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RECEIVED STATE
STATE OF IDAHO

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

December 30, 2011

VIA HAND DELIVERY

The Honorable Ben Ysursa
Idaho Secretary of State
STATEHOUSE

RE: Ballot Titles for Proposed Initiative Relating to Sales Tax Reform

Dear Secretary of State Ysursa:

Pursuant to Idaho Code § 34-1809, I am transmitting the short and long ballot titles for the proposed referendum received by our office on December 19, 2011.

The short ballot title for the referendum is as follows:

STATE SALES TAX REFORM INITIATIVE.


The long ballot title is as follows:

AN INITIATIVE RELATING TO TAXATION; ELIMINATING TEN (10) EXEMPTIONS (BROADCAST EQUIPMENT, COMMERCIAL AIRCRAFT, RAILROAD ROLLING STOCK AND MANUFACTURING, DRIVER'S EDUCATION AUTOMOBILES, TRADE-IN VALUE, SKI LIFTS AND SNOW GROOMING EQUIPMENT, HEATING MATERIALS, UTILITY SALES, PRECIOUS METAL BULLION, AND TELECOMMUNICATION EQUIPMENT). MAINTAINING THE EXEMPTIONS OF MEDICAL SERVICES; EXTENDING THE SALES AND USE TAX TO NINE (9) CATEGORIES OF SERVICES (PROFESSIONAL, PERSONAL, BUSINESS, CONSTRUCTION, TRANSPORTATION, REPAIRS, LOTTERY AND PARIMUTUEL BETTING, MEDIA MEASUREMENT AND MISCELLANEOUS SERVICES; EXTENDING THE SALES AND USE TAX TO CERTAIN MOTOR VEHICLE PURCHASES; SALES THROUGH VENDING MACHINES AND SALES BY OUTFITTERS AND GUIDES. REDUCING THE SALES AND USE TAX RATE FROM 6% TO 5%.

Secretary of State Ysursa
December 30, 2011
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If you have questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'BKane', with a large, sweeping flourish at the end.

BRIAN KANE
Assistant Chief Deputy

BK/tjn



11 DEC 12 PM 2:29
SECRETARY OF STATE
STATE OF IDAHO

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

December 12, 2011

The Honorable Ben Ysursa
Secretary of State
HAND DELIVERED

RE: Certificate of Review
Proposed Initiative to Broaden the Sales Tax Base and Lower the Sales Tax Rate

Dear Secretary of State Ysursa:

An initiative petition was filed with your office on December 6, 2011. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and prepared the following advisory comments. Given the strict statutory timeframe in which this office must review the petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only." The petitioners are free to "accept or reject them in whole or in part." The opinions expressed in this review are only those which may affect the legality of the initiative. This office offers no opinion with regard to the policy issues raised by the proposed initiative, nor the potential revenue impact to the state budget.

BALLOT TITLE

Following the filing of the proposed initiative, our office will prepare short and long ballot titles. The ballot titles must impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. While our office prepares titles for the initiative, petitioners may submit proposed titles for consideration. Any proposed titles should be consistent with the standard set forth above.

MATTERS OF SUBSTANTIVE IMPORT

The purpose of the proposed initiative is to broaden the sales tax base to include services and lower the rate from six percent (6%) to five percent (5%). Included within the definition of sales are contracts for applying, installing, cleaning, altering, improving, decorating, treating, storing, or repairing real property. *See* proposed Idaho Code § 63-3612(k). This provision has the effect of making many contracts for the improvement of real property retail sales subject to

sales tax. Idaho Code §§ 63-3622A and 63-3622O prohibit or exempt the imposition of taxes on sales to governmental entities, which means the proposed initiative will completely exempt materials and labor used on government contracts. Under present law, materials used on government contracts by contractors are taxed. Contractors working at the Idaho National Laboratory (INL), Mountain Home Air Force Base, and contractors building or repairing highways and other roads are just examples of contracts that would completely escape taxation under the petitioners' proposal.

Alternatively, the petitioners could consider amendments similar to states like Washington, which treat most contracts as retail sales, but for government contracts, the contractor is taxed on the materials used or consumed.

The proposed initiative may, in certain instances, tax the sale of new homes. If a builder builds a home that he intends to sell upon completion, he may be able to purchase the materials and the subcontract services for resale. Once the house is complete and he sells it, this may be a retail sale. Sales of existing homes are not considered to be retail sales pursuant to the initiative.

The proposed statute does not exempt any services except for those services consumed in a production process. Idaho Code § 63-3622D. There are many other statutes that provide exemptions of tangible personal property but would not exempt related services. For example, the occasional sale exemption exempts the transfer of tangible personal property between related entities. The proposed initiative would impose tax on service transactions between related entities. There are other exemptions that similarly exempt transactions involving tangible personal property, but related-service transactions would be taxed under the initiative. Some obvious examples include the pollution control exemption, the research and development exemption, and the logging exemption. The drafters of the initiative have the prerogative to either provide for or not provide for exemptions. However, since the proposed initiative does not remove any of the exemptions for sales of tangible personal property, the petitioners may wish to consider some consistency for service-related transactions.

Though not classified as an exemption, the initiative does not impose tax on services provided by “. . . licensed medical doctors, dentists, osteopaths, physical therapists, optometrists, physician assistants, midwives, podiatrists, hospitals, nursing homes, chiropractors, nurse practitioners, naturopaths, or psychologists.” See proposed Idaho Code § 63-3614A.¹ In a broad sense, the drafters are not taxing medically-related services. The method they have chosen to reach that result is to exclude services provided by certain medically-related professionals. The services provided by these professionals are not subject to sales tax regardless of whether the services are medically related. For example, if a physical therapist opened a day care at her business location that she operated in conjunction with her physical therapy business, the child care may be exempt from sales tax even though child care provided by a licensed day care would be taxable under the proposed statute.

¹ The drafters inserted “midwives” twice in the sentence identifying the professionals who are providing services for purposes of the tax on services.

The drafters of the initiative have included several sections to source the sale of tangible personal property and services to certain locations.² These sourcing rules seem unduly complex for the state sales tax and may or may not be consistent with other provisions of the Idaho sales tax law. Sourcing is defined as the point at which a retail sale occurs. The statute then provides a series of rules to determine the location of the sale. However, if the sale occurs in Idaho, then the transaction is subject to sales tax. Under present law, if delivery of tangible personal property occurs in Idaho, then the sale takes place in Idaho. If the sale takes place in another state, and if no sales tax is charged, then use tax is due if the property is used in Idaho.

