

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 283

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE STREAMLINED SALES TAX SIMPLIFICATION ACT; PROVIDING A SHORT
2 TITLE; AMENDING SECTION 50-1046, IDAHO CODE, TO REVISE PROVISIONS
3 ON CERTAIN CITY LOCAL-OPTION NONPROPERTY TAXES AND TO MAKE TECHNICAL
4 CORRECTIONS; AMENDING SECTION 63-3607, IDAHO CODE, TO REVISE THE DEF-
5 INITION OF "PERSON"; AMENDING SECTION 63-3608, IDAHO CODE, TO REVISE
6 THE DEFINITION OF "PURCHASE"; AMENDING SECTION 63-3609, IDAHO CODE,
7 TO REVISE THE DEFINITION OF "RETAIL SALE" OR "SALE AT RETAIL" AND TO
8 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3610, IDAHO CODE, TO
9 REVISE THE DEFINITION OF "RETAILER"; AMENDING SECTION 63-3611, IDAHO
10 CODE, TO REVISE THE DEFINITION OF "RETAILER ENGAGED IN BUSINESS IN THIS
11 STATE"; AMENDING SECTION 63-3612, IDAHO CODE, TO REVISE THE DEFINITION
12 OF "SALE" AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 63-3613,
13 IDAHO CODE, TO REVISE THE DEFINITION OF "SALES PRICE" AND TO MAKE TECH-
14 NICAL CORRECTIONS; AMENDING SECTION 63-3614, IDAHO CODE, TO REVISE THE
15 DEFINITION OF "SELLER"; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY
16 THE ADDITION OF A NEW SECTION 63-3615B, IDAHO CODE, TO PROVIDE DEFINI-
17 TIONS; AMENDING SECTION 63-3616, IDAHO CODE, TO REVISE THE DEFINITION
18 OF "TANGIBLE PERSONAL PROPERTY"; AMENDING SECTION 63-3619, IDAHO CODE,
19 TO PROVIDE AN ALGORITHM FOR ROUNDING; AMENDING SECTION 63-3621, IDAHO
20 CODE, TO ALLOW THE USE TAX TO APPLY TO CERTAIN TRANSACTIONS; AMENDING
21 SECTION 63-3622F, IDAHO CODE, TO REVISE THE SALES TAX EXEMPTION FOR
22 NATURAL GAS, ELECTRICITY, STEAM AND WATER; AMENDING SECTION 63-3622N,
23 IDAHO CODE, TO REVISE THE EXEMPTION FOR DRUGS AND MEDICAL EQUIPMENT;
24 REPEALING SECTION 63-3622UU, IDAHO CODE, RELATING TO PERSONAL PROP-
25 erty tax on rentals; AMENDING SECTION 67-4917B, IDAHO CODE, TO PROVIDE
26 FOR AN EXCISE TAX ON SALE OF HOTEL OR MOTEL ROOMS; AMENDING TITLE 63,
27 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 46, TITLE 63, IDAHO CODE,
28 TO PROVIDE THAT THE STREAMLINED SALES TAX AGREEMENT IS NOT TO PREEMPT
29 STATE LAW, TO PROVIDE INTENT, TO PROVIDE DUTIES OF THE STATE TAX COMMIS-
30 SION, TO PROVIDE STATE AND LOCAL TAX BASES, TO DEFINE TERMS, TO PROVIDE
31 FOR SELLER REGISTRATION, TO PROVIDE NOTICE FOR STATE TAX CHANGES, TO
32 PROVIDE APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM THE
33 RULES, TO PROVIDE FOR GENERAL SOURCING RULES, TO PROVIDE FOR GENERAL
34 SOURCING DEFINITIONS, TO PROVIDE FOR DIRECT MAIL SOURCING, TO PROVIDE
35 FOR ADMINISTRATION OF EXEMPTIONS, TO PROVIDE FOR UNIFORM TAX RETURNS,
36 TO PROVIDE UNIFORM RULES FOR REMITTANCES OF FUNDS, TO PROVIDE UNIFORM
37 RULES FOR RECOVERY OF BAD DEBTS, TO PROVIDE FOR CONFIDENTIALITY AND
38 PRIVACY PROTECTIONS UNDER MODEL 1 AND TO DEFINE A TERM, TO PROVIDE THE
39 EFFECTIVE DATE FOR RATE CHANGES, TO PROVIDE CUSTOMER REFUND PROCEDURES,
40 TO PROVIDE FOR A TAXABILITY MATRIX, TO PROVIDE RELIEF FROM CERTAIN LIA-
41 BILITY FOR PURCHASERS, TO PROVIDE FOR PROHIBITED REPLACEMENT TAXES, TO
42 PROVIDE FOR SELLER PARTICIPATION, TO PROVIDE AMNESTY FOR REGISTRATION,
43 TO PROVIDE A METHOD OF REMITTANCE, TO PROVIDE FOR REGISTRATION BY AN
44 AGENT, TO PROVIDE FOR CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED
45

1 SYSTEMS, TO PROVIDE FOR REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYS-
 2 TEM SOFTWARE AND CERTAIN LIABILITY RELIEF, TO PROVIDE FOR A MONETARY
 3 ALLOWANCE UNDER MODEL 1 AND TO PROVIDE A MONETARY ALLOWANCE FOR MODEL 2
 4 SELLERS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

6 SECTION 1. SHORT TITLE. This act shall be known and may be cited as the
 7 "Streamlined Sales Tax Simplification Act."

8 SECTION 2. That Section 50-1046, Idaho Code, be, and the same is hereby
 9 amended to read as follows:

10 50-1046. CITY LOCAL-OPTION NONPROPERTY TAXES PERMITTED BY SIXTY ~~PER~~
 11 ~~CENT PERCENT~~ MAJORITY VOTE. A sixty ~~per cent~~ percent (60%) majority of the
 12 voters of any resort city voting on the question may approve and, upon such
 13 approval, any city may adopt, implement and collect, subject to the provi-
 14 sions of this act, the following city local-option nonproperty taxes: (a) an
 15 occupancy tax upon hotel, motel, and other sleeping accommodations rented
 16 or leased for a period of thirty (30) days or less; (b) a tax upon liquor
 17 ~~by the drink~~ by the drink, wine and beer sold at retail for consumption on
 18 the licensed premises; and (c) a ~~sales resort~~ tax upon part or all of sales
 19 subject to taxation under chapter 36, title 63, Idaho Code.

20 SECTION 3. That Section 63-3607, Idaho Code, be, and the same is hereby
 21 amended to read as follows:

22 63-3607. PERSON. For the purposes of this chapter and chapter 46,
 23 title 63, Idaho Code, the term "person" includes any individual, firm,
 24 partnership, copartnership, joint venture, fiduciary, limited liability
 25 company, limited partnership, association, social club, fraternal organ-
 26 ization, corporation, estate, trust, business trust, receiver, trustee,
 27 syndicate, cooperative, assignee, and any other legal entity or any other
 28 group or combination acting as a unit.

29 SECTION 4. That Section 63-3608, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 63-3608. PURCHASE. The term "purchase" means any transfer, rental,
 32 exchange, or barter, conditional or otherwise, in any manner or by any means
 33 whatsoever, of tangible personal property or transactions described in sec-
 34 tion 63-3612(2), Idaho Code, for a consideration. A transaction whereby the
 35 possession of property is transferred but the seller retains the title as
 36 security for the payment of the price is a purchase. A transfer for a consid-
 37 eration of any publication or of tangible personal property which has been
 38 produced, fabricated, or printed to the special order of the customer is also
 39 a purchase.

40 SECTION 5. That Section 63-3609, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

1 63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or
2 "sale at retail" means a sale for any purpose other than resale in the
3 regular course of business or lease or rental of property in the regular
4 course of business where such rental or lease is taxable under section
5 63-3612(h), Idaho Code. A retail sale also means any sale described in sec-
6 tion 63-3612(2), Idaho Code.

7 (a) All persons engaged in constructing, altering, repairing or im-
8 proving real estate, are consumers of the material used by them; all sales to
9 or use by such persons of tangible personal property are taxable whether or
10 not such persons intend resale of the improved property.

11 (b) For the purpose of this chapter, the sale or purchase of personal
12 property incidental to the sale of real property or used mobile homes is
13 deemed a sale of real property.

14 SECTION 6. That Section 63-3610, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 63-3610. RETAILER. The term "retailer" includes:

17 (a) Every seller who makes any retail sale or sales of tangible personal
18 property or sale or sales as described in section 63-3612(2), Idaho Code,
19 and every person engaged in the business of making retail sales at auction of
20 tangible personal property owned by the person or others.

21 (b) Every person engaged in the business of making sales for storage,
22 use, or other consumption or in the business of making sales at auction of
23 tangible personal property owned by the person or others for storage, use, or
24 other consumption.

25 (c) Every person making more than two (2) retail sales of tangible per-
26 sonal property or retail sales as described in section 63-3612(2), Idaho
27 Code, during any twelve (12) month period, including sales made in the ca-
28 pacity of assignee for the benefit of creditors, or receiver or trustee in
29 bankruptcy, or every person making fewer sales who holds himself out as en-
30 gaging in the business of selling such tangible personal property at retail
31 or who sells a motor vehicle.

32 (d) When the state tax commission determines that it is necessary for
33 the efficient administration of this act to regard any salesmen, representa-
34 tives, peddlers, or canvassers as agents of the dealers, distributors, su-
35 pervisors, or employers under whom they operate or from whom they obtain the
36 tangible personal property sold by them, irrespective of whether they are
37 making sales on their own behalf or on behalf of such dealers, distributors,
38 supervisors, or employers, the state tax commission may so regard them and
39 may regard the dealers, distributors, supervisors, or employers as retail-
40 ers for the purpose of this act.

41 (e) Persons conducting both contracting and retailing activities.
42 Such persons must keep separate accounts for the retail portion of their
43 business and pay tax in the usual fashion on this portion.

44 SECTION 7. That Section 63-3611, Idaho Code, be, and the same is hereby
45 amended to read as follows:

1 63-3611. RETAILER ENGAGED IN BUSINESS IN THIS STATE. "Retailer en-
2 gaged in business in this state" as used in this chapter means any retailer
3 who:

4 (1) Engages in recurring solicitation of purchases from residents of
5 this state or otherwise purposefully directs its business activities at res-
6 idents of this state; and

7 (2) Has sufficient contact with this state, in accordance with the con-
8 stitution of the United States, to allow the state to require the seller to
9 collect and remit use tax on sales of tangible personal property or ~~services~~
10 sales as described in section 63-3612(2), Idaho Code, made to customers in
11 this state.

12 (3) The term includes any of the following:

13 (a) Any retailer maintaining, occupying or using, permanently or tem-
14 porarily, directly or indirectly, or through a subsidiary or agent, by
15 whatever name called, an office, place of distribution, sales or sample
16 room or place, warehouse or storage place, or other place of business or
17 maintaining a stock of goods.

18 (b) Any retailer having any representative, agent, salesman, canvasser
19 or solicitor operating in this state under the authority of the retailer
20 or its subsidiary for the purpose of selling, delivering, installing or
21 the taking of orders for any tangible personal property.

22 (c) Any retailer, with respect to a lease or rental, deriving rentals
23 from a lease or rental of tangible personal property situated in this
24 state.

25 (d) Any retailer engaging in any activity in connection with servicing
26 or installing tangible personal property in this state.

27 (e) Any retailer with substantial nexus in this state within the mean-
28 ing of section 63-3615A, Idaho Code.

29 (f) Any retailer having a franchisee or licensee operating under its
30 trade name if the franchisee or licensee is required to collect the tax
31 under the provisions of this section.

32 (g) Any retailer making sales as described in section 63-3612(2), Idaho
33 Code, the sale of which is subject to tax under the provisions of this
34 chapter and chapter 46, title 63, Idaho Code.

35 (h) Any retailer performing services within this state, the sale of
36 which is subject to tax under the provisions of this chapter.

37 SECTION 8. That Section 63-3612, Idaho Code, be, and the same is hereby
38 amended to read as follows:

39 63-3612. SALE. (1) The term "sale" means any transfer of title, ex-
40 change or barter, conditional or otherwise, of tangible personal property
41 for a consideration and shall include any similar transfer of possession
42 found by the state tax commission to be in lieu of, or equivalent to, a trans-
43 fer of title, exchange or barter.

44 (2) "Sale" shall also include the following transactions when a consid-
45 eration is transferred, exchanged or bartered:

46 (a) Producing, fabricating, processing, printing, or imprinting of
47 tangible personal property for consumers who furnish, either directly
48 or indirectly, the tangible personal property used in the producing,
49 fabricating, processing, printing, or imprinting.

1 (b) Furnishing, preparing, or serving food, meals, or drinks and nonde-
 2 preciable goods and services directly consumed by customers included in
 3 the charge thereof.

4 (c) A transfer of possession of property where the seller retains the
 5 title as security for the payment of the sales price.

