

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 243

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1
2 RELATING TO SALES TAXATION; AMENDING SECTION 63-3616, IDAHO CODE, TO PROVIDE
3 THAT APPLICATION SOFTWARE ACCESSED OVER THE INTERNET OR THROUGH WIRE-
4 LESS MEDIA IS NOT TANGIBLE PERSONAL PROPERTY AND TO DEFINE A TERM; AND
5 DECLARING AN EMERGENCY.

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

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

9 63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal
10 property" means personal property which may be seen, weighed, measured, felt
11 or touched, or which is in any other manner perceptible to the senses.

12 (b) The term "tangible personal property" includes any computer soft-
13 ware ~~which that~~ is not a custom computer program and is not application soft-
14 ware accessed over the internet or through wireless media.

15 (i) As used in this subsection, the term "computer software" means
16 any computer program, part of a program or any sequence of instructions
17 for automatic data processing equipment or information stored in an
18 electronic medium. Computer software is deemed to be tangible personal
19 property for purposes of this chapter regardless of the method by which
20 the title, possession or right to use the software is transferred to the
21 user.

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

36 (iii) As used in this section, the term "application software accessed
37 over the internet or through wireless media" means the right to use
38 computer software where the software is accessed over the internet
39 or through wireless media from a location owned or maintained by the
40 seller or an agent of the seller and is not loaded and left at the user's
41 location. The term does not include such remotely accessed computer
42 software if the primary purpose of such computer software is for en-

1 ertainment use, or if the vendor of that computer software offers for
2 sale, in a storage media or by an electronic download, to the user's
3 computer or server, and either directly or through wholesale or retail
4 channels, that same computer software or comparable computer software
5 that performs the same functions.

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

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