The sourcing rules for services are inconsistent. For example, proposed Idaho Code § 63-3642(1)(a) provides that if the service is received by the purchaser at a business location of the seller, the sale is sourced to that location. Paragraph (1)(b) provides that if the service is not received at the business location of the seller, it is sourced to the location where received. In short, pursuant to subsection (1), the sale is sourced to the location where the service is received.

Subsection (5) of proposed Idaho Code § 63-3642 introduces some new terms for sourcing of services. Pursuant to this provision, the sale is sourced to Idaho if the consumption of the service occurs in Idaho, even if the service is performed outside Idaho. These provisions are confusing. Under one provision, the service is sourced to Idaho if the service is received in Idaho, whereas under a second provision, the service is sourced to Idaho if it is consumed in Idaho. The provision creates a conflict between the terms “receipt” and “consume.” If an Idaho mechanic repairs a car belonging to an Oregon resident at the mechanic’s business location in Idaho, the service is performed in Idaho and, presumably, the receipt of the service occurs in Idaho. However, if the Oregon resident drives his car back to Oregon where he keeps it and uses it, the services may be said to be consumed in Oregon. The petitioners may want to clarify the sourcing rules for services.

The proposed statutes appear to raise revenue for the State of Idaho. The initiative does not address revenue impact, but since it only lowers the rate to five percent (5%) and substantially broadens the tax base, there is a likelihood that the initiative will raise revenue. This raises the question of whether an initiative that raises revenue may not be allowed because it is contrary to art. III, sec. 14 of the Idaho Constitution, which provides that all revenue-raising bills originate in the House. At a minimum, there is an argument that an initiative to raise revenue is prohibited by art. III, sec. 14, which provides that “[b]ills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.”³

By using the term “bill,” the drafters of the Constitution implied that the provision only applies to legislative enactments. An initiative, as allowed for in art. III, sec. 1, is a process for the people through signatures and voting to enact legislation. The history of the federal Origination Clause is all about balance between the two legislative houses. Idaho seems to have

² See proposed Idaho Code §§ 63-3642 and 63-3643.

³ We are unaware of any case authority, and we are unsure whether a court has ever addressed the issue, but we believe we are compelled to raise the issue for the petitioners to consider.

just copied the federal practice. The Idaho Constitutional Convention in 1889 adopted this section without debate or amendment. At the federal level, the clause had two motives. First, it put the fiscal authority in the House of Representatives, which was seen as being the house closest to the people. Second, it acted as a counterbalance to the special powers granted only the Senate – the power to advise and consent to Presidential appointments and to ratify treaties.⁴ Thus, the rationale for requiring revenue-raising measures in the House seems inapplicable to initiatives. If in fact one of the motives is to give the power to the body closest to the people, then it seems logical that the initiative process could be used to raise revenue.

CERTIFICATION

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style, and matters of substantive import. The recommendations set forth above have been communicated to the Petitioner via a copy of this Certificate of Review, deposited in the U.S. Mail to Robert C. Huntley, The Huntley Law Firm, PLLC, P. O. Box 2188, Boise, Idaho 83701.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

Analysis by:

WILLIAM A. VON TAGEN
Deputy Attorney General

⁴ The Federalist No. 66 (Alexander Hamilton).

WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

11 DEC 20 11 09 AM '05
CLERK OF STATE
STATE OF IDAHO

INITIATIVE PETITION

Short Title

Sales Tax Reform and Fair Share Initiative

To the Honorable Ben Ysursa, Secretary of State of the State of Idaho:

"We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, to wit:

General Title

Initiative amendment to the Idaho Sales and Use Tax statutes by eliminating ten (10) exemptions thereto, (i.e., broadcast equipment, commercial aircraft, railroad rolling stock and manufacturing, driver's education automobiles, trade-in value, ski lifts and snow grooming equipment, heating materials, utility sales, precious metal bullion, and telecommunications equipment); while retaining the Manufacturing/Production/Agricultural exemptions; and by extending the sales and use tax to nine (9) categories of services, while maintaining the exemptions of Medical Services (i.e., Professional, Personal, Business, Construction, Transportation, Repairs, Lottery and Pari-Mutual Betting, Media Measurement and Miscellaneous); and extending the sales and use tax to certain motor vehicle purchases, sales through vending machines and sales by outfitters and guides; reducing the sales and use tax rate from 6% to 5%, all with the net effect of producing new revenues to the General Fund of the State of Idaho of approximately \$371 Million.

RELATING TO TAXATION; AMENDING SECTION 63-602L, IDAHO CODE, TO DELETE REFERENCE TO CUSTOM COMPUTER PROGRAMS; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3602A, IDAHO CODE, TO DEFINE "COMPUTER SOFTWARE" AND "DIGITAL GOODS"; AMENDING SECTION 63-3608, IDAHO CODE, TO REVISE THE DEFINITION OF "PURCHASE"; AMENDING SECTION 63-3609, IDAHO CODE, TO REVISE THE DEFINITION OF "RETAIL SALE" OR "SALE AT RETAIL"; AMENDING SECTION 63-3610, IDAHO CODE, TO REVISE THE DEFINITION OF "RETAILER"; AMENDING SECTION 63-3612, IDAHO CODE, TO REVISE THE DEFINITION OF "SALE"; AMENDING SECTION 63-3613, IDAHO CODE, TO REVISE THE DEFINITION OF "SALES PRICE"; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3614A, IDAHO CODE, TO DEFINE THE TERM "SERVICES"; AMENDING SECTION 63-3615, IDAHO CODE, TO PROVIDE THAT THE TERM "USE" INCLUDES THE CONSUMPTION OF A SERVICE IN IDAHO; AMENDING SECTION 63-3616, IDAHO CODE, TO REVISE THE DEFINITION OF "TANGIBLE PERSONAL PROPERTY"; AMENDING SECTION 63-3619, IDAHO CODE, TO DECREASE THE RATE OF THE SALES TAX AND TO PROVIDE THAT THE IMPOSITION AND RATE OF THE SALES TAX INCLUDES SALES OF SERVICES; AMENDING SECTION 63-3621, IDAHO CODE, TO DECREASE THE RATE OF THE USE TAX AND TO PROVIDE THAT THE IMPOSITION AND RATE OF THE USE TAX INCLUDES SALES OF SERVICES; AMENDING SECTION 63-3622, IDAHO CODE, TO