6 (d) A transfer of the title or possession of tangible personal property
 7 which has been produced, fabricated, or printed to the special order of
 8 the customer, or of any publication.

9 (e) Admission to a place or for an event in Idaho, provided that an or-
 10 ganization conducting an exempt function as defined in section 527 or
 11 exempted by section 501(c)(3) of the Internal Revenue Code, as incor-
 12 porated in section 63-3004, Idaho Code, and collecting any charges for
 13 attendance at the aforementioned event, shall not have those admission
 14 charges be defined as a sale if the event:

15 (i) Is not predominately recreational or commercial; and

16 (ii) Any included entertainment value is minimal when compared to
 17 the charge for attendance; and

18 (iii) Such entity has paid sales and use tax on taxable property or
 19 services used during the event.

20 (f) The use of or the privilege of using tangible personal property or
 21 facilities for recreation.

22 (g) Providing hotel, motel, campground, or trailer court accommo-
 23 dations, nondepreciable goods directly consumed by customers and
 24 included services, except where residence is maintained continuously
 25 under the terms of a lease or similar agreement for a period in excess of
 26 thirty (30) days.

27 (h) The lease or rental of tangible personal property.

28 ~~(i) The intrastate transportation for hire by air of freight or passen-~~
 29 ~~gers, except (1) as part of a regularly scheduled flight by a certified~~
 30 ~~air carrier, under authority of the United States, or (2) when providing~~
 31 ~~air ambulance services~~ The sale, lease or rental of digital products,
 32 including specified digital products and digital codes, that provide a
 33 purchaser with the right to obtain one (1) or more digital products and
 34 regardless of the method by which the title, possession or right to use
 35 the digital product is transferred to the user.

36 (3) As used in subsections ~~(2) (b) and (2) (g)~~ of this section, goods "di-
 37 rectly consumed by customers" shall not be interpreted to mean any linens,
 38 bedding, cloth napkins or similar nondisposable property.

39 SECTION 9. That Section 63-3613, Idaho Code, be, and the same is hereby
 40 amended to read as follows:

41 63-3613. SALES PRICE. (a) The term "sales price" means the total
 42 amount for which tangible personal property or a transaction as described in
 43 section 63-3612(2), Idaho Code, including services agreed to be rendered as
 44 a part of the sale of tangible personal property, is sold, rented or leased,
 45 valued in money, whether paid in money or otherwise, without any deduction on
 46 account of any of the following: The total amount of consideration includes
 47 cash, credit, services and property for which tangible personal property
 48 or a transaction as described in section 63-3612(2), Idaho Code, is sold,

1 leased or rented. There is no deduction in sales price for any of the follow-
 2 ing:

3 (1-) The seller's cost of the property sold. However, in accordance
 4 with such rules as the state tax commission may prescribe, a deduction
 5 may be taken if the retailer has purchased property for some purpose
 6 other than resale or rental, has reimbursed his paid tax to the vendor
 7 for tax which the vendor is required to pay to the state or has paid
 8 the use tax to the state with respect to the property, and has resold
 9 or rented the property prior to making any use of the property other
 10 than retention, demonstration or display while holding it for sale in
 11 the regular course of business. If such a deduction is taken by the re-
 12 tailer, no refund or credit will be allowed to his vendor with respect to
 13 the sale of the property.

14 (2-) The cost of materials used, labor or service cost, losses, all
 15 taxes imposed on the seller or any other expense.

16 (3-) The cost of transportation of the property prior to its sale.

17 (4-) The face value of manufacturer's discount coupons pursuant to
 18 subsection (b) of this section. A manufacturer's discount coupon is a
 19 price reduction coupon presented by a consumer to a retailer upon pur-
 20 chase of a manufacturer's product, the face value of which may only be
 21 reimbursed by the manufacturer to the retailer.

22 (b) The term "Sales price" does not include any of the following shall
 23 include consideration received by the seller from third parties if:

24 (1) The seller actually receives consideration from a party other than
 25 the purchaser and the consideration is directly related to a price re-
 26 duction or discount on the sale;

27 (2) The seller has an obligation to pass the price reduction or discount
 28 through to the purchaser;

29 (3) The amount of the consideration attributable to the sale is fixed
 30 and determinable by the seller at the time of the sale of the item to the
 31 purchaser; and

32 (4) One (1) of the following criteria is met:

33 (i) The purchaser presents a coupon, certificate or other docu-
 34 mentation to the seller to claim a price reduction or discount
 35 where the coupon, certificate or documentation is authorized,
 36 distributed or granted by a third party with the understanding
 37 that the third party will reimburse any seller to whom the coupon,
 38 certificate or documentation is presented;

39 (ii) The purchaser identifies himself to the seller as a member of
 40 a group or organization entitled to a price reduction or discount.
 41 A preferred customer card that is available to any patron does not
 42 constitute membership in such a group; or

43 (iii) The price reduction or discount is identified as a third
 44 party price reduction or discount on the invoice received by the
 45 purchaser or on a coupon, certificate or other documentation pre-
 46 sented by the purchaser.

47 (c) "Sales price" shall not include:

48 (1-) Retailer discounts allowed and taken on sales, but only to the
 49 extent that such retailer discounts represent price adjustments as

1 opposed to cash discounts offered only as an inducement for prompt pay-
2 ment.

3 (2-) Any sums allowed on merchandise accepted in payment of other mer-
4 chandise, provided that this allowance shall not apply to the sale of a
5 "new manufactured home" or a "modular building" as defined herein.

6 (3-) The amount charged for property returned by customers when the
7 amount charged therefor is refunded either in cash or credit; but this
8 exclusion shall not apply in any instance when the customer, in order
9 to obtain the refund, is required to purchase other property at a price
10 greater than the amount charged for the property that is returned.

11 (4-) The amount charged for labor or services rendered in installing
12 or applying the property sold, provided that said amount is stated
13 separately and such separate statement is not used as a means of avoid-
14 ing imposition of this tax upon the actual sales price of the tangible
15 personal property; except that charges by a manufactured homes dealer
16 for ~~set up~~ setup of a manufactured home shall be included in the "sales
17 price" of such manufactured home.

18 ~~(5-) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer~~
19 Any taxes legally imposed directly on the consumer, provided that the
20 charge is stated separately.
21 Any taxes legally imposed directly on the consumer, provided that the
22 charge is stated separately.

23 (6-) The amount charged for finance charges, carrying charges, ser-
24 vice charges, time-price differential, or interest on deferred payment
25 sales, provided such charges are not used as a means of avoiding impo-
26 sition of this tax upon the actual sales price of the tangible personal
27 property.

28 (7-) ~~Delivery and handling~~ charges for transportation of tangible
29 personal property to the consumer, provided that the transportation
30 is stated separately and the separate statement is not used as a means
31 of avoiding imposition of the tax upon the actual sales price of the
32 tangible personal property; except that delivery charges by a manufac-
33 tured homes dealer for transportation of a manufactured home shall be
34 included in the "sales price" of such manufactured home.

35 (8-) Manufacturers' rebates when used at the time of a retail sale as a
36 down payment on or reduction to the retail sales price of a motor vehicle
37 to which the rebate applies. A manufacturer's rebate is a cash payment
38 made by a manufacturer to a consumer who has purchased or is purchasing
39 the manufacturer's product from the retailer.

40 (9-) The amount of any fee imposed upon an outfitter as defined in sec-
41 tion 36-2102, Idaho Code, by a governmental entity pursuant to statute
42 for the purpose of conducting outfitting activities on land or water
43 subject to the jurisdiction of the governmental entity, provided that
44 the fee is stated separately and is presented as a use fee paid by the
45 outfitted public to be passed through to the governmental entity.

46 (10-) The amount of any discount or other price reduction on telecom-
47 munications equipment when offered as an inducement to the consumer to
48 commence or continue telecommunications service, or the amount of any
49 commission or other indirect compensation received by a retailer or

1 seller as a result of the consumer commencing or continuing telecommu-
2 nications service.

3 (ed) The sales price of a "new manufactured home" or a "modular build-
4 ing" as defined in this chapter shall be limited to and include only fifty-
5 five percent (55%) of the sales price as otherwise defined herein.

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

10 (e) Tangible personal property when sold at retail for more than eleven
11 cents (11¢) but less than one dollar and one cent (\$1.01) through a vending
12 machine shall be deemed to have sold at a sales price equal to one hundred
13 seventeen percent (117%) of the price which is paid for such tangible per-
14 sonal property and/or its component parts including packaging by the owner
15 or operator of the vending machines.

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

20 (g) Sales price shall not include a gratuity or tip received when paid
21 to the service provider of a meal. The gratuity or tip can be either volun-
22 tary or mandatory, but must be given for the service provided and as a supple-
23 ment to the service provider's income.

24 SECTION 10. That Section 63-3614, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 63-3614. SELLER. The term "seller" means every person making sales at
27 retail or retail sales to a buyer or consumer, or on behalf of a buyer or con-
28 sumer, whether as principal, agent, or broker or principal. The term in-
29 cludes every person making retail sales as described in section 63-3612(2),
30 Idaho Code.

31 SECTION 11. That Chapter 36, Title 63, Idaho Code, be, and the same is
32 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
33 ignated as Section 63-3615B, Idaho Code, and to read as follows:

34 63-3615B. DEFINITIONS. As used in this chapter and in chapter 46, ti-
35 tle 63, Idaho Code:

36 (1) "Agent" means a person appointed by a seller to represent the seller
37 before the member states of the streamlined sales tax agreement.

38 (2) "Certified automated system" (CAS) means software certified under
39 the streamlined sales tax agreement to calculate the tax imposed by each ju-
40 risdiction on a transaction, to determine the amount of tax to remit to the
41 appropriate state and to maintain a record of the transaction.

42 (3) "Certified service provider" (CSP) means an agent certified under
43 the streamlined sales tax agreement to perform all the seller's sales and
44 use tax functions, other than the seller's obligation to remit tax on its own
45 purchases.

1 (4) "Entity-based exemption" means an exemption based on who purchases
2 the product or who sells the product. An exemption that is available to all
3 individuals shall not be considered an entity-based exemption.

4 (5) "Model 1 seller" means a seller registered under the streamlined
5 sales tax agreement that has selected a CSP as its agent to perform all the
6 seller's sales and use tax functions, other than the seller's obligation to
7 remit tax on its own purchases.

8 (6) "Model 2 seller" means a seller registered under the streamlined
9 sales tax agreement that has selected a CAS to perform part of its sales and
10 use tax functions, but retains responsibility for remitting the tax.

11 (7) "Model 3 seller" means a seller registered under the streamlined
12 sales tax agreement that has sales in at least five (5) member states,
13 has total annual sales revenue of at least five hundred million dollars
14 (\$500,000,000), has a proprietary system that calculates the amount of tax
15 due each jurisdiction and has entered into a performance agreement with the
16 member states that establishes a tax performance standard for the seller.
17 As used in this definition, a seller includes an affiliated group of sellers
18 using the same proprietary system.

19 (8) "Model 4 seller" means a seller that is registered under the stream-
20 lined sales tax agreement and is not a model 1, 2 or 3 seller.

21 (9) "Product-based exemption" means an exemption based on the descrip-
22 tion of the product and not based on who purchases the product or how the pur-
23 chaser intends to use the product.

24 (10) "Purchaser" means a person to whom a sale of tangible personal
25 property is made or a transaction as described in section 63-3612(2), Idaho
26 Code, is furnished.

27 (11) "Registered under the streamlined sales tax agreement" means reg-
28 istration by a seller with the member states under the registration system
29 provided in chapter 46, title 63, Idaho Code.

30 (12) "Use-based exemption" means an exemption based on a specified use
31 of the product by the purchaser.

32 (13) "State" means any state of the United States, the District of Co-
33 lumbia, the Commonwealth of Puerto Rico or any territory or possession of the
34 United States.

35 (14) "Bundled transaction" means the retail sale of two (2) or more
36 products, except real property and services to real property, where the
37 products are otherwise distinct and identifiable, and the products are sold
38 for one nonitemized price. A bundled transaction does not include the sale
39 of any products in which the sales price varies or is negotiable, based upon
40 the selection by the purchaser of the products included in the transaction.

