

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 530

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO PROVIDE THAT THE USE TAX SHALL NOT APPLY TO CERTAIN DONATIONS OF FOOD OR BEVERAGES, OR BOTH, TO CERTAIN INDIVIDUALS OR ENTITIES; AND DECLARING AN EMERGENCY.

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

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

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

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

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

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

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location 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  
2   may require.

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

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

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

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

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

1 (i) 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 (j) When the tangible personal property subject to use tax has been sub-  
8 jected 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 the other state was less, the property will  
12 be subject to use tax to the extent that the Idaho tax exceeds the tax paid  
13 to the other state. For the purposes of this subsection, a registration cer-  
14 tificate or title issued by another state or subdivision thereof for a vehi-  
15 cle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be  
16 sufficient evidence of payment of a general retail sales or use tax.

17 (k) The use tax herein imposed shall not apply to the use by a nonres-  
18 ident of this state of a motor vehicle which is registered or licensed un-  
19 der the laws of the state of his residence and is not used in this state more  
20 than a cumulative period of time totaling ninety (90) days in any consecutive  
21 twelve (12) months, and which is not required to be registered or licensed  
22 under the laws of this state. The use tax herein shall also not apply to any  
23 use of a motor vehicle which is registered or licensed under the laws of the  
24 state of residence of a nonresident student while such nonresident student  
25 is enrolled as a full-time student in an institution of postsecondary educa-  
26 tion that is both physically located in Idaho and recognized as accredited by  
27 the state board of education.

28 (l) The use tax herein imposed shall not apply to the use of household  
29 goods, personal effects and personally owned vehicles or personally owned  
30 aircraft by a resident of this state if such articles were acquired by such  
31 person in another state while a resident of that state and primarily for use  
32 outside this state and if such use was actual and substantial, but if an arti-  
33 cle was acquired less than three (3) months prior to the time he entered this  
34 state, it will be presumed that the article was acquired for use in this state  
35 and that its use outside this state was not actual and substantial. The use  
36 tax herein imposed shall not apply to the use of household goods, personal  
37 effects and personally owned vehicles or personally owned aircraft by ac-  
38 tive duty military personnel temporarily assigned in this state and spouses  
39 who accompany them if such articles were acquired prior to receipt of orders  
40 to transfer to Idaho or three (3) months prior to moving to Idaho, whichever  
41 time period is shorter. For purposes of this subsection, "resident" shall be  
42 as defined in section 63-3013 or 63-3013A, Idaho Code.

43 (m) The use tax herein imposed shall not apply to the storage, use or  
44 other consumption of tangible personal property which is or will be incor-  
45 porated into real property and which has been donated to and has become the  
46 property of:

47 (1) A nonprofit organization as defined in section 63-36220, Idaho  
48 Code; or

49 (2) The state of Idaho; or

50 (3) Any political subdivision of the state.

1 This exemption applies whether the tangible personal property is incorpo-  
2 rated in real property by the donee, a contractor or subcontractor of the  
3 donee, or any other person.

4 (n) The use tax herein imposed shall not apply to tastings of food and  
5 beverages including, but not limited to, wine and beer. For the purposes of  
6 this subsection, a tasting of wine and beer shall be defined as the maximum  
7 serving allowed by state or federal laws for such occasions provided to a po-  
8 tential customer, at no charge, at a location where like or similar beverages  
9 are sold. For nonalcoholic beverages and food, a tasting shall be defined as  
10 a sample from a unit available for sale at the tasting location.

11 (o) The use tax herein imposed shall not apply to donations of food or  
12 beverages, or both, to individuals or nonprofit organizations. For the pur-  
13 poses of this section, "nonprofit organization" means those nonprofit en-  
14 tities currently registered with the secretary of state pursuant to section  
15 30-3-2, Idaho Code.

16 SECTION 2. An emergency existing therefor, which emergency is hereby  
17 declared to exist, this act shall be in full force and effect on and after its  
18 passage and approval.