

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 342

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO SPECIE LEGAL TENDER; PROVIDING LEGISLATIVE INTENT; AMENDING TI-  
2 TLE 63, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 46, TITLE 63, IDAHO  
3 CODE, TO PROVIDE A SHORT TITLE, TO DEFINE A TERM, TO PROVIDE THAT SPECIE  
4 LEGAL TENDER IS LEGAL TENDER AND TO PROVIDE OTHER PROVISIONS REGARDING  
5 SPECIE LEGAL TENDER, TO PROVIDE SALES AND INCOME TAX TREATMENT OF SPECIE  
6 LEGAL TENDER, TO PROVIDE DUTIES OF THE ATTORNEY GENERAL AND TO PROVIDE  
7 SEVERABILITY; AMENDING SECTION 63-3022H, IDAHO CODE, TO PROVIDE THAT  
8 ANY CAPITAL GAINS ON THE SALE OR EXCHANGE OF SPECIE LEGAL TENDER FOR AN-  
9 OTHER FORM OF SPECIE LEGAL TENDER SHALL NOT BE INCLUDED IN TAXABLE IN-  
10 COME; AMENDING SECTION 63-3613, IDAHO CODE, TO REVISE THE DEFINITION OF  
11 SALES PRICE FOR PURCHASES PAID WITH SPECIE LEGAL TENDER; AMENDING CHAP-  
12 TER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3622XX,  
13 IDAHO CODE, TO PROVIDE A SALES AND USE TAX EXEMPTION FOR CERTAIN SPECIE  
14 LEGAL TENDER TRANSACTIONS; DECLARING AN EMERGENCY, PROVIDING RETROAC-  
15 TIVE APPLICATION AND PROVIDING EFFECTIVE DATES.  
16

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

18 SECTION 1. LEGISLATIVE INTENT. Historically, gold and silver coin has  
19 maintained the purchasing power of the earnings and savings of the people.  
20 The United States economy has, at all times during which the monetary system  
21 has been effectively linked to precious metals, grown at rates significantly  
22 surpassing that of other times. Congress has authorized gold and silver coin  
23 as "legal tender for all debts, public charges, taxes, and dues" pursuant  
24 to 31 U.S.C. Sections 5103 and 5112(h). The Secretary of the Treasury of  
25 the United States has largely demonetized congressionally authorized gold  
26 and silver legal tender by failing to fulfill the express statutory duty set  
27 forth in 31 U.S.C. Section 5119(a) "to maintain the equal purchasing power  
28 of each kind of United States currency;" allowing the Internal Revenue Ser-  
29 vice to impose capital gains and collectibles tax liability upon taxpayers  
30 as a result, in large measure, of the Secretary's failure to maintain cur-  
31 rency equilibrium; and neglecting to ensure that, as required by 31 U.S.C.  
32 Section 5116(2), "amounts received from the sale of gold shall be deposited  
33 by the Secretary in the general fund of the Treasury and shall be used for the  
34 sole purpose of reducing the national debt."

35 The Legislature further finds that legal tender can only function as an  
36 effective medium of exchange when free of taxation and of debilitating reg-  
37 ulation because any tax imposed upon the exchange of one form of legal ten-  
38 der for another effectively demonetizes the taxed medium (See, McCullough  
39 v. Maryland, 17 U.S. 316, 425 (1819). Additionally, the State of Idaho pos-  
40 sesses as a check and balance to federal powers, the constitutionally re-  
41 served monetary authority to make gold and silver coin a tender for payment  
42 of debts (See, Clause 1, Section 10, Article I, of the United States Consti-  
43 tution).

1 SECTION 2. That Title 63, Idaho Code, be, and the same is hereby amended  
 2 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
 3 ter 46, Title 63, Idaho Code, and to read as follows:

4 CHAPTER 46  
 5 SPECIE LEGAL TENDER ACT

6 63-4601. SHORT TITLE. This chapter shall be known and may be cited as  
 7 the "Specie Legal Tender Act."

8 63-4602. DEFINITIONS. Subject to section 63-4603(3), Idaho Code, as  
 9 used in this chapter, "specie legal tender" means gold or silver coin that is  
 10 issued by the United States.

11 63-4603. SPECIE LEGAL TENDER IS LEGAL TENDER IN THE STATE -- PERSON MAY  
 12 NOT COMPEL ANOTHER PERSON TO TENDER OR ACCEPT SPECIE LEGAL TENDER -- COURT  
 13 OR CONGRESSIONAL ACTION TO AUTHORIZE GOLD OR SILVER COIN OR BULLION AS LEGAL  
 14 TENDER. (1) Specie legal tender is legal tender in the state and is not prop-  
 15 erty other than money.

16 (2) Except as expressly provided by contract, a person may not compel  
 17 any other person to tender or accept specie legal tender.

