

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 40

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO TAXES; AMENDING SECTION 63-3035, IDAHO CODE, TO REVISE A PRO-
2 VISION REGARDING THE FILING OF WITHHOLDING REPORTS; AMENDING SECTION
3 63-3623, IDAHO CODE, TO REVISE A PROVISION REGARDING THE FILING OF SALES
4 TAX RETURNS AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMER-
5 GENCY AND PROVIDING AN EFFECTIVE DATE.
6

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

8 SECTION 1. That Section 63-3035, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 63-3035. STATE WITHHOLDING TAX ON PERCENTAGE BASIS -- WITHHOLDING,
11 COLLECTION AND PAYMENT OF TAX. (a) Every employer who is required under the
12 provisions of the Internal Revenue Code to withhold, collect and pay income
13 tax on wages or salaries paid by such employer to any employee (other than
14 employees specified in Internal Revenue Code section 3401(a)(2)) shall, at
15 the time of such payment of wages, salary, bonus or other emolument to such
16 employee, deduct and retain therefrom an amount substantially equivalent to
17 the tax reasonably calculated by the state tax commission to be due from the
18 employee under this chapter. The state tax commission shall prepare tables
19 showing amounts to be withheld, and shall supply same to each employer sub-
20 ject to this section. In the event that an employer can demonstrate adminis-
21 trative inconvenience in complying with the exact requirements set forth in
22 these tables, he may, with the consent of the state tax commission and upon
23 application to it, use a different method which will produce substantially
24 the same amount of taxes withheld. Every employer making payments of wages
25 or salaries earned in Idaho, regardless of the place where such payment is
26 made:

27 (1) Shall be liable to the state of Idaho for the payment of the tax re-
28 quired to be deducted and withheld under this section and shall not be
29 liable to any individual for the amount deducted from his wages and paid
30 over in compliance or intended compliance with this section;

31 (2) Must pay to the state tax commission monthly on or before the
32 ~~twentieth~~ last day of the succeeding month, or at such other times as the
33 state tax commission may allow, an amount of tax which, under the provi-
34 sions of this chapter, he is required to deduct and withhold;

35 (3) Shall register with the state tax commission, in the manner pre-
36 scribed by it, to establish an employer's withholding account number.
37 The account number will be used to report all amounts withheld for the
38 annual reconciliation required in this section, and for such other pur-
39 poses relating to withholding as the state tax commission may require;
40 and

41 (4) Must, notwithstanding the provisions of paragraphs (1) and (2) of
42 this subsection, if the amount of withholding of such employer for the

1 preceding twelve (12) month period equals or exceeds two hundred forty
2 thousand dollars (\$240,000) per annum or an average of twenty thousand
3 dollars (\$20,000) per month per annum, pay to the state tax commission
4 on the basis of two (2) withholding periods. The first period shall be-
5 gin on the first day of the month and end on the fifteenth day of the same
6 month, and payment shall be made not later than the twentieth day of the
7 same month. The second period shall begin on the sixteenth day of the
8 same month and end on the last day of the same month, and payment shall
9 be made not later than the fifth day of the following month. An employer
10 meeting the withholding threshold requirements of this subsection, but
11 only having one (1) pay period per month, may, upon request to and ap-
12 proval by the state tax commission, pay in accordance with paragraph (2)
13 of this subsection.

14 (5) If a payment required pursuant to paragraph (2) or (4) of this sub-
15 section is not made or is made delinquently or if made is not equal to
16 the withholding required under this section, the state tax commission
17 may treat the failure as a failure to file a return and may take admin-
18 istrative and judicial actions as authorized by this chapter in the case
19 of a failure to file a return. Interest, at the rate provided by section
20 63-3045, Idaho Code, shall apply to any such underpayment.

21 (6) Commencing in 2006, the state tax commission shall determine
22 whether the threshold amounts established by paragraph (4) of this sub-
23 section must be adjusted to reflect fluctuations in the cost of living.
24 The state tax commission shall base its determination on the cumu-
25 lative effect of the annual cost-of-living percentage modifications
26 determined by the United States secretary of health and human services
27 pursuant to 42 U.S.C. 415(i). When the cumulative percentage applied
28 to the monthly threshold amount equals or exceeds five thousand dollars
29 (\$5,000), the commission shall promulgate a rule adjusting the monthly
30 threshold amount by five thousand dollars (\$5,000) and making the nec-
31 essary proportional adjustment to the annual threshold amount. The
32 rule shall be effective for the next succeeding calendar year and each
33 year thereafter until again adjusted by the commission. The tax commis-
34 sion shall determine subsequent adjustments in the same manner, in each
35 case using the year of the last adjustment as the base year.

