

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 633

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXATION POLICIES; PROVIDING A SHORT TITLE; AMENDING CHAPTER 36,
2 TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3609A, IDAHO
3 CODE, TO PROVIDE APPLICATION TO REFUND PROVISIONS; AMENDING CHAPTER 36,
4 TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3609B, IDAHO
5 CODE, TO PROVIDE APPLICATION TO SALES AND USE TAX EXEMPTIONS; AMEND-
6 ING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
7 63-3609C, IDAHO CODE, TO PROVIDE APPLICATION TO LOCAL OPTION TAXES;
8 AMENDING SECTION 63-3610, IDAHO CODE, TO FURTHER DEFINE THE TERM "RE-
9 TAILER"; AMENDING SECTION 63-3611, IDAHO CODE, TO FURTHER DEFINE THE
10 TERM "RETAILER ENGAGED IN BUSINESS IN THIS STATE"; AMENDING SECTION
11 63-3024, IDAHO CODE, TO REDUCE PERSONAL INCOME TAX RATES; AMENDING
12 SECTION 63-3025, IDAHO CODE, TO REDUCE CORPORATE INCOME TAX RATES; PRO-
13 VIDING SEVERABILITY; AND DECLARING AN EMERGENCY, PROVIDING RETROACTIVE
14 APPLICATION AND PROVIDING EFFECTIVE DATES.
15

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

17 SECTION 1. SHORT TITLE. This act shall be known and may be cited as the
18 "Nexus Modernization Act."

19 SECTION 2. 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 63-3609A, Idaho Code, and to read as follows:

22 63-3609A. APPLICATION TO REFUNDS. A transaction upon which a tax has
23 been paid pursuant to this chapter shall not impact a taxpayer's ability to
24 request a refund pursuant to section 63-3626, Idaho Code.

25 SECTION 3. That Chapter 36, Title 63, Idaho Code, be, and the same is
26 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
27 ignated as Section 63-3609B, Idaho Code, and to read as follows:

28 63-3609B. APPLICATION TO EXEMPTIONS. The provisions of this act shall
29 have no effect on any exemptions from taxation provided in this chapter.

30 SECTION 4. That Chapter 36, Title 63, Idaho Code, be, and the same is
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
32 ignated as Section 63-3609C, Idaho Code, and to read as follows:

33 63-3609C. APPLICATION TO LOCAL OPTION TAXES. The provisions of this
34 act shall have no effect on any local option tax authorized by section
35 50-1046, Idaho Code.

36 SECTION 5. That Section 63-3610, Idaho Code, be, and the same is hereby
37 amended to read as follows:

1 63-3610. RETAILER. The term "retailer" includes:

2 (a) Every seller who makes any retail sale or sales of tangible personal
3 property or any sale as described in section 63-3612(2), Idaho Code, and ev-
4 ery person engaged in the business of making retail sales at auction of tan-
5 gible personal property owned by the person or others.

6 (b) Every person engaged in the business of making sales for storage,
7 use, or other consumption or in the business of making sales at auction of
8 tangible personal property owned by the person or others for storage, use, or
9 other consumption.

10 (c) Every person making more than two (2) retail sales of tangible per-
11 sonal property or any sale as described in section 63-3612(2), Idaho Code,
12 during any twelve (12) month period, including sales made in the capacity of
13 assignee for the benefit of creditors, or receiver or trustee in bankruptcy,
14 or every person making fewer sales who holds himself out as engaging in the
15 business of ~~selling such tangible personal property at retail~~ making retail
16 sales or who sells a motor vehicle.

17 (d) When the state tax commission determines that it is necessary for
18 the efficient administration of this act to regard any salesmen, representa-
19 tives, peddlers, or canvassers as agents of the dealers, distributors, su-
20 pervisors, or employers under whom they operate or from whom they obtain the
21 tangible personal property sold by them, irrespective of whether they are
22 making sales on their own behalf or on behalf of such dealers, distributors,
23 supervisors, or employers, the state tax commission may so regard them and
24 may regard the dealers, distributors, supervisors, or employers as retail-
25 ers for the purpose of this act. The out-of-state retailer, at its option,
26 may have the dealers, distributors, supervisors or employer parties collect
27 and remit the sales tax. When such dealers, distributors, supervisors or em-
28 ployer parties (tax remittance agents) collect sales tax, the out-of-state
29 retailer shall be relieved of any obligation to collect the same tax. In
30 the event that the related sales are audited by the Idaho state tax commis-
31 sion, the out-of-state retailer may opt to have the Idaho state tax commis-
32 sion first contact the tax remittance agents for audit inquiries. The out-
33 of-state retailer remains ultimately liable for any under-collection and/or
34 under-remittance of sales tax. When a tax remittance agent conducts sales
35 on behalf of out-of-state retailers, it is permissible for a tax remittance
36 agent to accept resale certificates and sales tax exemption certificates ex-
37 ecuted in the name of the tax remittance agent to support the out-of-state
38 retailers' tax-exempt sales.