1 PROVIDE EXEMPTION AND RESALE CERTIFICATES FOR SERVICES; AMENDING
 2 SECTION 63-3622D, IDAHO CODE, TO INCLUDE SERVICES IN THE PRODUCTION
 3 EXEMPTION; REPEALING SECTION 63-3622LL, IDAHO CODE, RELATING TO THE
 4 EXEMPTION FOR MEDIA MEASUREMENT SERVICES; AMENDING SECTION 63-3623,
 5 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; REPEALING SECTION
 6 63-3640, IDAHO CODE, RELATING TO CONTRACTS ENTERED INTO BEFORE THE
 7 EFFECTIVE DATE OF INCREASED TAX; AMENDING CHAPTER 36, TITLE 63, IDAHO
 8 CODE, BY THE ADDITION OF A NEW SECTION 63-3642, IDAHO CODE, TO DEFINE
 9 THE TERM "SOURCING" AND TO PROVIDE FOR THE PLACE WHERE A SALE
 10 OCCURS; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A
 11 NEW SECTION 63-3643, IDAHO CODE, TO PROVIDE GENERAL SOURCING
 12 DEFINITIONS; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION
 13 OF A NEW SECTION 63-3644, IDAHO CODE, TO PROVIDE FOR MULTIPLE POINTS OF
 14 USE; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A
 15 NEW SECTION 63-3645, IDAHO CODE, TO PROVIDE THE EFFECT ON CONTRACTS
 16 ENTERED INTO PRIOR TO THE EFFECTIVE DATE OF THIS ACT; PROVIDING
 17 SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

18
 19 Be It Enacted by the Legislature of the State of Idaho:

20
 21 SECTION 1. That Section 63-602L, Idaho Code, be, and the same is hereby amended to read as
 22 follows:

23
 24 63-602L. PROPERTY EXEMPT FROM TAXATION -- INTANGIBLE PERSONAL PROP-
 25 ERTY. (1) The following intangible personal property is exempt from taxation: capital stock and bonds.
 26 The deposits in national banks, state banks, and savings and loan associations. Shares and accounts of
 27 savings and loan associations, credit unions or associations organized under the laws of the state of Idaho
 28 for the purpose of accumulating the savings and funds of their members and lending the same to their
 29 members. Goodwill, customer lists, contracts and contract rights, patents, trademarks, ~~custom computer~~
 30 ~~programs as defined in section 63-3616, Idaho Code,~~ copyrights, trade secrets, franchises, licenses, rights-
 31 of-way which are possessory only and not accompanied by title.

32 (2) The commission shall promulgate rules which shall provide for the exclusion of exempt
 33 intangible personal property from taxable value of operating property. Such rules shall allow each
 34 taxpayer the right to elect one (1) of the following three (3) methods for exclusion of exempt intangible
 35 personal property from its taxable value:

- 36 (a) Separate exclusion of the exempt intangible personal property at the system level value; or
 37 (b) Separate exclusion of the exempt intangible personal property at the state allocated value; or
 38 (c) Exclusion of the exempt intangible personal property by valuation of only tangible personal
 39 property and nonexempt intangible personal property using valuation models which do not impound or
 40 include values of the exempt intangible personal property.

41
 42 SECTION 2. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the
 43 addition thereto of a NEW SECTION, to be known and designated as Section 63-3602A, Idaho Code, and
 44 to read as follows:

45
 46 63-3602A. COMPUTER SOFTWARE AND DIGITAL GOODS. The term "computer software"
 47 means any computer program, part of a program or any sequence of instructions for automatic data
 48 processing equipment or information stored in an electronic medium. The term "computer software"
 49 includes both prewritten and custom software. Computer software is deemed to be tangible personal
 50 property for purposes of this chapter regardless of the method by which the title, possession or right to use
 51 the software is transferred to the user. The term "digital goods" means items such as audio, video and

1 graphic files that are downloaded via electronic means which would be tangible personal property if sold
2 in another format, such as a CD, DVD, film or cassette.

3
4 SECTION 3. That Section 63-3608, Idaho Code, be, and the same is hereby amended to read as
5 follows:

6
7 63-3608. PURCHASE. The term "purchase" means any transfer, rental, exchange, or barter,
8 conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a
9 consideration. The term "purchase" shall also include the payment of consideration for services as defined
10 in section 63-3614A, Idaho Code. A transaction whereby the possession of property is transferred but the
11 seller retains the title as security for the payment of the price is a purchase. A transfer for a consideration
12 of any publication or of tangible personal property which has been produced, fabricated, or printed to the
13 special order of the customer is also a purchase.

14
15 SECTION 4. That Section 63-3609, Idaho Code, be, and the same is hereby amended to read as
16 follows:

17
18 63-3609. RETAIL SALE -- SALE AT RETAIL. The terms "retail sale" or "sale at retail" means a
19 sale for any purpose other than resale in the regular course of business or lease or rental of property in the
20 regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

21
22 ~~(a) All persons engaged in constructing, altering, repairing or improving real estate, are~~
23 ~~consumers of the material used by them; all sales to or use by such persons of tangible personal property~~
24 ~~are taxable whether or not such persons intend resale of the improved property.~~

25 ~~_____ (b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale~~
26 ~~of real property or used mobile homes is deemed a sale of real property.~~

27
28 SECTION 5. That Section 63-3610, Idaho Code, be, and the same is hereby amended to read as follows:

29
30 63-3610. RETAILER. The term "retailer" includes: (a) Every seller who makes any retail sale or
31 sales of tangible personal property and every person engaged in the business of making retail sales at
32 auction of tangible personal property owned by the person or others.

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

36 (c) Every person making more than two (2) retail sales of tangible personal property during any
37 twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or
38 receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging
39 in the business of selling such tangible personal property at retail or who sells a motor vehicle.

40 (d) When the state tax commission determines that it is necessary for the efficient administration
41 of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers,
42 distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible
43 personal property sold by them, irrespective of whether they are making sales on their own behalf or on
44 behalf of such dealers, distributors, supervisors, or employers, the state tax commission may so regard
45 them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this
46 act.

