

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 493

BY NICHOLS

AN ACT

1 RELATING TO SALES AND USE TAX; AMENDING SECTION 63-3619, IDAHO CODE, TO  
2 REVISE PROVISIONS REGARDING THE SALES TAX; AMENDING SECTION 63-3621,  
3 IDAHO CODE, TO REVISE PROVISIONS REGARDING THE USE TAX; AND DECLARING AN  
4 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
5

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

7 SECTION 1. That Section 63-3619, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 63-3619. IMPOSITION AND RATE OF THE SALES TAX. An excise tax is hereby  
10 imposed upon each sale at retail at the rate of ~~six~~ five percent (65%) of the  
11 sales price of all retail sales subject to taxation under this chapter and  
12 such amount shall be computed monthly on all sales at retail within the pre-  
13 ceding month.

14 (a) The tax shall apply to, be computed on, and collected for all  
15 credit, installment, conditional or similar sales at the time of the sale or,  
16 in the case of rentals, at the time the rental is charged.

17 (b) The tax hereby imposed shall be collected by the retailer from the  
18 consumer.

19 (c) The state tax commission shall provide schedules for collection of  
20 the tax on sales which involve a fraction of a dollar. The retailer shall  
21 calculate the tax upon the entire amount of the purchases of the consumer  
22 made at a particular time and not separately upon each item purchased. The  
23 retailer may retain any amount collected under the bracket system prescribed  
24 which is in excess of the amount of tax for which he is liable to the state  
25 during the period as compensation for the work of collecting the tax.

26 (d) It is unlawful for any retailer to advertise or hold out or state to  
27 the public or to any customer, directly or indirectly, that the tax or any  
28 part thereof will be assumed or absorbed by the retailer or that it will not  
29 be added to the selling price of the property sold or that if added it or any  
30 part thereof will be refunded. Any person violating any provision of this  
31 section is guilty of a misdemeanor.

32 (e) The tax commission may by rule provide that the amount collected by  
33 the retailer from the customer in reimbursement of the tax be displayed sepa-  
34 rately from the list price, the price advertised on the premises, the marked  
35 price, or other price on the sales slip or other proof of sale.

36 (f) The taxes imposed by this chapter shall apply to the sales to con-  
37 tractors purchasing for use in the performance of contracts with the United  
38 States.

39 SECTION 2. That Section 63-3621, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

1           63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. (1) An ex-  
2 cise tax is hereby imposed on the storage, use, or other consumption in this  
3 state of tangible personal property acquired on or after October 1, 2006,  
4 for storage, use, or other consumption in this state at the rate of ~~six~~ five  
5 percent (65%) of the value of the property, and a recent sales price shall  
6 be presumptive evidence of the value of the property unless the property is  
7 wireless telecommunications equipment, in which case a recent sales price  
8 shall be conclusive evidence of the value of the property.

9           (2) Every person storing, using, or otherwise consuming, in this state,  
10 tangible personal property is liable for the tax. His liability is not ex-  
11 tinguished until the tax has been paid to this state except that a receipt  
12 from a retailer maintaining a place of business in this state or engaged in  
13 business in this state given to the purchaser is sufficient to relieve the  
14 purchaser from further liability for the tax to which the receipt refers.  
15 A retailer shall not be considered to have stored, used, or consumed wire-  
16 less telecommunications equipment by virtue of giving, selling, or other-  
17 wise transferring such equipment at a discount as an inducement to a consumer  
18 to commence or continue a contract for telecommunications service.

19           (3) Every retailer engaged in business in this state and making sales  
20 of tangible personal property for the storage, use, or other consumption in  
21 this state, not exempted under section 63-3622, Idaho Code, shall, at the  
22 time of making the sales or, if storage, use, or other consumption of the tan-  
23 gible personal property is not then taxable hereunder, at the time the stor-  
24 age, use, or other consumption becomes taxable, collect the tax from the pur-  
25 chaser and give to the purchaser a receipt therefor in the manner and form  
26 prescribed by the state tax commission.

27           (4) The provisions of this section shall not apply when the retailer  
28 pays sales tax on the transaction and collects reimbursement for such sales  
29 tax from the customer.

30           (5) Every retailer engaged in business in this state or maintaining a  
31 place of business in this state shall register with the state tax commission  
32 and give the name and address of all agents operating in this state the loca-  
33 tion of all distributions or sales houses or offices or other places of busi-  
34 ness in this state and such other information as the state tax commission may  
35 require.

36           (6) For the purpose of the proper administration of this act and to pre-  
37 vent evasion of the use tax and the duty to collect the use tax, it shall be  
38 presumed that tangible personal property sold by any person for delivery in  
39 this state is sold for storage, use, or other consumption in this state. The  
40 burden of proving the sale is tax-exempt is upon the person who makes the  
41 sale unless he obtains from the purchaser a resale certificate to the ef-  
42 fect that the property is purchased for resale or rental. It shall be pre-  
43 sumed that sales made to a person who has completed a resale certificate for  
44 the seller's records are not taxable and the seller need not collect sales or  
45 use taxes unless the tangible personal property purchased is taxable to the  
46 purchaser as a matter of law in the particular instance claimed on the resale  
47 certificate.