41 (a) Distinct and identifiable products do not include:

42 (i) Packaging such as containers, boxes, sacks, bags and bot-
43 tles, or other materials such as wrapping, labels, tags and in-
44 struction guides, that accompany the retail sale of the products
45 and are incidental or immaterial to the retail sale thereof. Ex-
46 amples of packaging that are incidental or immaterial include gro-
47 cery sacks, shoe boxes, dry cleaning garment bags and express de-
48 livery envelopes and boxes;

49 (ii) A product provided free of charge with the required purchase
50 of another product. A product is provided free of charge if the

1 sales price of the product purchased does not vary depending on the
2 inclusion of the product provided free of charge;

3 (iii) Items included in the definition of "sales price," pursuant
4 to this chapter;

5 (b) "One nonitemized price" does not include a price that is sep-
6 arately identified by product on binding sales or other supporting
7 sales-related documentation made available to the customer in paper or
8 electronic form including, but not limited to, an invoice, bill of sale,
9 receipt, contract, service agreement, lease agreement, periodic notice
10 of rates and services, rate card or price list;

11 (c) A transaction that otherwise meets the definition of a "bundled
12 transaction" pursuant to this chapter is not a bundled transaction if:

13 (i) It is the retail sale of tangible personal property and a ser-
14 vice where the tangible personal property is essential to the use
15 of the service, and is provided exclusively in connection with the
16 service, and the true object of the transaction is the service; or

17 (ii) It is the retail sale of services where one service is pro-
18 vided that is essential to the use or receipt of a second service,
19 and the first service is provided exclusively in connection with
20 the second service, and the true object of the transaction is the
21 second service; or

22 (iii) It is a transaction that includes taxable products and non-
23 taxable products and the purchase price or sales price of the tax-
24 able products is de minimis;

25 1. "De minimis" means the seller's purchase price or sales
26 price of the taxable products is ten percent (10%) or less of
27 the total purchase price or sales price of the bundled prod-
28 ucts;

29 2. Sellers shall use either the purchase price or the sales
30 price of the products to determine if the taxable products
31 are de minimis. Sellers may not use a combination of the pur-
32 chase price and sales price of the products to determine if
33 the taxable products are de minimis;

34 3. Sellers shall use the full term of a service contract to
35 determine if the taxable products are de minimis; or

36 (iv) It is the retail sale of exempt tangible personal property
37 and taxable tangible personal property where:

38 1. The transaction includes food and food ingredients,
39 drugs, durable medical equipment, mobility enhancing equip-
40 ment, over-the-counter drugs, prosthetic devices as defined
41 in this chapter or medical supplies; and

42 2. The seller's purchase price or sales price of the taxable
43 tangible personal property is fifty percent (50%) or less of
44 the total purchase price or sales price of the bundled tangi-
45 ble personal property. Sellers may not use a combination of
46 the purchase price and sales price of the tangible personal
47 property when making the fifty percent (50%) determination
48 for a transaction.

49 (15) "Delivery charges" means charges by the seller of personal prop-
50 erty or services for preparation and delivery to a location designated by the

1 purchaser of personal property including, but not limited to, transporta-
2 tion, shipping, postage, handling, crating and packing.

3 (16) "Direct mail" means printed material delivered or distributed by
4 United States mail or other delivery service to a mass audience or to ad-
5 dressees on a mailing list provided by the purchaser or at the direction of
6 the purchaser when the cost of the items is not billed directly to the recip-
7 ients. Direct mail includes tangible personal property supplied directly or
8 indirectly by the purchaser to the direct mail seller for inclusion in the
9 package containing the printed material. Direct mail does not include mul-
10 tiple items of printed material delivered to a single address.

11 (17) (a) "Lease or rental" means any transfer of possession or control
12 of tangible personal property for a fixed or indeterminate term for con-
13 sideration. A "lease or rental" may include future options to purchase
14 or extend.

15 (b) "Lease or rental" does not include:

16 (i) A transfer of possession or control of property under a secu-
17 rity agreement or deferred payment plan that requires the transfer
18 of title upon completion of the required payments;

19 (ii) A transfer of possession or control of property under an
20 agreement that requires the transfer of title upon completion of
21 required payments and payment of an option price does not exceed
22 the greater of one hundred dollars (\$100) or one percent (1%) of
23 the total required payments; or

24 (iii) Providing tangible personal property along with an operator
25 for a fixed or indeterminate period of time. A condition of this
26 exclusion is that the operator is necessary for the equipment to
27 perform as designed. For the purpose of this subsection, an opera-
28 tor must do more than maintain, inspect or set up the tangible per-
29 sonal property;

30 (c) This definition shall be used for sales and use tax purposes regard-
31 less if a transaction is characterized as a lease or rental under gen-
32 erally accepted accounting principles, the Internal Revenue Code, the
33 uniform commercial code or other provisions of federal, state or local
34 law.

35 (18) "Computer" means an electronic device that accepts information in
36 digital or similar form and manipulates it for a result based on a sequence of
37 instructions.

38 (a) "Computer software" means a set of coded instructions designed to
39 cause a computer or automatic data processing equipment to perform a
40 task;

41 (b) "Delivered electronically" means delivered to the purchaser by
42 means other than tangible storage media;

43 (c) "Electronic" means relating to technology having electrical, digi-
44 tal, magnetic, wireless, optical, electromagnetic or similar capabili-
45 ties;

46 (d) "Load and leave" means delivery to the purchaser by use of a tan-
47 gible storage media where the tangible storage media is not physically
48 transferred to the purchaser.

49 (19) "Drug" means a compound, substance or preparation, and any compo-
50 nent of a compound, substance or preparation, other than food and food ingre-

1 dients, dietary supplements or alcoholic beverages: recognized in the of-
2 ficial United States pharmacopoeia, official homeopathic pharmacopoeia of
3 the United States, or official national formulary, and supplement to any of
4 them; or intended for use in the diagnosis, cure, mitigation, treatment, or
5 prevention of disease; or intended to affect the structure or any function of
6 the body.

7 (20) "Durable medical equipment" means equipment including repair and
8 replacement parts for same, but does not include mobility enhancing equip-
9 ment, which: can withstand repeated use; and is primarily and customarily
10 used to serve a medical purpose; and generally is not useful to a person in
11 the absence of illness or injury; and is not worn in or on the body.

12 (21) "Mobility enhancing equipment" means equipment including repair
13 and replacement parts to same, but does not include durable medical equip-
14 ment, which: is primarily and customarily used to provide or increase the
15 ability to move from one place to another and which is appropriate for use ei-
16 ther in a home or a motor vehicle; is not generally used by persons with nor-
17 mal mobility; and does not include any motor vehicle or equipment on a motor
18 vehicle normally provided by a motor vehicle manufacturer.

19 (22) "Over-the-counter drug" means a drug that contains a label that
20 identifies the product as a drug as required by 21 CFR 201.66.

21 (23) "Prescription" means an order, formula or recipe issued in any
22 form of oral, written, electronic or other means of transmission by a duly
23 licensed practitioner authorized by the laws of Idaho.

24 (24) "Prosthetic device" means a replacement, corrective or supportive
25 device including repair and replacement parts for same worn on or in the body
26 to: artificially replace a missing portion of the body; prevent or correct
27 physical deformity or malfunction; or support a weak or deformed portion of
28 the body.

29 SECTION 12. That Section 63-3616, Idaho Code, be, and the same is hereby
30 amended to read as follows:

31 63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal
32 property" means personal property which may be seen, weighed, measured, felt
33 or touched, or which is in any other manner perceptible to the senses, in-
34 cluding electricity, water, gas, steam and prewritten computer software.

35 (b) The term "tangible personal property" includes any computer soft-
36 ware except the following: custom computer programs; computer software that
37 is delivered electronically; remotely accessed computer software; and com-
38 puter software that is delivered by the load and leave method where the ven-
39 dor or its agent loads the software at the user's location but does not trans-
40 fer any tangible personal property containing the software to the user.

41 (1) As used in this subsection, the term "remotely accessed computer
42 software" means computer software that a user accesses over the inter-
43 net, over private or public networks, or through wireless media, where
44 the user has only the right to use or access the software by means of
45 a license, lease, subscription, service or other agreement. Notwith-
46 standing the foregoing exclusions of certain types of computer software
47 from the definition of tangible personal property, tangible personal
48 property shall include computer software that constitutes digital mu-
49 sic, digital books, digital videos and digital games, regardless of the

1 method by which the title, possession or right to use such software is
2 transferred to the user.

3 (2) As used in this subsection, the term "digital videos" means prere-
4 recorded video products and shall not include live broadcasts, television
5 or cable broadcasts or video conferencing products.

6 ~~(i) As used in this subsection, the term "computer software" means any~~
7 ~~computer program, part of a program or any sequence of instructions for~~
8 ~~automatic data processing equipment or information stored in an elec-~~
9 ~~tronic medium.~~

10 (ii)3) 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 the
21 actual amount charged for the modification is separately stated on in-
22 voices, statements, and other billing documents supplied to the pur-
23 chaser.

24 (c) The term "tangible personal property" does not include:

25 (1) Advertising space when sold to an advertiser or its agent by the
26 publisher of the newspaper or the magazine in which the advertisement is
27 displayed or circulated.

28 (2) "Specified digital products," which means electronically trans-
29 ferred:

30 (i) "Digital audio-visual works," which means a series of related
31 images that when shown in succession impart an impression of mo-
32 tion, together with accompanying sounds, if any;

33 (ii) "Digital audio works," which means works that result from the
34 fixation of a series of musical, spoken, or other sounds, includ-
35 ing ringtones; and

36 (iii) "Digital books," which means works that are generally recog-
37 nized in the ordinary and usual sense as books.

38 For purposes of the definitions of specified digital products, "trans-
39 ferred electronically" means obtained by the purchaser by means other
40 than tangible storage media. For the purposes of the definition of
41 digital audio works, "ringtones" means digitized sound files that are
42 downloaded onto a device and that may be used to alert the customer with
43 respect to a communication.

44 (d) "Prewritten computer software" means computer software, includ-
45 ing prewritten upgrades, that is not designed and developed by the author
46 or other creator to the specifications of a specific purchaser. The combin-
47 ing of two (2) or more prewritten computer software programs or prewritten
48 portions thereof does not cause the combination to be other than prewrit-
49 ten computer software. Prewritten computer software includes software de-
50 signed and developed by the author or other creator to the specifications

1 of a specific purchaser when it is sold to a person other than the specific
2 purchaser. When a person modifies or enhances computer software of which
3 the person is not the author or creator, the person shall be deemed to be
4 the author or creator only of such person's modifications or enhancements.
5 Prewritten computer software or a prewritten portion thereof that is modi-
6 fied or enhanced to any degree, where such modification or enhancement is de-
7 signed and developed to the specifications of a specific purchaser, remains
8 prewritten computer software; provided however, that where there is a rea-
9 sonable, separately stated charge or an invoice or other statement of the
10 price given to the purchaser for such modification or enhancement, such mod-
11 ification or enhancement shall not constitute prewritten computer software.

12 SECTION 13. That Section 63-3619, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby
15 imposed upon each sale at retail at the rate of six percent (6%) of the sales
16 price of all retail sales subject to taxation under this chapter and such
17 amount shall be computed monthly on all sales at retail within the preceding
18 month.

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

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

24 (c) The state tax commission shall provide schedules for collection of
25 the tax on sales which involve a fraction of a dollar. The retailer shall
26 calculate the tax upon the entire amount of the purchases of the consumer
27 made at a particular time and not separately upon each item purchased. The
28 retailer may retain any amount collected under the bracket system prescribed
29 which is in excess of the amount of tax for which he is liable to the state
30 during the period as compensation for the work of collecting the tax.

31 (d) It is unlawful for any retailer to advertise or hold out or state to
32 the public or to any customer, directly or indirectly, that the tax or any
33 part thereof will be assumed or absorbed by the retailer or that it will not
34 be added to the selling price of the property sold or that if added it or any
35 part thereof will be refunded. Any person violating any provision of this
36 section is guilty of a misdemeanor.

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

41 (f) The taxes imposed by this chapter shall apply to the sales to con-
42 tractors purchasing for use in the performance of contracts with the United
43 States.

44 (g) The commission shall adopt a rounding algorithm that meets the fol-
45 lowing criteria: tax computation must be carried to the third decimal place;
46 the tax must be rounded to a whole cent using a method that rounds up to the
47 next cent whenever the third decimal place is greater than four (4); and the
48 state tax commission shall allow sellers to elect to compute the tax due on
49 a transaction on an item or on an invoice basis and shall allow the round-

1 ing rule to be applied to the aggregated state and local taxes. The state
2 tax commission shall allow sellers to use rounding rules in the streamlined
3 sales tax agreement.

4 SECTION 14. That Section 63-3621, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise
7 tax is hereby imposed on the storage, use, or other consumption in this state
8 of tangible personal property acquired or any transaction as described in
9 section 63-3612(2), Idaho Code, on or after October 1, 2006, for storage,
10 use, or other consumption in this state at the rate of six percent (6%) of
11 the value of the property, and a recent sales price shall be presumptive ev-
12 idence of the value of the tangible personal property or any transaction as
13 described in section 63-3612(2), Idaho Code, unless the property is wireless
14 telecommunications equipment, in which case a recent sales price shall be
15 conclusive evidence of the value of the property.