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

49
50

1 SECTION 6. That Section 63-3612, Idaho Code, be, and the same is hereby amended to read as
2 follows:

3
4 63-3612. SALE. (1) The term "sale" means any transfer of title, exchange or barter, conditional or
5 otherwise, of tangible personal property for a consideration and shall include any similar transfer of
6 possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange
7 or barter.

8 (2) "Sale" shall also include the following transactions when a consideration is transferred,
9 exchanged or bartered:

10 (a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for
11 consumers who furnish, either directly or indirectly, the tangible personal property used in the
12 producing, fabricating, processing, printing, or imprinting.

13 (b) Furnishing, preparing, or serving food, meals, or drinks and nondepreciable goods and
14 services directly consumed by customers included in the charge thereof.

15 (c) A transfer of possession of property where the seller retains the title as security for the
16 payment of the sales price.

17 (d) A transfer of the title or possession of tangible personal property which has been produced,
18 fabricated, or printed to the special order of the customer, or of any publication.

19 (e) Admission to a place or for an event in Idaho, provided that an organization conducting an
20 exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal
21 Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for
22 attendance at the aforementioned event, shall not have those admission charges be defined as a
23 sale if the event:

24 (i) Is not predominately recreational or commercial; and

25 (ii) Any included entertainment value is minimal when compared to the charge for
26 attendance; and

27 (iii) Such entity has paid sales and use tax on taxable property or services used during the
28 event.

29 (f) The use of or the privilege of using tangible personal property or facilities for recreation.

30 (g) Providing hotel, motel, campground, or trailer court accommodations, nondepreciable goods
31 directly consumed by customers and included services, except where residence is maintained
32 continuously under the terms of a lease or similar agreement for a period in excess of thirty (30)
33 days.

34 (h) The lease or rental of tangible personal property.

35 (i) ~~The intrastate transportation for hire by air of freight or passengers, except (1) as part of a~~
36 ~~regularly scheduled flight by a certified air carrier, under authority of the United States, or (2)~~
37 ~~when providing air ambulance services Sales of services as defined in section 63-3614A, Idaho~~
38 ~~Code. Sales of services as defined in section 63-3614A, Idaho Code.~~

39 (j) Computer software and digital goods as defined in section 63-3602A, Idaho Code.

40 (k) Contracts from applying, installing, cleaning, altering, improving, decorating, treating, storing
41 or repairing tangible personal property or real property.

42 (3) As used in subsections (2)(b) and (2)(g) of this section, goods "directly consumed by
43 customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable
44 property.

45
46 SECTION 7. That Section 63-3613, Idaho Code, be, and the same is hereby amended to read as
47 follows:

48
49 63-3613. SALES PRICE. (a) The term "sales price" means the total amount for which tangible
50 personal property, ~~including and~~ services ~~agreed to be rendered as a part of the sale, is~~ are sold, rented or

1 leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of
2 the following:

3 1. The cost of the property sold. However, in accordance with such rules as the state tax
4 commission may prescribe, a deduction may be taken if the retailer has purchased property for
5 some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is
6 required to pay to the state or has paid the use tax with respect to the property, and has resold or
7 rented the property prior to making any use of the property other than retention, demonstration or
8 display while holding it for sale in the regular course of business. If such a deduction is taken by
9 the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the
10 property.

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

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

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

16 5. Any additional charge added to the sales price of tangible personal property.

17 6. The amount charged for applying, installing, cleaning, altering, improving, decorating, treating,
18 storing or repairing tangible personal property or real property.

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

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

23 2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that
24 this allowance shall not apply to the sale of a "new manufactured home" or a "modular building"
25 as defined herein.

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

30 ~~4. The amount charged for labor or services rendered in installing or applying the property sold,~~
31 ~~provided that said amount is stated separately and such separate statement is not used as a means~~
32 ~~of avoiding imposition of this tax upon the actual sales price of the tangible personal property;~~
33 ~~except that charges by a manufactured homes dealer for set up of a manufactured home shall be~~
34 ~~included in the "sales price" of such manufactured home.~~

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

38 ~~6. The amount charged for finance charges, carrying charges, service charges, time-price~~
39 ~~differential, or interest on deferred payment sales, provided such charges are not used as a means~~
40 ~~of avoiding imposition of this tax upon the actual sales price of the tangible personal property.~~

41 ~~7. Delivery and handling charges for transportation of tangible personal property to the consumer,~~
42 ~~provided that the transportation is stated separately and the separate statement is not used as a~~
43 ~~means of avoiding imposition of the tax upon the actual sales price of the tangible personal~~
44 ~~property; except that charges by a manufactured homes dealer for transportation of a~~
45 ~~manufactured home shall be included in the "sales price" of such manufactured home.~~

46 ~~86. Manufacturers' rebates when used at the time of a retail sale as a down payment on or~~
47 ~~deduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's~~
48 ~~rebate is a cash payment made by a manufacturer to a consumer who has purchased or is~~
49 ~~purchasing the manufacturer's product from the retailer.~~

50 ~~97. The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code,~~
51 ~~by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on~~

1 land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated
 2 separately and is presented as a use fee paid by the outfitted public to be passed through to the
 3 governmental entity.

4 ~~108.~~ The amount of any discount or other price reduction on telecommunications equipment
 5 when offered as an inducement to the consumer to commence or continue telecommunications
 6 service, or the amount of any commission or other indirect compensation received by a retailer or
 7 seller as a result of the consumer commencing or continuing telecommunications service.

