

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 60

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1  
2 RELATING TO USE TAXES; AMENDING SECTION 63-3621, IDAHO CODE, TO REVISE PRO-  
3 VISIONS REGARDING THE APPLICATION OF THE USE TAX AND TO MAKE TECHNICAL  
4 CORRECTIONS; AND DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE AP-  
5 PPLICATION.

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

7 SECTION 1. That Section 63-3621, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. (1) An ex-  
10 cise tax is hereby imposed on the storage, use, or other consumption in this  
11 state of tangible personal property acquired on or after October 1, 2006, for  
12 storage, use, or other consumption in this state at the rate of six percent  
13 (6%) of the value of the property, and a recent sales price shall be presump-  
14 tive evidence of the value of the property unless the property is wireless  
15 telecommunications equipment, in which case a recent sales price shall be  
16 conclusive evidence of the value of the property.

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

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

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

38 (5) Every retailer engaged in business in this state or maintaining a  
39 place of business in this state shall register with the state tax commission  
40 and give the name and address of all agents operating in this state the loca-  
41 tion of all distributions or sales houses or offices or other places of busi-

1   ness in this state and such other information as the state tax commission may  
2   require.

3       (6) For the purpose of the proper administration of this act and to pre-  
4   vent evasion of the use tax and the duty to collect the use tax, it shall be  
5   presumed that tangible personal property sold by any person for delivery in  
6   this state is sold for storage, use, or other consumption in this state. The  
7   burden of proving the sale is tax-exempt is ~~upon~~ on the person who makes the  
8   sale, unless he obtains from the purchaser a resale certificate to the ef-  
9   fect that the property is purchased for resale or rental. It shall be pre-  
10  sumed that sales made to a person who has completed a resale certificate for  
11  the seller's records are not taxable and the seller need not collect sales or  
12  use taxes unless the tangible personal property purchased is taxable to the  
13  purchaser as a matter of law in the particular instance claimed on the resale  
14  certificate.

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

34       (b) The resale certificate shall bear the name and address of the pur-  
35   chaser, shall be signed by the purchaser or his agent, shall indicate  
36   the number of the permit issued to the purchaser or that the purchaser  
37   is an out-of-state retailer, and shall indicate the general character  
38   of the tangible personal property sold by the purchaser in the regular  
39   course of business. The certificate shall be substantially in such form  
40   as the state tax commission may prescribe.

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

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

48       (8) It shall be presumed that tangible personal property shipped or  
49   brought to this state by the purchaser was purchased from a retailer for  
50   storage, use, or other consumption in this state.

1 (9) It shall be presumed that tangible personal property delivered out-  
2 side this state to a purchaser known by the retailer to be a resident of this  
3 state was purchased from a retailer for storage, use, or other consumption in  
4 this state. This presumption may be controverted by evidence satisfactory  
5 to the state tax commission that the property was not purchased for storage,  
6 use, or other consumption in this state.

7 (10) When the tangible personal property subject to use tax has been  
8 subjected to a general retail sales or use tax by another state of the United  
9 States in an amount equal to or greater than the amount of the Idaho tax, and  
10 evidence can be given of such payment, the property will not be subject to  
11 Idaho use tax. If the amount paid to the other state was less, the property  
12 will be subject to use tax to the extent that the Idaho tax exceeds the tax  
13 paid to the other state. For the purposes of this subsection, a registration  
14 certificate or title issued by another state or subdivision thereof for a ve-  
15 hicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall  
16 be sufficient evidence of payment of a general retail sales or use tax.

17 (11) The use tax imposed by this section shall not apply to the use by a  
18 nonresident of this state of a motor vehicle registered or licensed under the  
19 laws of the state of his residence and not used in this state more than a cu-  
20 mulative period of time totaling ninety (90) days in any consecutive twelve  
21 (12) months and if none of the buyers listed on the purchase, registration,  
22 or title documents are Idaho residents. A nonresident business entity will  
23 be held to the same requirements as a nonresident individual to qualify for  
24 the exemption provided in this subsection, except that the nonresident busi-  
25 ness entity also must not be formed under the laws of the state of Idaho. The  
26 use tax herein shall also not apply to any use of a motor vehicle registered  
27 or licensed under the laws of the state of residence of a nonresident stu-  
28 dent while such nonresident student is enrolled as a full-time student in an  
29 institution of postsecondary education that is both physically located in  
30 Idaho and recognized as accredited by the state board of education.

31 (12) The use tax imposed by this section shall not apply to the use of  
32 household goods, personal effects, and personally owned vehicles or person-  
33 ally owned aircraft by a resident of this state if such articles were ac-  
34 quired by such person in another state while a resident of that state and  
35 primarily for use outside this state and if such use was actual and substan-  
36 tial, ~~but; however,~~ if an article was acquired less than ~~three (3) months~~  
37 ninety (90) days prior to the time he entered this state, it will be presumed  
38 that the article was acquired for use in this state and that its use outside  
39 this state was not actual and substantial. The use tax imposed by this sec-  
40 tion shall not apply to the use of household goods, personal effects, and  
41 personally owned vehicles or personally owned aircraft by active duty mil-  
42 itary personnel temporarily assigned in this state and spouses who accom-  
43 pany them if such articles were acquired prior to receipt of orders to trans-  
44 fer to Idaho or ~~three (3) months~~ ninety (90) days prior to moving to Idaho,  
45 whichever time period is shorter. For purposes of this subsection, "resi-  
46 dent" shall be as defined in section 63-3013 or 63-3013A, Idaho Code. For  
47 purposes of this subsection, wherever the term "individual" appears in sec-  
48 tion 63-3013 or 63-3013A, Idaho Code, the term includes a natural person or  
49 a grantor trust as described in sections 673 through 678 of the Internal Rev-  
50 enue Code.

1 (13) (a) The use tax imposed by this section shall not apply to the stor-  
2 age, use, or other consumption of tangible personal property that is or  
3 will be incorporated into real property and has been donated to and has  
4 become the property of:

5 (i) A nonprofit organization as defined in section 63-36220,  
6 Idaho Code;

7 (ii) The state of Idaho; or

8 (iii) Any political subdivision of the state.

9 (b) This exemption applies whether the tangible personal property is  
10 incorporated in real property by the donee, a contractor, ~~or a~~ subcon-  
11 tractor of the donee, or any other person.

12 (14) The use tax imposed by this section shall not apply to tastings of  
13 food and beverages, including but not limited to wine and beer. For the pur-  
14 poses of this subsection, a tasting of wine and beer shall be defined as the  
15 maximum serving allowed by state or federal laws for such occasions provided  
16 to a potential customer, at no charge, at a location where like or similar  
17 beverages are sold. For nonalcoholic beverages and food, a tasting shall be  
18 defined as a sample from a unit available for sale at the tasting location.

19 (15) The use tax imposed by this section shall not apply to donations  
20 of food or beverages, or both, to individuals or nonprofit organizations.  
21 For the purposes of this section, "nonprofit organization" means those non-  
22 profit entities currently registered with the secretary of state pursuant to  
23 section 30-30-102, Idaho Code.

24 (16) The use tax imposed by this section shall not apply to a retailer  
25 supplying prepared food or beverages free of charge to its employee when that  
26 retailer sells prepared food or beverages in its normal course of business.

27 SECTION 2. An emergency existing therefor, which emergency is hereby  
28 declared to exist, this act shall be in full force and effect on and after its  
29 passage and approval, and retroactively to January 1, 2023.