16 (a) Every person storing, using, or otherwise consuming, in this
17 state, tangible personal property or any transaction as described in section
18 63-3612(2), Idaho Code, is liable for the tax. His liability is not extin-
19 guished until the tax has been paid to this state except that a receipt from a
20 retailer maintaining a place of business in this state or engaged in business
21 in this state given to the purchaser is sufficient to relieve the purchaser
22 from further liability for the tax to which the receipt refers. A retailer
23 shall not be considered to have stored, used or consumed wireless telecommu-
24 nications equipment by virtue of giving, selling or otherwise transferring
25 such equipment at a discount as an inducement to a consumer to commence or
26 continue a contract for telecommunications service.

27 (b) Every retailer engaged in business in this state, and making sales
28 of tangible personal property or any transaction as described in section
29 63-3612(2), Idaho Code, for the storage, use, or other consumption in this
30 state, not exempted under section 63-3622, Idaho Code, shall, at the time
31 of making the sales or, if storage, use or other consumption of the tangible
32 personal property or any transaction as described in section 63-3612(2),
33 Idaho Code, is not then taxable hereunder, at the time the storage, use or
34 other consumption becomes taxable, collect the tax from the purchaser and
35 give to the purchaser a receipt therefor in the manner and form prescribed by
36 the state tax commission.

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

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

46 (e) For the purpose of the proper administration of this act and to pre-
47 vent evasion of the use tax and the duty to collect the use tax, it shall be
48 presumed that tangible personal property or any transaction as described in
49 section 63-3612(2), Idaho Code, sold by any person for delivery in this state

1 is sold for storage, use, or other consumption in this state. The burden of
2 proving the sale is tax exempt is upon the person who makes the sale unless he
3 obtains from the purchaser a resale certificate to the effect that the prop-
4 erty is purchased for resale or rental. It shall be presumed that sales made
5 to a person who has completed a resale certificate for the seller's records
6 are not taxable and the seller need not collect sales or use taxes unless the
7 tangible personal property purchased or any transaction as described in sec-
8 tion 63-3612(2), Idaho Code, is taxable to the purchaser as a matter of law in
9 the particular instance claimed on the resale certificate.

10 A seller may accept a resale certificate from a purchaser prior to the
11 time of sale, at the time of sale, or at any reasonable time after the sale
12 when necessary to establish the privilege of the exemption. The resale cer-
13 tificate relieves the person selling the property from the burden of proof
14 only if taken from a person who is engaged in the business of selling or rent-
15 ing tangible personal property or any transaction as described in section
16 63-3612(2), Idaho Code, and who holds the permit provided for by section
17 63-3620, Idaho Code, or who is a retailer not engaged in business in this
18 state, and who, at the time of purchasing the tangible personal property or
19 any transaction as described in section 63-3612(2), Idaho Code, intends to
20 sell or rent it in the regular course of business or is unable to ascertain
21 at the time of purchase whether the property will be sold or will be used
22 for some other purpose. Other than as provided elsewhere in this section,
23 when a resale certificate, properly executed, is presented to the seller,
24 the seller has no duty or obligation to collect sales or use taxes in regard
25 to any sales transaction so documented regardless of whether the purchaser
26 properly or improperly claimed an exemption. A seller so relieved of the
27 obligation to collect tax is also relieved of any liability to the purchaser
28 for failure to collect tax or for making any report or disclosure of informa-
29 tion required or permitted under this chapter.

30 The resale certificate shall bear the name and address of the purchaser,
31 shall be signed by the purchaser or his agent, shall indicate the number of
32 the permit issued to the purchaser, or that the purchaser is an out-of-state
33 retailer, and shall indicate the general character of the tangible personal
34 property or any transaction as described in section 63-3612(2), Idaho Code,
35 sold by the purchaser in the regular course of business. The certificate
36 shall be substantially in such form as the state tax commission may pre-
37 scribe.

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

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

45 (h) It shall be presumed that tangible personal property or any trans-
46 action as described in section 63-3612(2), Idaho Code, shipped or brought to
47 this state by the purchaser was purchased from a retailer, for storage, use
48 or other consumption in this state.

49 (i) It shall be presumed that tangible personal property or any trans-
50 action as described in section 63-3612(2), Idaho Code, delivered outside

1 this state to a purchaser known by the retailer to be a resident of this state
2 was purchased from a retailer for storage, use, or other consumption in this
3 state. This presumption may be controverted by evidence satisfactory to the
4 state tax commission that the property was not purchased for storage, use, or
5 other consumption in this state.

6 (j) When the tangible personal property or any transaction as described
7 in section 63-3612(2), Idaho Code, subject to use tax has been subjected to
8 a general retail sales or use tax by another state of the United States in an
9 amount equal to or greater than the amount of the Idaho tax, and evidence can
10 be given of such payment, the property will not be subject to Idaho use tax.
11 If the amount paid the other state was less, the property will be subject to
12 use tax to the extent that the Idaho tax exceeds the tax paid to the other
13 state. For the purposes of this subsection, a registration certificate or
14 title issued by another state or subdivision thereof for a vehicle or trailer
15 or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient
16 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 SECTION 15. That Section 63-3622F, Idaho Code, be, and the same is
 17 hereby amended to read as follows:

18 63-3622F. UTILITIES NATURAL GAS, ELECTRICITY, STEAM AND WATER. There
 19 is exempted from the taxes imposed by this chapter the sale or purchase of
 20 natural gas, electricity, steam and water when delivered to consumers at the
 21 place of consumption by means of pipes, wires, conduits, aqueducts, mains,
 22 canals, ditches, natural and man-made waterways or similar systems.

23 SECTION 16. That Section 63-3622N, Idaho Code, be, and the same is
 24 hereby amended to read as follows:

25 63-3622N. PRESCRIPTIONS. (a) There are exempted from the taxes im-
 26 posed by this chapter drugs, durable medical equipment that is appropriate
 27 for use in the home, prosthetic devices other than eyeglasses and con-
 28 tacts, mobility enhancing equipment, and the following items regardless of
 29 classification when administered or distributed by a practitioner or when
 30 purchased by or on behalf of an individual for use by such individual under a
 31 prescription or work order of a practitioner:

32 (1) ~~Drugs,~~ Hypodermic syringes, insulin, insulin syringes, artifi-
 33 cial eyes, hearing aids, and hearing aid parts and accessories;

34 (2) Drugs and supplies used in hemodialysis and peritoneal dialysis;

35 (3) Braces and other orthopedic appliances;

36 (4) Dental prostheses and other orthodontic appliances, including
 37 fillings;

38 (5) Catheters, urinary accessories, colostomy supplies, ~~and other~~
 39 ~~prosthetic devices which shall include, but are not limited to,~~ enteral
 40 and parenteral feeding equipment and supplies, (tubing, pumps, con-
 41 tainers), catheter devices and supplies, ~~but not including eyeglasses~~
 42 ~~and contact lenses;~~

43 (6) Equipment and devices or chemical reagents which are used to test or
 44 monitor blood or urine of a diabetic;

45 (7) ~~Other durable medical equipment and devices~~ The following medical
 46 products and related parts and supplies specifically designed for those
 47 products ~~which shall include, but are not limited to:~~ oxygen equip-

1 ment, oxygen cylinders, cylinder transport devices (sheaths, carts),
 2 cylinder stands, support devices, regulators, flowmeters, tank wrench,
 3 oxygen concentrators, liquid oxygen base dispenser, liquid oxygen
 4 portable dispenser, oxygen tubing, nasal cannulas, face masks, oxy-
 5 gen humidifiers, oxygen fittings and accessories, respiratory therapy
 6 equipment, room humidifiers, aspirators, aerosol compressors (sta-
 7 tionary and portable), ultrasonic nebulizers, volume ventilators,
 8 respirators and related device supplies, percussors, vibrators, IPPB,
 9 circuits, devices and supplies, air oxygen mixers, manual resuscita-
 10 tors, nebulizers, tubing, emergency oxygen delivery units, patient
 11 care equipment, physical and occupational therapy items, hospital
 12 beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift
 13 recliners, bedside commodes, overbed tables, patient lifts, patient
 14 lift slings, traction stands and pulleys, shower seating, shower grip
 15 bars, raised toilet seats, toilet safety frames, walking canes, quad
 16 canes and accessories, walkers, wheeled walkers, walker accessories,
 17 I.V. stands, crawlers, posture back supports for seating, posture back
 18 supports, wheelchairs, crutches, crutch pads, tips, grips, restraints,
 19 standing frame devices and accessories, hand exercise equipment and
 20 putty, specially designed hand utensils, leg weights, paraffin baths,
 21 hydrocollators, hydrotherm heating pads, communication aids for phys-
 22 ically impaired, specialized seating, desks, work stations, foam
 23 wedges, writing and speech aids for the impaired, dressing aids, button
 24 loops and zipper aids, grooming aids, dental aids, eating and drinking
 25 aids, splints, holders, household aids for the impaired, shampoo trays,
 26 reaching aids, foam seating pads, decubitus seating pads, bed pads,
 27 fitted stroller, alternating pressure pads and pumps, stethoscope,
 28 sphygmomanometers, otoscopes, sitting and sleeping cushions, patient
 29 transport devices, boards, stairglides, lifts in home, transcutaneous
 30 nerve stimulators, muscle stimulators and bone fracture therapy de-
 31 vices.

32 (b) The term "practitioner" means a physician, physician assistant,
 33 surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist,
 34 ophthalmologist, nurse practitioner, denturist, orthodontist, audiolo-
 35 gist, hearing aid dealer or fitter or any person licensed by the state under
 36 title 54, Idaho Code, to prescribe, administer or distribute items identi-
 37 fied in subsection (a) of this section.

38 (c) The term "drug" means a drug ~~which is:~~ as

39 ~~(1) Defined in section 54-1705, Idaho Code,~~ and

40 ~~(2) Either:~~

41 ~~(i) Listed in a drug compendia which the state board of pharmacy~~
 42 ~~requires to be maintained by Idaho licensed pharmacies; or~~

43 ~~(ii) The use of which requires a prescription under state or fed-~~
 44 ~~eral law. The term shall not include articles intended for use in~~
 45 ~~the diagnosis, cure, mitigation, treatment or prevention of dis-~~
 46 ~~ease in animals other than man.~~

47 ~~(d) The term "durable medical equipment" means equipment which:~~

48 ~~(1) Can withstand repeated use;~~

49 ~~(2) Is primarily and customarily used to serve a medical purpose;~~

1 ~~(3) Generally is not useful to a person in the absence of illness or in-~~
2 ~~jury; and~~

3 ~~(4) Is appropriate for use in the home.~~

4 ~~(e) The term "prosthetic device" means a device which replaces a miss-~~
5 ~~ing part or function of the human body and shall include any supplies physi-~~
6 ~~cally connected to such devices.~~

7 SECTION 17. That Section 63-3622UU, Idaho Code, be, and the same is
8 hereby repealed.

9 SECTION 18. That Section 67-4917B, Idaho Code, be, and the same is
10 hereby amended to read as follows:

11 67-4917B. HOTEL/MOTEL ROOM SALES EXCISE TAX. The board shall have
12 power and authority to levy ~~a sales~~ an excise tax of not to exceed five per-
13 cent (5%) of the receipts derived by hotels and motels within the district
14 from the furnishing of hotel and motel rooms, except no tax shall be imposed
15 where residence therein is maintained continuously under the terms of a
16 lease or similar agreement for a period in excess of thirty (30) days, and
17 except that no tax shall be charged on the sale of rooms by the Idaho Ronald
18 McDonald House; provided that for any auditorium district established after
19 July 1, 2001, such ~~sales~~ excise tax shall not exceed the maximum tax rate
20 authorized in the petition. The levy and collection of said ~~sales~~ excise
21 tax shall not be subject to the limitations or other provisions of sections
22 67-4913, 67-4914, 67-4915 and 67-4916, Idaho Code. The revenues received by
23 the district from such ~~sales~~ excise tax shall be deposited in the depository
24 of the district. Promptly following the adoption by the board of the resolu-
25 tion to levy such tax, the secretary of the board shall certify to the state
26 tax commission that such levy has been adopted and shall state the effective
27 date thereof and shall transmit to the commission a certified copy of such
28 resolution. The effective date of any such levy shall not be earlier than the
29 first day of the month not less than sixty (60) days following certification
30 of such levy to the commission.

31 SECTION 19. That Title 63, Idaho Code, be, and the same is hereby
32 amended by the addition thereto of a NEW CHAPTER, to be known and designated
33 as Chapter 46, Title 63, Idaho Code, and to read as follows:

34 CHAPTER 46
35 STREAMLINED SALES TAX SIMPLIFICATION ACT

36 63-4601. AGREEMENT NOT TO PREEMPT STATE LAW. No provision of the
37 agreement authorized pursuant to this chapter in whole or in part invali-
38 dates or amends any provision of the laws of this state. Adoption of the
39 agreement by this state does not amend or modify any law of this state.
40 Implementation of any condition of the agreement in this state, whether
41 adopted before, at, or after membership of this state in the agreement, must
42 be by the action of the legislature or by administrative rules of the state
43 tax commission authorized by the legislature.