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

42 SECTION 6. That Section 63-3611, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 63-3611. RETAILER ENGAGED IN BUSINESS IN THIS STATE. "Retailer en-
45 gaged in business in this state" as used in this chapter means any retailer
46 who utilizes the following acts or methods of transacting business on a regu-
47 lar or systematic basis:

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

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

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

10 (a) Any retailer maintaining, occupying or using, permanently or tem-
11 porarily, directly or indirectly, or through a subsidiary or agent, by
12 whatever name called, an office, place of distribution, sales or sample
13 room or place, warehouse or storage place, or other place of business
14 operated by any person, other than a common carrier acting in its capac-
15 ity as such, or maintaining a stock of goods.

16 (b) Any retailer having any representative, agent, salesman, canvasser
17 or solicitor operating in this state under the authority of the retailer
18 or its ~~subsidiary~~ affiliated person for the purpose of selling, deliv-
19 ering, installing or the taking of orders for any tangible personal
20 property or any sale described in section 63-3612 (2), Idaho Code.

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

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

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

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

31 (g) Any retailer selling, or delivering in this state, or any activ-
32 ity in this state in connection with the selling, or delivering in this
33 state, of tangible personal property or making any sale as described in
34 section 63-3612 (2), Idaho Code, for use, storage, distribution or con-
35 sumption within this state.

36 (h) Any retailer maintaining within this state, directly or indirectly
37 or by an affiliate, an office, distribution facility, salesroom, ware-
38 house, storage place or other similar place of business, including the
39 employment of a resident of this state who works from an office in this
40 state.

41 (i) Any retailer that engages in, either directly or indirectly,
42 through an affiliated person or other third party in this state, di-
43 rect response marketing targeted at this state. For purposes of this
44 subsection, direct response marketing includes, but is not limited to,
45 sending, transmitting or broadcasting of flyers, newsletters, tele-
46 phone calls, targeted electronic mail, text messages, social media
47 messages, or targeted mailings; using information or software that is
48 stored on property in or distributed within this state; or conduct-
49 ing any other actions that use persons, tangible property, intangible
50 property, digital files or information, or software in this state in an

1 effort to enhance the probability that a person's contacts with a cus-
2 tomers in this state will result in a sale to that customer.

3 (j) Any retailer entering into one (1) or more agreements that a person
4 or persons that have nexus under the commerce clause with this state di-
5 rectly or indirectly refer potential purchasers of products to the re-
6 tailer for a commission or other consideration, whether by an internet-
7 based link or an internet website or otherwise.

8 (i) A retailer engaged in the activities described in this para-
9 graph is a "retailer engaged in business in this state" regardless
10 of whether or not the referral is related to the sale of tangible
11 personal property or any sale as described in section 63-3612(2),
12 Idaho Code.

13 (ii) An agreement under which a retailer purchases advertisements
14 from a person or persons in this state, to be delivered on televi-
15 sion, radio, in print, on the internet or by any other medium, is
16 not an agreement described in this paragraph unless the advertise-
17 ment revenue paid to the person or persons in this state consists
18 of commissions or other consideration that is based in whole or in
19 part upon sales of products.

20 (4) A retailer is also engaged in business in this state if any part of
21 the sale process, including listing products for sale, soliciting, brand-
22 ing products, selling products, processing orders, fulfilling orders, pro-
23 viding customer service or accepting or assisting with returns or exchanges,
24 occurs in the state, regardless of whether that part of the process has been
25 subcontracted to an affiliate or third party. The sale process does not in-
26 clude shipping via a common carrier.