8 ~~(c) The sales price of a "new manufactured home" or a "modular building" as defined in this act
 9 shall be limited to and include only fifty five percent (55%) of the sales price as otherwise
 10 defined herein.~~

11 ~~(d) Taxes previously paid on amounts represented by accounts found to be worthless may be
 12 credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due,
 13 refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so
 14 collected.~~

15 ~~(e) Tangible personal property when sold at retail for more than eleven cents (\$.11) but less than
 16 one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a
 17 sales price equal to one hundred seventeen percent (117%) of the price which is paid for such
 18 tangible personal property and/or its component parts including packaging by the owner or
 19 operator of the vending machines.~~

20 ~~(f) The use of or the privilege~~

21
 22 SECTION 8. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the addition
 23 thereto of a NEW SECTION, to be known and designated as Section 63-3614A, Idaho Code, and to read
 24 as follows:

25
 26 63-3614A. SERVICES. The term "services" means all activities engaged in for other persons for
 27 a consideration, which activities involve predominantly the performance of a service as distinguished
 28 from selling or leasing property. The term "services" does not include services provided by an employee
 29 to an employer. The term "services" does not include services provided by licensed medical doctors,
 30 dentists, osteopaths, physical therapists, optometrists, physician assistants, midwives, podiatrists,
 31 hospitals, nursing homes, chiropractors, nurse practitioners, naturopaths, or psychologists. In determining
 32 what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall
 33 not be controlling. The term "services" also includes the constructing, repairing, decorating or improving
 34 of new or existing buildings or other structures under, upon or above real property, including the
 35 installing or attaching of any article of tangible personal property therein or thereto, whether or not such
 36 personal property becomes a part of the realty by virtue of installation, and shall also include the clearing
 37 of land and the moving of earth.

38
 39 SECTION 9. That Section 63-3615, Idaho Code, be, and the same is hereby amended to read as
 40 follows:

41
 42 63-3615. STORAGE -- USE. (a) The term "storage" includes any keeping or retention in this
 43 state for any purpose except sale in the regular course of business or subsequent use solely outside this
 44 state of tangible personal property purchased from a retailer.

45 (b) The term "use" includes the exercise of any right or power over tangible personal property
 46 incident to the ownership or the leasing of that property or the exercise of any right or power over
 47 tangible personal property by any person in the performance of a contract, or to fulfill contract or
 48 subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee,
 49 subcontractee, or any other person, or whether the titleholder of such property would be subject to the
 50 sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho

1 Code, except that the term "use" does not include the sale of that property in the regular course of
2 business. The term "use" includes the consumption of a service in Idaho.

3 (c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power
4 over tangible personal property for the purpose of subsequently transporting it outside the state for use
5 thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into,
6 attached to, or incorporated into other tangible personal property to be transported outside the state, and
7 thereafter used solely outside the state.
8

9 SECTION 10. That Section 63-3616, Idaho Code, be, and the same is hereby amended to read as
10 follows:
11

12 63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal property"
13 means personal property which may be seen, weighed, measured, felt or touched, or which is in any other
14 manner perceptible to the senses.

15 ~~(b) The term "tangible personal property" includes any computer software which is not a custom
16 computer program.~~

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

22 ~~(ii) As used in this subsection, the term "custom computer program" means any computer
23 software (as defined in this subsection) which is written or prepared exclusively for a customer
24 and includes those services represented by separately stated charges for the modification of
25 existing prewritten programs when the modifications are written or prepared exclusively for a
26 customer. The term does not include a "canned" or prewritten program which is held or existing
27 for general or repeated sale, lease or license, even if the program was initially developed on a
28 custom basis or for in house use. Modification to an existing prewritten program to meet the
29 customer's needs is custom computer programming only to the extent of the modification, and
30 only to the extent that the actual amount charged for the modification is separately stated on
31 invoices, statements, and other billing documents supplied to the purchaser.~~

32 ~~(c) The term "tangible personal property" does not include advertising space when sold to an
33 advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is
34 displayed or circulated.~~
35

36 SECTION 11. That Section 63-3619, Idaho Code, be, and the same is hereby amended to read as
37 follows:
38

39 63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby imposed
40 upon each sale at retail at the rate of six five percent (65%) of the sales price of all retail sales, including
41 sales of services, subject to taxation under this chapter and such amount shall be computed monthly on all
42 sales at retail within the preceding month.

43 (a) The tax shall apply to, be computed on, and collected for all credit, installment, conditional or
44 similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.

45 (b) The tax hereby imposed shall be collected by the retailer from the consumer.

46 (c) The state tax commission shall provide schedules for collection of the tax on sales, including
47 sales of services, which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire
48 amount of the purchases of the consumer made at a particular time and not separately upon each item
49 purchased. The retailer may retain any amount collected under the bracket system prescribed which is in
50 excess of the amount of tax for which he is liable to the state during the period as compensation for the
51 work of collecting the tax.

1 (d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer,
 2 directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it
 3 will not be added to the selling price of the property or service sold or that if added it or any part thereof
 4 will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

5 (e) The tax commission may by rule provide that the amount collected by the retailer from the
 6 customer in reimbursement of the tax be displayed separately from the list price, the price advertised on
 7 the premises, the marked price, or other price on the sales slip or other proof of sale.

8 (f) The taxes imposed by this chapter shall apply to the sales, including sales of services, to
 9 contractors purchasing for use in the performance of contracts with the United States.

10
 11 SECTION 12. That Section 63-3621, Idaho Code, be, and the same is hereby amended to read as
 12 follows:

13
 14 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise tax is
 15 hereby imposed on the storage, use, or other consumption in this state of tangible personal property or
 16 services acquired on or after ~~October 1, 2012~~ July 1, 2012, for storage, use, or other consumption in this
 17 state at the rate of ~~six~~ five percent (65%) of the value of the property or service, and a recent sales price
 18 shall be presumptive evidence of the value of the property or service unless the property is wireless
 19 telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the
 20 value of the property or service.

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

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

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

37 (d) Every retailer engaged in business in this state or maintaining a place of business in this state
 38 shall register with the state tax commission and give the name and address of all agents operating in this
 39 state, the location of all distributions or sales houses or offices or other places of business in this state, and
 40 such other information as the state tax commission may require.

41 (e) For the purpose of the proper administration of this act and to prevent evasion of the use tax
 42 and the duty to collect the use tax, it shall be presumed that tangible personal property or services sold by
 43 any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden
 44 of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the
 45 purchaser a resale certificate to the effect that the property or service is purchased for resale or rental. It
 46 shall be presumed that sales made to a person who has completed a resale certificate for the seller's
 47 records are not taxable and the seller need not collect sales or use taxes unless the tangible personal
 48 property or service purchased is taxable to the purchaser as a matter of law in the particular instance
 49 claimed on the resale certificate.

1 A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of
2 sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption.
3 The resale certificate relieves the person selling the property or service from the burden of proof only if
4 taken from a person who is engaged in the business of selling or renting tangible personal property or
5 service and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not
6 engaged in business in this state, and who, at the time of purchasing the tangible personal property or
7 service, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of
8 purchase whether the property or service will be sold or will be used for some other purpose. Other than
9 as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the
10 seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so
11 documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller
12 so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to
13 collect tax or for making any report or disclosure of information required or permitted under this chapter.