1 63-4602. STATEMENT OF FINDINGS AND INTENT. The legislature finds that
2 a simplified sales and use tax system will reduce and, over time, eliminate
3 the burden and cost for all vendors to collect this state's sales and use
4 tax. The legislature further finds that this state should participate in the
5 agreement to simplify and modernize sales and use tax administration in or-
6 der to substantially reduce the burden of tax compliance for all sellers and
7 for all types of commerce.

8 63-4603. DUTIES OF THE STATE TAX COMMISSION. (1) The state tax commis-
9 sion shall provide state-level administration of sales and use taxes subject
10 to the state-level agreement. The state-level administration shall be per-
11 formed by the state tax commission. Sellers and purchasers are required to
12 register with, file returns with, and remit funds only to the state tax com-
13 mission. The state tax commission shall provide for collection of any local
14 taxes and distribution of them to the appropriate taxing jurisdictions. The
15 state tax commission shall conduct, or others may be authorized to conduct on
16 its behalf, subject to the provisions of this chapter and chapter 36, title
17 63, Idaho Code, all audits of the sellers and purchasers for that state's tax
18 and the tax of its local jurisdictions. Except as provided herein, local ju-
19 risdictions shall not conduct independent sales or use tax audits of sellers
20 and purchasers.

21 (2) Nothing in this section prohibits the state tax commission from au-
22 thorizing audits of taxpayers to be conducted or performed by others on be-
23 half of the state tax commission so long as:

24 (a) The person is conducting the audit for all taxes due and not just for
25 taxes due to a specific local taxing jurisdiction; and

26 (b) The person is subject to the same confidentiality provisions, and
27 other protections afforded to a taxpayer, as a person working for the
28 state tax commission; and

29 (c) Absent fraud, a refund claim filed subsequent to the audit that cov-
30 ers part of the audit period or, if by mutual consent, the audit does not
31 cover an audit period already conducted by the state tax commission or
32 another person acting on its behalf; and

33 (d) The audit is subject to the same administrative and appeal proce-
34 dures granted to audits conducted by the state tax commission.

35 63-4604. STATE AND LOCAL TAX BASES. The tax base for local jurisdic-
36 tions shall be identical to the state tax base unless otherwise prohibited
37 by federal law. The provisions of this section do not apply to sales or use
38 taxes levied on fuel used to power motor vehicles, aircraft, locomotives
39 or watercraft, or to electricity, piped natural or artificial gas or other
40 fuels delivered by the seller and the retail sale or transfer of motor ve-
41 hicles, aircraft, watercraft, modular homes, manufactured homes or mobile
42 homes.

43 63-4605. DEFINITIONS. The definitions in this section apply through-
44 out this chapter unless the context clearly requires otherwise.

45 (1) "Agreement" means the streamlined sales and use tax agreement as
46 adopted.

47 (2) "Commission" means the Idaho state tax commission.

1 (3) "Sales tax" means the tax levied by the provisions of sections
2 63-3619 and 67-4917B, Idaho Code.

3 (4) "Seller" means any person making sales, leases or rentals of per-
4 sonal property or transactions as described in section 63-3612(2), Idaho
5 Code.

6 (5) "State" means any state of the United States and the District of Co-
7 lumbia.

8 (6) "Use tax" means the tax levied by the provisions of section
9 63-3621, Idaho Code, and local sales taxes levied in accordance with section
10 67-4917B, Idaho Code.

11 63-4606. SELLER REGISTRATION. (1) The commission shall participate
12 in an online sales and use tax registration system in cooperation with
13 the other member states. Under this system a seller registering under
14 the streamlined sales tax agreement shall be registered in Idaho. A model
15 2, model 3 or model 4 seller may elect to be registered in one (1) or more
16 states as a seller that anticipates making no sales into such state(s) if it
17 has not had sales into such state(s) for the preceding twelve (12) months.
18 Such election does not relieve the seller of its agreement pursuant to this
19 chapter to collect taxes on all sales into such states or its liability for
20 remitting to the proper states any taxes collected. The commission agrees
21 not to require the payment of any registration fees or other charges for a
22 seller to register in a state in which the seller has no legal requirement to
23 register. A written signature from the seller is not required and an agent
24 may register a seller under uniform procedures adopted by the member states.
25 A seller may cancel its registration under the system at any time under uni-
26 form procedures adopted by the governing board and cancellation does not
27 relieve the seller of its liability for remitting to the proper states any
28 taxes collected.

29 (2) Nothing in this section shall be construed to relieve a seller of
30 any legal obligation it may have under a state's laws to register in that
31 state or its obligation to collect and remit taxes for at least thirty-six
32 (36) months in a state and to meet all other requirements for amnesty set out
33 in this chapter in order to be eligible for amnesty in such state. Sellers
34 registered under the streamlined sales tax agreement shall be registered in
35 Idaho as follows:

36 (a) Model 1 sellers will be automatically registered in Idaho.

37 (b) Model 2, model 3 and model 4 sellers will be automatically regis-
38 tered in the state of Idaho but may elect to be registered as a seller
39 that anticipates making no sales into the state of Idaho.

40 63-4607. NOTICE FOR STATE TAX CHANGES. (1) The commission shall lessen
41 the difficulties faced by sellers when there is a change in Idaho's state
42 sales or use tax rate or base by making a reasonable effort to do all of the
43 following:

44 (a) Provide sellers with as much advance notice as practicable of a rate
45 change;

46 (b) Limit the effective date of a rate change to the first day of a cal-
47 endar quarter; and

1 (c) Notify sellers of legislative changes in the tax base and amend-
2 ments to sales and use tax rules.

3 (2) Failure of a seller to receive notice or failure of Idaho to pro-
4 vide notice or limit the effective date of a rate change shall not relieve the
5 seller of its obligation to collect sales or use taxes for Idaho.

6 (3) If Idaho fails to provide for at least thirty (30) days between the
7 enactment of the statute providing for a rate change and the effective date
8 of such rate change, the seller shall be relieved of liability for failing to
9 collect tax at the new rate if:

10 (a) The seller collected tax at the immediately preceding effective
11 rate; and

12 (b) The seller's failure to collect at the newly effective rate does
13 not extend beyond thirty (30) days after the date of enactment of the new
14 rate.

15 (4) Notwithstanding subsection (3) of this section, if the commission
16 establishes the seller fraudulently failed to collect at the new rate or so-
17 licits purchasers based on the immediately preceding effective rate this re-
18 lief does not apply.

19 (5) The commission may provide for relief of liability for failing to
20 collect tax as a result of a tax change beyond the liability relief required
21 by this section.

22 63-4608. APPLICATION OF GENERAL SOURCING RULES AND EXCLUSIONS FROM
23 THE RULES. The commission shall require sellers to source the retail sale
24 of a product in accordance with sections 63-4609 and 63-4611, Idaho Code.
25 Except as provided in section 63-4612, Idaho Code, the provisions of section
26 63-4611, Idaho Code, apply to all sales regardless of the characterization
27 of a product as tangible personal property, a digital good, or a transaction
28 as described in section 63-3612(2), Idaho Code. Except as otherwise pro-
29 vided in this chapter and chapter 36, title 63, Idaho Code, the provisions of
30 sections 63-4610 and 63-4612, Idaho Code, only apply to determine a seller's
31 obligation to pay or collect and remit a sales or use tax with respect to the
32 seller's retail sale of a product. These provisions do not affect the obli-
33 gation of a purchaser or lessee to remit tax on the use of the product to the
34 taxing jurisdictions of that use. Sections 63-4610 and 63-4612, Idaho Code,
35 do not apply to sales or use taxes levied on the following:

36 (1) The retail sale or transfer of watercraft, modular homes, manufac-
37 tured homes or mobile homes. These items must be sourced according to rules
38 of the commission.

39 (2) The retail sale, excluding lease or rental of motor vehicles,
40 trailers, semitrailers or aircraft that do not qualify as transportation
41 equipment as defined in section 63-4609, Idaho Code. The retail sale of
42 these items shall be sourced according to the rules of the commission and
43 the lease or rental items must be sourced according to sections 63-4609 and
44 63-4610, Idaho Code.

45 (3) Florist sales shall be sourced according to rules of the commis-
46 sion.

47 (4) The retail sales of products and transactions described in section
48 63-3612(2) Idaho Code, qualifying as direct mail shall be sourced in accor-
49 dance with rules of the commission.

1 (5) "Taxable service" means only those services enumerated as taxable
2 in chapter 36, title 63, Idaho Code.

3 63-4609. GENERAL SOURCING RULES. (1) Except as provided in this chap-
4 ter, the retail sale, excluding the lease or rental of a product, shall be
5 sourced as follows:

6 (a) When the product is received by the purchaser at a business location
7 of the seller, the sale is sourced to that business location.

8 (b) When the product is not received by the purchaser at a business lo-
9 cation of the seller, the sale is sourced to the location where receipt
10 by the purchaser, or the purchaser's donee, designated as such by the
11 purchaser, occurs, including the location indicated by instructions
12 for delivery to the purchaser or donee, known by the seller.

13 (c) When the provisions of paragraphs (a) and (b) of this subsection
14 do not apply, the sale is sourced to the location indicated by an ad-
15 dress for the purchaser that is available from the business records of
16 the seller that are maintained in the ordinary course of the seller's
17 business when use of this address does not constitute bad faith.

18 (d) When the provisions of paragraphs (a), (b) and (c) of this subsec-
19 tion do not apply, the sale is sourced to the location indicated by an
20 address for the purchaser obtained during the consummation of the sale,
21 including the address of a purchaser's payment instrument, if no other
22 address is available, when use of this address does not constitute bad
23 faith.

24 (e) When the provisions of paragraphs (a) through (d) of this section
25 do not apply, including the circumstance in which the seller is without
26 sufficient information to apply the previous rules, then the location
27 will be determined by the address from which tangible personal property
28 was shipped, from which the digital good or the computer software deliv-
29 ered electronically was first available for transmission by the seller,
30 or from which the service was provided, disregarding for these purposes
31 any location that merely provided the digital transfer of the product
32 sold.

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

36 (a) For a lease or rental that requires recurring periodic payments,
37 the first periodic payment is sourced the same as a retail sale in accor-
38 dance with the provisions of subsection (1) of this section. Periodic
39 payments made subsequent to the first payment are sourced to the pri-
40 mary property location for each period covered by the payment. The pri-
41 mary property location shall be indicated by an address for the property
42 provided by the lessee that is available to the lessor from its records
43 maintained in the ordinary course of business, when use of this address
44 does not constitute bad faith. The property location shall not be al-
45 tered by intermittent use at different locations, such as use of busi-
46 ness property that accompanies employees on business trips and service
47 calls.

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

4 (c) This subsection does not affect the imposition or computation of
5 sales or use tax on leases or rentals based on a lump sum or accelerated
6 basis, or on the acquisition of property for lease.

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

10 (a) For a lease or rental that requires recurring periodic payments,
11 each periodic payment is sourced to the primary property location.
12 The primary property location shall be indicated by an address for the
13 property provided by the lessee that is available to the lessor from its
14 records maintained in the ordinary course of business, when use of this
15 address does not constitute bad faith.

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

19 (c) This subsection does not affect the imposition or computation of
20 sales or use tax on leases or rentals based on a lump sum or accelerated
21 basis or on the acquisition of property for lease.

22 (4) The retail sale, including lease or rental, of transportation
23 equipment shall be sourced the same as a retail sale in accordance with the
24 provisions of subsection (1) of this section, notwithstanding the exclusion
25 of lease or rental in subsection (1) of this section. "Transportation equip-
26 ment" means any of the following:

27 (a) Locomotive and railcars that are utilized for the carriage of per-
28 sons or property in interstate commerce.

29 (b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR)
30 of ten thousand one (10,001) pounds or greater, trailers, semitrailers
31 or passenger buses that are:

- 32 (i) Registered through the international registration plan; and
33 (ii) Operated under authority of a carrier authorized and certi-
34 ficated by the United States department of transportation or an-
35 other federal authority to engage in the carriage of persons or
36 property in interstate or foreign commerce.

37 (c) Aircraft that are operated by air carriers authorized and certifi-
38 cated by the United States department of transportation or another fed-
39 eral or foreign authority to engage in the carriage of persons or prop-
40 erty in interstate or foreign commerce.

41 (d) Containers designed for use on and component parts attached or se-
42 cured on the items set forth in paragraphs (a) through (c) of this sub-
43 section.

44 63-4610. GENERAL SOURCING DEFINITIONS. For purposes of section
45 63-4609(1), Idaho Code, the terms "receive" and "receipt" mean taking pos-
46 session of tangible personal property, making first use of a transaction
47 described in section 63-3612(2), Idaho Code, or taking possession or making
48 first use of digital goods, whichever comes first. The terms receive and

1 receipt do not include possession by a shipping company on behalf of the
2 purchaser.