27 (5) Except for persons acting in the capacity as a common carrier, a re-
28 tailer is also presumed to be engaged in business in this state if such per-
29 son is related to a retailer over which this state has jurisdiction under the
30 commerce clause of the United States constitution to impose an obligation to
31 collect and remit sales and use tax and such related person:

32 (a) Sells under the same or a similar business name tangible personal
33 property or any transaction as described in section 63-3612(2), Idaho
34 Code, similar to that sold by the person against whom the presumption is
35 asserted;

36 (b) Maintains an office, distribution facility, salesroom, warehouse,
37 storage place or other similar place of business in this state to fa-
38 facilitate the delivery of tangible personal property or any sale as de-
39 scribed in section 63-3612(2), Idaho Code, sold by the person against
40 whom the presumption is asserted to such person's in-state customers;

41 (c) Uses, with consent or knowledge of the person against whom the pre-
42 sumption is asserted, trademarks, service marks or trade names in this
43 state that are the same or substantially similar to those used by the
44 person against whom the presumption is asserted;

45 (d) Delivers, installs or assembles tangible personal property in this
46 state, or performs maintenance or repair services on tangible personal
47 property in this state, which tangible personal property is sold to
48 in-state customers by the person against whom the presumption is as-
49 serted;

1 (e) Facilitates the delivery of tangible personal property to in-state
 2 customers of the person against whom the presumption is asserted by
 3 allowing such customers to pick up tangible personal property sold by
 4 such person at an office, distribution facility, salesroom, warehouse,
 5 storage place or other similar place of business maintained in this
 6 state; or

7 (f) Shares management, business systems, business practices or employ-
 8 ees with the person against whom the presumption is asserted, or engages
 9 in intercompany transactions with the person against whom the presump-
 10 tion is asserted related to the activities that establish or maintain
 11 the market in this state of the person against whom the presumption is
 12 asserted.

13 (6) For purposes of this section, two (2) persons are related or affili-
 14 ated if:

15 (a) Such persons are related within the meaning of subsections (b) and
 16 (c) of section 267 or section 707(b) (1) of the Internal Revenue Code of
 17 1986; or

18 (b) Such persons have one (1) or more ownership relationships and such
 19 relationships were designed with a principal purpose of avoiding the
 20 application of this section.

21 (7) The presumption set forth in this section may be rebutted by a pre-
 22 ponderance of evidence that, during the taxable period in question, the re-
 23 lated person with nexus under the commerce clause did not engage in any ac-
 24 tivities in this state that are sufficient under the commerce clause to es-
 25 tablish nexus in this state on behalf of the person against whom the presump-
 26 tion is asserted.

27 (8) This section affects the imposition, application or collection of
 28 sales and use taxes only.

29 SECTION 7. That Section 63-3024, Idaho Code, be, and the same is hereby
 30 amended to read as follows:

31 63-3024. INDIVIDUALS' TAX AND TAX ON ESTATES AND TRUSTS. For taxable
 32 year 2001, and each taxable year thereafter, a tax measured by Idaho taxable
 33 income as defined in this chapter is hereby imposed upon every individual,
 34 trust, or estate required by this chapter to file a return.

35 (a) The tax imposed upon individuals, trusts and estates shall be com-
 36 puted at the following rates:

37 When Idaho taxable income is:	The rate is:
38 Less than \$1,000	One and six five-tenths percent (1. 6 5%)
39 \$1,000 but less than \$2,000	\$16, plus three and six five-tenths
40	percent (3. 6 5%) of the amount over
41	\$1,000
42 \$2,000 but less than \$3,000	\$52, plus four and one tenths
43	percent (4. 1 %) of the amount over \$2,000
44 \$3,000 but less than \$4,000	\$93, plus five and one tenths
45	percent (5. 1 %) of the amount over \$3,000
46 \$4,000 but less than \$5,000	\$144, plus six and one tenths

1	When Idaho taxable income is:	The rate is:
2		percent (6.1%) of the amount over \$4,000
3	\$5,000 but less than \$7,500	\$205, plus seven and one-tenth
4		percent (7.1%) of the amount over \$5,000
5	\$7,500 and over	\$383, plus seven and four <u>three</u> -tenths
6		percent (7.43%) of the amount
7		over \$7,500

