

## STATEMENT OF PURPOSE

### RS26123

RS26123 This amendment to Title 63, Chapter 36, Idaho Code revises the section 63-3611 by expanding the definition of a "retailer engaged in business in this state". This bill establishes that a retailer, selling tangible personal property to Idaho customers, is engaged in business in Idaho, if the out-of-state retailer generates sales of \$10,000 or more through affiliated Idaho persons. It also provides a rebuttable presumption for the retailer. The rebuttable presumption will allow a retailer, so identified, to apply for relief by presenting their rebuttable facts to Tax Commission.

Since 1992, when the Supreme Court decision in Quill vs. North Dakota defined nexus, retailers have embraced technologies that removed the burdens of compliance that was identified in 1992. In 2009 the U. S. Supreme Court upheld a New York Supreme Court decision in Amazon vs. New York State Department of Taxation and Finance. The New York law required out of state retailers to collect and remit sales/use tax on sales to New York customers, if there was an affiliated nexus to New York through sales agreements and other business relationships. On February 22, 2016 in a Colorado case Direct Marketing Association vs. Barbara Brohl (Colorado) the 10th U.S. Court of Appeals upheld a Colorado Law. The case was later denied an appeal to the U.S. Supreme Court.

### FISCAL NOTE

There are no additional appropriation requirements of the Tax Commission to implement these changes. Retailers routinely apply for sales tax permits and remit sales/use taxes on-line. There is an expected increase in volume of permits and collections within the existing business model of the Tax Commission.

There are various estimates as to the total amount of sales to out-of-state retailers, taxes on which go uncollected by the retailer and unreported by the taxpayer. While, it will not be possible to provide a reliable estimate of the revenues this bill will produce, it may be possible to monitor collections from new out-of-state retailers.

E-Commerce now accounts for approximately 10% of retail sales. Idaho Taxable Retail Sales were estimated at \$27.4 billion in 2017. A 9% market share of E-Commerce market would be \$2.5 Billion. Sales Tax on 6% of that amount would be \$148 million. Much of that is being collected and remitted by brick and mortar retailers. Amazon began collecting and remitting Idaho sales taxes on their direct sales in 2017. This did not include the retailers they service through their marketplace. If 15-25% of all Idaho E-Retail is not being collected or remitted there may be in the range of \$22 - \$37 million of e-commerce sales tax impacted by this amendment.

It is recommended that additional revenues from this amendment be monitored by the Tax Commission and that no appropriation in Fiscal 2018 rely on the anticipated revenues. Any increases in sales or use taxes would impact the General Fund and the revenue sharing with local cities and counties.

#### Contact:

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**DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).**