeeding month.

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

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

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

34 (e) For the purposes of the sales tax, the return shall show the total  
35 sales at retail subject to tax under this act during the reporting period.  
36 For the purposes of the use tax, in case of a return filed by a retailer, the  
37 return shall show the total sales price of the property sold by him, the stor-  
38 age, use, or consumption of which property became subject to the use tax dur-  
39 ing the reporting period; in the case of a return filed by a purchaser, the  
40 return shall show the total sales price of the property purchased by him, the  
41 storage, use, or consumption of which became subject to the use tax during  
42 the reporting period.

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

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

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

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

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

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

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

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

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

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

32 SECTION 18. 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 63-3642, Idaho Code, and to read as follows:

35 63-3642. PLACE WHERE SALE OCCURS -- SOURCING. (1) The term "sourcing"  
36 means the point at which a retail sale occurs. The retail sale of a product or  
37 service, excluding lease or rental, of a product shall be sourced as follows:

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

41 (b) When the product or service is not received by the purchaser at a  
42 business location of the seller, the sale is sourced to the location  
43 where received by the purchaser, or the purchaser's donee, designated  
44 as such by the purchaser, occurs, including the location indicated  
45 by instructions for delivery to the purchaser, or donee, known to the  
46 seller.

47 (c) When subsection (1) (a) and (1) (b) of this section does not apply,  
48 the sale is sourced to the location indicated by an address for the pur-



1 chaser that is available from the business records of the seller that  
2 are maintained in the ordinary course of the seller's business when use  
3 of this address does not constitute bad faith.

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

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

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

21 (a) For a lease or rental that requires recurring periodic payments,  
22 the first periodic payment is sourced the same as a retail sale in accor-  
23 dance with the provisions of subsection (1) of this section. Periodic  
24 payments made subsequent to the first payment are sourced to the primary  
25 property location for each period covered by the payment. The primary  
26 property location shall be as indicated by an address for the property  
27 provided by the lessee that is available to the lessor from its records  
28 maintained in the ordinary course of business, when use of this address  
29 does not constitute bad faith. The property location shall not be al-  
30 tered by intermittent use at different locations, such as use of busi-  
31 ness property that accompanies employees on business trips and service  
32 calls.

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

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

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

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

49 (4) The retail sale, including lease or rental, of transportation  
50 equipment shall be sourced the same as a retail sale in accordance with the

1 provisions of subsection (1) of this section, notwithstanding the exclusion  
2 of lease in subsection (1) of this section. "Transportation equipment"  
3 means any of the following:

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

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

9 (i) Registered through the international registration plan; and

10 (ii) Operated under authority of a carrier authorized and cer-  
11 tificated by the U.S. department of transportation or another fed-  
12 eral authority to engage in the carriage of persons or property in  
13 interstate commerce.

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

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

21 (5) Services performed and consumed at the same location in Idaho are  
22 sourced to that location. Services performed in another state but consumed  
23 in Idaho will be sourced to the Idaho location at which the consumption oc-  
24 curs. Services performed in Idaho but consumed in another state shall not be  
25 sourced to Idaho.

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

29 63-3643. GENERAL SOURCING DEFINITIONS. For the purposes of subsection  
30 (1) of section 63-3642, Idaho Code, the terms "receive" and "receipt" mean:

31 (1) Taking possession of tangible personal property;

32 (2) Making first use of services; or

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

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

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

40 63-3644. MULTIPLE POINTS OF USE. Notwithstanding the provisions of  
41 section 63-3642, Idaho Code, a business purchaser that is not a holder of a  
42 direct pay permit that knows at the time of its purchase of a digital good,  
43 computer software delivered electronically or a service that the digital  
44 good, computer software delivered electronically or service will be con-  
45 currently available for use in more than one (1) jurisdiction shall deliver  
46 to the seller in conjunction with its purchase a "multiple points of use" or  
47 "MPU" exemption form disclosing this fact.

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

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

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

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

19 SECTION 21. That Chapter 36, Title 63, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 63-3645, Idaho Code, and to read as follows:

22 63-3645. CONTRACTS FOR SERVICES ENTERED INTO PRIOR TO JULY 1,  
23 2011. (1) Beginning July 1, 2011, and ending June 30, 2013, the sales of  
24 services to improve real property shall be exempt if the contract to improve  
25 real property is in writing and entered into prior to July 1, 2011. Contrac-  
26 tors purchasing materials for such a contract shall be deemed the consumers  
27 of those materials and shall pay sales or use tax on the purchase of such  
28 materials.

29 (2) Beginning July 1, 2011, and ending June 30, 2013, purchasers of  
30 services other than improvements to real property may claim a refund of the  
31 sales tax actually paid for such services if the sales of the services would  
32 have been exempt prior to July 1, 2011. To qualify for a refund the agreement  
33 to purchase such services must be in writing. The service must be one that is  
34 either:

35 (a) Continuous in nature and started prior to July 1, 2011, but not com-  
36 pleted until after that date; or

37 (b) Agreed to commence after July 1, 2011.

38 (c) Agreements that are not continuous in nature will not qualify for a  
39 refund of tax. For instance, if a purchaser contracts for a service to  
40 be performed once a week for a year and the service is one that is started  
41 and completed within one (1) day, payments for such service will not be  
42 subject to refund if they occur after July 1, 2011.

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

1           SECTION 23. This act shall be in full force and effect on and after July  
2    1, 2011.