8 For taxable year 2000 and each year thereafter, the state tax commission
9 shall prescribe a factor which shall be used to compute the Idaho income tax
10 brackets provided in subsection (a) of this section. The factor shall pro-
11 vide an adjustment to the Idaho tax brackets so that inflation will not re-
12 sult in a tax increase. The Idaho tax brackets shall be adjusted as follows:
13 multiply the bracket amounts by the percentage (the consumer price index for
14 the calendar year immediately preceding the calendar year to which the ad-
15 justed brackets will apply divided by the consumer price index for calendar
16 year 1998). For the purpose of this computation, the consumer price index
17 for any calendar year is the average of the consumer price index as of the
18 close of the twelve (12) month period for the immediately preceding calendar
19 year, without regard to any subsequent adjustments, as adopted by the state
20 tax commission. This adoption shall be exempt from the provisions of chapter
21 52, title 67, Idaho Code. The consumer price index shall mean the consumer
22 price index for all U.S. urban consumers published by the United States de-
23 partment of labor. The state tax commission shall annually include the fac-
24 tor as provided in this subsection to multiply against Idaho taxable income
25 in the brackets above to arrive at that year's Idaho taxable income for tax
26 bracket purposes.

27 (b) In case a joint return is filed by husband and wife pursuant to the
28 provisions of section 63-3031, Idaho Code, the tax imposed by this section
29 shall be twice the tax which would be imposed on one-half (1/2) of the aggre-
30 gate Idaho taxable income. For the purposes of this section, a return of a
31 surviving spouse, as defined in section 2(a) of the Internal Revenue Code,
32 and a head of household, as defined in section 2(b) of the Internal Revenue
33 Code, shall be treated as a joint return and the tax imposed shall be twice
34 the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

35 (c) In the case of a trust that is an electing small business trust as
36 defined in section 1361 of the Internal Revenue Code, the special rules for
37 taxation of such trusts contained in section 641 of the Internal Revenue Code
38 shall apply except that the maximum individual rate provided in this section
39 shall apply in computing tax due under this chapter.

40 (d) The state tax commission shall compute and publish Idaho income
41 tax liability for taxpayers at the midpoint of each bracket of Idaho taxable
42 income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000),
43 rounding such calculations to the nearest dollar. Taxpayers having income
44 within such brackets shall file returns based upon and pay taxes according
45 to the schedule thus established. The state tax commission shall promulgate
46 rules defining the conditions upon which such returns shall be filed.

47 SECTION 8. That Section 63-3025, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 63-3025. TAX ON CORPORATE INCOME. (1) For taxable years commencing on
2 and after January 1, 2001, a tax is hereby imposed on the Idaho taxable in-
3 come of a corporation, other than an S corporation, which transacts or is au-
4 thorized to transact business in this state or which has income attributable
5 to this state. The tax shall be equal to seven and ~~four~~three-tenths percent
6 (7.43%) of Idaho taxable income.

7 (2) In the case of an S corporation that is required to file a return un-
8 der section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided
9 in subsection (1) of this section upon both:

10 (a) Net recognized built-in gain attributable to this state. The
11 amount of net recognized built-in gain attributable to this state shall
12 be computed in accordance with section 1374 of the Internal Revenue
13 Code subject to the apportionment and allocation provisions of section
14 63-3027, Idaho Code.

15 (b) Excess net passive income attributable to this state. The amount of
16 excess net passive income attributable to this state shall be computed
17 in accordance with section 1375 of the Internal Revenue Code subject to
18 the apportionment and allocation provisions of section 63-3027, Idaho
19 Code.

20 (3) The tax imposed by subsection (1) or (2) of this section shall not
21 be less than twenty dollars (\$20.00); provided further that the twenty dol-
22 lar (\$20.00) minimum payment shall not be collected from nonproductive min-
23 ing corporations.

24 (4) The tax imposed by this section shall not apply to corporations
25 taxed pursuant to the provisions of section 63-3025A, Idaho Code.

26 SECTION 9. SEVERABILITY. The provisions of this act are hereby declared
27 to be severable and if any provision of this act or the application of such
28 provision to any person or circumstance is declared invalid for any reason,
29 such declaration shall not affect the validity of the remaining portions of
30 this act.

31 SECTION 10. An emergency existing therefor, which emergency is hereby
32 declared to exist, Sections 7, 8 and 9 of this act shall be in full force and
33 effect on and after passage and approval, and retroactively to January 1,
34 2016. Sections 1 through 6 of this act shall be in full force and effect on
35 and after July 1, 2016, and shall apply to tax periods beginning on or after
36 July 1, 2016.