36 (b) (1) In addition to the payments required pursuant to subsection
37 (a) (2) and (4) of this section, every employer shall file a return upon
38 such form as shall be prescribed by the state tax commission, but not
39 more frequently than annually, or as required pursuant to any agreement
40 between the state tax commission and the department of labor under sec-
41 tion 63-3035B, Idaho Code, unless a shorter filing period and due date
42 is prescribed by the state tax commission. The return shall be due on
43 the last day of the first month following the end of the period to which
44 the return relates. The return shall:

45 (i) Show, for the period to which it relates, the total amount
46 of wages, salary, bonus or other emolument paid to his employees,
47 the amount deducted therefrom in accordance with the provisions of
48 the Internal Revenue Code, the amount deducted therefrom in accor-
49 dance with the provisions of this section, the amount of any pre-
50 vious payments made pursuant to this section, the amount of any

1 deficiency due from the employer or refund payable by the state
2 tax commission and such pertinent and necessary information as the
3 state tax commission may require.

4 (ii) Include a copy of the declaration of withholding provided to
5 employees pursuant to paragraph (2) of this subsection.

6 (2) Every employer making a declaration of withholding as provided
7 herein shall furnish to the employees annually, but not later than
8 thirty (30) days after the end of the calendar year, a record of the
9 amount of tax withheld from such employee on forms to be prescribed,
10 prepared and furnished by the state tax commission.

11 (3) Every employer who is required, under Internal Revenue Code section
12 6011, to file returns on magnetic media, machine readable form or elec-
13 tronic means, as defined in the Idaho uniform electronic transactions
14 act, may be required by rules of the state tax commission to file corre-
15 sponding state returns on similar magnetic media, machine readable form
16 or electronic means. Such rules may provide a different due date for
17 such returns, which shall be no later than the date employers are re-
18 quired to file such returns with the internal revenue service or the so-
19 cial security administration and shall provide a five (5) business day
20 period for an employer to correct errors in the electronic file received
21 by the due date.

22 (c) All moneys deducted and withheld by every employer shall immedi-
23 ately upon such deduction be state money and every employer who deducts and
24 retains any amount of money under the provisions of this chapter shall hold
25 the same in trust for the state of Idaho and for the payment thereof to the
26 state tax commission in the manner and at the times in this chapter provided.
27 Any employer who does not possess real property situated within the state of
28 Idaho, which, in the opinion of the state tax commission, is of sufficient
29 value to cover his probable tax liability, may be required to post a surety
30 bond in such sum as the state tax commission shall deem adequate to protect
31 the state.

32 (d) The provisions of this chapter relating to additions to tax in case
33 of delinquency, and penalties, shall apply to employers subject to the pro-
34 visions of this section and for these purposes any amount deducted, or re-
35 quired to be deducted and remitted to the state tax commission under this
36 section, shall be considered to be the tax of the employer and with respect
37 to such amount he shall be considered the taxpayer.

38 (e) Amounts deducted from wages of an employee during any calendar year
39 in accordance with the provisions of this section shall be considered to be
40 in part payment of the tax imposed on such employee for his tax year, which
41 begins within such calendar year, and the return made by the employer under
42 this subsection shall be accepted by the state tax commission as evidence in
43 favor of the employee of the amount so deducted from his wages. Where the to-
44 tal amount so deducted exceeds the amount of tax on the employee, based on his
45 Idaho taxable income, or where his income is not taxable under this chapter,
46 the state tax commission shall, after examining the annual return filed by
47 the employee in accordance with this chapter, but not later than sixty (60)
48 days after the filing of each return, refund the amount of the excess de-
49 ducted.

1 (f) This section shall in no way relieve any taxpayer from his obliga-
2 tion of filing a return at the time required under this chapter, and, should
3 the amount withheld under the provisions of this section be insufficient to
4 pay the total tax of such taxpayer, such unpaid tax shall be paid at the time
5 prescribed by section 63-3034, Idaho Code.

6 (g) An employee receiving wages shall on any day be entitled to not more
7 than, but may claim fewer than, the number of withholding allowances to which
8 he is entitled under the Internal Revenue Code for federal income tax with-
9 holding purposes.