3 63-4611. DIRECT MAIL SOURCING. (1) Notwithstanding section 63-4610,
4 Idaho Code, the following provisions apply to sales of advertising and pro-
5 motional direct mail:

6 (a) A purchaser of advertising and promotional direct mail may provide
7 the seller with either:

8 (i) A direct pay permit;

9 (ii) An agreement certificate of exemption claiming direct mail
10 or other written statement approved, authorized or accepted by the
11 commission; or

12 (iii) Information showing the jurisdictions to which the adver-
13 tising and promotional direct mail is to be delivered to recipi-
14 ents.

15 (b) If the purchaser provides the permit, certificate or statement
16 referred to in paragraph (a) (i) or (ii) of this subsection, the seller,
17 in the absence of bad faith, is relieved of all obligations to col-
18 lect, pay or remit any tax on any transaction involving advertising and
19 promotional direct mail to which the permit, certificate or statement
20 applies. The purchaser shall source the sale to the jurisdictions to
21 which the advertising and promotional direct mail is to be delivered to
22 the recipients and shall report and pay any applicable tax due.

23 (c) If the purchaser provides the seller information showing the ju-
24 risdictions to which the advertising and promotional direct mail is to
25 be delivered to recipients, the seller shall source the sale to the ju-
26 risdictions to which the advertising and promotional direct mail is to
27 be delivered and shall collect and remit the applicable tax. In the ab-
28 sence of bad faith, the seller is relieved of any further obligation to
29 collect any additional tax on the sale of advertising and promotional
30 direct mail where the seller has sourced the sale according to the de-
31 livery information provided by the purchaser.

32 (d) If the purchaser does not provide the seller with any of the items
33 listed in paragraph (a) (i), (ii) or (iii) of this subsection, the sale
34 shall be sourced according to section 63-4609(1) (e), Idaho Code. The
35 state to which the advertising and promotional direct mail is delivered
36 may disallow credit for tax paid on sales sourced under this subsection.

37 (2) Notwithstanding section 63-4609, Idaho Code, the following provi-
38 sions apply to sales of other direct mail:

39 (a) Except as otherwise provided in this subsection, sales of other di-
40 rect mail are sourced in accordance with section 63-4609(1) (c), Idaho
41 Code.

42 (b) A purchaser of other direct mail may provide the seller with either
43 a direct pay permit or an agreement certificate of exemption claiming
44 direct mail or other written statement approved, authorized or accepted
45 by the commission.

46 (c) If the purchaser provides the permit, certificate or statement re-
47 ferred to in paragraph (b) of this subsection, the seller, in the ab-
48 sence of bad faith, is relieved of all obligations to collect, pay or re-
49 mit any tax on any transaction involving other direct mail to which the

1 permit, certificate or statement applies. Notwithstanding paragraph
2 (a) of this subsection, the sale shall be sourced to the jurisdictions
3 to which other direct mail is to be delivered to the recipients, and the
4 purchaser shall report and pay any applicable tax due.

5 (3) For purposes of this section:

6 (a) "Advertising and promotional direct mail" means printed material
7 that meets the definition of "direct mail" in chapter 36, title 63,
8 Idaho Code, or this chapter and the primary purpose of which is to at-
9 tract public attention to a product, person, business or organization,
10 or to attempt to sell, popularize or secure financial support for a
11 product, person, business or organization. As used in this subsection,
12 the word "product" means tangible personal property, transactions de-
13 scribed in section 63-3612(2), Idaho Code, or a product transferred
14 electronically.

15 (b) "Other direct mail" means any direct mail that is not advertis-
16 ing and promotional direct mail regardless of whether advertising and
17 promotional direct mail is included in the same mailing. The term in-
18 cludes, but is not limited to, transactional direct mail that contains
19 personal information specific to the addressee including, but not lim-
20 ited to, invoices, bills, statements of account, payroll advices; any
21 legally required mailings including, but not limited to, privacy no-
22 tices, tax reports and stockholder reports; and other nonprofessional
23 direct mail delivered to existing or former shareholders, customers,
24 employees, or agents including, but not limited to, newsletters and in-
25 formational pieces. Other direct mail does not include the development
26 of billing information or the provision of any data processing service
27 that is more than incidental.

28 (4) This section applies to a transaction characterized under state law
29 as the sale of services only if the service is an integral part of the produc-
30 tion and distribution of printed material that meets the definition of "di-
31 rect mail." This section does not apply to any transaction that includes the
32 development of billing information or the provision of any data processing
33 service that is more than incidental regardless of whether advertising and
34 promotional direct mail is included in the same mailing. If a transaction
35 is a bundled transaction that includes advertising and promotional direct
36 mail, this section applies only if the primary purpose of the transaction is
37 the sale of products or services that meet the definition of "advertising and
38 promotional direct mail."

39 (5) Nothing in this section shall limit any purchaser's: obligation
40 for sales or use tax to any state to which the direct mail is delivered; right
41 under local, state, federal or constitutional law to a credit for sales or
42 use taxes legally due and paid to other jurisdictions; or right to a refund
43 of sales or use taxes overpaid to any jurisdiction. This section applies for
44 purposes of uniformly sourcing direct mail transactions and does not impose
45 requirements on states regarding the taxation of products that meet the def-
46 inition of "direct mail" or to the application of sales for resale or other
47 exemptions.

48 63-4612. ADMINISTRATION OF EXEMPTIONS. (1) The commission shall ob-
49 serve the following provisions when a purchaser claims an exemption:

1 (a) The seller shall obtain identifying information of the purchaser
2 and the reason for claiming a tax exemption at the time of the purchase
3 as determined by the governing board.

4 (b) A purchaser is not required to provide a signature to claim an ex-
5 emption from tax unless a paper exemption certificate is used.

6 (c) The seller shall use the standard form for claiming an exemption
7 electronically as adopted by the commission.

8 (d) The seller shall obtain the same information for proof of a claimed
9 exemption regardless of the medium in which the transaction occurred.

10 (e) The commission may utilize a system wherein the purchaser exempt
11 from the payment of the tax is issued an identification number that
12 shall be presented to the seller at the time of the sale.

13 (f) The seller shall maintain proper records of exempt transactions and
14 provide them to the commission when requested.

15 (g) The commission shall administer use-based and entity-based exemp-
16 tions when practicable through a direct pay permit, an exemption cer-
17 tificate, or another means that does not burden sellers.

18 (h) In the case of drop shipment sales, the commission must allow a
19 third-party vendor (e.g., drop shipper) to claim a resale exemption
20 based on an exemption certificate provided by its customer/reseller or
21 any other acceptable information available to the third-party vendor
22 evidencing qualification for a resale exemption, regardless of whether
23 the customer/reseller is registered to collect and remit sales and use
24 tax in the state where the sale is sourced.

25 (2) The commission shall relieve sellers that follow the requirements
26 of this section from the tax otherwise applicable if it is determined that
27 the purchaser improperly claimed an exemption and to hold the purchaser li-
28 able for the nonpayment of tax. This relief from liability does not apply to
29 a seller who fraudulently fails to collect tax; to a seller who solicits pur-
30 chasers to participate in the unlawful claim of an exemption; to a seller who
31 accepts an exemption certificate when the purchaser claims an entity-based
32 exemption when the subject of the transaction sought to be covered by the ex-
33 emption certificate is actually received by the purchaser at a location op-
34 erated by the seller and the state in which that location resides provides an
35 exemption certificate that clearly and affirmatively indicates, graying out
36 exemption reason types on the uniform form and posting it on the commission's
37 website as an indicator that the claimed exemption is not available in Idaho.

38 (3) The commission shall relieve a seller of the tax otherwise appli-
39 cable if the seller obtains a fully completed exemption certificate or cap-
40 tures the relevant data elements required under the streamlined sales tax
41 agreement within ninety (90) days subsequent to the date of sale. The com-
42 mission may provide, by rule, for a period longer than ninety (90) days for
43 the seller to obtain necessary information.

44 (4) If the seller has not obtained an exemption certificate or all rel-
45 evant data elements as provided in subsection (3) of this section, the com-
46 mission shall provide the seller within one hundred twenty (120) days subse-
47 quent to a request for substantiation by the state tax commission to either:

48 (a) Obtain a fully completed exemption certificate from the purchaser,
49 taken in good faith, which means that the seller obtains a certificate
50 that claims an exemption that:

- 1 (i) Was statutorily available on the date of the transaction in
2 the jurisdiction where the transaction is sourced;
3 (ii) Could be applicable to the item being purchased; and
4 (iii) Is reasonable for the purchaser's type of business; or
5 (b) Obtain other information establishing that the transaction was not
6 subject to the tax. The commission may provide for a period longer than
7 one hundred twenty (120) days for sellers to obtain the necessary infor-
8 mation.
- 9 (5) If the seller obtains the information described in subsection
10 (4) (a) of this section, the commission shall relieve the seller of any li-
11 ability for the tax on the transaction unless it is discovered through the
12 audit process that the seller had knowledge or had reason to know at the time
13 such information was provided that the information relating to the exemption
14 claimed was materially false or that the seller otherwise knowingly partic-
15 ipated in activity intended to purposefully evade the tax that is properly
16 due on the transaction. The state tax commission must establish that the
17 seller had knowledge or had reason to know, at the time the information was
18 provided, that the information was materially false.
- 19 (6) Nothing in this section shall affect the ability of member states to
20 require purchasers to update exemption certificate information or to reap-
21 ply with the state to claim certain exemptions.
- 22 (7) The commission shall relieve a seller of the tax otherwise appli-
23 cable if it obtains a blanket exemption certificate from a purchaser with
24 which the seller has a recurring business relationship. Notwithstanding the
25 provisions of subsection (6) of this section, the commission may not request
26 from the seller renewal of blanket certificates or updates of exemption cer-
27 tificate information or data elements when there is a recurring business re-
28 lationship between the buyer and seller. For purposes of this section, a
29 recurring business relationship exists when a period of no more than twelve
30 (12) months elapses between sales transactions.
- 31 (8) The commission shall post on its website the uniform paper exemp-
32 tion certificate (streamlined sales and use tax exemption certificate) as
33 revised and adopted by the governing board, with any applicable graying out
34 of nonapplicable exemption types pursuant to this section and rules of the
35 commission.

36 63-4613. UNIFORM TAX RETURNS. (1) The commission shall:

- 37 (a) Require that only a single tax return for each taxing period for
38 each seller be filed with the commission to include all the taxing ju-
39 risdications within Idaho.
- 40 (b) Require that returns be due no sooner than the twentieth day of the
41 month following the month in which the transaction occurred, and when
42 the due date for a return falls on a Saturday or Sunday or legal holiday
43 in Idaho, the return shall be due on the next succeeding business day.
44 If the return is filed in conjunction with a remittance and the remit-
45 tance cannot be made pursuant to section 63-4614, Idaho Code, the return
46 shall be accepted as timely filed on the same day as the remittance under
47 that section.
- 48 (c) Make available to all sellers, whether or not registered under the
49 agreement, except sellers of products qualifying for exclusion from the

1 provisions of section 63-4609, Idaho Code, a simplified return that is
2 filed electronically as follows:

3 (i) The simplified electronic return (SER) shall be in a form
4 approved by the commission and governing board and shall contain
5 only those fields approved by the governing board. The SER shall
6 contain two (2) parts. Part 1 shall contain information relating
7 to remittances and allocations and part 2 shall contain informa-
8 tion relating to exempt sales.

9 (ii) The commission must notify the governing board if it requires
10 the submission of the part 2 information. Provided however, the
11 commission may not require the submission of part 2 information
12 from a model 4 seller that has no legal requirement to register in
13 Idaho.

14 (d) Returns shall be required as follows:

15 (i) Certified service providers must file an SER with the commis-
16 sion on behalf of model 1 sellers. Certified service providers,
17 on behalf of such sellers, shall file the audit reports provided
18 for in rules of the commission and, in addition, pursuant to rules
19 of the commission, shall be required to file part 1 of the SER each
20 month. The commission shall allow a model 1 seller to file both
21 part 1 and part 2 of the SER. A model 1 seller that chooses to file
22 both part 1 and part 2 of the SER shall still be required to file the
23 audit reports provided for in rules of the commission.

24 (ii) Model 2 and model 3 sellers must file an SER with the com-
25 mission unless they have indicated that they anticipate making no
26 sales in Idaho. Such sellers shall file part 1 of the SER every
27 month if they anticipate making sales in Idaho or to Idaho resi-
28 dents. After January 1, 2017, they shall have the following op-
29 tions for meeting their obligation to furnish part 2 information:

30 1. File part 2 of the SER together with part 1 of the SER ev-
31 ery month; or

32 2. File part 2 of the SER at the same time part 1 of the SER
33 for the month of December is due. Part 2 information filed
34 pursuant to this option shall cover the month of December and
35 all previous months of the same calendar year and shall re-
36 quire only annual and not monthly totals.

