

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 449

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO SALES TAX; AMENDING SECTION 63-3622K, IDAHO CODE, TO ADD SALES
2 OF FOOD PRODUCTS BY CERTAIN GIRL SCOUT OR BOY SCOUT ORGANIZATIONS TO THE
3 DEFINITION OF "OCCASIONAL SALES" EXEMPT FROM SALES TAX AND TO MAKE TECH-
4 NICAL CORRECTIONS; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE
5 APPLICATION.
6

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

8 SECTION 1. That Section 63-3622K, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 63-3622K. OCCASIONAL SALES. (a) There are exempted from the taxes im-
11 posed by this chapter occasional sales of tangible personal property.

12 (b) As used in this section, the term "occasional sales" means:

13 (1) A sale of property not held or used by a person in the course of an
14 activity for which he is required to hold a seller's permit, provided
15 such sale is not one (1) of a series of sales sufficient in number or
16 of such a nature as to constitute the seller a "retailer" under section
17 63-3610(c), Idaho Code. The definition of "occasional sales" provided
18 in this subsection does not apply to use tax in regard to tangible per-
19 sonal property used to improve real property when such property is ob-
20 tained, directly or indirectly, from a person in the business of making
21 like or similar improvements to real property.

22 (2) Any transfer of all or substantially all of the property held or
23 used by a person in a business requiring a seller's permit when, after
24 such transfer, the real or ultimate ownership of such property is sub-
25 stantially similar to that which existed before such transfer. For the
26 purpose of this section, stockholders, bondholders, partners, or other
27 persons holding an interest in a corporation or other entity are re-
28 garded as having a "real or ultimate ownership" of the property of such
29 corporation or other entity.

30 (3) A transfer of capital assets to or by a business when the transfer
31 is accomplished through an adjustment of the beneficial interest of the
32 business and the transferor has paid sales or use taxes pursuant to sec-
33 tion 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental
34 to:

35 (i) A division of joint venture, partnership, or limited liabil-
36 ity company assets among the members or partners in exchange for a
37 proportional reduction of the transferee's interest in the joint
38 venture, partnership, or limited liability company. For the pur-
39 poses of this section, the term "limited liability company" means
40 a business organization as defined in chapter 6, title 53, Idaho
41 Code, or as defined in section 30-6-102, Idaho Code, as appropri-
42 ate pursuant to section 30-6-1104, Idaho Code;

1 (ii) The formation of a partnership, joint venture, or limited
2 liability company by the transfer of assets to the partnership,
3 joint venture, or limited liability company or transfers to a
4 partnership, joint venture, or limited liability company in ex-
5 change for proportionate interests in the partnership, joint
6 venture, or limited liability company;

7 (iii) The formation of a corporation by the owners of a business
8 and the transfer of their business assets to the corporation in ex-
9 change for stock in proportion to assets contributed;

10 (iv) The transfer of assets of shareholders in the formation or
11 dissolution of a corporation;

12 (v) The transfer of capital assets by a corporation to its stock-
13 holders in exchange for surrender of capital stock;

14 (vi) The transfer of assets from a parent corporation to a sub-
15 subsidiary corporation which is owned at least eighty percent (80%)
16 by the parent corporation, which transfer is solely in exchange
17 for stock or securities of the subsidiary corporation;

18 (vii) The transfer of assets from a subsidiary corporation which
19 is owned at least eighty percent (80%) by the parent corporation to
20 a parent corporation or another subsidiary which is owned at least
21 eighty percent (80%) by the parent corporation, which transfer is
22 solely in exchange for stock or securities of the parent corpora-
23 tion or the subsidiary which received the assets.

24 (4) The sale, lease or rental of a capital asset in substantially
25 the same form as acquired by the transferor and on which the initial
26 transferor has paid sales or use taxes pursuant to section 63-3619 or
27 63-3621, Idaho Code, when the owners of all of the outstanding stock,
28 equity or interest of the transferor are the same as the transferee or
29 are members of the same family within the second degree of consanguinity
30 or affinity.

31 (5) The sale of substantially all of the operating assets of a business
32 or of a separate division, branch, or identifiable segment to a buyer
33 who continues operation of the business. For the purpose of this sub-
34 section, a "separate division, branch, or identifiable segment" shall
35 be deemed to exist if, prior to its sale, the income and expense attrib-
36 utable to such "separate division, branch, or identifiable segment"
37 could be separately ascertained from the books of accounts and records.

38 (6) Sales by persons who are not defined as "retailers" in section
39 63-3610, Idaho Code.

40 (7) Sales of animals by any 4-H club or FFA club held in conjunction with
41 a fair or the western Idaho spring lamb sale.

42 (8) The sale or purchase of tangible personal property at home yard
43 sales; provided however, that no more than two (2) such home yard sales
44 per individual calendar year shall be exempt.

45 (9) Sales of food products by an Idaho chapter of the Girl Scouts of
46 the United States of America or by an Idaho chapter of the Boy Scouts of
47 America, or by chapters of either organization that combine an Idaho re-
48 gion with a region of a border state.

49 (c) As used in this section, the term "occasional sales," when applied
50 to the sale of a motor vehicle, means only:

1 (1) Sales of motor vehicles between members of a family related within
2 the second degree of consanguinity, unless a sales or use tax was not im-
3 posed on the sale of that motor vehicle at the time of purchase, in which
4 situation the sale is taxable.

5 (2) Sales of motor vehicles that fall within the scope of the transac-
6 tions detailed in subsection (b) (2) through ~~(b)~~(5) of this section.

7 (d) The exemption provided by subsection (b) (1), ~~(b)~~(4), ~~(b)~~(6) or
8 ~~(b)~~(8) of this section shall not apply to the sale, purchase or use of air-
9 craft, as defined in section 21-201, Idaho Code, nor shall it apply to the
10 sale, purchase or use of boats or vessels, as defined in section 67-7003,
11 Idaho Code, nor shall it apply to the sale, purchase or use of snowmobiles,
12 recreational vehicles or off-highway motorbikes, as defined in section
13 63-3622HH, Idaho Code.

14 SECTION 2. An emergency existing therefor, which emergency is hereby
15 declared to exist, this act shall be in full force and effect on and after its
16 passage and approval, and retroactively to January 1, 2016.