18 (3) Gold or silver coin or bullion, other than gold or silver coin that  
 19 is issued by the United States, is considered to be specie legal tender and is  
 20 legal tender in the state if:

21 (a) A court of competent jurisdiction issues a final, unappealable  
 22 judgment or order determining that the state may recognize the gold or  
 23 silver coin or bullion, other than gold or silver coin that is issued by  
 24 the United States, as legal tender in the state; or

25 (b) Congress enacts legislation that:

26 (i) Expressly provides that the gold or silver coin or bullion,  
 27 other than gold or silver coin that is issued by the United States,  
 28 is legal tender in the state; or

29 (ii) Expressly allows the state to recognize the gold or silver  
 30 coin or bullion, other than gold or silver coin that is issued by  
 31 the United States, as legal tender in the state.

32 63-4604. NONREFUNDABLE INCOME TAX CREDIT SALES AND USE TAX EXEMPTION  
 33 AND SALES AND USE TAX REMITTANCE. (1) A nonrefundable individual income tax  
 34 credit is allowed as provided in section 63-3022H, Idaho Code, related to a  
 35 capital gain on a transaction involving the exchange of one (1) form of legal  
 36 tender for another form of legal tender.

37 (2) Sales of currency or coin are exempt from sales and use taxes as pro-  
 38 vided in section 63-3622XX, Idaho Code.

39 (3) The remittance of a sales and use tax on a transaction involving  
 40 specie legal tender is as provided in section 63-3613, Idaho Code.

41 63-4605. DUTIES OF THE ATTORNEY GENERAL. (1) The attorney general  
 42 shall enforce the provisions of this chapter.

43 (2) Subsection (1) of this section does not prejudice any right a person  
 44 may have to bring a civil action in a court of competent jurisdiction to ad-  
 45 dress issues at law or in equity between private parties.

1           63-4606. SEVERABILITY. If any provision of this chapter or the appli-  
2 cation of any provision to any person or circumstance is held invalid by a  
3 final decision of a court of competent jurisdiction, the remainder of this  
4 chapter shall be given effect without the invalid provision or application.  
5 The provisions of this chapter are severable.

6           SECTION 3. That Section 63-3022H, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8           63-3022H. DEDUCTION OF CAPITAL GAINS. (1) If an individual taxpayer  
9 reports capital gain net income in determining taxable income, eighty per-  
10 cent (80%) in taxable year 2001 and sixty percent (60%) in taxable years  
11 thereafter of the capital gain net income from the sale or exchange of qual-  
12 ified property shall be a deduction in determining Idaho taxable income.  
13 Any capital gain on the sale or exchange of specie legal tender as defined in  
14 section 63-4602, Idaho Code, for another form of legal tender shall not be  
15 included in taxable income.

16           (2) The deduction provided in this section is limited to the amount of  
17 the capital gain net income from all property included in taxable income.  
18 Gains treated as ordinary income by the Internal Revenue Code do not qualify  
19 for the deduction allowed in this section. The deduction otherwise allow-  
20 able under this section shall be reduced by the amount of any federal capital  
21 gains deduction relating to such property, but not below zero.

22           (3) Property held by an estate, trust, S corporation, partnership, lim-  
23 ited liability company or an individual is "qualified property" under this  
24 section if the property had an Idaho situs at the time of sale and is:

25           (a) Real property held at least twelve (12) months;

26           (b) Tangible personal property used in Idaho for at least twelve (12)  
27 months by a revenue-producing enterprise;

28           (c) Cattle or horses held for breeding, draft, dairy or sporting pur-  
29 poses for at least twenty-four (24) months if more than one-half (1/2)  
30 of the taxpayer's gross income (as defined in section 61(a) of the In-  
31 ternal Revenue Code) for the taxable year is from farming or ranching  
32 operations in Idaho;

33           (d) Breeding livestock other than cattle or horses held at least twelve  
34 (12) months if more than one-half (1/2) of the taxpayer's gross income  
35 (as defined in section 61(a) of the Internal Revenue Code) for the tax-  
36 able year is from farming or ranching operations in Idaho;

37           (e) Timber grown in Idaho and held at least twenty-four (24) months;

38           (f) In determining the period for which property subject to this sec-  
39 tion has been held by a taxpayer, the provisions of section 1223 of the  
40 Internal Revenue Code shall apply, except that the holding period shall  
41 not include the holding period of property given up in an exchange, when  
42 such property would not have constituted qualified property under this  
43 section without regard to meeting the holding period nor shall the hold-  
44 ing period include any time period in which the property subject to this  
45 section was held by a corporation other than an S corporation.