10 (h) An employer shall use the allowance certificate filed by the em-
11 ployee with the employer under the withholding allowance provisions of the
12 Internal Revenue Code in determining the amount of tax to be withheld from
13 the employee's wages or salary under this chapter. The state tax commission
14 may redetermine the number of withholding allowances to which an employee
15 is entitled under subsection (g) of this section, and the state tax commis-
16 sion may require such allowance certificate to be filed on a form prescribed
17 by the commission in any circumstance where the commission finds that the
18 allowance certificate filed for Internal Revenue Code purposes does not
19 properly reflect the number of withholding allowances to which the employee
20 is entitled under this chapter. In no event shall any employee give an al-
21 lowance certificate which claims a higher number of withholding allowances
22 than the number to which the employee is entitled by subsection (g) of this
23 section.

24 SECTION 2. That Section 63-3623, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 63-3623. RETURNS AND PAYMENTS. (a) The taxes imposed by this act
27 are due and payable to the state tax commission monthly on or before the
28 ~~twentieth~~ last day of the succeeding month.

29 (b) All moneys collected or received by the state tax commission from
30 the taxes, penalties, interest and fees imposed by this act shall be de-
31 posited with the state treasurer to be credited by him to the sales tax
32 account created by this act.

33 (c) On or before the ~~twentieth~~ last day of the month a return shall be
34 filed with the state tax commission in such form as the state tax commission
35 may prescribe.

36 (d) For the purpose of the sales tax, a return shall be filed by every
37 seller. For the purposes of the use tax, a return shall be filed by every re-
38 tailer engaged in business in this state and by every person purchasing tan-
39 gible personal property, the storage, use, or other consumption of which is
40 subject to the use tax, who has not paid the use tax due to a retailer required
41 to collect the tax. Returns shall be signed by the person required to file
42 the return or by his duly authorized agent.

43 (e) For the purposes of the sales tax, the return shall show the total
44 sales at retail subject to tax under this act during the reporting period.
45 For the purposes of the use tax, in case of a return filed by a retailer, the
46 return shall show the total sales price of the property sold by him, the stor-
47 age, use, or consumption of which property became subject to the use tax dur-
48 ing the reporting period; in the case of a return filed by a purchaser, the
49 return shall show the total sales price of the property purchased by him, the

1 storage, use, or consumption of which became subject to the use tax during
2 the reporting period.

3 (f) The return shall show the amount of the taxes for the period covered
4 by the return and such other information as the state tax commission deems
5 necessary for the proper administration of this act.

6 (g) The person required to file the return shall mail or deliver the re-
7 turn together with a remittance of any tax due to the state tax commission for
8 the reporting period.

9 (h) The state tax commission, if it deems it necessary in order to
10 ~~insure~~ ensure payment to or facilitate the collection by the state of taxes,
11 may require returns for periods other than monthly periods.

12 (i) For the purposes of the sales tax, gross amounts from rentals or
13 leases of tangible personal property which may be subject to tax under this
14 act shall be reported and the tax paid in accordance with such rules as the
15 state tax commission may prescribe.

16 (j) The state tax commission for good cause may extend, for not to ex-
17 ceed one (1) month, the time for making any return or paying any amount re-
18 quired to be paid under this act.

19 (k) Any person to whom an extension is granted and who pays the tax
20 within the period for which the extension is granted shall pay, in addition
21 to the tax, interest at the rate provided in section 63-3045, Idaho Code,
22 from the date on which the tax would have been due without the extension until
23 the day of payment.

24 (l) Upon the transfer of ownership of a motor vehicle subject to sales
25 or use tax, a certificate of title will be issued to the new owner only upon
26 presentation of evidence of payment of sales or use tax on the transaction.

27 (m) The owner of a motor vehicle or trailer required to be registered
28 by the laws of this state shall, upon demand, furnish to the officer issuing
29 such registration, satisfactory evidence that any sales or use tax to which
30 such motor vehicle or trailer is subject has been paid to this state before
31 any such registration shall be issued.

32 (n) Retail sales of tangible personal property through a vending ma-
33 chine which are taxable upon the purchase price paid by the owner or operator
34 of the vending machine pursuant to subsection (e) of section 63-3613, Idaho
35 Code, shall be reported upon the sales tax return of the owner or operator of
36 the vending machine in the manner by which the tax commission may by rule pre-
37 scribe.

38 SECTION 3. An emergency existing therefor, which emergency is hereby
39 declared to exist, this act shall be in full force and effect on and after
40 July 1, 2023.