

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 171

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO SALES TAX; AMENDING SECTION 63-3622, IDAHO CODE, TO REVISE PROVISIONS REGARDING SALES TAX EXEMPTION AND RESALE CERTIFICATES.

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

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

63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENALTIES. (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate, in which case the purchaser shall bear the burden of establishing the facts giving rise to the exemption.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. ~~A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.~~ If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so re-

1 lieved of the obligation to collect tax is also relieved of any liability to
2 the purchaser for failure to collect tax or for making any report or disclo-
3 sure of information required or permitted under this chapter. The purchaser
4 providing an exemption or resale certificate to a seller shall bear all re-
5 sponsibility and liability for any subsequent audit of the transaction and
6 the seller shall be held harmless. A seller need not accept an exemption or
7 resale certificate that is not readable, legible or copyable.

8 (e) Any person who gives an exemption or resale certificate with the in-
9 tention of evading payment of the amount of the tax applicable to the trans-
10 action is guilty of a misdemeanor and punishable by a fine not exceeding one
11 thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or
12 by both such fine and imprisonment.

13 (f) An exemption or resale certificate shall be substantially in such
14 form as the state tax commission may prescribe. The claim for the exemp-
15 tion may be a part of the documentation on a sales invoice, purchase order, or
16 other documentation retained by the retailer with regard to the sale. Unless
17 the purchaser has an exemption or resale certificate on file with the seller,
18 the purchaser or his agent must sign the exemption claim, which shall be in
19 addition to any other signature which the seller normally requires on sales
20 invoices, purchase orders, or other sales documentation.

21 (g) It shall be presumed that sales made to a person who has completed an
22 exemption or resale certificate for the seller's records are not taxable and
23 the seller need not collect sales or use taxes unless the tangible personal
24 property or services purchased are taxable to the purchaser as a matter of
25 law in the particular instance claimed on the exemption certificate.