14 The resale certificate shall bear the name and address of the purchaser, shall be signed by the
15 purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the
16 purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal
17 property or service sold by the purchaser in the regular course of business. The certificate shall be
18 substantially in such form as the state tax commission may prescribe.

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

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

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

27 (i) It shall be presumed that tangible personal property or service delivered outside this state to a
28 purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage,
29 use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to
30 the state tax commission that the property or service was not purchased for storage, use, or other
31 consumption in this state.

32 (j) When the tangible personal property or service subject to use tax has been subjected to a
33 general retail sales or use tax by another state of the United States in an amount equal to or greater than
34 the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject
35 to Idaho use tax. If the amount paid the other state was less, the property or service will be subject to use
36 tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this
37 subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or
38 trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a
39 general retail sales or use tax.

40 (k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor
41 vehicle which is registered or licensed under the laws of the state of his residence and is not used in this
42 state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12)
43 months, and which is not required to be registered or licensed under the laws of this state.

44 (l) The use tax herein imposed shall not apply to the use of household goods, personal effects and
45 personally owned vehicles or personally owned aircraft by a resident of this state, if such articles were
46 acquired by such person in another state while a resident of that state and primarily for use outside this
47 state and if such use was actual and substantial, but if an article was acquired less than three (3) months
48 prior to the time he entered this state, it will be presumed that the article was acquired for use in this state
49 and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident"
50 shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

1 (m) The use tax herein imposed shall not apply to the storage, use or other consumption of
2 tangible personal property or service which is or will be incorporated into real property and which has
3 been donated to and has become the property of:

4 (1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or

5 (2) The state of Idaho; or

6 (3) Any political subdivision of the state.

7 This exemption applies whether the tangible personal property or service is incorporated in real property
8 by the donee, a contractor or subcontractor of the donee, or any other person.

9
10 SECTION 13. That Section 63-3622, Idaho Code, be, and the same is hereby amended to read as
11 follows:

12
13 63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENALTIES. (a)
14 To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes
15 imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts
16 giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer,
17 an exemption or resale certificate.

18 (b) An exemption certificate shall show the purchaser's name, business name and address (if
19 any), address, and signature and the reason for and nature of the claimed exemption.

20 (c) A resale certificate shall be signed by and bear the name and address of the purchaser or his
21 agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-
22 state retailer, and shall indicate the general character of the tangible personal property or service sold or
23 rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the
24 burden of proof only if taken from a person who is engaged in the business of selling or renting tangible
25 personal property or service and who holds a permit provided for in this section, or who is a retailer not
26 engaged in business in this state, and who, at the time of purchasing the tangible personal property or
27 service, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of
28 purchase whether the property or service will be sold or will be used for some other purpose. If a
29 purchaser who gives a resale certificate makes any use of the property or service other than retention,
30 demonstration or display while holding it for sale or rent in the regular course of business, the use shall be
31 taxable to the purchaser as of the time the property or service is first used by him, and the sales price of
32 the property or service to him shall be deemed the measure of the tax.

33 (d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of
34 sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the
35 privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale
36 certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or
37 obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of
38 whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation
39 to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any
40 report or disclosure of information required or permitted under this chapter. A seller need not accept an
41 exemption or resale certificate that is not readable, legible or copyable.

42 (e) Any person who gives an exemption or resale certificate with the intention of evading
43 payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable
44 by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or
45 by both such fine and imprisonment.

46 (f) An exemption or resale certificate shall be substantially in such form as the state tax
47 commission may prescribe. The claim for the exemption may be a part of the documentation on a sales
48 invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the
49 purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must
50 sign the exemption claim, which shall be in addition to any other signature which the seller normally
51 requires on sales invoices, purchase orders, or other sales documentation.

1 (g) It shall be presumed that sales made to a person who has completed an exemption or resale
 2 certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless
 3 the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the
 4 particular instance claimed on the exemption certificate.

5
 6 SECTION 14. That Section 63-3622D, Idaho Code, be, and the same is 7 hereby amended to read
 7 as follows:
 8

9 63-3622D. PRODUCTION EXEMPTION. There are exempted from the taxes imposed by this
 10 chapter:

11 (a) The sale at retail, storage, use or other consumption in this state of:

12 (1) Tangible personal property and services which will enter into and become an ingredient or
 13 component part of tangible personal property manufactured, processed, mined, produced or
 14 fabricated for sale.

15 (2) Tangible personal property and services primarily and directly used or consumed in or during
 16 a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited
 17 to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such
 18 tangible personal property; provided that the use or consumption of such tangible personal
 19 property is necessary or essential to the performance of such operation.

20 (3) Chemicals, catalysts, and other materials which are used for the purpose of producing or
 21 inducing a chemical or physical change in the product or for removing impurities from the
 22 product or otherwise placing the product in a more marketable condition as part of an operation
 23 described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place
 24 systems in the food processing and food manufacturing industries.

25 (4) Safety equipment and supplies required to meet a safety standard of a state or federal agency
 26 when such safety equipment and supplies are used as part of an operation described in subsection
 27 (a)(2) of this section.

28 (5) Plants to be used as part of a farming operation.

29 (b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections
 30 (a)(1), (a)(2), (a)(3) and (a)(4) of this section are available only to a business or separately operated
 31 segment of a business which is primarily devoted to producing tangible personal property which that
 32 business will sell and which is intended for ultimate sale at retail within or without this state. A contractor
 33 providing services to a business entitled to an exemption under this section is not exempt as to any
 34 property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the
 35 property is exempt under section 63-3615(b), Idaho Code.

36 (c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall
 37 also be available to a business, or separately operated segment of a business, engaged in farming or
 38 mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or
 39 segment of a business is primarily devoted to producing tangible personal property which is intended for
 40 ultimate sale at retail within or without this state, without regard to the ownership of the product being
 41 produced.

42 (d) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall
 43 also be available to a business, or separately operated segment of a business, engaged in the business of
 44 processing materials, substances or commodities for use as fuel for the production of energy, whether as a
 45 subcontractor, contractor, contractee or subcontractee, without regard to the ownership of the materials,
 46 substances or commodities being processed and irrespective of whether the materials, substances or
 47 commodities being processed are intended for ultimate sale at retail within or without this state.

