

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 187

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1  
2 RELATING TO USE TAX; AMENDING SECTION 63-3621, IDAHO CODE, TO CLARIFY SERV-  
3 ING SIZES FOR FREE TASTINGS OF WINE AND BEER, TO PROVIDE THAT THE USE TAX  
4 SHALL NOT APPLY TO CERTAIN FREE SAMPLES OF FOOD AND TO DEFINE A TERM; AND  
5 DECLARING AN EMERGENCY.

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

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

9 63-3621. IMPOSITION AND RATE OF THE USE TAX -- EXEMPTIONS. An excise  
10 tax is hereby imposed on the storage, use, or other consumption in this state  
11 of tangible personal property acquired on or after October 1, 2006, for  
12 storage, use, or other consumption in this state at the rate of six percent  
13 (6%) of the value of the property, and a recent sales price shall be presump-  
14 tive evidence of the value of the property unless the property is wireless  
15 telecommunications equipment, in which case a recent sales price shall be  
16 conclusive evidence of the value of the property.

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

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

35 (c) The provisions of this section shall not apply when the retailer  
36 pays sales tax on the transaction and collects reimbursement for such sales  
37 tax from the customer.

38 (d) Every retailer engaged in business in this state or maintaining a  
39 place of business in this state shall register with the state tax commission  
40 and give the name and address of all agents operating in this state, the loca-  
41 tion of all distributions or sales houses or offices or other places of busi-

1   ness in this state, and such other information as the state tax commission  
2   may require.

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

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

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

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

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

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

1 (i) It shall be presumed that tangible personal property delivered out-  
2 side this state to a purchaser known by the retailer to be a resident of this  
3 state was purchased from a retailer for storage, use, or other consumption in  
4 this state. This presumption may be controverted by evidence satisfactory  
5 to the state tax commission that the property was not purchased for storage,  
6 use, or other consumption in this state.

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

17 (k) The use tax herein imposed shall not apply to the use by a nonres-  
18 ident of this state of a motor vehicle which is registered or licensed un-  
19 der the laws of the state of his residence and is not used in this state more  
20 than a cumulative period of time totaling ninety (90) days in any consecutive  
21 twelve (12) months, and which is not required to be registered or licensed  
22 under the laws of this state. The use tax herein shall also not apply to any  
23 use of a motor vehicle which is registered or licensed under the laws of the  
24 state of residence of a nonresident student while such nonresident student  
25 is enrolled as a full-time student in an institution of postsecondary educa-  
26 tion that is both physically located in Idaho and recognized as accredited by  
27 the state board of education.

28 (l) The use tax herein imposed shall not apply to the use of household  
29 goods, personal effects and personally owned vehicles or personally owned  
30 aircraft by a resident of this state, or military personnel temporarily as-  
31 signed in this state and spouses who accompany them, if such articles were  
32 acquired by such person in another state while a resident of that state and  
33 primarily for use outside this state and if such use was actual and substan-  
34 tial, but if an article was acquired less than three (3) months prior to the  
35 time he entered this state, it will be presumed that the article was acquired  
36 for use in this state and that its use outside this state was not actual and  
37 substantial. For purposes of this subsection, "resident" shall be as de-  
38 fined in section 63-3013 or 63-3013A, Idaho Code.

39 (m) The use tax herein imposed shall not apply to the storage, use or  
40 other consumption of tangible personal property which is or will be incor-  
41 porated into real property and which has been donated to and has become the  
42 property of:

43 (1) A nonprofit organization as defined in section 63-36220, Idaho  
44 Code; or

45 (2) The state of Idaho; or

46 (3) Any political subdivision of the state.

47 This exemption applies whether the tangible personal property is incorpo-  
48 rated in real property by the donee, a contractor or subcontractor of the  
49 donee, or any other person.

1           (n) The use tax herein imposed shall not apply to ~~free~~ tastings of food  
2 and beverages including, but not limited to, wine and beer. For the purposes  
3 of this subsection, a ~~free~~ tasting of wine and beer shall be defined as a bev-  
4 ~~erage~~ the maximum serving allowed by state or federal laws for such occasions  
5 provided to a potential customer, at no charge, and to occur individually  
6 at that ~~specifie~~ at a location and time where like or similar beverages are  
7 sold. For nonalcoholic beverages and food, a tasting shall be defined as a  
8 sample from a unit available for sale at the tasting location.

9           SECTION 2. An emergency existing therefor, which emergency is hereby  
10 declared to exist, this act shall be in full force and effect on and after its  
11 passage and approval.