37 Such sellers shall only be required to file part 2 of the SER
38 for any state that has notified the governing board that it
39 will require the submission of the part 2 information pur-
40 suant to subsection (1) (c) (ii) of this section.

41 (iii) No later than July 1, 2017, the commission shall allow model
42 4 sellers to file an SER. Such sellers shall file part 1 of the SER
43 every month unless the commission allows less frequent filing.
44 Model 4 sellers that have a legal requirement to register in Idaho
45 shall have the following options for meeting their obligation to
46 furnish part 2 information:

47 1. File part 2 of the SER together with part 1 of the SER; or

48 2. File part 2 of the SER at the same time part 1 of the SER
49 for the month of December is due. Part 2 information filed
50 pursuant to this option shall cover the month of December and

1 all previous months of the same calendar year and shall re-
2 quire only annual and not monthly totals.

3 Such sellers shall only be required to file part 2 of the SER
4 for any state that has notified the governing board that it
5 will require the submission of the part 2 information pur-
6 suant to subsection (1) (c) (ii) of this section.

7 (iv) The commission may provide an exemption from the requirement
8 of part 2 information to a seller under terms and conditions set
9 out by the commission.

10 (v) The commission may require a seller that elects to file an SER
11 to give at least three (3) months notice of the seller's intent to
12 discontinue filing an SER.

13 (2) After July 1, 2016, the commission shall not require the filing of
14 a return from a seller that is registered under the streamlined sales tax
15 agreement that has indicated at the time of registration that it anticipates
16 making no sales that would be sourced to the state under the streamlined
17 sales tax agreement. A seller shall lose such exemption upon making any
18 taxable sales into Idaho and shall file a return in the month following such
19 sale. The commission may, but is not required to, allow a seller to regain
20 such filing exemption upon such terms and conditions as the commission may
21 impose.

22 (3) The commission shall adopt a standardized transmission process to
23 allow for receipt of uniform tax returns and other formatted information as
24 approved by the governing board of the streamlined sales tax agreement. Such
25 a process will provide for the filing of separate returns for multiple le-
26 gal entities in a single transmission for each state and will not include any
27 requirement for manual entry or input by the seller of any of the aforemen-
28 tioned information. This process will allow a certified service provider, a
29 tax preparer or any other person authorized to do so to file returns for more
30 than one (1) seller in a single electronic transmission. However, sellers
31 filing returns for multiple legal entities may only do so for affiliated le-
32 gal entities.

33 (4) After July 1, 2016, the commission shall give notice to a seller
34 registered under the streamlined sales tax agreement that has no legal re-
35 quirement to register in Idaho of a failure to file a required return and a
36 minimum of thirty (30) days to file thereafter prior to establishing a lia-
37 bility amount for taxes based solely on the seller's failure to timely file
38 a return. Provided however, the commission may establish a liability amount
39 for taxes based solely on the seller's failure to timely file a return if such
40 seller has a history of nonfiling or late filing.

41 (5) Nothing in this section shall prohibit the commission from allowing
42 additional return options or the filing of returns less frequently.

43 63-4614. UNIFORM RULES FOR REMITTANCES OF FUNDS. (1) The commission
44 shall:

45 (a) Require only one (1) remittance for each return except as provided
46 in this subsection. If any additional remittance is required, it may be
47 required only from sellers that collect more than thirty thousand dol-
48 lars (\$30,000) in sales and use taxes in Idaho during the preceding cal-
49 endar year as provided in this chapter. The commission shall allow the

1 amount of any additional remittance to be determined through a calcula-
2 tion method rather than actual collections. Any additional remittances
3 shall not require the filing of an additional return.

4 (b) Require, at the commission's discretion, all remittances in pay-
5 ment of taxes reported on the approved simplified return format to be
6 remitted electronically.

7 (c) Allow for electronic payments by all remitters by both automated
8 clearing house (ACH) credit and ACH debit.

9 (d) Provide an alternative method for making same-day payments if an
10 electronic funds transfer fails.

11 (e) Provide that if a due date for a payment falls on a Saturday or Sun-
12 day or legal holiday in Idaho, the payment, including any related pay-
13 ment voucher information, is due to the commission on the next succeed-
14 ing business day. Additionally, if the federal reserve bank is closed
15 on a due date that prohibits a person from being able to make a payment by
16 ACH debit or credit, the payment shall be accepted as timely if made on
17 the next day the federal reserve bank is open.

18 (f) Require that any data that accompanies a remittance be formatted
19 using uniform tax type and payment type codes approved by rule of the
20 commission.

21 (2) The commission shall adopt a standardized transmission process ap-
22 proved by the governing board of the streamlined sales tax agreement that
23 allows for the remittance in a single electronic transmission of a single
24 (bulk) payment for taxes reported on multiple SERs by affiliated entities,
25 certified service providers or preparers. The commission shall comply with
26 this provision no later than two (2) years after the governing board of the
27 streamlined sales tax agreement approves such a standardized transmission
28 process.

29 63-4615. UNIFORM RULES FOR RECOVERY OF BAD DEBTS. (1) The commission
30 shall use the following to provide a deduction for bad debts to a seller. To
31 the extent the commission provides a bad debt deduction to any other party,
32 the same procedures will apply. The commission shall:

33 (a) Allow a deduction from taxable sales for bad debts. Any deduction
34 taken that is attributed to bad debts shall not include interest.

35 (b) Utilize the federal definition of "bad debt" in 26 U.S.C. section
36 166 as the basis for calculating bad debt recovery. However, the amount
37 calculated pursuant to 26 U.S.C. section 166 shall be adjusted to ex-
38 clude: financing charges or interest; sales or use taxes charged on the
39 purchase price; uncollectible amounts on property that remains in the
40 possession of the seller until the full purchase price is paid; and ex-
41 penses incurred in attempting to collect any debt and repossessed prop-
42 erty.

43 (c) Allow bad debts to be deducted on the return for the period dur-
44 ing which the bad debt is written off as uncollected in the claimant's
45 books and records and is eligible to be deducted for federal income tax
46 purposes. For purposes of this subsection, a claimant who is not re-
47 quired to file federal income tax returns may deduct a bad debt on a re-
48 turn filed for the period in which the bad debt is written off as uncol-
49 lectible in the claimant's books and records and would be eligible for

1 a bad debt deduction for federal income tax purposes if the claimant was
2 required to file a federal income tax return.

3 (d) Require that, if a deduction is taken for a bad debt and the debt
4 is subsequently collected in whole or in part, the tax on the amount so
5 collected must be paid and reported on the return filed for the period in
6 which the collection is made.

7 (e) Provide that, when the amount of bad debt exceeds the amount of tax-
8 able sales for the period during which the bad debt is written off, a
9 refund claim may be filed within the commission's otherwise applicable
10 statute of limitations for refund claims; however, the statute of lim-
11 itations shall be measured from the due date of the return on which the
12 bad debt could first be claimed.

13 (f) Where filing responsibilities have been assumed by a CSP, allow
14 the service provider to claim, on behalf of the seller, any bad debt al-
15 lowance provided by this section. The CSP must credit or refund the full
16 amount of any bad debt allowance or refund received to the seller.

17 (g) Provide that, for the purposes of reporting a payment received on
18 a previously claimed bad debt, any payments made on a debt or account
19 are applied first proportionally to the taxable price of the property
20 or service and the sales tax thereon, and second to interest, service
21 charges and any other charges.

22 (h) Permit the allocation in situations where the books and records of
23 the party claiming the bad debt allowance support an allocation of the
24 bad debts among the member states of the streamlined sales tax agree-
25 ment.

26 (2) The commission shall promulgate rules to provide in situations
27 where the books and records of the party claiming the bad debt allowance may
28 be used in support of an allocation and permit the allocation of the bad debt
29 among the member states.

30 63-4616. CONFIDENTIALITY AND PRIVACY PROTECTIONS UNDER MODEL

31 1. (1) The purpose of this section is to set forth the member states' policy
32 for the protection of the confidentiality rights of all participants in the
33 system and of the privacy interests of consumers who deal with model 1 sell-
34 ers.

35 (2) As used in this section, the term "confidential taxpayer informa-
36 tion" means all information that is protected under a member state's laws,
37 regulations and privileges; the term "personally identifiable information"
38 means information that identifies a person; and the term "anonymous data"
39 means information that does not identify a person.

40 (3) The state of Idaho agrees that a fundamental precept in model 1 is to
41 preserve the privacy of consumers by protecting their anonymity. With very
42 limited exceptions, a CSP shall perform its tax calculation, remittance and
43 reporting functions without retaining the personally identifiable informa-
44 tion of consumers.

45 (4) The commission, through the governing board of the streamlined
46 sales tax agreement, may certify a CSP only if that CSP certifies that:

47 (a) Its system has been designed and tested to ensure that the fundamen-
48 tal precept of anonymity is respected;

1 (b) That personally identifiable information is used and retained only
2 to the extent necessary for the administration of model 1 with respect
3 to exempt purchasers and proper identification of taxing jurisdic-
4 tions;

5 (c) It provides consumers clear and conspicuous notice of its informa-
6 tion practices, including what information it collects, how it collects
7 the information, how it uses the information, how long, if at all, it re-
8 tains the information and whether it discloses the information to mem-
9 ber states. Such notice shall be satisfied by a written privacy policy
10 statement accessible by the public on the official website of the CSP;

11 (d) Its collection, use and retention of personally identifiable in-
12 formation will be limited to that required by the member states to en-
13 sure the validity of exemptions from taxation that are claimed by reason
14 of a consumer's status or the intended use of the goods or services pur-
15 chased and for documentation of the correct assignment of taxing jurisdic-
16 tions; and

17 (e) It provides adequate technical, physical and administrative safe-
18 guards so as to protect personally identifiable information from unau-
19 thorized access and disclosure.

20 (5) The commission shall provide public notification to consumers, in-
21 cluding their exempt purchasers, of the state's practices relating to the
22 collection, use and retention of personally identifiable information.

23 (6) When any personally identifiable information that has been col-
24 lected and retained is no longer required for the purposes set forth in
25 subsection (4)(d) of this section, such information shall no longer be re-
26 tained by the commission.

27 (7) When personally identifiable information regarding an individ-
28 ual is retained by or on behalf of the commission, such state shall provide
29 reasonable access by such individual to his or her own information in the
30 state's possession and a right to correct any inaccurately recorded infor-
31 mation.

32 (8) If anyone other than the commission, or a person authorized by that
33 state law or the streamlined sales tax agreement, seeks to discover person-
34 ally identifiable information, the commission from whom the information is
35 sought should make a reasonable and timely effort to notify the individual of
36 such request.

37 (9) This privacy policy is subject to enforcement by the attorney gen-
38 eral.

39 (10) Idaho's laws and rules regarding the collection, use and mainte-
40 nance of confidential taxpayer information shall remain fully applicable
41 and binding. Without limitation, the streamlined sales tax agreement shall
42 not enlarge or limit Idaho's authority to:

43 (a) Conduct audits or other review as provided under the streamlined
44 sales tax agreement and state law.

45 (b) Provide records pursuant to chapter 3, title 9, Idaho Code.

46 (c) Prevent, consistent with state law, disclosures of confidential
47 taxpayer information.

48 (d) Prevent, consistent with federal law, disclosures or misuse of fed-
49 eral return information obtained under a disclosure agreement with the
50 internal revenue service.

1 (e) Collect, disclose, disseminate or otherwise use anonymous data for
2 governmental purposes.

3 (11) This privacy policy does not preclude the commission through the
4 governing board from certifying a CSP whose privacy policy is more protec-
5 tive of confidential taxpayer information or personally identifiable infor-
6 mation than is required by the streamlined sales tax agreement.

7 63-4617. EFFECTIVE DATE FOR RATE CHANGES. The effective date of rate
8 changes for services covering a period starting before and ending after the
9 statutory effective date shall be as follows: for a rate increase, the new
10 rate shall apply to the first billing period starting on or after the effec-
11 tive date; and for a rate decrease, the new rate shall apply to bills rendered
12 on or after the effective date.

13 63-4618. CUSTOMER REFUND PROCEDURES. (1) The commission shall allow
14 a purchaser to seek a return of over-collected sales or use taxes from the
15 seller and this section shall provide procedures for such refunds.

16 (2) Nothing in this section shall either require the commission to pro-
17 vide or prevent the commission from providing a procedure by which a pur-
18 chaser may seek a refund directly from the state arising out of sales or use
19 taxes collected in error by a seller from the purchaser. Nothing in this sec-
20 tion shall operate to extend any person's time to seek a refund of sales or
21 use taxes collected or remitted in error.

22 (3) These customer refund procedures provide the first course of rem-
23 edy available to purchasers seeking a return of over-collected sales or use
24 taxes from the seller. A cause of action against the seller for the over-
25 collected sales or use taxes does not accrue until a purchaser has provided
26 written notice to a seller and the seller has had sixty (60) days to respond.
27 Such notice to the seller must contain the information necessary to deter-
28 mine the validity of the request.