48 (e) As used in this section, the term "directly used or consumed in or during" a farming operation
 49 means the performance of a function reasonably necessary to the operation of the total farming business,
 50 including, the planting, growing, harvesting and initial storage of crops and other agricultural products
 51 and movement of crops and produce from the place of harvest to the place of initial storage. It includes

1 disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking
2 equipment.

3 (f) The exemptions allowed in this section do not include machinery, equipment, materials and
4 supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or
5 fabricating operations such as maintenance and janitorial equipment and supplies.

6 (g) Without regard to the use of such property, this section does not exempt:

7 (1) Hand tools with a unit purchase price not in excess of one hundred dollars (\$100). A hand tool
8 is an instrument used or worked by hand.

9 (2) Tangible personal property used in any activities other than the actual manufacturing,
10 processing, mining, farming or fabricating operations such as office equipment and supplies, and
11 equipment and supplies used in selling or distributing activities.

12 (3) Property used in transportation activities.

13 (4) Machinery, equipment, tools or other property used to make repairs.

14 This subsection does not include repair parts that become a component part of tangible property
15 exempt from tax under this section or lubricants, hydraulic oil, or coolants used in the operation
16 of tangible personal property exempt under this section.

17 (5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or
18 install tangible personal property which is:

19 (i) Not held for resale in the regular course of business; and

20 (ii) Owned by the manufacturer, processor, miner, farmer or fabricator;

21 provided, however, this subsection does not prevent exemption of machinery, equipment, tools or
22 other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

23 (6) Any improvement to real property or fixture thereto or any tangible personal property which
24 becomes or is intended to become a component of any real property or any improvement or
25 fixture thereto.

26 (7) Motor vehicles and aircraft.

27 (8) Tangible personal property used or consumed in processing, producing or fabricating tangible
28 personal property exempted from tax under this chapter in sections 63-3622F and 63-3622I, Idaho
29 Code.

30 (9) Tangible personal property described in section 63-3622HH, Idaho Code.

31 (h) Any tangible personal property exempt under this section which ceases to qualify for this
32 exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this
33 chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any
34 tangible personal property taxed under this chapter which later qualifies for this exemption shall not
35 entitle the owner of it to any claim for refund.

36
37 SECTION 15. That Section 63-3622LL, Idaho Code, be, and the same is hereby repealed.

38
39 SECTION 16. That Section 63-3623, Idaho Code, be, and the same is hereby amended to read as
40 follows:

41
42 63-3623. RETURNS AND PAYMENTS. (a) The taxes imposed by this act are due and payable
43 to the state tax commission monthly on or before the twentieth day of the succeeding month.

44 (b) All moneys collected or received by the state tax commission from the taxes, penalties,
45 interest and fees imposed by this act shall be deposited with the state treasurer to be credited by him to the
46 sales tax account created by this act.

47 (c) On or before the twentieth day of the month a return shall be filed with the state tax
48 commission in such form as the state tax commission may prescribe.

49 (d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the
50 use tax, a return shall be filed by every retailer engaged in business in this state and by every person
51 purchasing tangible personal property, the storage, use, or other consumption of which is subject to the

1 use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed
2 by the person required to file the return or by his duly authorized agent.

3 (e) For the purposes of the sales tax, the return shall show the total sales at retail subject to tax
4 under this act during the reporting period. For the purposes of the use tax, in case of a return filed by a
5 retailer, the return shall show the total sales price of the property sold by him, the storage, use, or
6 consumption of which property became subject to the use tax during the reporting period; in the case of a
7 return filed by a purchaser, the return shall show the total sales price of the property purchased by him,
8 the storage, use, or consumption of which became subject to the use tax during the reporting period.

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

11 (g) The person required to file the return shall mail or deliver the return together with a
12 remittance of any tax due to the state tax commission for the reporting period.

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

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

18 (j) The state tax commission for good cause may extend, for not to exceed one (1) month, the
19 time for making any return or paying any amount required to be paid under this act.

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

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

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

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

36 SECTION 17. That Section 63-3640, Idaho Code, be, and the same is hereby repealed.

37
38 SECTION 18. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the
39 addition thereto of a NEW SECTION, to be known and designated as Section 63-3642, Idaho Code, and
40 to read as follows:
41

42 63-3642. PLACE WHERE SALE OCCURS -- SOURCING. (1) The term "sourcing" means the
43 point at which a retail sale occurs. The retail sale of a product or service, excluding lease or rental, of a
44 product shall be sourced as follows:

45 (a) When the product or service is received by the purchaser at a business location of the seller,
46 the sale is sourced to that business location.

47 (b) When the product or service is not received by the purchaser at a business location of the
48 seller, the sale is sourced to the location where received by the purchaser, or the purchaser's donee,
49 designated as such by the purchaser, occurs, including the location indicated by instructions for delivery
50 to the purchaser, or donee, known to the seller.

1 (c) When subsection (1)(a) and (1)(b) of this section does not apply, the sale is sourced to the
2 location indicated by an address for the purchaser that is available from the business records of the seller
3 that are maintained in the ordinary course of the seller's business when use
4 of this address does not constitute bad faith.

5 (d) When subsection (1)(a), (1)(b) and (1)(c) of this section does not apply, the sale is sourced to
6 the location indicated by an address for the purchaser obtained during the consummation of the sale,
7 including the address of a purchaser's payment instrument, if no other address is available, when use of
8 this address does not constitute bad faith.

9 (e) When none of the previous provisions of subsection (1)(a), (1)(b), (1)(c) or (1)(d) of this
10 section apply, including the circumstance in which the seller is without sufficient information to apply the
11 previous provisions, then the location will be determined by the address from which tangible personal
12 property was shipped, from which the digital goods or the computer software delivered electronically was
13 first available for transmission by the seller, or from which the service was provided, disregarding for
14 these purposes any location that merely provided the digital transfer of the product or service sold.

