

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 210

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO SALES AND USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO
2 REVISE PROVISIONS REGARDING REQUIREMENTS FOR A USE TAX EXEMPTION FOR
3 NONRESIDENTS PURCHASING VEHICLES IN IDAHO AND TO MAKE TECHNICAL CORREC-
4 TIONS; AND AMENDING SECTION 63-3622R, IDAHO CODE, TO REVISE PROVISIONS
5 REGARDING REQUIREMENTS FOR A SALES AND USE TAX EXEMPTION FOR CERTAIN
6 NONRESIDENT BUSINESS ENTITIES PURCHASING VEHICLES IN IDAHO AND TO MAKE
7 TECHNICAL CORRECTIONS.
8

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

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

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

20 (a2) Every person storing, using, or otherwise consuming, in this
21 state, tangible personal property is liable for the tax. His liability is
22 not extinguished until the tax has been paid to this state except that a
23 receipt from a retailer maintaining a place of business in this state or
24 engaged in business in this state given to the purchaser is sufficient to
25 relieve the purchaser from further liability for the tax to which the receipt
26 refers. A retailer shall not be considered to have stored, used, or con-
27 sumed wireless telecommunications equipment by virtue of giving, selling,
28 or otherwise transferring such equipment at a discount as an inducement to a
29 consumer to commence or continue a contract for telecommunications service.

30 (b3) Every retailer engaged in business in this state, and making sales
31 of tangible personal property for the storage, use, or other consumption in
32 this state, not exempted under section 63-3622, Idaho Code, shall, at the
33 time of making the sales or, if storage, use, or other consumption of the tan-
34 gible personal property is not then taxable hereunder, at the time the stor-
35 age, use, or other consumption becomes taxable, collect the tax from the pur-
36 chaser and give to the purchaser a receipt therefor in the manner and form
37 prescribed by the state tax commission.

38 (e4) The provisions of this section shall not apply when the retailer
39 pays sales tax on the transaction and collects reimbursement for such sales
40 tax from the customer.

41 (d5) Every retailer engaged in business in this state or maintaining a
42 place of business in this state shall register with the state tax commission

1 and give the name and address of all agents operating in this state the loca-
2 tion of all distributions or sales houses or offices or other places of busi-
3 ness in this state and such other information as the state tax commission may
4 require.

5 (e6) For the purpose of the proper administration of this act and to
6 prevent evasion of the use tax and the duty to collect the use tax, it shall
7 be presumed that tangible personal property sold by any person for delivery
8 in this state is sold for storage, use, or other consumption in this state.
9 The burden of proving the sale is tax-exempt is upon the person who makes the
10 sale unless he obtains from the purchaser a resale certificate to the effect
11 that the property is purchased for resale or rental. It shall be presumed
12 that sales made to a person who has completed a resale certificate for the
13 seller's records are not taxable and the seller need not collect sales or use
14 taxes unless the tangible personal property purchased is taxable to the pur-
15 chaser as a matter of law in the particular instance claimed on the resale
16 certificate.

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

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

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

47 (g7) Any person violating any provision of this section is guilty of
48 a misdemeanor and punishable by a fine not in excess of one hundred dollars
49 (\$100), and each violation shall constitute a separate offense.

1 (~~8~~) It shall be presumed that tangible personal property shipped or
2 brought to this state by the purchaser was purchased from a retailer, for
3 storage, use, or other consumption in this state.

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

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

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

36 (~~12~~) The use tax ~~herein~~ imposed by this section shall not apply to the
37 use of household goods, personal effects and personally owned vehicles or
38 personally owned aircraft by a resident of this state if such articles were
39 acquired by such person in another state while a resident of that state and
40 primarily for use outside this state and if such use was actual and substan-
41 tial, but if an article was acquired less than three (3) months prior to the
42 time he entered this state, it will be presumed that the article was acquired
43 for use in this state and that its use outside this state was not actual and
44 substantial. The use tax ~~herein~~ imposed by this section shall not apply to
45 the use of household goods, personal effects, and personally owned vehicles
46 or personally owned aircraft by active duty military personnel temporarily
47 assigned in this state and spouses who accompany them if such articles were
48 acquired prior to receipt of orders to transfer to Idaho or three (3) months
49 prior to moving to Idaho, whichever time period is shorter. For purposes

1 of this subsection, "resident" shall be as defined in section 63-3013 or
2 63-3013A, Idaho Code.

3 ~~(m13)~~ (a) The use tax ~~herein~~ imposed by this section shall not apply to
4 the storage, use, or other consumption of tangible personal property
5 ~~which that~~ is or will be incorporated into real property and ~~which~~ has
6 been donated to and has become the property of:

7 (1i) A nonprofit organization as defined in section 63-36220,
8 Idaho Code; ~~or~~

9 (2ii) The state of Idaho; or

10 (3iii) Any political subdivision of the state.

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

14 ~~(n14)~~ The use tax ~~herein~~ imposed by this section shall not apply to
15 tastings of food and beverages, including, but not limited to, wine and
16 beer. For the purposes of this subsection, a tasting of wine and beer shall
17 be defined as the maximum serving allowed by state or federal laws for such
18 occasions provided to a potential customer, at no charge, at a location where
19 like or similar beverages are sold. For nonalcoholic beverages and food, a
20 tasting shall be defined as a sample from a unit available for sale at the
21 tasting location.