29 (4) In connection with a purchaser's request from a seller of over-col-
30 lected sales or use taxes, a seller shall be presumed to have a reasonable
31 business practice if, in the collection of such sales or use taxes, the
32 seller: uses either a provider or a system, including a proprietary system,
33 that is certified by the commission; and has remitted to the commission all
34 taxes collected less any deductions, credits or collection allowances.

35 63-4619. TAXABILITY MATRIX. (1) To ensure uniform application of
36 terms defined in this chapter and chapter 36, title 63, Idaho Code, the com-
37 mission shall complete a taxability matrix adopted by the governing board of
38 the streamlined sales tax agreement. The commission's entries in the matrix
39 shall be provided and maintained in a database that is in a downloadable
40 format approved by the governing board. The commission shall provide notice
41 of changes in the taxability of the products or sales covered under chapter
42 36, title 63, Idaho Code, listed in the taxability matrix as required by the
43 governing board.

44 (2) The commission shall relieve sellers and CSPs from liability to the
45 commission and local jurisdictions for having charged and collected the in-
46 correct amount of sales or use tax resulting from the seller or CSP relying on
47 erroneous data provided by the commission in the taxability matrix.

1 (3) If a sales and use tax is imposed on a specified digital product and
2 provides an exemption for an item within the definition of such specified
3 digital product pursuant to chapter 36, title 63, Idaho Code, and this chap-
4 ter, such exemption must be noted in the taxability matrix.

5 63-4620. RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS. (1) The com-
6 mission shall relieve a purchaser from liability for penalty and its local
7 jurisdictions for having failed to pay the correct amount of sales or use tax
8 in the following circumstances:

9 (a) A purchaser's seller or CSP relied on erroneous data provided by the
10 commission on tax rates, boundaries, taxing jurisdiction assignments
11 or in the taxability matrix completed by the commission pursuant to sec-
12 tion 63-4619, Idaho Code;

13 (b) A purchaser holding a direct pay permit relied on erroneous data
14 provided by the commission on tax rates, boundaries, taxing jurisdic-
15 tion assignments or in the taxability matrix completed by the commis-
16 sion pursuant to section 63-4619, Idaho Code;

17 (c) A purchaser relied on erroneous data provided by the commission in
18 the taxability matrix completed by the commission pursuant to section
19 63-4619, Idaho Code; or

20 (d) A purchaser using databases pursuant to section 63-4619, Idaho
21 Code, relied on erroneous data provided by the commission on tax rates,
22 boundaries or taxing jurisdiction assignments. After providing ade-
23 quate notice as determined by the governing board, if the commission
24 provided an address-based database for assigning taxing jurisdictions
25 pursuant to section 63-4619, Idaho Code, it may cease providing lia-
26 bility relief for errors resulting from the reliance on the database
27 provided by the commission under the provisions of chapter 46, title 63,
28 Idaho Code.

29 (2) Except where prohibited by the constitution of the state of Idaho,
30 the commission shall also relieve a purchaser from liability for tax and in-
31 terest to the state of Idaho and its local jurisdictions for having failed
32 to pay the correct amount of sales or use tax in the circumstances described
33 in this section, provided that, with respect to reliance on the taxability
34 matrix completed by the commission pursuant to section 63-4619, Idaho Code,
35 such relief is limited to the state's erroneous classification in the taxa-
36 bility matrix of terms included in the definitions of this chapter and chap-
37 ter 36, title 63, Idaho Code, as "taxable" or "exempt," "included in sales
38 price" or "excluded from sales price," or "included in the definition" or
39 "excluded from the definition."

40 (3) For purposes of this section, the term "penalty" means an amount im-
41 posed for noncompliance that is not fraudulent, willful or intentional that
42 is in addition to the correct amount of sales or use tax and interest.

43 (4) The commission may allow relief on terms and conditions more favor-
44 able to a purchaser than the terms required by this section.

45 63-4621. PROHIBITED REPLACEMENT TAXES. The legislature shall not en-
46 act a prohibited replacement tax on any product defined in this chapter or
47 chapter 36, title 63, Idaho Code, which has the effect of avoiding the intent
48 of the streamlined sales tax agreement.

1 63-4622. SELLER PARTICIPATION. (1) The commission shall provide an
2 online registration system that will allow sellers to register in all the
3 member states of the streamlined sales tax agreement.

4 (2) By registering, the seller agrees to collect and remit sales and use
5 taxes for all taxable sales into the member states, including member states
6 joining after the seller's registration. Withdrawal or revocation of a mem-
7 ber state shall not relieve a seller of its responsibility to remit taxes
8 previously or subsequently collected on behalf of the state.

9 63-4623. AMNESTY FOR REGISTRATION. (1) Subject to the limitation in
10 this section:

11 (a) The commission shall provide amnesty for uncollected or unpaid
12 sales or use tax to a seller who registers to pay or to collect and remit
13 applicable sales or use tax on sales made to purchasers in the state in
14 accordance with the terms of the streamlined sales tax agreement, pro-
15 vided that the seller was not so registered in Idaho in the twelve (12)
16 month period preceding the effective date of Idaho's participation in
17 the streamlined sales tax agreement.

18 (b) The amnesty will preclude assessment for uncollected or unpaid
19 sales or use tax together with penalty or interest for sales made during
20 the period the seller was not registered in Idaho, provided regis-
21 tration occurs within twelve (12) months of the effective date of the
22 state's participation in the streamlined sales tax agreement.

23 (c) Amnesty similarly shall be provided by any additional state that
24 joins the agreement after the seller has registered.

25 (2) The amnesty is not available to a seller with respect to any matter
26 or matters for which the seller received notice of the commencement of an au-
27 dit and which audit is not yet finally resolved including any related admin-
28 istrative and judicial processes.

29 (3) The amnesty is not available for sales or use taxes already paid or
30 remitted to the state or to taxes collected by the seller.

31 (4) The amnesty is fully effective, absent the seller's fraud or inten-
32 tional misrepresentation of a material fact, as long as the seller contin-
33 ues registration and continues payment or collection and remittance of ap-
34 plicable sales or use taxes for a period of at least thirty-six (36) months.
35 Idaho's statute of limitations applicable to asserting a tax liability dur-
36 ing this thirty-six (36) month period is tolled.

37 (5) The amnesty is applicable only to sales or use taxes due from a
38 seller in its capacity as a seller and not to sales or use taxes due from a
39 seller in its capacity as a buyer.

40 (6) The legislature and the commission may allow amnesty on terms and
41 conditions more favorable to a seller than the terms required by this sec-
42 tion.

43 63-4624. METHOD OF REMITTANCE. When registering, the seller may se-
44 lect one (1) of the following methods of remittance or other method allowed
45 by state law to remit the taxes collected:

46 (1) Model 1, wherein a seller selects a CSP as an agent to perform all
47 the seller's sales or use tax functions, other than the seller's obligation
48 to remit tax on its own purchases.

1 (2) Model 2, wherein a seller selects a CAS to use that calculates the
2 amount of tax due on a transaction.

3 (3) Model 3, wherein a seller utilizes its own proprietary automated
4 sales tax system that has been certified as a CAS.

5 63-4625. REGISTRATION BY AN AGENT. A seller may be registered by an
6 agent. Such appointment shall be in writing and submitted to the commission
7 if so requested.

8 63-4626. CERTIFICATION OF SERVICE PROVIDERS AND AUTOMATED SYS-
9 TEMS. (1) The commission shall certify automated systems and service
10 providers to aid in the administration of sales and use tax collections.

11 (2) The commission may certify a person as a CSP if the person meets all
12 of the following requirements:

13 (a) The person uses a CAS;

14 (b) The person integrates its CAS with the system of a seller for whom
15 the person collects tax so that the tax due on a sale is determined at the
16 time of the sale;

17 (c) The person agrees to file returns on behalf of the sellers for whom
18 it collects tax;

19 (d) The person agrees to protect the privacy of tax information it ob-
20 tains in accordance with this chapter; and

21 (e) The person enters into a contract with the member states of the
22 streamlined sales tax agreement and agrees to comply with the terms of
23 the contract.

24 (3) The commission may certify a software program as a CAS if the com-
25 mission determines that the program meets all of the following requirements:

26 (a) It determines the applicable state and local sales and use tax rate
27 for a transaction, in accordance with this chapter and chapter 36, title
28 63, Idaho Code;

29 (b) It determines whether or not an item is exempt from tax;

30 (c) It determines the amount of tax to be remitted for each taxpayer for
31 a reporting period;

32 (d) It can generate reports and returns as required by the commission;
33 and

34 (e) It can meet any other requirement set by the commission.

35 (4) The commission may establish one (1) or more sales tax performance
36 standards for model 3 sellers that meet the eligibility criteria set by the
37 commission and that develop a proprietary system to determine the amount of
38 sales and use tax due on transactions.

39 63-4627. REVIEW AND APPROVAL OF CERTIFIED AUTOMATED SYSTEM SOFTWARE
40 AND CERTAIN LIABILITY RELIEF. (1) The commission shall review software sub-
41 mitted to the commission for certification as a CAS under section 63-4629,
42 Idaho Code. Such review shall include a review to determine that the program
43 accurately reflects the taxability of the product categories included in the
44 program. Upon approval by the commission, the commission shall certify to
45 the governing board of the streamlined sales tax agreement its acceptance
46 of the determination of the taxability of the product categories included in
47 the program.

1 (2) The commission shall relieve CSPs and model 2 sellers from liability
2 ity to the commission and local jurisdictions for not collecting sales or use
3 taxes resulting from the CSP or model 2 seller relying on the certification
4 provided by the commission.

5 (3) The commission shall provide relief from liability to CSPs for not
6 collecting sales and use taxes in the same manner as provided to sellers un-
7 der the provisions of this chapter.

8 (4) The commission shall not be responsible for classification of an
9 item or transaction within the product categories certified. The relief
10 from liability provided in this section shall not be available for a CSP or
11 model 2 seller that has incorrectly classified an item or transaction into
12 a product category certified by the commission. This subsection shall not
13 apply to the individual listing of items or transactions within a product
14 definition approved by the commission.

15 (5) If the commission determines that an item or transaction is incor-
16 rectly classified as to its taxability, it shall notify the CSP or model 2
17 seller of the incorrect classification. The CSP or model 2 seller shall have
18 ten (10) days to revise the classification after receipt of notice from the
19 commission of the determination. Upon expiration of the ten (10) days, the
20 CSP or model 2 seller shall be liable for the failure to collect the correct
21 amount of sales or use taxes due and owing to the commission.

22 63-4628. MONETARY ALLOWANCE UNDER MODEL 1. (1) The commission shall
23 provide a monetary allowance to a CSP in model 1 in accordance with the terms
24 of the contract between the governing board and the CSP. The details of the
25 monetary allowance will be provided through the contract process. The gov-
26 erning board shall require that such allowance be funded entirely from money
27 collected in model 1.

28 (2) The contract between the commission and a CSP may base the monetary
29 allowance to a CSP on one (1) or more of the following:

30 (a) A base rate that applies to taxable transactions processed by the
31 CSP; or

32 (b) For a period not to exceed twenty-four (24) months following a vol-
33 untary seller's registration through the streamlined sales tax agree-
34 ment's central registration process, a percentage of tax revenue gener-
35 ated for a member state by the voluntary seller for each member state for
36 which the seller does not have a requirement to register to collect the
37 tax.

38 63-4629. MONETARY ALLOWANCE FOR MODEL 2 SELLERS. The commission ini-
39 tially anticipates that it will provide a monetary allowance to sellers un-
40 der model 2 based on the following:

41 (1) All sellers shall receive a base rate for a period not to exceed
42 twenty-four (24) months following the commencement of participation by a
43 seller. The base rate will be set after the base rate has been established
44 for model 1. This allowance will be in addition to any discount afforded by
45 the commission at the time.

46 (2) The commission anticipates a monetary allowance to a model 2 seller
47 based on the following:

1 (a) For a period not to exceed twenty-four (24) months following a vol-
2 untary seller's registration through the streamlined sales tax agree-
3 ment's central registration process, a percentage of tax revenue gener-
4 ated for a member state by the voluntary seller for each member state for
5 which the seller does not have a requirement to register to collect the
6 tax;

7 (b) Following the conclusion of the twenty-four (24) month period, a
8 seller will be entitled to a vendor discount afforded under Idaho law
9 only at the time the base rate expires.

10 SECTION 20. SEVERABILITY. The provisions of this act are hereby de-
11 clared to be severable and if any provision of this act or the application
12 of such provision to any person or circumstance is declared invalid for any
13 reason, such declaration shall not affect the validity of the remaining por-
14 tions of this act.

15 SECTION 21. This act shall be in full force and effect on and after July
16 1, 2016.