15 (2) The lease or rental of tangible personal property, other than property identified in subsection
16 (3) or (4) of this section, shall be sourced as follows:

17 (a) For a lease or rental that requires recurring periodic payments, the first periodic payment is
18 sourced the same as a retail sale in accordance with the provisions of subsection (1) of this
19 section. Periodic payments made subsequent to the first payment are sourced to the primary
20 property location for each period covered by the payment. The primary property location shall be
21 as indicated by an address for the property provided by the lessee that is available to the lessor
22 from its records maintained in the ordinary course of business, when use of this address does not
23 constitute bad faith. The property location shall not be altered by intermittent use at different
24 locations, such as use of business property that accompanies employees on business trips and
25 service calls.

26 (b) For a lease or rental that does not require recurring periodic payments, the payment is sourced
27 the same as a retail sale in accordance with the provisions of subsection (1) of this section.

28 (3) The lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not qualify as
29 transportation equipment as defined in subsection (4) of this section, shall be sourced as follows:

30 (a) For a lease or rental that requires recurring periodic payments, each periodic payment is
31 sourced to the primary property location. The primary property location shall be as indicated by
32 an address for the property provided by the lessee that is available to the lessor from its records
33 maintained in the ordinary course of business, when use of this address does not constitute bad
34 faith. This location shall not be altered by intermittent use at different locations.

35 (b) For a lease or rental that does not require recurring periodic payments, the payment is sourced
36 the same as a retail sale in accordance with the provisions of subsection (1) of this section.

37 (4) The retail sale, including lease or rental, of transportation equipment shall be sourced the
38 same as a retail sale in accordance with the provisions of subsection (1) of this section, notwithstanding
39 the exclusion of lease in subsection (1) of this section. "Transportation equipment" means any of the
40 following:

41 (a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate
42 commerce.

43 (b) Trucks and truck tractors with a gross vehicle weight rating (GVWR) greater than twenty-six
44 thousand (26,000) pounds, trailers, semitrailers or passenger buses that are:

45 (i) Registered through the international registration plan; and

46 (ii) Operated under authority of a carrier authorized and certificated by the U.S.
47 department of transportation or another federal authority to engage in the carriage of
48 persons or property in interstate commerce.

49 (c) Aircraft that are operated by air carriers authorized and certificated by the U.S. department of
50 transportation or another federal or a foreign authority to engage in the carriage of persons or
51 property in interstate or foreign commerce.

1 (d) Containers designed for use on and component parts attached or secured on the items set forth
2 in subsection (4)(a) through (4)(c) of this section.

3 (5) Services performed and consumed at the same location in Idaho are sourced to that location.
4 Services performed in another state but consumed in Idaho will be sourced to the Idaho location at which
5 the consumption occurs. Services performed in Idaho but consumed in another state shall not be sourced
6 to Idaho.

7
8 SECTION 19. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the
9 addition thereto of a NEW SECTION, to be known and designated as Section 63-3643, Idaho Code, and
10 to read as follows:

11
12 63-3643. GENERAL SOURCING DEFINITIONS. For the purposes of subsection (1) of section
13 63-3642, Idaho Code, the terms "receive" and "receipt" mean:

14 (1) Taking possession of tangible personal property;

15 (2) Making first use of services; or

16 (3) Taking possession or making first use of digital goods, whichever comes first. The terms
17 "receive" and "receipt" do not include possession by a shipping company on behalf of the
18 purchaser.

19
20 SECTION 20. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the
21 addition thereto of a NEW SECTION, to be known and designated as Section 63-3644, Idaho Code, and
22 to read as follows:

23
24 63-3644. MULTIPLE POINTS OF USE. Notwithstanding the provisions of section 63-3642,
25 Idaho Code, a business purchaser that is not a holder of a direct pay permit that knows at the time of its
26 purchase of a digital good, computer software delivered electronically or a service that the digital good,
27 computer software delivered electronically or service will be concurrently available for use in more than
28 one (1) jurisdiction shall deliver to the seller in conjunction with its purchase a "multiple points of use" or
29 "MPU" exemption form disclosing this fact.

30 (1) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect,
31 pay or remit the applicable tax and the purchaser shall be obligated to collect, pay or remit the applicable
32 tax on a direct pay basis.

33 (2) A purchaser delivering the MPU exemption form may use any reasonable but consistent and
34 uniform method of apportionment that is supported by the purchaser's business records as they exist at the
35 time of the consummation of the sale.

36 (3) The MPU exemption form shall remain in effect for all future sales by the seller to the
37 purchaser, except as to the subsequent sale's specific apportionment that is governed by the provisions of
38 subsection (2) of this section and the facts existing at the time of the sale until it is revoked in writing.

39 (4) A holder of a direct pay permit shall not be required to deliver an MPU exemption form to the
40 seller. A direct pay permit holder shall follow the provisions of subsection (2) of this section in
41 apportioning the tax due on a digital good or a service that will be concurrently available for use in more
42 than one (1) jurisdiction.

43
44 SECTION 21. That Chapter 36, Title 63, Idaho Code, be, and the same is hereby amended by the
45 addition thereto of a NEW SECTION, to be known and designated as Section 63-3645, Idaho Code, and
46 to read as follows:

47
48 63-3645. CONTRACTS FOR SERVICES ENTERED INTO PRIOR TO JULY 1, 2013. (1)
49 Beginning July 1, 2013, and ending June 30, 2015, the sales of services to improve real property shall be
50 exempt if the contract to improve real property is in writing and entered into prior to July 1, 2012.

1 Contractors purchasing materials for such a contract shall be deemed the consumers of those materials
2 and shall pay sales or use tax on the purchase of such materials.

3 (2) Beginning July 1, 2012, and ending June 30, 2014, purchasers of services other than
4 improvements to real property may claim a refund of the sales tax actually paid for such services if the
5 sales of the services would have been exempt prior to July 1, 2013. To qualify for a refund the agreement
6 to purchase such services must be in writing. The service must be one that is either:

7 (a) Continuous in nature and started prior to July 1, 2013, but not completed until after that date;

8 or

9 (b) Agreed to commence after July 1, 2013.

10 (c) Agreements that are not continuous in nature will not qualify for a refund of tax. For instance,
11 if a purchaser contracts for a service to be performed once a week for a year and the service is one
12 that is started and completed within one (1) day, payments for such service will not be subject to
13 refund if they occur after July 1, 2013.
14

15 SECTION 22. SEVERABILITY. The provisions of this act are hereby declared to be severable
16 and if any provision of this act or the application of such provision to any person or circumstance is
17 declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of
18 this act.

19
20 SECTION 23. This act shall be in full force and effect on and after July 1, 2013.
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