

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 237

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1
2 RELATING TO THE USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO PROVIDE
3 THAT THE USE TAX SHALL NOT APPLY TO A RETAILER SUPPLYING PREPARED FOOD OR
4 BEVERAGES FREE OF CHARGE TO ITS EMPLOYEE WHEN THAT RETAILER SELLS PRE-
5 PARED FOOD OR BEVERAGES IN ITS NORMAL COURSE OF BUSINESS; AND DECLARING
6 AN EMERGENCY.

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

8 SECTION 1. That Section 63-3621, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise
11 tax is hereby imposed on the storage, use, or other consumption in this state
12 of tangible personal property acquired on or after October 1, 2006, for
13 storage, use, or other consumption in this state at the rate of six percent
14 (6%) of the value of the property, and a recent sales price shall be presump-
15 tive evidence of the value of the property unless the property is wireless
16 telecommunications equipment, in which case a recent sales price shall be
17 conclusive evidence of the value of the property.

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

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

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

39 (d) Every retailer engaged in business in this state or maintaining a
40 place of business in this state shall register with the state tax commission
41 and give the name and address of all agents operating in this state, the loca-
42 tion of all distributions or sales houses or offices or other places of busi-

1 ness in this state, and such other information as the state tax commission
2 may require.

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

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

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

40 (f) If a purchaser who gives a resale certificate makes any storage or
41 use of the property other than retention, demonstration or display while
42 holding it for sale in the regular course of business, the storage or use is
43 taxable as of the time the property is first so stored or 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 delivered out-
2 side this state to a purchaser known by the retailer to be a resident of this
3 state was purchased from a retailer for storage, use, or other consumption in
4 this state. This presumption may be controverted by evidence satisfactory
5 to the state tax commission that the property was not purchased for storage,
6 use, or other consumption in this state.

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

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

28 (l) The use tax herein imposed shall not apply to the use of household
29 goods, personal effects and personally owned vehicles or personally owned
30 aircraft by a resident of this state if such articles were acquired by such
31 person in another state while a resident of that state and primarily for use
32 outside this state and if such use was actual and substantial, but if an arti-
33 cle was acquired less than three (3) months prior to the time he entered this
34 state, it will be presumed that the article was acquired for use in this state
35 and that its use outside this state was not actual and substantial. The use
36 tax herein imposed shall not apply to the use of household goods, personal
37 effects and personally owned vehicles or personally owned aircraft by ac-
38 tive duty military personnel temporarily assigned in this state and spouses
39 who accompany them if such articles were acquired prior to receipt of orders
40 to transfer to Idaho or three (3) months prior to moving to Idaho, whichever
41 time period is shorter. For purposes of this subsection, "resident" shall be
42 as defined in section 63-3013 or 63-3013A, Idaho Code.

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

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

49 (2) The state of Idaho; or

50 (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 (n) The use tax herein imposed shall not apply to tastings of food and
5 beverages including, but not limited to, wine and beer. For the purposes of
6 this subsection, a tasting of wine and beer shall be defined as the maximum
7 serving allowed by state or federal laws for such occasions provided to a po-
8 tential customer, at no charge, at a location where like or similar beverages
9 are sold. For nonalcoholic beverages and food, a tasting shall be defined as
10 a sample from a unit available for sale at the tasting location.

11 (o) The use tax herein imposed shall not apply to donations of food or
12 beverages, or both, to individuals or nonprofit organizations. For the pur-
13 poses of this section, "nonprofit organization" means those nonprofit en-
14 tities currently registered with the secretary of state pursuant to section
15 30-3-2, Idaho Code.

16 (p) The use tax herein imposed shall not apply to a retailer supplying
17 prepared food or beverages free of charge to its employee when that retailer
18 sells prepared food or beverages in its normal course of business.

19 SECTION 2. An emergency existing therefor, which emergency is hereby
20 declared to exist, this act shall be in full force and effect on and after its
21 passage and approval.