

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 214

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO PROVIDE
2 THE USE TAX SHALL NOT APPLY TO ANY USE OF A MOTOR VEHICLE WHICH IS REGIS-
3 TERED OR LICENSED UNDER THE LAWS OF THE STATE OF RESIDENCE OF A NONRES-
4 IDENT STUDENT WHILE SUCH NONRESIDENT STUDENT IS ENROLLED AS A FULL-TIME
5 STUDENT IN AN INSTITUTION OF POSTSECONDARY EDUCATION THAT IS BOTH PHYS-
6 ICALLY LOCATED IN IDAHO AND RECOGNIZED AS ACCREDITED BY THE STATE BOARD
7 OF EDUCATION; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLI-
8 CATION.
9

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

11 SECTION 1. 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 acquired on or after October 1, 2006, for
16 storage, use, or other consumption in this state at the rate of six percent
17 (6%) of the value of the property, and a recent sales price shall be presump-
18 tive evidence of the value of the property unless the property is wireless
19 telecommunications equipment, in which case a recent sales price shall be
20 conclusive evidence of the value of the property.

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

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

39 (c) The provisions of this section shall not apply when the retailer
40 pays sales tax on the transaction and collects reimbursement for such sales
41 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 sold by any person for delivery in
10 this state is sold for storage, use, or other consumption in this state. The
11 burden of proving the sale is tax exempt is upon the person who makes the
12 sale unless he obtains from the purchaser a resale certificate to the ef-
13 fect that the property is purchased for resale or rental. It shall be pre-
14 sumed that sales made to a person who has completed a resale certificate for
15 the seller's records are not taxable and the seller need not collect sales or
16 use taxes unless the tangible personal property purchased is taxable to the
17 purchaser as a matter of law in the particular instance claimed on the resale
18 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 from the burden of proof
23 only if taken from a person who is engaged in the business of selling or rent-
24 ing tangible personal property and who holds the permit provided for by sec-
25 tion 63-3620, Idaho Code, or who is a retailer not engaged in business in
26 this state, and who, at the time of purchasing the tangible personal prop-
27 erty, intends to sell or rent it in the regular course of business or is un-
28 able to ascertain at the time of purchase whether the property will be sold or
29 will be used for some other purpose. Other than as provided elsewhere in this
30 section, when a resale certificate, properly executed, is presented to the
31 seller, the seller has no duty or obligation to collect sales or use taxes in
32 regard to any sales transaction so documented regardless of whether the pur-
33 chaser properly or improperly claimed an exemption. A seller so relieved of
34 the obligation to collect tax is also relieved of any liability to the pur-
35 chaser for failure to collect tax or for making any report or disclosure of
36 information required or permitted under this chapter.

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

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

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

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

4 (i) It shall be presumed that tangible personal property delivered out-
5 side this state to a purchaser known by the retailer to be a resident of this
6 state was purchased from a retailer for storage, use, or other consumption in
7 this state. This presumption may be controverted by evidence satisfactory
8 to the state tax commission that the property was not purchased for storage,
9 use, or other consumption in this state.

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

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

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

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

- 45 (1) A nonprofit organization as defined in section 63-36220, Idaho
46 Code; or
- 47 (2) The state of Idaho; or
- 48 (3) Any political subdivision of the state.

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

4 SECTION 2. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after its
6 passage and approval, and retroactively to January 1, 2011.