22 ~~(o15)~~ The use tax ~~herein~~ imposed by this section shall not apply to do-
23 nations of food or beverages, or both, to individuals or nonprofit organi-
24 zations. For the purposes of this section, "nonprofit organization" means
25 those nonprofit entities currently registered with the secretary of state
26 pursuant to section 30-30-102, Idaho Code.

27 ~~(p16)~~ The use tax ~~herein~~ imposed by this section shall not apply to a
28 retailer supplying prepared food or beverages free of charge to its employee
29 when that retailer sells prepared food or beverages in its normal course of
30 business.

31 SECTION 2. That Section 63-3622R, Idaho Code, be, and the same is hereby
32 amended to read as follows:

33 63-3622R. MOTOR VEHICLES, USED MANUFACTURED HOMES, VESSELS, ALL-TER-
34 RAIN VEHICLES, TRAILERS, UTILITY TYPE VEHICLES, SPECIALTY OFF-HIGHWAY VEHI-
35 CLES, OFF-ROAD MOTORCYCLES, SNOWMOBILES AND GLIDER KITS. There are exempted
36 from the taxes imposed by this chapter:

37 (a) Sales to nonresidents of motor vehicles, trailers, vessels,
38 all-terrain vehicles (ATVs), utility type vehicles (UTVs), specialty
39 off-highway vehicles (SOHVs), motorcycles intended for off-road use and
40 snowmobiles, for use outside of this state, even though delivery be made
41 within this state, but only when:

42 (1) The motor vehicles, vessels, ATVs, UTVs, SOHVs, motorcycles in-
43 tended for off-road use, snowmobiles or trailers will be taken from the
44 point of delivery in this state directly to a point outside this state;
45 and

46 (2) The motor vehicles, vessels, ATVs, UTVs, SOHVs, motorcycles in-
47 tended for off-road use, snowmobiles and trailers will be registered
48 immediately under the laws of another state, will be titled in another
49 state if required to be titled in that state, will not be used in this

1 state more than ninety (90) days in any twelve (12) month period, and
2 will not be required to be titled under the laws of this state. If the
3 purchaser is a business entity, it must not have been formed under the
4 laws of the state of Idaho in order to qualify for the exemption provided
5 in this section.

6 (3) For the purpose of this subsection, the terms "all-terrain vehicle"
7 or "ATV," "utility type vehicle" or "UTV," and "specialty off-highway
8 vehicle" or "SOHV" mean all-terrain vehicle or ATV, utility type vehi-
9 cle or UTV, and specialty off-highway vehicle or SOHV as defined in sec-
10 tion 67-7101, Idaho Code.

11 (4) For the purpose of this section, the term "vessel" means any boat
12 intended to carry one (1) or more persons upon the water ~~which~~ that is
13 either:

14 (i) Sold together with a motor; or

15 (ii) Eleven (11) feet in length or more, but shall not include
16 canoes, kayaks, paddleboards, inflatable boats or similar water-
17 craft, unless such canoes, kayaks, paddleboards, inflatable boats
18 or similar watercraft are sold together with a motor.

19 (b) Sale of used manufactured homes, whether or not such used manufac-
20 tured homes are sold for use outside this state, and whether or not such used
21 manufactured homes are sold by a dealer. Every manufactured home sale after
22 its sale as a "new manufactured home," as defined in section 63-3606, Idaho
23 Code, is a sale as a used manufactured home.

24 (c) Sale or lease of motor vehicles with a maximum gross registered
25 weight over twenty-six thousand (26,000) pounds, which shall be immediately
26 registered under the international registration plan, whether or not base
27 plated in Idaho, and the sale or lease of trailers ~~which~~ that are part of a
28 fleet of vehicles registered under the international registration plan when
29 such vehicles and trailers are substantially used in interstate commerce.
30 If such a motor vehicle or trailer is not substantially used in interstate
31 commerce during any four (4) fiscal year quarters beginning July 1 and ending
32 June 30 of each year under the international registration plan, it shall be
33 deemed used in Idaho and subject to the use tax under section 63-3621, Idaho
34 Code. For the purpose of this subsection, "substantially used in interstate
35 commerce" means that the vehicles or trailers will be part of a fleet with a
36 minimum of ten percent (10%) of the miles operated by the fleet accrued out-
37 side of Idaho in any four (4) fiscal year quarters beginning July 1 and ending
38 June 30 of each year under the international registration plan.

39 (d) The sale or purchase of a glider kit when the glider kit will be used
40 to assemble a glider kit vehicle as defined in section 49-123, Idaho Code,
41 which will be immediately registered under a plan defined in subsection (c)
42 of this section, provided that if the glider kit vehicle is not substantially
43 used in interstate commerce as defined in subsection (c) of this section dur-
44 ing any registration period, it shall be subject to the use tax under section
45 63-3621, Idaho Code.

46 (e) The use or other consumption of a motor vehicle temporarily donated
47 to a driver's education program sponsored by a nonprofit educational insti-
48 tution as defined in section 63-36220, Idaho Code.