

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 209

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO THE SALES AND USE TAX; AMENDING SECTION 63-3616, IDAHO CODE, TO
2 REVISE THE DEFINITION OF "TANGIBLE PERSONAL PROPERTY" AND TO REMOVE THE
3 DEFINITION OF "DIGITAL VIDEOS"; DECLARING AN EMERGENCY AND PROVIDING AN
4 EFFECTIVE DATE.
5

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

7 SECTION 1. That Section 63-3616, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 63-3616. TANGIBLE PERSONAL PROPERTY. (a) The term "tangible personal
10 property" means personal property which may be seen, weighed, measured, felt
11 or touched, or which is in any other manner perceptible to the senses.

12 (b) The term "tangible personal property" includes any computer soft-
13 ware except the following: custom computer programs; computer software
14 that is delivered electronically; remotely accessed computer software; and
15 computer software that is delivered by the load and leave method where the
16 vendor or its agent loads the software at the user's location but does not
17 transfer any tangible personal property containing the software to the user.
18 As used in this subsection, the term "remotely accessed computer software"
19 means computer software that a user accesses over the internet, over private
20 or public networks, or through wireless media, where the user has only the
21 right to use or access the software by means of a license, lease, subscrip-
22 tion, service or other agreement. Notwithstanding the foregoing exclusions
23 of certain types of computer software from the definition of tangible per-
24 sonal property, tangible personal property shall include computer software
25 that constitutes digital music, digital books, digital videos and digital
26 games when the purchaser has a permanent right to use such software and,
27 regardless of the method by which the title, possession or right to use such
28 software is transferred to the user of delivery or access. If the right to
29 use digital music, digital books, digital videos or digital games is condi-
30 tioned upon continued payment from the purchaser it is not a permanent right
31 of use. As used in this subsection, the term "digital videos" means prere-
32 corded video products and shall not include live broadcasts, television or
33 cable broadcasts or video conferencing products.

34 (i) As used in this subsection, the term "computer software" means any
35 computer program, part of a program or any sequence of instructions for
36 automatic data processing equipment or information stored in an elec-
37 tronic medium.

38 (ii) As used in this subsection, the term "custom computer program"
39 means any computer software, as defined in this subsection, which is
40 written or prepared exclusively for a customer and includes those ser-
41 vices represented by separately stated charges for the modification of
42 existing prewritten programs when the modifications are written or pre-

1 pared exclusively for a customer. The term does not include a "canned"
2 or prewritten program which is held or existing for general or repeated
3 sale, lease or license, even if the program was initially developed on a
4 custom basis or for in-house use. Modification to an existing prewrit-
5 ten program to meet the customer's needs is custom computer programming
6 only to the extent of the modification, and only to the extent that
7 the actual amount charged for the modification is separately stated on
8 invoices, statements, and other billing documents supplied to the pur-
9 chaser.

10 (c) The term "tangible personal property" does not include advertising
11 space when sold to an advertiser or its agent by the publisher of the newspa-
12 per or the magazine in which the advertisement is displayed or circulated.

13 SECTION 2. An emergency existing therefor, which emergency is hereby
14 declared to exist, this act shall be in full force and effect on and after
15 April 1, 2015.