

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 598

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3616, IDAHO CODE, TO CLARIFY THE DEFINITION OF "REMOTELY ACCESSED COMPUTER SOFTWARE" THAT IS NOT SUBJECT TO TAXATION, TO CLARIFY CERTAIN OTHER PROVISIONS RELATED TO COMPUTER SOFTWARE AND TO MAKE A TECHNICAL CORRECTION.

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

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

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

(b) The term "tangible personal property" includes any computer software ~~that is not a~~ except the following: custom computer programs; computer software that is delivered electronically; remotely accessed computer software; and computer software that is delivered by the load and leave method where the vendor or its agent loads the software at the user's location but does not transfer any tangible personal property containing the software to the user. and is not application software accessed over the internet or through wireless media As used in this subsection, the term "remotely accessed computer software" means computer software that a user accesses over the internet, over private or public networks, or through wireless media, where the user has only the right to use or access the software by means of a license, lease, subscription, service or other agreement. Notwithstanding the foregoing exclusions of certain types of computer software from the definition of tangible personal property, tangible personal property shall include computer software that constitutes digital music, digital books, digital videos and digital games, regardless of the method by which the title, possession or right to use such software is transferred to the user. As used in this subsection, the term "digital videos" means prerecorded video products and shall not include live broadcasts, television or cable broadcasts or video conferencing products.

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

(ii) As used in this subsection, the term "custom computer program" means any computer software, ~~(as defined in this subsection),~~ which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of

1 existing prewritten programs when the modifications are written or pre-
2 pared exclusively for a customer. The term does not include a "canned"
3 or prewritten program which is held or existing for general or repeated
4 sale, lease or license, even if the program was initially developed on a
5 custom basis or for in-house use. Modification to an existing prewrit-
6 ten program to meet the customer's needs is custom computer programming
7 only to the extent of the modification, and only to the extent that
8 the actual amount charged for the modification is separately stated on
9 invoices, statements, and other billing documents supplied to the pur-
10 chaser.

11 ~~(iii) As used in this section, the term "application software accessed~~
12 ~~over the internet or through wireless media" means the right to use~~
13 ~~computer software where the software is accessed over the internet~~
14 ~~or through wireless media from a location owned or maintained by the~~
15 ~~seller or an agent of the seller and is not loaded and left at the user's~~
16 ~~location. The term does not include such remotely accessed computer~~
17 ~~software if the primary purpose of such computer software is for en-~~
18 ~~tertainment use, or if the vendor of that computer software offers for~~
19 ~~sale, in a storage media or by an electronic download, to the user's~~
20 ~~computer or server, and either directly or through wholesale or retail~~
21 ~~channels, that same computer software or comparable computer software~~
22 ~~that performs the same functions.~~

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