46           (4) As used in this section "revenue-producing enterprise" means:

47           (a) The production, assembly, fabrication, manufacture, or processing  
48 of any agricultural, mineral or manufactured product;

1 (b) The storage, warehousing, distribution, or sale at wholesale of any  
2 products of agriculture, mining or manufacturing;

3 (c) The feeding of livestock at a feedlot;

4 (d) The operation of laboratories or other facilities for scientific,  
5 agricultural, animal husbandry, or industrial research, development,  
6 or testing.

7 (5) As used in this section the term "real property" means land and  
8 other tangible property permanently upon or affixed to the land.

9 SECTION 4. That Section 63-3613, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 63-3613. SALES PRICE. (a) The term "sales price" means the total  
12 amount for which tangible personal property, including services agreed to be  
13 rendered as a part of the sale, is sold, rented or leased, valued in money,  
14 whether paid in money or otherwise, without any deduction on account of any  
15 of the following:

16 1. The cost of the property sold. However, in accordance with such  
17 rules as the state tax commission may prescribe, a deduction may be  
18 taken if the retailer has purchased property for some purpose other than  
19 resale or rental, has reimbursed his vendor for tax which the vendor is  
20 required to pay to the state or has paid the use tax with respect to the  
21 property, and has resold or rented the property prior to making any use  
22 of the property other than retention, demonstration or display while  
23 holding it for sale in the regular course of business. If such a deduc-  
24 tion is taken by the retailer, no refund or credit will be allowed to his  
25 vendor with respect to the sale of the property.

26 2. The cost of materials used, labor or service cost, losses, or any  
27 other expense.

28 3. The cost of transportation of the property prior to its sale.

29 4. The face value of manufacturer's discount coupons. A manufacturer's  
30 discount coupon is a price reduction coupon presented by a consumer to  
31 a retailer upon purchase of a manufacturer's product, the face value of  
32 which may only be reimbursed by the manufacturer to the retailer.

33 (b) The term "sales price" does not include any of the following:

34 1. Retailer discounts allowed and taken on sales, but only to the extent  
35 that such retailer discounts represent price adjustments as opposed to  
36 cash discounts offered only as an inducement for prompt payment.

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

40 3. The amount charged for property returned by customers when the  
41 amount charged therefor is refunded either in cash or credit; but this  
42 exclusion shall not apply in any instance when the customer, in order  
43 to obtain the refund, is required to purchase other property at a price  
44 greater than the amount charged for the property that is returned.

45 4. The amount charged for labor or services rendered in installing or  
46 applying the property sold, provided that said amount is stated sepa-  
47 rately and such separate statement is not used as a means of avoiding  
48 imposition of this tax upon the actual sales price of the tangible per-  
49 sonal property; except that charges by a manufactured homes dealer for

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

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

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

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

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

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

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

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

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

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

48 (f) Sales price shall not include a gratuity or tip received when paid  
49 to the service provider of a meal. The gratuity or tip can be either volun-

1 tary or mandatory, but must be given for the service provided and as a supple-  
2 ment to the service provider's income.

3 (g) For a purchase paid with specie legal tender as defined in chap-  
4 ter 46, title 63, Idaho Code, and until such time as the commission accepts  
5 specie legal tender for the payment of a tax under this chapter, if the com-  
6 mission requires a seller to remit a tax under this chapter in legal tender  
7 other than specie legal tender, the seller shall state on the seller's books  
8 and records and on an invoice, bill of sale, or similar document provided  
9 to the purchaser: the purchase price in specie legal tender and in the le-  
10 gal tender the seller is required to remit to the commission; the amount of  
11 tax due under this chapter in specie legal tender and in the legal tender the  
12 seller is required to remit to the commission; the tax rate under this chap-  
13 ter applicable to the purchase; and the date of the purchase. For purposes  
14 of determining the amount of tax due under this chapter, a seller shall use  
15 the most recent London fixing price for the specie legal tender the purchaser  
16 paid. In accordance with chapter 52, title 67, Idaho Code, the commission  
17 may promulgate rules for determining the amount of tax due if the London fix-  
18 ing price is not available for a particular day.

19 SECTION 5. That Chapter 36, Title 63, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 63-3622XX, Idaho Code, and to read as follows:

22 63-3622XX. SPECIE LEGAL TENDER TRANSACTIONS. There is exempted from  
23 the taxes imposed by this chapter: The sale of specie legal tender as that  
24 term is defined in chapter 46, title 63, Idaho Code, or the purchase of goods  
25 or services utilizing specie legal tender as that term is defined in chapter  
26 46, title 63, Idaho Code.

27 SECTION 6. An emergency existing therefor, which emergency is hereby  
28 declared to exist, Section 3 of this act shall be in full force and effect on  
29 and after passage and approval, and retroactively to January 1, 2013. The  
30 remaining provisions of this act shall be in full force and effect on and af-  
31 ter July 1, 2013.