

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 578

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3611, IDAHO CODE, TO  
REVISE THE DEFINITION OF "RETAILER ENGAGED IN BUSINESS IN THIS STATE."

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

SECTION 1. That Section 63-3611, Idaho Code, be, and the same is hereby  
amended to read as follows:

63-3611. RETAILER ENGAGED IN BUSINESS IN THIS STATE. "Retailer engaged in business in this state" as used in this chapter means any retailer who:

(1) Engages in recurring solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state; and

(2) Has sufficient contact with this state, in accordance with the constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to customers in this state.

(3) The term includes any of the following:

(a) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business or maintaining a stock of goods.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing or the taking of orders for any tangible personal property.

(c) Any retailer, with respect to a lease or rental, deriving rentals from a lease or rental of tangible personal property situated in this state.

(d) Any retailer engaging in any activity in connection with servicing or installing tangible personal property in this state.

(e) Any retailer with substantial nexus in this state within the meaning of section 63-3615A, Idaho Code.

(f) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under the provisions of this section.

(g) (i) Any retailer that has an agreement, directly or indirectly, with one (1) or more persons engaged in business in this state pursuant to this section under which, for a commission or other consideration, the persons refer potential purchasers to the retailer directly, whether by a link on an internet website, written or oral presentation, or otherwise; and

1           (ii) The cumulative gross receipts from sales by the retailer  
2 to purchasers who are referred by all retailers engaged in busi-  
3 ness in this state pursuant to this section with such an agreement  
4 are greater than ten thousand dollars (\$10,000) during the im-  
5 mediately preceding twelve (12) months. For purposes of this  
6 paragraph, gross receipts means receipts from sales to customers  
7 located in this state who were referred to the retailer by persons  
8 in this state with such an agreement with the retailer.

9           (iii) For purposes of this paragraph, a retailer may rebut the  
10 presumption that it is soliciting sales in Idaho through persons  
11 in this state with whom it has an agreement as described in para-  
12 graph (g) (i) of this subsection. For purposes of administering  
13 such rebuttal, the state tax commission will deem the presumption  
14 rebutted if the retailer is able to establish that no persons as  
15 described in paragraph (g) (i) of this subsection engaged in any  
16 solicitation in this state on behalf of the retailer that would  
17 satisfy the nexus requirement of the United States constitution  
18 during the twelve (12) month period in question. The state tax  
19 commission may promulgate rules to administer the provisions of  
20 this subsection.