48           (a) A seller may accept a resale certificate from a purchaser prior to  
49 the time of sale, at the time of sale, or at any reasonable time after the  
50 sale when necessary to establish the privilege of the exemption. The

1 resale certificate relieves the person selling the property from the  
2 burden of proof only if taken from a person who is engaged in the busi-  
3 ness of selling or renting tangible personal property and who holds the  
4 permit provided for by section 63-3620, Idaho Code, or who is a retailer  
5 not engaged in business in this state and who, at the time of purchasing  
6 the tangible personal property, intends to sell or rent it in the regu-  
7 lar course of business or is unable to ascertain at the time of purchase  
8 whether the property will be sold or will be used for some other pur-  
9 pose. Other than as provided elsewhere in this section, when a resale  
10 certificate, properly executed, is presented to the seller, the seller  
11 has no duty or obligation to collect sales or use taxes in regard to any  
12 sales transaction so documented, regardless of whether the purchaser  
13 properly or improperly claimed an exemption. A seller so relieved of  
14 the obligation to collect tax is also relieved of any liability to the  
15 purchaser for failure to collect tax or for making any report or disclo-  
16 sure of information required or permitted under this chapter.

17 (b) The resale certificate shall bear the name and address of the pur-  
18 chaser, shall be signed by the purchaser or his agent, shall indicate  
19 the number of the permit issued to the purchaser or that the purchaser  
20 is an out-of-state retailer, and shall indicate the general character  
21 of the tangible personal property sold by the purchaser in the regular  
22 course of business. The certificate shall be substantially in such form  
23 as the state tax commission may prescribe.

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

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

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

34 (9) It shall be presumed that tangible personal property delivered out-  
35 side this state to a purchaser known by the retailer to be a resident of this  
36 state was purchased from a retailer for storage, use, or other consumption in  
37 this state. This presumption may be controverted by evidence satisfactory  
38 to the state tax commission that the property was not purchased for storage,  
39 use, or other consumption in this state.

40 (10) When the tangible personal property subject to use tax has been  
41 subjected to a general retail sales or use tax by another state of the United  
42 States in an amount equal to or greater than the amount of the Idaho tax,  
43 and evidence can be given of such payment, the property will not be subject  
44 to Idaho use tax. If the amount paid the other state was less, the property  
45 will be subject to use tax to the extent that the Idaho tax exceeds the tax  
46 paid to the other state. For the purposes of this subsection, a registration  
47 certificate or title issued by another state or subdivision thereof for a ve-  
48 hicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall  
49 be sufficient evidence of payment of a general retail sales or use tax.

1 (11) The use tax imposed by this section shall not apply to the use by a  
2 nonresident of this state of a motor vehicle registered or licensed under the  
3 laws of the state of his residence and not used in this state more than a cum-  
4 ulative period of time totaling ninety (90) days in any consecutive twelve  
5 (12) months and if none of the buyers listed on the purchase, registration,  
6 or title documents are Idaho residents. A nonresident business entity will  
7 be held to the same requirements as a nonresident individual to qualify for  
8 the exemption provided in this subsection, except that the nonresident busi-  
9 ness entity also must not be formed under the laws of the state of Idaho. The  
10 use tax herein shall also not apply to any use of a motor vehicle registered  
11 or licensed under the laws of the state of residence of a nonresident stu-  
12 dent while such nonresident student is enrolled as a full-time student in an  
13 institution of postsecondary education that is both physically located in  
14 Idaho and recognized as accredited by the state board of education.

15 (12) The use tax imposed by this section shall not apply to the use of  
16 household goods, personal effects and personally owned vehicles or person-  
17 ally owned aircraft by a resident of this state if such articles were ac-  
18 quired by such person in another state while a resident of that state and pri-  
19 marily for use outside this state and if such use was actual and substantial,  
20 but if an article was acquired less than three (3) months prior to the time  
21 he entered this state, it will be presumed that the article was acquired for  
22 use in this state and that its use outside this state was not actual and sub-  
23 stantial. The use tax imposed by this section shall not apply to the use of  
24 household goods, personal effects, and personally owned vehicles or person-  
25 ally owned aircraft by active duty military personnel temporarily assigned  
26 in this state and spouses who accompany them if such articles were acquired  
27 prior to receipt of orders to transfer to Idaho or three (3) months prior  
28 to moving to Idaho, whichever time period is shorter. For purposes of this  
29 subsection, "resident" shall be as defined in section 63-3013 or 63-3013A,  
30 Idaho Code.

31 (13) (a) The use tax imposed by this section shall not apply to the stor-  
32 age, use, or other consumption of tangible personal property that is or  
33 will be incorporated into real property and has been donated to and has  
34 become the property of:

35 (i) A nonprofit organization as defined in section 63-36220,  
36 Idaho Code;

37 (ii) The state of Idaho; or

38 (iii) Any political subdivision of the state.

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

42 (14) The use tax imposed by this section shall not apply to tastings of  
43 food and beverages, including but not limited to wine and beer. For the pur-  
44 poses of this subsection, a tasting of wine and beer shall be defined as the  
45 maximum serving allowed by state or federal laws for such occasions provided  
46 to a potential customer, at no charge, at a location where like or similar  
47 beverages are sold. For nonalcoholic beverages and food, a tasting shall be  
48 defined as a sample from a unit available for sale at the tasting location.

49 (15) The use tax imposed by this section shall not apply to donations  
50 of food or beverages, or both, to individuals or nonprofit organizations.

1 For the purposes of this section, "nonprofit organization" means those non-  
2 profit entities currently registered with the secretary of state pursuant to  
3 section 30-30-102, Idaho Code.

4 (16) The use tax imposed by this section shall not apply to a retailer  
5 supplying prepared food or beverages free of charge to its employee when that  
6 retailer sells prepared food or beverages in its normal course of business.

7 SECTION 3. An emergency existing therefor, which emergency is hereby  
8 declared to exist, this act shall be in full force and effect on and after  
9 July 1, 2022.